Albemarle County Planning Commission
November 12, 2013

The Albemarle County Planning Commission held a public hearing on Tuesday, November 12, 2013, at 6:00 p.m., at the County Office Building, Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

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

Other officials present were Scott Clark, Senior Planner; Amelia McCulley, Director of Zoning/Zoning Administrator; Andy Sorrell, Senior Planner; Sarah Baldwin, 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.

Marcia Joseph presented the baseline report for the conservation easement on the property proposed for the Trump Golf Course in southern Albemarle. (Attachment A – Baseline Document Report Kluge Conservation Easement – Virginia Outdoors Foundation prepared by Anna Clayton Logan dated October 4, 2006 - Attachment on file with the printed minutes in the office of the clerk)

Mr. Randolph asked staff to provide copies to the Commission.

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

Committee Reports:

Mr. Morris invited committee reports.

The following committee reports were given:

- Mr. Dotson pointed out the luncheon meeting on the Long Range Transportation Plan was cancelled and there will be alternative plans to bring that information before the Commission. Mr. Cilimberg noted Sarah Rhodes would come to the Commission's December 3rd meeting to provide that information.

- Mr. Randolph noted the first meeting of the CIP Oversight Committee was held and ACE money was included in the projected items to be discussed for this year. He also noted that Jeff Werner with PEC presented extensive documentation regarding the proposed Western Bypass at the last meeting of the Historic Preservation Committee.

- Mr. Morris noted the Pantops Advisory Council met and was briefed on the opening of the Lewis and Clark Center and changes to the Pantops Corner ZMA that will be going to the

Board.

- Mr. Lafferty noted the Citizens Transportation Advisory Committee met and worked on the Long Range Plans.

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

Consent Agenda:

Flood Hazard Overlay District – Resolution of Intent (Amelia McCulley)

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

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

The motion carried by a vote of 7:0.

Mr. Morris noted the consent agenda item was approved. Schedule work session and/or public hearing dates.

Review of Board of Supervisors Meeting – November 5, 2013

Mr. Cilimberg reviewed the Board's November 5, 2013 meeting actions.

Deferred Item:

AFD-2013-0004 Hardware Addition – Eudy
The parcel proposed for addition is Tax Map 88 Parcel 3U (21 acres in size). The Albemarle County Agricultural and Forestal Advisory Committee have recommended approval of this addition. ***DEFERRED FROM THE OCTOBER 22, 2013 PLANNING COMMISSION MEETING.*** (Scott Clark)

Public Hearing Items

a. **AFD-2013-0007 Jacob's Run Addition – Goldberg**
The parcel proposed for addition is Tax Map 19A Parcel 22 (21.4 acres in size, located at 884 Caddice Court). The Albemarle County Agricultural and Forestal Districts Advisory Committee has recommended approval of this addition. (Scott Clark)

b. **AFD-2013-00008 Totier Creek Addition – Boatwright**
The parcel proposed for addition is Tax Map 127 Parcel 39 (28.82 acres in size, located at 3993 Irish Road). The Albemarle County Agricultural and Forestal Advisory Committee has recommended approval of this addition. (Scott Clark)

Mr. Morris noted that the next three items will be briefed at the same time. The first is a deferred item AFD-2013-0004, Hardware Addition. The next two are AFD-2013-00007, Jacobs Run Addition – Goldberg and AFD-2013-0008 Totier Creek Addition – Boatwright.

Mr. Clark presented a PowerPoint presentation and summarized the staff reports for the three requests for additions to the agricultural and forestal district.

AFD-2013-0004 Hardware Addition – Eudy

Proposal:
This proposal would add one parcel (Tax Map 88 Parcel 3U) of 21 acres to the District.

Recommendation:
The Agricultural and Forestal Districts Advisory Committee recommended approval of the proposed addition to the Hardware Agricultural and Forestal District.

AFD-20130-0007 Jacob's Run Addition – Goldberg

Proposal:
The proposal is to add one parcel (Tax Map 19A Parcel 22) totaling 21.4 acres to the District.

Recommendation:
The Agricultural and Forestal Districts Advisory Committee recommended approval of the proposed addition to the Jacob's Run Agricultural and Forestal District.

AFD-2013-00008 Totier Creek Addition – Boatwright

Proposal:
The proposal is to add one parcel (Tax Map 127 Parcel 39) totaling 28.8 acres to the District.

Recommendation:
The Agricultural and Forestal Districts Advisory Committee recommended approval of the proposed addition to the Totier Creek Agricultural and Forestal District.

Mr. Morris invited questions for staff.

Mr. Dotson asked if the new parcel in the last two requests would not share a boundary with any of the existing parcels. He asked what the ordinance says about being contiguous.

Mr. Clark replied that the parcel does not need to be contiguous. He explained the parcel needs to be within one mile of the original core of the district or the parcels that formed the district when it was first formed. Any later parcels don't really count. Staff figures out which parcels were there from the beginning and measures the distance to them. In both of those cases it was under the one mile. The Totier Creek addition was very close. It was about 5,000 feet. However, it did qualify.

