Albemarle County Planning Commission
August 20, 2013

The Albemarle County Planning Commission held a public hearing on Tuesday, August 20, 2013, at 6:00 p.m., at the County Office Building, Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

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

Other officials present were J.T. Newberry, Senior Planner; Scott Clark, Senior Planner; Claudette Grant, Senior Planner; Sharon Taylor, Clerk to Planning Commission; Wayne Cilimberg, Director 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. There being no comments, the meeting moved to the next item.

Review of Board of Supervisors Meetings – August 7 & August 14, 2013:

Mr. Cilimberg reviewed the actions of the Board of Supervisors meetings on August 7, 2013 and August 14, 2013.

Regular Items:

SUB-2013-000079 Kuttner
PROPOSED: Request for final plat approval without an approved preliminary plat to subdivide 1 lot into 2, with access from Rio Road East (State Route 631) on 2.95 acres.
ZONING CATEGORY/GENERAL USAGE: R-4 Residential; residential density (4 dwelling units/acre)
SECTION: Chapter 14 Subdivision Ordinance
COMPREHENSIVE PLAN LAND USE/DENSITY: Neighborhood Density in Neighborhood 2 – residential (3 – 6 units/acre); supporting uses such as religious institutions, schools and other small-scale non-residential uses.
ENTRANCE CORRIDOR: No
FLOOD HAZARD OVERLAY: Yes; FH Flood Hazard – Overlay to provide safety and protection from flooding
PROFFERS: No
LOCATION: 465 Rio Road East
TAX MAP/PARCEL: 06100-00-00-210B0

MAGISTERIAL DISTRICT: Rio
(JT Newberry)

J.T. Newberry presented a PowerPoint presentation to summarize the staff report for the Kuttner final plat.

The request is for final plat approval without an approved preliminary plat to subdivide one lot into two lots. The property is encumbered by floodplain as well as stream buffers. There are also some critical slopes that exist on the property. This application has been called up for review by an adjacent property owner at 435 Rio Road immediately to the west at the July 3 Site Review Committee meeting.

The property is 2.95 acres and the proposed lot is on the western portion of the parcel. It is a pretty tight site. However, ultimately the Site Review Committee did find that it met all of the requirements for subdivision approval. This adjacent owner that called it up submitted a letter to staff that outlined some concerns. The concerns include issues related to traffic safety, erosion and sediment control, critical slopes, tree maintenance, setbacks and sewage overflow.

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

1. ***Chapter 14 Section 225 Review and Action on Final Plat by Commission***

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

1. Traffic safety – The adjacent property owner has communicated with Troy Austin at VDOT about his concerns. State law permits up to two single-family residences on existing private entrances before additional standards are required. Therefore, the existing entrance has been deemed adequate for the proposed subdivision.

2. Erosion and sediment control, critical slopes – The adjacent property owner has communicated with Erosion and Sediment Control Officer Mark Hopkins. At this point, there is no violation of the County's erosion and sediment control or critical slope ordinances. However, there may be some things that would need to be addressed at building permit stage.

3. Tree maintenance – Staff visited the site on August 7th and found that many trees had been recently cut-down by Dominion Power. A forester from Dominion Power named Josh Whirley worked with the property owner to remove trees threatening the power lines, which had been a problem in the past. Mr. Whirley expressed concern that the construction of the existing house may have undermined the integrity of the trees that needed to be removed.

   The property owner separately acknowledged asking the tree removal crew to take down some additional trees on the site that were outside of the Dominion

Power easements. The Zoning Division is investigating whether or not the removal of these trees constitutes a zoning violation. The property owner expressed a desire to plant new trees, but agreed to comply with any necessary mitigation plan, if deemed appropriate by the County.

Staff notes that a zoning violation would prevent the issuance of a building permit, but it does not give staff the authority to deny a subdivision plat that meets the County's standards.

4. Setbacks – The adjacent property owner expresses some concern that the submitted plat shows a small encroachment by their shed on the applicant's property. Any discrepancy of the location of the property line and the location of the shed is considered a private civil matter that does not affect the consideration of the subdivision.

5. Sewage overflow – One condition of approval is that the proposed lot must connect to public water and public sewer. The bond estimate from ACSA states that the sewer connection would run underneath Meadow Creek. ACSA also worked with the City Utilities Engineer to determine that the public water connection would come from an 8" water line off nearby Agnese Street. ACSA expressed no concern with making these connections to the proposed lot.

The final subdivision plat was reviewed by all members of the Site Review Committee and found to meet the requirements for final subdivision approval. No unfavorable factors were identified. Therefore, staff recommends approval of the final subdivision plat subject to one condition as stated in the staff report.

Mr. Morris invited questions for staff.

Mr. Loach asked regarding the entrance if it was required by VDOT and has it been approved.

Mr. Newberry replied yes, VDOT has approved it because it is an existing entrance. There are no improvements since the current entrance serves an existing dwelling on the property. Troy Austin, of VDOT, explained that there was not anything that he could do within his power to require any changes or to deny the proposed subdivision.

There being no further questions, Mr. Morris opened the public hearing for the applicant and public comment. He invited the applicant to come forward.