Mr. Randolph asked if that was a linear mile or just one mile in terms of the road.

Mr. Clark replied it was a linear mile. He explained there is a recent revision in the State Code that allows the County to add a parcel that is more than a mile away if the Committee finds that it is agriculturally significant, although it does not explain what that means.

Mr. Morris opened the public hearing for the applicants and public comment. He invited the applicants or members of the public to come forward and address the Planning Commission on any of the three items. There being none, the public hearing was closed and the matter before the Planning Commission for discussion and action.

Mr. Kamptner said he assumed there was consensus to take one action for the three items.

Motion: Mr. Smith moved and Mr. Randolph seconded to recommend approval of the three requests 6(a), 7(a) and 7(b) as follows: a. AFD-2013-00004 Hardware Addition – Eudy; b. AFD-2013-00007 Jacob's Run Addition – Goldberg; and c. AFD-2013-00008 Totier Creek Addition – Boatwright – Addition.

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

Mr. Morris noted the three requests would go to the Board of Supervisors on December 4, 2013 with a recommendation for approval.

SP-2013-000015 Mahone Family (Sign #12)
PROPOSAL: Additional development right on 21 acres for 1 new unit with a density of up to 0.5 dwelling units per acre on the new lot.
ZONING: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots)
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: 1688 Dudley Mountain Road
TAX MAP/PARCEL: 08900-00-00-062B0
MAGISTERIAL DISTRICT: Samuel Miller (Andy Sorrell)

Mr. Sorrell presented a PowerPoint presentation and summarized the staff report.

This is a special use permit request for SP-2013-000015 Mahone Family. It is a proposal for additional development rights to complete a family division for a new building lot for a daughter of the property owner at 1688 Dudley Mountain Road. It is zoned RA, Rural Areas. The property is about 1.8 miles from the edge of the Development Area in the Southern Development Area near Biscuit Run.

In an overview map of the property staff pointed out the front and rear are wooded. There is a pasture in the middle. There is a drive that extends from Dudley Mountain Road through to the rear of the property. The applicant's existing dwelling is 1688 Dudley Mountain Road. He noted the proposed location of the house, which is shown on Attachment D of the staff report. That locates a potential area of 30,000 square foot to accommodate a dwelling area.

This is a 21-acre lot that was created when the prior owner subdivided the property in 1984. The parcel has not had development rights since the applicants have owned the property. Two development rights are needed since the resulting lots would be less than 21 acres in area. Staff understands that the applicant has spoken to adjoining property owners and they were not successful in obtaining additional rights through boundary line adjustments or things of that nature. In general since 1981 there have been 25 applications for additional development rights with 14 being approved and 11 denied. Most of the requests that have been approved were for family divisions and things of that nature where they used all of the additional development rights and had none left. One-half of the approvals have typically been based upon applications that have adequately met the criteria listed in the Rural Area zoning district, such as for an intermediate family member or some other unique circumstance.

This property is in the Rural Area of the Comprehensive Plan. There would be a small increase in the impacts generated by the increased population density in minimal traffic, additional septic, and things like that. The Rural Area policies call for the reduction in the rate of residential development in these parts of the County. There is concern of setting precedent for additional

types of requests if this approval was granted. In the past the Board has considered approval for additional development rights in certain cases for family members when all prior development rights may have been used for family division. In this instance it is a little bit different because no development rights have existed on this property since the applicants have owned it.

Staff also notes that prior to setting the public hearing the applicant felt it would be best to speak with the Commission before going to the detail of addressing staff's review comments that are mentioned in the staff report. That was mostly related to showing where potential division lines may be to determine where setbacks could be and that there was adequate area. Staff has not reviewed this particular application against the subdivision standards since they did not have that information. However, at 21 acres a possibility exists that is available.

Summary:

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

Factors favorable to this request include:

1. The proposal can be accommodated without significant health or safety impacts on the area.
2. The limited scale of the use would avoid impacts on adjacent properties and critical resources.

Factors unfavorable to this request include:

1. The request would increase development in the Rural Area, which is contrary to the County's land use goals as expressed in the Comprehensive Plan.
2. Approval of the request would not be consistent with previous actions on requests for additional development rights in the Rural Areas.
3. Approval of this request would not be consistent with previous actions on requests for additional development rights in the Rural Area.
4. The applicant did not submit additional information necessary to complete staff's technical review of the application.

Staff noted in the factors unfavorable that #2 and #3 are mentioned twice. The second one should actually mention that additional development rights are not consistent with the Rural Area zoning district standards.

In summary, this request is not consistent with Comprehensive Plan policies or the Rural Areas zoning district. There are no unique family circumstances consistent with the basis for prior Board approvals. There is a cumulative impact since numerous similar approvals could lead to more significant impacts to the Rural Area.

RECOMMENDED ACTION:
Based on the findings contained in this staff report, staff recommends denial of SP-2013-15 Mahone Additional Development Rights.

However, if the Planning Commission desires to recommend approval of this application, staff recommends the following conditions:

1. The proposed subdivision of Tax Map 89 Parcel 62B shall only be permitted as a "family subdivision" as provided by Chapter 14 of the Albemarle County Code; and
2. The family division period to retain the property, as provided by Chapter 14 of the

Albemarle County Code, shall be extended to fifteen (15) years.

Mr. Morris invited questions for staff.

Mr. Loach asked after making the two lots what acreage is left on the 21 acres.

Mr. Sorrell replied it would 19 acres for the residual and 2 acres for the family division.

Mr. Loach asked if it would affect the land use status if it is less than 20 acres.

Mr. Sorrell replied that it could affect the land use taxation.

Mr. Cilimberg noted that he was not sure if they were in Land Use now. It would depend because there are certain minimums that are less.

Mr. Kamptner pointed out that it required 20 acres for forestry or open space and 5 acres for agricultural and horticultural.

Mr. Cilimberg added that it would also depend on the activities.

Mr. Loach noted he just did not want to create problems.

Mr. Randolph said he would like to ask a question about circumstances of subdivision. Staff has provided good information about how many times the Board of Supervisors has approved these types of situations. Under those circumstances if one did a case analysis were those situations where there was a necessity of some kind related to a family illness, disability of a family member or some kind of compelling social medical reason why the subdivision was permitted. Whereas, in this case it appears to be a request for a subdivision based on convenience.

Mr. Sorrell replied in past approvals of this nature that has been a case of consideration when there is an applicant where it allows them to be close by to family who may be disabled or something of that nature. A recent request for Hall, probably in 2011/2012, was a similar one to that where the applicant requested the family division in order to care for a relative who was disabled. So the answer is yes, in prior approvals that was something that has been considered, but not all the time.

Mr. Randolph noted there was no hard and fast rule, but that seems to be a situation or circumstance that would lead the Board to feel a degree of compassion to waive the Comp Plan and the Rural Area restrictions that are identified in the staff report. If this were permitted what happens if a future property owner is not interested in farming since there are no requirements once the subdivision occurs that the piece of property actually be farmed.

Mr. Sorrell replied there is no requirement for that other than if it was to be permitted and they would agree to the 15-year time period being held by a family member. That would be the only conditions they would have.

Mr. Randolph noted on page 4 it identifies that under the Subdivision Ordinance it requires that the land remain in family ownership for at least 15 years after the recordation of the subdivision plat. What happens if in this case the subdivision occurs and because of some compelling medical circumstance the family that owns the land finds themselves having to sell to pay a

medical bill, to cover a nursing home, or whatever? What happens if that occurs in less than 15 years?

Mr. Sorrell replied there would be the deed restriction. However, if it was to be something where there was a compelling need he asked if that was something that had been considered in the past.

Mr. Cilimberg noted that the condition is 15 years, which is the period that it has to be held. That has been the standard in these types of approvals in the recent years. Although it would be a circumstance where he assumed they would need to ask for a special use permit amendment.

Mr. Smith asked if Mr. Randolph was talking about the sale of the 2 acre lot or the balance.

Mr. Randolph replied it was the balance.

Mr. Cilimberg noted that family subdivision is a subdivision type and it applies to all of the area covered by the subdivision and not just one lot.

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

Justin Shimp, representative for the owner, Irma Mahone, said he had given the owners a little guidance about the special use permit process in Albemarle. It is quite a big thing to go through as an individual landowner with the fees and everything. The owners are here because they have a specific need, which Ms. Irma Mahone would talk about. He wanted to comment about one item in the staff report particularly about the soil's item about the studies that have been done on that plat and layout. They felt those were things that really on a 21-acre lot could be required, of course, with the Subdivision Ordinance for a family subdivision. However, it was an item that could be addressed later. The issue really is should an additional lot be allowed. It will certainly be around a 2 acre lot in the general location that they have shown. It may move 20', 30' or 50' here or there. They don't have a survey of that right now. That is something they would not envision doing without approval of the Board. They would like to have a recommendation for approval from the Commission for that additional lot first.

Mr. Shimp noted as it relates to the past examples he found it interesting to think about other lots where there were development rights that were exhausted. It seems logical to say 10 years ago if one had a child that was 25 years old that lived their whole life on the farm that property would have had development rights. That person would have been born before the ordinance changed in 1980 to create development rights. So they have a situation here where there are no development rights because it is 31 or 32 years later. So that may be the reason that this has not been seen commonly before.

Mr. Shimp said their intention with this property is to use it for agricultural purposes for a family farm. The owner will talk about that in more detail. That is a use clearly supportive of the Comprehensive Plan if the subdivision can enable that to be a better use of the land without any detrimental impacts to anything else around and it is consistent with the form of the surrounding lots. The surrounding property is mostly developed into 2 to 5 acre lots in the intermediate vicinity going from this lot up towards the growth area. So it is fairly consistent with the form of development. It is simply a request to help them with the function of the farm and their agricultural operations a little more efficiently. With that said he would ask Ms. Mahone to take over and talk about those things in more detail.