Eliza Pister, Property Manager representing Mr. Kuttner, explained that Mr. Kuttner was in Europe visiting his children. She is familiar with the site and was confused by the comment about the trees and Virginia Power. She asked if they are saying that Mr. Kuttner called to have the trees removed.

Mr. Morris noted the Commission would address that afterwards.

Ms. Pister noted that Mr. Kuttner totally wants to comply with all of the laws, the zoning, and anything that he can do. Mr. Kuttner wants to get along with his neighbors. The proposed structure is very small and around 500 square feet. Originally, Mr. Kuttner was talking about putting in a raised structure. However, now he has changed his mind and wants it to be flat. She pointed out Mr. Kuttner wants to do everything the right way to comply.

Mr. Morris invited public comment.

Harold Herrs, the adjacent property owner, pointed out it was difficult because they are good friends. He did not want to stop any development that Mr. Kuttner wants to do legally through all the course of action that he seems to be following at this time. Everything seems under the guidelines to be effectively permissible. There are a couple of issues that affect his property directly. One is the discrepancy of a property line for a shed. His property is the Cochran's Mill Property that is directly across from the Advantage Handyman. He has been restoring the property for ten years. It was built in 1754 and it is the oldest original standing structure in the County. Mr. Kuttner's proposal puts his new structure 15' from his property line. There is a little confusion on his part because the guidelines state that 15' is permissible. However with 3 acres of land they question why the new structure has to be so close. The shed has been on the property for more than 40 years. The surveyor, Mr. Nixon, informed him today that the cinderblock structure literally lies on the property line. They want to be able to clean up and have access to that shed. They dispute the fact that it is over the property line. They feel that the setback requirements may be somewhat of an issue. He was willing to work that out with Mr. Kuttner to come to an agreement so they both can be happy. He was trying to protect the property since it had been there for over 250 years. The tree issue is also big. They have been cutting and hacking trees left and right and they have had the power knocked out twice from tress falling onto the property.

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

Mr. Dotson asked staff what are the regulations about cutting trees in the R-4 zone.

Mr. Newberry replied the zoning ordinance has some provisions that permit cutting trees in the R-4 zone. That is what the Code Enforcement Officers would be looking at with a building permit. Trees that are greater than 6" in diameter measured 6" from the ground should have permission from the zoning administrator to be removed. Typically that is done through a certified arborist providing information saying this is a diseased or dying tree, or where this tree definitely poses a risk to health, safety, and welfare and should be removed. When he spoke to the property owner on the phone he basically acknowledged that there were some trees that he did not want to have on the site that would probably not have been taken down by Dominion Power, but he said he paid the crew a little bit extra to take down about five trees. On his visit to the site it appeared they would violate the 6" diameter provision, but there is an exception in the zoning ordinance that if those trees were removed in conjunction with preparing the site for development, then they are exempt. So zoning would be weighing those ordinance provisions at the time of the building permit.

Mr. Randolph noted normally a public utility does not remove trees unless the trees impinge on or pose a threat to their electric line.

Mr. Smith said the adjacent property owner brought up about the 15' building setback and worrying about his shed. The way the building is drawn on the plat it is shown away from the 15' setback line.

Mr. Newberry replied it was true.

Mr. Smith said he had a question for the applicant.

Mr. Morris invited the applicant's surveyor to come forward.

Mr. Smith asked if an iron was found on the property line since it said a benchmark was found at 32.8 feet.

Josh Nixon, with Nixon Land Survey, replied it was an iron found on a property line, but it was also a benchmark called for from the old VDOT right-of-way plans where the road changed on Rio Road.

Mr. Smith noted the next door neighbor had commented about a problem with the drainfield. He thought the letter indicated that it had come over on his property. He asked where the drainfield for the existing house was located.

Mr. Nixon replied he believed it is on the north side of the house on the hillside in between the driveway and the right-of-way. He believed it is an ego pump system up to that area. He pointed out it was to the north of the septic system risers.

Mr. Smith pointed out he finds it hard to believe since he could not see how it could drain all the way to the adjacent property owner. That was why he was asking if he knew where it was.

Mr. Nixon noted that is based on his own judgment seeing the clearing and the lay of the land.

Motion: Mr. Randolph moved and Mr. Smith seconded to approve SUB-2013-00079 Kuttner Final Subdivision Plat with the conditions as recommended by staff in the staff report.

The final subdivision plat shall not be signed until the following condition has been met: Planning approval to include:

1. The connection of public water and public sewer to the proposed lot has either been built or bonded to the estimate set by ACSA ($46,800).

The motion passed by a vote of 5:0. (Lafferty, Franco absent)

Mr. Morris noted this matter was unanimously approved and does not require approval

by the Board of Supervisors.

Public Hearing Items

SP-2013-00012 Les Yeux du Monde
PROPOSAL: Art gallery on 30 acres. No dwellings proposed
ZONING: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots)
SECTION: Chapter 18 Section 10.2.2.36 of the Albemarle County Code, which allows gift, craft and antique shops.
ENTRANCE CORRIDOR: No
COMPREHENSIVE PLAN: Rural Areas – preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (0.5 unit/ acre in development lots)
LOCATION: 841 Wolf Trap Rd.
TAX MAP/PARCEL: 06300-00-00-014I0
MAGISTERIAL DISTRICT: Rivanna
(Scott Clark)

Scott Clark presented a PowerPoint presentation to summarize the staff report for the SP-2013-00012 Les Yeux du Monde.