Irma Mahone said she wanted to tell the Commission a little bit about her family. Her family has lived at 1688 Dudley Mountain Road for 28 years. About 24 years ago her daughter was born and she has lived there all her life. Her family was faced with two big questions this year. First, last September her husband retired. Of course, he has been poking around at a lot of different options trying to decide what he wants to do in his retirement. Her daughter is in college trying to narrow down what she wants to major in. This spring it came together for her daughter when she suddenly realized that she really had an intense interest in farming. She knew right away that this was more than just sort of putting her toe in the water on another possible career. She really was interested in farming and talked her dad into considering building a family farm. They do own the 21 acres and as long as they have lived there they have talked about lots of different things that they could do with the 21 acres. However, working full time nothing really got off the ground. Now with her daughter's interest she was really happy to see that her daughter had narrowed down what she wanted to major in and her husband has narrowed down what he wants to do in his retirement, which is to build a family farm.

Ms. Mahone noted they named their property Mountain Dream when they moved there 28 years ago. Now they want to call it the Mountain Dream Farm. They had a large garden this summer and started selling produce at produce stands. In the fall they started planting mushrooms that will grow this winter. There are a lot of wonderful ideas that are floating around the family. They felt honored when their daughter came home and said she would like to build a home on the property. The long term plan is to build this family farm, which they feel is consistent with keeping it rural if that is the goal of the overall plan. They definitely want to plant some berries and fruit trees as well as expand the garden to grow vegetables. That is what they hope to be able to do with this. To facilitate our daughter to move back to our farm will really allow us to create a family farm

Mr. Morris invited questions for the applicant.

Mr. Smith asked if they are in land use.

Ms. Mahone replied yes, they grow hay on 10 acres of open field.

Mr. Smith asked if her daughter lives on the property.

Ms. Mahone replied actually her daughter lives about 6 miles up the road. She is renting a little house and living independently, but close to home.

Mr. Randolph asked where the proposed house and septic field would be on the property.

Mr. Shimp replied the septic field would be where the star is located within the rectangular area on the slide. The rectangular area is an area identified as slopes and soils that are reasonable. They anticipate the drainfield to be within the rectangular area.

Mr. Randolph asked how many square feet were in that area.

Mr. Shimp replied it should be 30,000 square feet.

Mr. Smith asked if the property will attach to the side line, and Mr. Shimp replied yes, it would attach from the road over and the road would go past in some sort of easement.

Mr. Smith asked what the frontage was.

Mr. Shimp replied that he did not know. He could tell that was a 100' X 300' rectangle, which would scale to 200 feet of road frontage.

Mr. Randolph asked if she was aware when they bought this property in 1985 that there was no development rights associated with the property. He asked if they were well aware of it from the deed.

Ms. Mahone replied yes, they knew that. However, they did not know if they were going to have a family or what the future held.

Mr. Dotson noted the staff report indicates that they had talked to the neighbors since they were willing to buy additional land. He asked Ms. Mahone to tell him about that set of conversations.

Ms. Mahone replied intermediately contiguous to their property there is a meadow that went up for sale, which is what actually started this conversation. They thought maybe the sellers would be willing to sell 2 acres, which would increase the lot size to 23 acres with a division right. They explored the option by asking if they would be willing to sell 2 acres and they were not. Then they explored buying 2 acres across the road only to find out that was not an option because the state owns the road. Since their property does not go to the middle of the road they were not able to extend the border across the road. Therefore, the 2 acres across the road was not an option either.

Mr. Morris invited public comment.

Mary Ann Rodheaver, the intermediate neighbor, said the proposal for building this home would be right at the corner of her property. She noted Jacquelyn has been her neighbor ever since she had been born and she was a wonderful young lady. She has no qualm whatsoever. She has a concern, which she has spoken to Mr. Sorrell about, which is about the drain field and well. She understands it would have to be 100 feet away. She is sure the Health Department would look into that before it would be approved. She has spoken to other neighbors and they all think it would be a wonderful idea to have Jacquelyn stay in the neighborhood. She thinks keeping our families together is important in today's world. She asked that they consider that. As she understands they are proposing to put the house between the fence line and the driveway. That area is not being used for anything. By putting a home there and then being able to develop the pasture area with farming and perhaps trees or berries as suggested, it would actually increase the use of the land and not really be deterring anything. Right now it is just grass and probably weeds up to the fence line. Therefore, she was in support of the request.

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

Motion: Mr. Smith moved and Mr. Loach seconded to recommend approval of SP-2013-00015, Mahone Family Additional Development Rights with the conditions outlined in the staff report.

Mr. Morris invited further discussion.

Mr. Randolph said he appreciates the concern about keeping family together. However, he also thinks it is important to keep the rural area together, which is our responsibility. The Planning Commission is not into family planning or family preservation. They have to look out for the welfare of the County and its future needs. He would like to propose to the family an alternative

approach. He would suggest that they visit Montpelier. James Madison lived on one side of a house quite successfully with his parents on the other side of the house until such time as the Madison family grew and that arrangement was no longer viable. He would see the addition onto the existing Mahone house as being an option that would allow 21 acres to be preserved for the daughter to, in fact, farm the land. It would also allow for the Rural Area and the Comprehensive Plan to be protected as it is meant to be. He thinks both sides could live very well. He has a proposal to split the difference here and propose that they just expand the house to accommodate their daughter and not build an additional structure on the 21 acres and not subdivide it.

Mr. Smith said he loves his in laws, but he did not live with them. That is not always an option. They have to look out for the County, but the County is the people and they have to look out for the people in the County.

Mr. Morris said personally he was in sympathy with the family and their proposal. However, he was also concerned about the Comprehensive Plan. But, as with our guest speaker he does think it is a wonderful thing when families want to stick together.

Mr. Loach said he appreciates Mr. Randolph's approach. However, he was going to be consistent with what he voted before. If it is a family subdivision and they have agreed to the 15 years, he thinks that is more than adequate protection. Therefore, he would support the request.

Mr. Lafferty pointed out the Commission has just spent two years revising the Comprehensive Plan. He was sympathetic with the family, but it is creeping into the Development Area.

Mr. Franco said he would like to echo those comments. Versus some of the past things that have come before the Commission he was not sure if the use they were trying to establish, the family farm, is dependent upon everybody living on that location. Six miles away having a residence there works. If it were a dairy farm where they have to take care of the cows 24/7, it may be something different. However, he did not know if the use they were trying to establish is dependent upon everyone living on that location. It starts to be more of a matter of convenience. Again, he thinks it is important to keep families together, but he thinks that our role is less about taking care of the residents of the County. He thinks the Board can make those kinds of decisions. The Planning Commission's role is to apply the Comprehensive Plan. The fundamental basis of the Comprehensive Plan has been to limit development in the Rural Areas.

Mr. Dotson agreed with many of the comments. It is certainly beneficial to the County to establish farming. However, he was afraid of the precedent. This is only one house and so they could say they would have a minimal in significant impact. But, if they say yes here how do we say no to the next one. So it is kind of a slippery slope problem. He is impressed that the family has made an effort to talk to the neighbors. Obviously, they think this is important enough to spend some money to buy some additional land. He suggested that possibly working through an attorney there would be some way where they could offset the additional development right by buying a development right someplace else. What the neighbors told them was that they did not want to sell them any land. They wanted to keep their land intact. However, if there was some creative legal way to buy a development right and retire that permanently, then the County would be able to say there is no net gain in the Rural Area of development. Then this might look different with that circumstance. Absent of that he would not be able to support the motion.

There being no further comments, Mr. Morris asked for a roll call.

Mr. Franco voted no because he finds it inconsistent with the Comprehensive Plan.

Mr. Dotson voted no.

Mr. Randolph voted no because he finds it inconsistent with the Comprehensive Plan.

Mr. Smith voted aye because he thinks it is the thing to do.

Mr. Morris voted aye.

Mr. Loach voted aye.

Mr. Lafferty voted no because of the Comprehensive Plan.

The motion failed by a vote of 3:4. (Loach, Morris and Smith voted aye) (Franco, Dotson, Randolph and Lafferty voted nay.)

Mr. Kamptner noted under the Commission's rules they now need a motion to recommend disapproval of the special use permit.

Mr. Franco said before they make that recommendation he would like to throw out some other options to the applicant. One of the other options they have explored in the past has been accessory units. He asked if an option is to have a stand-alone accessory unit on the property.

Mr. Cilimberg replied no, that it would only be through a special use permit.

Mr. Franco asked if they could do it through a special use permit or not at all.

Mr. Cilimberg said it was essentially adding another development right and not any different from what was requested here. The accessory apartment has to be within the structure of the house and there are some limitations on the size. It could not even be a duplex because there is not a development right for a duplex either. However, there could be an accessory apartment as long as it meets the definition under the ordinance. In terms of the creative approach he would have to defer to Mr. Kamptner because it would become somewhat of a transfer of development rights process and he did not know it is something they are able to do in Albemarle County.

Mr. Kamptner said they don't have a TDR ordinance yet because the enabling authority is so incomprehensible. The only other thing he can think of is if the applicants wanted to participate with an open space easement that some land owner was interested in participating in to put the open space easement on the property and contribute to the cost of retiring a development right. That would be a way to do it. They would need to work with the Virginia Outdoors Foundation or the Public Recreational Facilities Authority in Albemarle County, which is one of the tools or entities that deal with that.

Mr. Morris asked if someone would like to make a motion to deny.

Motion: Mr. Lafferty moved and Mr. Franco seconded to recommend denial of SP-2013-00015, Mahone Family Addition to Development Rights.

Mr. Kamptner assumed that would be for the reasons stated by the Commissioners on the prior vote for inconsistency with the Comprehensive Plan.

Mr. Lafferty agreed that it was due to the inconsistency with the Comprehensive Plan.

The motion to recommend denial passed by a vote of 4:3. (Loach, Morris and Smith voted nay) (Franco, Dotson, Randolph and Lafferty voted aye)

Mr. Morris noted that SP-2013-00015, Mahone Family - Request for Additional development right was recommended for denial and can go to the Board of Supervisors if the applicant desires at a time to be determined.