This is a special use permit request for an art gallery in the Rural Areas zoning district. It is being applied for under the section of the zoning ordinance that permits gift, craft and antique shops.

The entrance is on Wolf Trap Road. The concrete parking area is used most days with any small events. Along the driveway there are maintained grass areas that can be used for parking for larger events.

The proposal is to use the existing structure as an art gallery. The hours proposed are Thursday to Sunday from 1:00 p.m. to 5:00 p.m. as well as by appointment. There would be ten art openings or similar events per year for up to 50 people. The 50 is based on the building official's determination of the capacity of the building. There would be 20 other events for up to 20 people per year.

Impacts on adjacent properties: Staff is mainly concerned about noise. There is no amplified sound proposed. In fact, it would be prohibited by a recommended condition. Parking, although it on the corner of the property, is about 1,000 feet or more from any dwellings on adjacent properties.

The uses impact on the zoning district: The use is commercial. It is not a typical Rural Area use and is not related to agriculture or forestry. But, given the limited scale and visibility of the use staff felt that as long as it was kept at that scale the impacts would be minimal.

Health and Safety Concern: VDOT has reviewed the site a couple of times and is comfortable with the current entrance at the current levels of use. The County Engineer feels that the existing site can support the parking needs.

This property is in an Agricultural and Forestal District, which means when it gets to the Board of Supervisors if they decide to approve it they will make a determination that it is appropriate within the districts. Staff took the request to the Agricultural and Forestal District Advisory Committee. The Committee felt that the use would not be a detriment to agricultural or forestry in the district. The forested area at the center of the property is under a current forest management plan. So that will not be changed by the use of the gallery on the property. The Committee recommended approval of the request provided that the proposed limits as far as hours of operation and attendance levels were held to.

Staff has identified factors which are favorable and unfavorable to this proposal:

Factors favorable to this request include:

1. The limited scale of the use would avoid impacts on adjacent properties and critical resources.
2. The Agricultural & Forestal Districts Advisory Committee recommends approval, provided that the use is limited to the proposed scale of use.

Factors unfavorable to this request include:

1. The use is not directly supportive of the Comprehensive Plan's goals for the Rural Areas.

RECOMMENDATION: Staff recommends approval of SP-2013-00012 Les Yeux du Monde with the conditions provided in the staff report. He reviewed the recommended conditions. Although the applicants did not feel that they would need to go much past 8:00 or 8:30 p.m. for their events, staff put a 10:00 p.m. limit on it just to have some hard limit that kept the events from happening during the nighttime hours. Condition 6 sets the hours as proposed by the applicant, which again limits the scale and frequency of the use. Conditions 3 and 4 reflect the applicants' proposal as described above.

Mr. Morris invited questions for staff.

Mr. Randolph said just for the record and to assure anybody in the audience given the conditions of approval on page 5 if in fact this property would be sold in the future no one would be able to hold outdoor concerts on this site without another special use permit changing the conditions.

Mr. Clark replied if there was going to be a music festival or something like that they would need to have a separate special use permit for special events. So this would not provide the applicant the right to do that.

Ms. Monteith pointed out the only thing that she did not quite understand is that this is an existing use. Therefore, she was not quite sure why it is coming to us now.

Mr. Clark replied this category of use can only operate by special use permit. The owners did not know that and they started the use. They have been operating it for a while. However, staff received a complaint. Therefore, this application is to mitigate that violation.

Mr. Randolph commented that under the section on page 3 character of the district unchanged - the character of district will not be changed by the proposed special use permit. He was struck that there was no mention of traffic in there. In this case there are no significant traffic impacts that they can identify. However, just for the record certainly in that section of character of district unchanged that is an area where they all acknowledge that the traffic can have an impact on the character of a particular community or neighborhood. But, in this case it is not applicable. That is just an observation.

Mr. Dotson asked for clarification on conditions 3 and 4. Condition 3 says there can be 10 big events, with big events being up to 50 people over the course of a day. Condition 4 says there can be in addition to that 20 small events defined as no more than 20 people. So it is a total of 30 events per year.

Mr. Clark replied that was correct.

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

Lynn Bolen Warren, applicant, said she thought that everything is in the report just given. However, they are applying for a special use permit to operate a gallery in a building that is also used as her husband's studio. He is a painter. They were very happy to comply with the conditions of approval. In addition, they would like to put up signage. That is another issue that a neighbor had that they would need a sign near the opening so that people would know where they are located. Regarding conditions 3 and 4 basically the gallery would have about ten exhibits a year. So that is why they are asking for ten events where they can have an opening.

Ms. Warren pointed out her goal and mission has always been with the eyes of the world, Les Yeux du Monde. She has lived on the property for about 20 years and started the entity about 20 years ago. The mission of Les Yeux du Monde was to share the beauty of the views of Albemarle County as well as the views that art can bring to educate people. She did all her graduate work in art history. So that is another mission that she has with the gallery and not just to sell art but always to educate as well and to open new venues of seeing the world through art. That is why they asked for the other two smaller events. So with each exhibit they would have an educational event, such as an artist talk or something like that. It would be 15 people max that usually would come to these. That is why they asked for that. For the hours, again, it would be 1:00 to 5:00 p.m. by appointment. Very few people come during these times. However, she thought it was nice to have a time that they would not have to call and make an appointment so that people would know that they could drive up and see the art on

those days during those times. Of course, they understand there is no amplified sound. They are very happy to abide by all the conditions of approval.

Mr. Morris invited questions for the applicant.

Mr. Loach asked if the proposed uses are consistent with the uses that have been going on the property.

Ms. Warren replied yes it is.

Mr. Smith asked if it was in regards to the events, also.

Ms. Warren replied yes.

Mr. Smith pointed out that really there is no change to what has been going on.

Ms. Warren agreed that there was no change.

Mr. Dotson said she mentioned that her husband is an artist/painter. He was curious what portion of the works that would be exhibited for sale are his works versus other people's works.

Ms. Warren replied that her husband is one of the artists that she shows. She shows his work every two years. She has a show coming up. Her husband is always working in the gallery. He has a certain floor basically and a studio. He will be showing there throughout the year, too. She highlights one artist or maybe a group of artists for each show. But, she can also carry these other artists.

Mr. Smith asked if some of the artists are local.

Ms. Warren replied yes, most of the artists are local. She started it a long time ago. She was downtown for about nine years in two different places on the Downtown Mall. She had to bring art from elsewhere to show in Charlottesville. She found out there are so many great artists that live right here that are just as good as or better than artists in New York. So it was mostly local now. But, they are of regional and national importance.

Mr. Morris said having had the delightful experience of going up to her house a couple days ago he had one question. He asked if she has had any problem with vehicles going down and meeting a vehicle coming up on a very narrow driveway.

Ms. Warren replied that they have not yet. There are several places to pull off. She knows it is a little narrow in certain places. However, there are enough areas where someone can pull to the side.

Mr. Morris invited public comment.

Mike Rodemeyer, 888 Wolf Trap Road, said he lived on the other side of Wolf Trap Road that was not contiguous to the subject property. He was in the viewshed and sound shed of the property. They are present in support of the Warren's request for the special use permit. This is a unique situation where they actually have some experience with potential impacts. Certainly from his perspective they really have not seen any impacts from traffic or noise. They support the conditions that have been recommended by the staff. They think as long as this remains the small scale activity that it is that it is not only not detrimental to the community, but in fact a real asset. They enjoy having this gallery in the neighborhood and it is a real valuable contribution to the community as a whole. They are here to support the application under the conditions as proposed by the staff. They certainly would not want to see anything on this road that would begin to lead to commercialization. But, they are assured by the small scale requirements of the events in the permit that would not happen. With those conditions they are very happy to support the request for the special use permit.

Scott Jamison, 787 Wolf Trap Road, said his property adjoins the applicant's property on two sides. So they are the most immediate residence to the property that is the subject of the application. He does not have a problem with the application based upon conditions that would preserve the current low impact low volume kind of situation that they have experienced in the past. He agreed that they do need a sign at the property. His driveway is right next to the applicant's driveway and they get a lot of cars that come up because they don't know which driveway is which. The two driveways are very close together. He would ask that the sign be part of the conditions so that people know which driveway to turn up.

Mr. Jamison asked since this does create a precedent that could extend beyond the current owners he would ask that maybe the conditions be looked at a little more specifically. One is the 10 p.m. cut off period is an expansion of the existing use from what he understands. The application said that they typically only run to 7:30 p.m. at the latest. Certainly he would understand that people don't leave immediately at 7:30 p.m., but he would submit that maybe it would be more appropriate to consider a time like 8:30 p.m. or 9:00 p.m. at the latest. But, 10 p.m. is an expansion and is not what the applicant indicated in her application to the Board on what her expectations were for her current operations at this site. He would ask that to be considered.

Mr. Jamison noted the other thing from his review of the file was the suggestion at one point that there would not be any outdoor music. It is now qualified to be amplified outdoor music. Non-amplified music at times can be very loud. He noted his son used to play the drums and his neighbors let him know how they felt about that. He would ask that the Board consider modifying that to just outdoor music. He thought that was the original comment from the zoning review of the application. Somebody playing a guitar quietly is one thing, but it can be excessive, as they know. That was an issue they got feedback on when their son was playing drums. The other issue is there is no starting time for events under conditions 3 and 4. He wondered if that was his misunderstanding of the conditions or whether that was omitted for a particular reason. Generally he is supportive. What is done today is fine and not obtrusive on anybody in the area. He would be the first to feel that and it has not been an issue.

Mary Ann Parr, a neighbor on Wolf Trap Road, said she lives three houses past Lynn's property. She agreed with the proposal completely. She thinks it is very low impact. She has been up there many times and there are never a lot of people up there. It is very low impact for the environment. She has walked the road many times including during events. She takes walks frequently. There are very few cars going up and down the road. In fact, some of our other neighbors are much more detrimental drivers. She just heartily approves of it. Also, she firmly believes the work Lynn does is very good for the community in general and she has enjoyed it herself. She was in favor of the request.

Dennis Woodriff, husband of Mary Ann Parr, said he was totally in favor of this and hopes they will approve it. It is a real benefit to the community. There is no infringement on their peace and quiet.