ZMA 2012-00005 Hollymead Town Center (A-1) (Signs # 33 & 35)
PROPOSAL: Request to amend the Application Plan and Proffers on property zoned PD-MC which allows large-scale commercial uses; and residential by special use permit (15 units/ acre).
PURPOSE OF NOTICE AND HEARING: Intention of the Planning Commission to make recommendation on the Proposal to the Board of Supervisors
ENTRANCE CORRIDOR: Yes
PROFFERS: Yes
EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Town Center-compact, higher density area containing a mixture of businesses, services, public facilities, residential areas and public spaces, attracting activities of all kinds. (6.01-34 dwelling units per acre) in Hollymead Development Area.
LOCATION: Hollymead Town Center Area A-1, the southwest quadrant of Seminole Trail (US 29) and Towncenter Drive in the Hollymead Development Area
TAX MAP/PARCEL: 032000000042A0, 03200000004400, 03200000004500 (portion), 04600000000500, 046000000005A0
MAGISTERIAL DISTRICT: Rio
(Sarah Baldwin)

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

This proposal is to amend the application plan and proffers located in Hollymead Town Center A-1. The applicant is requesting to amend the transit stop and greenway proffers which were to be constructed at the site plan or subdivision stage. Since it has not been constructed there is an outstanding Notice of Violation. This amendment would remedy those violations as well as provide more clarity to the proffers.

This is a portion of the approved rezoning application plan. Proffer 3 provided construction of a 200 square foot paved surface and 2 benches to be installed at site plan stage. The bus stop area exists, but there are no benches installed and bus service is not available as of yet. The applicant requests to change the proffer to install the benches within 30 days after bus service is available.

Proffer 8 provided construction of a 10' wide multi-use greenway path. The members of the Board of Supervisors, Planning Commission and staff attended an on-site meeting at the applicant's request to view the existing terrain for the greenway path. It was determined that a 10' wide greenway path would be difficult to achieve in some locations. Due to these constraints and given the existing and proposed sidewalk and bike lane network for Hollymead Town Center, it was determined that a primitive path would better serve the community.

The applicant worked with Parks and Recreation and staff and it was agreed that the path could be constructed as a 6' wide primitive path in this general location and it will be constructed by the applicant. The proposed proffers also offer an alternative tie in to the trail should Meeting Street not be constructed at the time that the trail would be available. Additional changes include the trail head which was proposed as a switchback connection to the greenway. Again, due to terrain it was decided that stairs would provide a more practical solution. The applicant will design the stairs subject to staff approval and construct the stairs and trail prior to an issuance of a Certificate of Occupancy (CO) for the buildings adjacent to the trail head. Staff is supportive of changes to both the transit stop and greenway, which will provide for clear deadlines and actions for the benches and greenway.

Staff found the following factors favorable:

1. The rezoning request proposes to address an outstanding Notice of Violation and further clarifies the proffers.
2. This rezoning request will not significantly change the site layout or intent of the original rezoning.

Staff found no unfavorable factors.

Staff recommends approval of ZMA-2012-00005 and of the Amended Proffers and Application Plan.

Mr. Morris invited questions for staff.

Mr. Randolph asked when was the site plan approved, and Ms. Baldwin replied it was originally approved in 2005 with a minor amendment after that.

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

Wendell Wood said he would be glad to answer questions. He said they have had several meetings and invited all the Commissioners and Supervisors. It was well attended. They met with Parks and Recreation. One of the reasons was this trail, as it was approved originally, goes through wetlands and virtually could not be built where it was originally proposed without disturbing wetlands. The bus stop is there and was actually constructed with the development of the Center. There is a full spot for the bus to park for a loading ramp, which meets all the standards. However, the bus service is not there. They have agreed to put the benches there when they get buses. Parks and Recreation staff was not in favor of the greenway in the way that it was required to be built and suggested the alternate route that they agreed to.

Mr. Morris invited questions for the applicant.

Mr. Smith asked how did it get designed in the wetlands in first place, and Mr. Wood replied he did not know.

Mr. Randolph said the application seems to suggest some concern about the potential for vandalism with benches on a bus stop. He asked if he had past experiences where that has in fact occurred. The application says the applicant does not believe the benches should be installed until service is provided, thereby avoiding unnecessary maintenance and possible vandalism issues.

Mr. Wood replied that vandalism was not an unusual feature in the development area. In particular, where the bus stop is located is away from the stores. They have actually had benches stolen from properties. These benches are off by themselves today. Eventually, the benches will be close to a building, which will make it less likely to be stolen. In the Center they have had decorative flower pots stolen within the past 30 days.

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

Mr. Lafferty pointed out in the Long Range Transportation Plans there is bus service going out to Hollymead Town Center. However, they don't know if they will get the money.

Mr. Morris asked if he had any idea what time frame, and Mr. Lafferty replied no.

Motion: Mr. Loach moved and Mr. Lafferty seconded to recommend approval of the Amended Proffers and Application Plan for ZMA-2012- 00005, Hollymead Town Center (A-1) as recommended by staff.