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

Mr. Randolph requested to ask the applicant to come back to answer a question.

Mr. Morris invited the applicant to come forward to answer a question.

Mr. Randolph said regarding the issue of no outdoor music you don't project to have the Les Yeux du Monde jazz festival at this location.

Ms. Warren replied no, that she sees no reason to have outdoor music in relation to this use.

Mr. Randolph asked about a start time for special events.

Ms. Warren said for the larger event the start time is usually 5:00 p.m. to 7:30 p.m. for the opening. They left the other one open because sometimes she might do a midday gallery talk, an afternoon tea, or a morning coffee for one of the educational events. Typically another one would be the very last day of the show on a Sunday from 3:00 p.m. to 5 p.m. So those in general are the times. However, it might vary a little bit once in a while depending on what month and day things fall on. However, that is typically the hours she would have these events.

Mr. Randolph noted there was a recommendation for the closing time to be earlier than 10:00 p.m. He asked if she would consider a time earlier such as 9:00 p.m.

Ms. Warren replied that 9:00 p.m. would be fine.

Mr. Loach noted that the question came up on signage.

Ms. Warren said she would like to have a sign. In a letter from an adjacent neighbor, the Powers, they requested that a sign be put up earlier on the road instead of right before their mailbox. She did not know if this is something she would have to get another approval for.

Mr. Morris suggested that she talk with Mr. Clark about this before doing anything with the sign. There are rules and regulations on that. They want to make sure the sign is in compliance.

Mr. Dotson said they talked a little bit about starting time and the question was raised about 10:00 p.m. He asked what she would feel is a reasonable time to cease activities.

Mr. Morris pointed out Ms. Warren just stated 9:00 p.m.

Ms. Warren said that was just to protect if they want to have a small group of artists for dinner afterwards. That is why she used 10:00 p.m. honestly. However, the dinner is usually in their house anyway. But, usually the opening people leave at the latest by 7:30 p.m.

Mr. Morris thanked Ms. Warren for her answers.

Mr. Loach asked if they need to put the signage as a condition.

Mr. Kamptner replied no, and he would recommend against it because zoning would need to work with the applicant with respect to that.

Mr. Morris pointed out that it was a whole different set of rules and regulations, which is why it would be better not to have it encumbered.

Mr. Clark mentioned that if they are going to make a motion for approval they should also add the standard lighting condition, which he failed to include. The condition requires cut off shielded lighting and not to fall on neighboring properties. He did not believe any new lighting is proposed. However, they normally include that.

Mr. Morris asked if it would be a standard condition, and Mr. Clark replied that is correct.

Mr. Morris questioned if the applicant would have a problem with no additional outdoor lighting.

Mr. Cilimberg noted that any additional lighting has to be fully shielding.

Motion: Mr. Loach moved and Mr. Randolph seconded for approval of SP-2013-00012, Les Yeux du Monde with staff's recommended conditions, as amended for the change in time and the addition of the lighting condition.

Mr. Cilimberg noted the time would be the 9:00 p.m.

Mr. Kamptner asked if a consensus was reached on a condition for a starting time.

Mr. Morris replied no.

Ms. Monteith asked if the other condition was no outdoor music.

Mr. Loach noted that was not included in the motion because the applicant stated that she would not have outdoor music. He asked if the applicant agreed with the changes to the conditions. He noted the time was changed to 9:00 p.m. They did not put anything in about the starting time. They added the lighting condition she would have to meet. However, they did not add a condition for outdoor music.

Ms. Warren said she can live with this condition as it is. She did not see any reason to add another condition.

Mr. Morris invited further discussion.

Mr. Dotson commented that the thing that makes him feel comfortable with this is the fact that it is an artist studio and gallery. It is selling works produced on the property. He believes it is subtle perhaps but something that is strictly a gallery might be a different matter. She indicated that previously her gallery had been on the Downtown Mall. They are talking about the rural area. Sometimes the Commission has looked at whether a product was sort of yielded by the property and the owner. He was wondering if the Commission could be explicit and say that what they are approving is an artist studio and gallery. That sort of makes that connection. Then the next time if somebody else came along and said well this is just a gallery and it has nothing to do with my work or my spouses it might be a different application.

Mr. Kamptner replied yes, the use could be further narrowed from what the broader special use permit classification states.

Mr. Clark pointed out the artist studio is not something that requires a special use permit. It is just when it steps into sales and exhibits that it becomes a use that requires a special use permit.

Mr. Dotson said that he was satisfied.

Mr. Morris called the question and asked for a roll call vote.

The motion passed by a vote of 5:0. (Lafferty, Franco absent)

Mr. Morris noted that SP-2013-00012, Les Yeux du Monde would go to the Board of Supervisors on a date to be determined with a recommendation for approval with the conditions, amended as follows.

1. No antique shop or gift shop shall be operated on the property.
2. The gallery use shall take place only in the existing 40-foot by 20-foot gallery structure, which may be altered but not expanded.
3. The art gallery shall hold no more than 10 art-related events per year for more than 20 attendees at any time, and daily attendance for these events shall not exceed 50 persons.

4. The art gallery shall hold no more than 20 art-related events per year for up to 20 attendees at any time, and daily attendance for these events shall not exceed 20 persons. These events are in addition to the events permitted under condition 3.
5. Any art event allowed by conditions 3 or 4 must end by 9:00 p.m.
6. The hours of operation for sales in the art gallery shall not begin earlier than 1:00 p.m. and shall end not later than 5:00 p.m.., each day, Thursday through Sunday. Operation outside those hours shall be by appointment only.
7. There shall be no outdoor amplified sound permitted for this use.
8. The use shall commence on or before [date two years from Board approval] or the permit shall expire and be of no effect.
9. All new outdoor lighting shall be only full cut-off fixtures and shielded to reflect light away from all abutting properties.

SP-2013-00013 Roberts
PROPOSAL: SP2013-00013: Special use permit amendment to permit a residential use to replace a public garage on 5 acres.
ZONING: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots)
SECTION: SP2013-00013: Chapter 18 Section 10.5.2 of the Albemarle County Code, which allows for more lots than the total number permitted under sections 10.3.1 and 10.3.2
ENTRANCE CORRIDOR: No
COMPREHENSIVE PLAN: Rural Areas – preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (0.5 unit/ acre in development lots)
LOCATION: 8576 Howardsville Turnpike
TAX MAP/PARCEL: 12600-00-00-032F3
MAGISTERIAL DISTRICT: Samuel Miller
(Scott Clark)

AND

SP-2013-00014 Roberts – Public Garage
PROJECT: SP2013-00014 Roberts Public Garage
PROPOSAL: SP2013-00014: Special use permit amendment to require closure of the permitted public garage on 5 acres if a dwelling is built on the property.
ZONING: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots)
SECTION: SP2013-00014: Chapter 18 Section 10.2.2.37 of the Albemarle County Code, which allows for public garages
ENTRANCE CORRIDOR: No
COMPREHENSIVE PLAN: Rural Areas – preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (0.5 unit/ acre in development lots)
LOCATION: 8576 Howardsville Turnpike
TAX MAP/PARCEL: 12600-00-00-032F3
MAGISTERIAL DISTRICT: Samuel Miller
(Scott Clark)

Scott Clark presented a PowerPoint presentation to summarize the staff reports to amend two special use permits to permit residential use to replace a public garage.

SUMMARY:
In order to allow the residential use to replace the garage use, the conditions of both previous special use permits need to be amended. The garage use (SP91-21) cannot be vacated or rescinded, so the recommended conditions of approval would allow only a garage or a residence on the property, and not both. Also, the existing conditions for SP-92-46 need to be amended to remove the prohibition on dwellings on the parcel. There is an 8,000 square foot garage building, which is the only structure on the 5 acres at the moment.

PLANNING AND ZONING HISTORY:

ZTA-91-04 Schuyler Enterprises: On September 18, 1991, the Board of Supervisors denied this zoning text amendment request to add temporary storage of motor vehicles on the land surrounding a public garage to the definition of "public garage" in the Zoning Ordinance.

SP-91-21 Schuyler Enterprises: Also on September 18, 1991, the Board of Supervisors approved this special use permit for a public garage, with conditions. The approval permitted use of the public garage for repair of trucks and equipment owned by the garage operator, and limited outdoor parking of tractor-trailer units to four. The current SP2013-00014 Roberts Public Garage is an amendment of SP 91-21.

SP-92-46 James E. Clark: On August 17, 1992, the Board of Supervisors approved this special use permit for three additional development rights on a 25-acre parcel. The approval permitted three additional lots, only two of which could have dwellings. The third lot became the site of the public garage approved under SP-91-21, and the conditions of approval do not permit it to have a dwelling. The current SP-2013-00013 is an amendment of SP-92-46 to allow a dwelling on the existing parcel.

APPLICANT'S PROPOSAL AND JUSTIFICATION
The applicant wants to amend SP-91-21 and SP-92-46 to permit a dwelling on the property and to remove the public-garage use. The public-garage is not currently operating, but the existing special use permit would allow it to re-open and operate under the existing conditions of approval.

Staff has identified factors which are favorable and unfavorable to this proposal:

Factors favorable:

1. The property already has a development right.
2. The change from a commercial garage use to a single-family residence would reduce impacts on adjacent properties and on water quality.

Factors unfavorable:

None found

RECOMMENDATION (SP2013-00013): Staff recommends approval of SP-2013-00013 Roberts with amendments to the existing conditions listed in the staff report as follows.

1) The parcel upon which the public garage is located may only be used as a garage in compliance with SP-2013-00014 until a dwelling is constructed on the property, and not thereafter.

RECOMMENDATION (SP-2013-00014): Staff recommends approval of SP-2013-00014 Roberts Public Garage with amendments to the existing conditions listed in the staff report, as follows.

1) The public garage may only operate until a dwelling is constructed on the property, and not thereafter.
2) The following requirements shall apply to the public garage use:
   a) The hours of operation for the public garage shall not begin earlier than 8:00 a.m. and shall end not later than 5:00 p.m., each day, Monday through Saturday.
   b) No outside storage of parts including junk parts. Refuse awaiting disposal shall be stored in appropriate containers.
   c) No freight shall be handled or stored on-site.
   d) All work shall be conducted within the garage.
   e) Repair work and storage shall be limited to equipment owned or operated by the operator of the public garage; and
   f) No more than four tractor trailers shall be parked in the outside area at any one time.