Mr. Morris invited further discussion.

Mr. Randolph noted that it seems to be standard operating procedure that they indicate the benches; and, therefore a public transit stop should be prepared to operate 30 days after transit services is established. He was just thinking about the fact that for 30 days there may be people using that facility with some kind of handicap or if it was uncomfortable for them to stand for a period of time. They all know that the buses do not travel through the County with the kind of frequency that one would associate with public transit in other locations of the country in a municipal setting specifically. So it could be very difficult to be standing there for an extended period of time. He would hope at some point they could revisit that and try to shorten the 30 days. He did not want to victimize Mr. Wood on this application by suggesting that they should shorten it for his application. However, it seems that 30 days is a long period of time to leave people for the opening of a transit stop until such time as benches are available for people to sit down. He hoped somehow in the future they could narrow that time period from a month maybe down to a week or no more than two weeks.

Mr. Morris asked for a roll call.

The motion passed by a vote of 7:0.

Mr. Morris noted that ZMA-2012- 00005, Hollymead Town Center (A-1) would go to the Board of Supervisors at a time to be determined with a recommendation for approval.

ZTA- 2013-00006 Residential and Industrial Uses in Downtown Crozet Zoning District ("DCD")

Ordinance to amend 20B.2 to allow by special use permit residential uses of any authorized dwelling type in the DCD without requiring first-floor non-residential uses and to allow Laboratories/Research and Development/Experimental Testing by right, and to allow Storage/Warehousing/Distribution\Transportation and Manufacturing/Processing Assembly/Fabrication/ Recycling by special use permit, and add Sec. 20B.8 to add factors when considering special use permits. (Wayne Cilimberg)

Mr. Cilimberg presented a PowerPoint presentation and summarized the executive summary.

- The Planning Commission passed a Resolution of Intent on October 22, 2013. That was in response to an application that was made requesting residential uses be added on first floors of attached single-family dwellings by special use permit in the DCD district.

- A discussion was held with the Crozet Community Advisory Council at staff level on that potential amendment plus the possibility of introducing the more standardized industrial category of uses in this district as they had done in other commercial districts. The CCAC generally supported that, which was noted when the Commission passed the Resolution of Intent on 10/17/13.

- Staff provided a table that compared current and proposed provisions. There will not be any changes in the by right residential allowances. Staff would propose the latest category identifying laboratory, research and development and experimental testing as a by right use be included in this district. Right now laboratory and research and development are included by right in the district. Therefore, it is not a significant change.

- The special use permit allowance would be for first floor residential in all residential use types. Also, they would propose adding the two other categories of industrial use: Manufacturing/Processing/Assembly/Fabrication/Recycling; and Storage/Warehousing/Distribution/Transportation as special use permit uses. Currently, there are similar uses by special use permit in that district.

- They also have added what does not exist in the district now, which is additional factors that would considered with a special use permit whether it be for the first floor residential uses or for the non-residential uses that would be allowed by special use permit. That would be to consider in the special use permit their consistency with the Crozet Master Plan's Downtown Area Descriptions and Purpose. It would also include the purpose and intent of the Downtown Crozet Zoning District. They also want to look into how the proposal compliments adjacent uses and contributes to mix of uses and the convertibility of structures for by right uses that might be proposed by special use permit. It was also to respond to some of the comments provided by the Crozet Advisory Council that they just wanted to make sure any of the special use permits had some parameters for their consideration.

Staff recommends approval of ZTA- 2013-00006 Residential and Industrial Uses in Downtown Crozet Zoning District ("DCD").

Mr. Morris invited questions for staff.

Mr. Randolph said he was trying to find out what the definition is of experimental testing. He saw under the current DCD provisions laboratories and RMD and then in here experimental testing. He asked would that include businesses involving animals that could have testing done.

Mr. Cilimberg replied when the Commission looked at the amendments back earlier in the year the Board ultimately adopted the Lab/R&D/Experimental Testing definition. He did not have the definition in front of him, but could pull it up and tell him what it is. Now it is a category definition.

Mr. Loach noted he remembered there were some restrictions on that.

Ms. McCulley explained they kind of broadened that category Lab/R&D/Experimental Testing, Scientific Research, Testing and Investigation or Experimentation, the development of prototype products under the assembly or manufacturing of prototype products and including but not

limited to bio science and medical devices research, development and manufacturing and information technology and defense security research development and manufacturing, scientific or technical instruction. It is very broad.

Mr. Smith asked what the worst case scenario is of what they can have side by side. He asked if it would be a rat lab and an apartment

Mr. Cilimberg said he thinks the worse case scenarios are going to be the potential uses that they would look at under a special use permit. He can't define that for him, but that is why they did not propose introducing all of these uses by right, but instead by special use permit so they could be considered on a case by case basis. So if they had that worse case scenario that might in fact be a reason not to approve a special use permit because it would not be complimentary uses.