Condition #1 in both special use permit recommendations are worded to allow the public garage to continue as permitted until there is a dwelling constructed at which point that public garage use goes away.

Condition #2 on SP-2013-00014, which is the public garage use, only applies to the public garage use and just adapted from the earlier existing conditions on the special use permit and would only be relevant for as long as the public garage use is still permitted. It is not actually in operation now, but it could come back into operation at any time.

Staff is recommending approval of SP-2013-13 and SP-2013-14 with the conditions as shown.

Mr. Morris invited questions for staff.

Mr. Dotson asked for clarification. Staff said the public garage approval cannot be rescinded.

Mr. Clark replied it was his understanding from zoning their preferred approach was to amend both of the special use permits.

Mr. Dotson said his second question is he said the property already has a development right so the previous condition had said even though you have a development right you can only have a garage.

Mr. Clark replied that was correct because the development right had to be granted in order for that to become an individual lot.

Mr. Randolph pointed out this is not in the Rivanna District. The property is west of Scottsville so is probably in the Samuel Miller District. One note on character of district unchanged on page 3 in the middle was he thinks short of the applicant having extended family with 24 family members they should see a reduction in traffic as a result of this application.

Mr. Scott replied that he thought that was addressed in the public safety section.

Mr. Randolph noted that in the R-4 district there was going to be less traffic as a result. He was trying to use that to remind us that it does not affect the character.

Mr. Smith said in all practically is this like a down zone.

Mr. Clark said it was not really a down zoning, but it is a reduction in intensity of use on the property.

Mr. Cilimberg pointed out in reality it was giving the applicant flexibility to do what they want to do with the property. They can keep operating as a garage, which they don't prefer to do. They want to go to a house.

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

Brenda Robertson said she owns this land and also the adjacent 10 acres. She is asking to have this changed because she wants to let her son build a home on the property. The only thing she wants to add is it is a garage on paper only. It has been closed for over 19 years with no operation. So it is not a matter of even operating until a home is built.

Mr. Morris invited public comment. There being none, the public hearing was closed and the matter before the Commission for discussion and action. He noted that it was in the Samuel Miller District and not the Scottsville District.

Motion: Mr. Loach moved and Mr. Smith seconded to recommend approval of SP-2013-0013 Roberts with the conditions as outlined in the staff report.

The motion passed by a vote of 5:0. (Lafferty, Franco absent)

Motion: Mr. Loach moved and Mr. Smith seconded to recommend approval of SP-2013-0014 Roberts Public Garage with the conditions as outlined in the staff report.

The motion passed by a vote of 5:0. (Lafferty, Franco absent)

Mr. Morris noted that SP-2013-00013 and SP-2013-000014 would go to the Board of

Supervisors on a date to be determined with a recommendation for approval with conditions.

ZMA-2013-0003 1306 Crozet Avenue
PROPOSAL: Rezone 1.09 acres from R-2 Residential zoning district which allows residential uses at a density of 2 units per acre to R-4 Residential zoning district which allows residential uses at a density of 4 units/acre, to allow construction of 2 proposed units (with two 2 existing units) for a density of 3.67 dwellings/acre.
ENTRANCE CORRIDOR: No
PROFFERS: Yes
SCENIC BYWAYS OVERLAY: Yes
COMPREHENSIVE PLAN: Crozet Master Plan-Neighborhood Density Residential – 3-6 units /acre; supporting uses such as religious institutions, schools and other small-scale non-residential uses in the Crozet Community.
LOCATION: Intersection of St. George Avenue/Crozet Avenue (1306 Crozet Avenue)
TAX MAP/PARCEL: 056A1010011400
MAGISTERIAL DISTRICT: White Hall
(Claudette Grant)

Ms. Grant presented a PowerPoint presentation to summarize the staff report.

Purpose of Request: Rezone 1.09 acres from R-2 residential zoning district to R-4 residential zoning district to allow construction of two (2) proposed houses (along with one (1) existing house and one (1) rental unit; a second existing rental unit will be eliminated) for a density of 3.67 dwellings/acre. The existing units are shown along with the proposed lots.

As described in the staff report, the proffers are in need of some minor technical fixes along with an additional proffer for the affordable unit. The revisions will be completed prior to the Board public hearing.

Factors Favorable:
1. The rezoning request would be consistent with the Comprehensive Plan (Crozet Master Plan).
2. The use is consistent with the uses permitted under the existing R-4 zoning district.
3. This rezoning request would correct the issue of the existing non-conforming use of three units in the R-2 zoning district.
4. This rezoning request would continue to provide an affordable rental unit along with two new residential units in this portion of the County.

No unfavorable factors found.

RECOMMENDATION: Staff recommends approval of the rezoning with the proposed revised proffers as described in the staff report, the addition of an affordable housing proffer and based on the factors favorable.

Mr. Morris invited questions for staff.

Mr. Randolph said just for the record the existing zoning is R-2 with three houses on the site. They have one nonconforming. There are two affordable units, which mean two of the three units are affordable. Therefore, 66 percent of the current site is affordable. What is proposed is to move to R-4 with four (4) houses with one being affordable. That means they go from 66 percent affordability down to 25 percent affordability.

Ms. Grant replied that was correct.

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

Mike Carmagnola, architect representing the owner Mary Elizabeth Jensen and Keith Cheely, made a clarification on the number of affordable units on the property. He would actually submit that all three current units on the property are affordable. The large 3,400 square foot house rents for $1,100 per month. He would actually consider that to be an affordable housing unit, given the size and the price of it in Crozet. None the less, two of those three units will remain as part of the rezoning request.

Mr. Carmagnola said the intent is to have those remain at a similar rent scale that they currently are right now. The rezoning request does take it from R-2 to R-4 and corrects the current nonconforming use of three units in an R-2 district. Obviously, it is consistent with the Crozet Master Plan Neighborhood Density Residential, which allows 3 to 6 dwelling units per acre in that area. They would have 4 dwelling units on the 1.09 acres. They would certainly be within the 6 dwelling limit. They have met several times with Ms. Grant and responded to all her comments, hopefully satisfactorily. They did meet with the neighbors. They had a meeting on site outside with boards and discussions. They had several neighbors sign a petition supporting this in concept including several of the tenants in the existing homes. One tenant is going to have to move at some point. In concept they do accept that. The owner is very committed to affordable housing as one of her beliefs. That is something that is important to her and wants to make sure remains.

Mr. Carmagnola said when Crozet was originally developed there were large lots off of Crozet Avenue. There were several large lots along Crozet Avenue with a big house in the front. What happens, because this is a corner lot, was as they get beyond this property there are actually a series of smaller lots with houses fronting on St. George itself. The two proposed lots would actually be consistent with the development that is already occurring on both sides of St. George Avenue. In many ways this is a place where the division of lots is located where two different types of streets come together obviously on the corner of St. George and Crozet Avenue. Again, they think this proposal is consistent with what is already in place with the current vernacular and sort of rhythm of development that already exists and in place.

Mr. Morris invited questions for the applicant.

Mr. Loach asked whether Mr. Carmagnola had come before the Crozet Advisory Committee.

Mr. Carmagnola said they did not come formally to the Crozet Advisory Committee, but they did make them aware of this application. However, they did not formally meet with them.

Mr. Loach asked what is staying and what is going.

Mr. Carmagnola replied that at this point he believes that it is open as to which one of the three units will then be decommissioned as a residential unit. So right now on the property there is the one large unit, and the two small units. That is three units. Obviously, the total maximum build out will be four. So when two new units are added that would make a total of 5 dwellings units. Therefore, one of the existing three dwelling units has to come down or be decommissioned as a residential unit. They don't know exactly which one at this point. He believed the intent is that one of the smaller units would be decommissioned. They have gone back and forth, but are not really sure at this point. The staff's recommendation was not to put that condition on us at this point.

There being no questions for the applicant, Mr. Morris invited public comment. There being no public comment, the public hearing was closed and the matter before the Planning Commission for discussion and action.

Motion: Mr. Loach moved and Mr. Smith seconded to recommend approval of ZMA-2013-00003 1306 Crozet Avenue as recommended by staff with proffers.

Mr. Morris invited further discussion.

Mr. Randolph said the only question he had was that they are going to have proffered is an affordable unit. He asked if there should be a second proffer.

Mr. Morris asked what proffer.

Mr. Randolph replied because there is a second building. There are going to be two additional new buildings constructed and they are getting a proffer on one of those buildings, which will guarantee that it will remain affordable. He asked should there be a cash proffer on the other one.

Ms. Monteith noted they usually don't have proffers for 100 percent of a property. To even have 50 percent of the properties being affordable is pretty significant. She would say no.

Ms. Grant said she thinks what he is asking is there are four units that will be proposed. One of those units will be an affordable unit and the cash proffer policy states that an

affordable unit is not counted as something that would have the cash proffer policy go with it. They are not adding any additional units above and beyond. So she did not know that there would necessarily be a cash proffer amount associated with any of the other units.

Mr. Cilimberg noted the discussion about how the policy works technically is if they add a unit they should be getting a cash proffer for that unit because in reality there is an affordable unit that does not have the policy applied to it. So the net is no increase and it would not require the policy to kick in or something equivalent for infrastructure.

Mr. Morris asked for a roll call.

The motion passed by a vote of 5:0. (Franco, Lafferty absent)

Mr. Morris noted that ZMA-2013-00003 1306 Crozet Avenue would go to the Board of Supervisors on a date to be determined with a recommendation for approval.

Old Business

Mr. Morris asked if there was any new business.

- Ms. Monteith commended Mr. Clark for the two previous presentations. She thought the staff reports were very thorough and well articulated tonight.

There being no further old business, the meeting proceeded.

New Business

Mr. Morris asked if there was any new business.

- Mr. Morris provided an overview of the meeting at Broadus Memorial Church regarding a cell tower in Key West.

- THE NEXT PLANNING COMMISSION MEETING WILL BE ON TUESDAY, AUGUST 27, 2013 AT 6:00 p.m.

Adjournment

With no further items, the meeting adjourned at 7:28 p.m. to the Tuesday, August 27, 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)