Mr. Loach noted in the discussions with the community that was one of the reasons they supported it because it continues to be a special use permit. They felt that would be enough protection for the community should there be a worse case scenario. He thinks Mr. Cilimberg stated the objectives well. From the community's perspective they see this as a matter of increasing the flexibility of the plan, but not a change to the goal of a mixed use plan for Downtown. They are looking forward to seeing the new plan come forward and see how this works out.

Mr. Cilimberg pointed out the application was made by the current applicant for the Barnes Lumber property.

Mr. Dotson asked if staff has the zoning maps so they can see where they are talking about. One of his thoughts is that residential on the ground floor maybe is not something they want to open the door to when it is along Crozet Avenue or Three Notched Road. However, it might be fine on some interior or minor streets. He would like to see which streets are involved in the district.

Mr. Cilimberg apologized that he did not have that map, but could pull it up on line. He pointed out that Crozet Avenue and Three Notched Road are in the Downtown Crozet District along with side streets. It is essentially what they would visualize that is in the center of Crozet including where the old and new library is. The Barnes Lumber property is not actually zoned Downtown Crozet District. It is designated that, but not zoned. For the reasons he mentioned they were proposing that these first floor opportunities only be by special use permit because it may not be appropriate as he mentioned on certain streets.

Mr. Dotson said he had concern about that.

Mr. Randolph asked if they have cases where they would revisit a policy in two years.

Mr. Cilimberg replied they have a five-year review of the master plans. The most recent review was approved two years ago. Each of those master plan reviews are policy reviews for the areas covered by the plans.

Mr. Randolph said he was just wondering about that since he was thinking they were going into a situation proposed where there would be attached units on the first floor that could be used for residential purposes in the CDC and they don't know what is going to happen with market conditions. They don't know if they will see a number of special use permits for that conversion over on the first floor of those attached units. He would think there may be some value in doing

a check after a certain number of years to see actually what is happening. In other words, are they seeing so much residential pressure in that area that they need to revisit this, or if there is so little residential that perhaps it really was not a concern all along.

Mr. Loach pointed out that was part of the discussion of the community. He would say to Mr. Dotson that they are not abandoning the commercial on the first floor with the residential above it. They are just trying to get more flexibility. There are areas where they see this may have more applicability that is to say those areas of Barnes Lumber where the borders are contiguous with the residential units now where it may be more appropriate. He thinks they are willing to give the flexibility, but are waiting to see the plan. They have to react to the plan.

Mr. Dotson commented that when this was originally proposed by the consultant it was too complex. There were two Downtown Districts and two Transitional Districts, but they decided to go with just a single district. He thinks what they are doing is finding out there is a need for some transition. He thinks not for the major streets, but the interior streets and those edges that he was looking for a possible way where they could make that clearer that this is for those transition areas and it is not for the main streets with sidewalks and pedestrian activity and visibility from the street, etc. It is not for those, but for those more minor or interior streets and the transition. That is what he was trying to get at.

Mr. Cilimberg pointed out he thinks they were trying to capture that in the criteria of looking at how it compliments adjacent uses and contributes to the mix of uses as one of the factors to be considered. Mr. Dotson was right that there was discussion of even having a transition area that did not end up getting into the Crozet Master Plan. By the time it got to Downtown Crozet District zoning it was very specific. It had been in the first master plan identified as level P-6. That DCD geography was to more or less reflect that. There are some of the neighborhood areas that are residential right now in the DCD. So they have first floor residential in the DEC that exists because of that zoning. It does give the opportunity for some of that residential to convert if it wanted to. They had a conversion for the coffee shop just on the north side of the intersection near the Dairy Queen. He thinks in terms of opportunities to revisit one is in the consideration of each special use permit they might get. As they heard earlier tonight when they were talking about the family division extra development right that there is the question always that it will be setting some precedence or creating through individual approvals a change to the district. There is also at the time of each master plan the opportunity to look at trends and decide whether there are things in policy that actually need to be changed because of circumstances, market conditions, or whatever.

Mr. Randolph commented that he thinks Mr. Dotson's point about a map will be valuable. Then as they look at these special use permits they are going to see where the previous special use permits have occurred or where there is already that kind of first floor residential going on so they have an understanding of the dynamic. That is what he was trying to get at. He was back to a point that Mr. Franco frequently makes about a way that they can measure this and see what is happening on the ground as a result of this policy change. He asked if that would meet his objective as well.

Mr. Franco agreed it would meet the objective.

Mr. Cilimberg noted that is obviously something they would want to do on each application they see.

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

Motion: Mr. Loach moved and Mr. Franco seconded to recommend approval of the draft ordinance in Attachment B for ZMA-2013-00006, Residential and Industrial Uses in Downtown Crozet Zoning District ("DCD").

The motion passed by a vote of 7:0.

Mr. Morris noted that the draft ordinance for ZMA-2013-00006, Residential and Industrial Uses in Downtown Crozet Zoning District ("DCD") would go to the Board of Supervisors on December 11, 2013 with a recommendation for approval.

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.

- No Planning Commission meeting on November 19, 2013 and November 26, 2013.
- The next meeting will be on December 3, 2013.

Adjournment

With no further items, the meeting adjourned at 7:17 p.m. to the Tuesday, December 3, 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)