Albemarle County Planning Commission
October 20, 2015

The Albemarle County Planning Commission held a regular meeting and public hearing on Tuesday, October 20, 2015, at 6:00 p.m., at the County Office Building, Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Cal Morris, Chair; Richard Randolph, Mac Lafferty, Vice Chair; Thomas Loach, Bruce Dotson, and Tim Keller. Absent was Karen Firehock. Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia was present.

Staff present was Scott Clark, Senior Planner; Claudette Grant, Senior Planner; Francis McCall, Senior Planner; Ron Higgins, Chief of Zoning; J.T. Newberry, Senior Planner; Sharon Taylor, Clerk to Planning Commission; David Benish, Acting Director of Planning; Wayne Cilimberg, Deputy Director of Community Development 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 on the Agenda from the Public

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

The following persons expressed concerns regarding potential farm winery events that might occur as permitted by County provisions, particularly as they might affect Ballards Mill Road.

Nancy Breci, 4051 Ballards Mill Road in Free Union, noted that a serious situation has occurred on our road in the neighborhood that the County needs to address. They have a neighbor who over the past 25 years has designed and planted a stunning garden, but this has become a hobby that has gone arise. She is now expecting her neighbors to support her efforts of becoming a full profit enterprise in a strictly rural noncommercial area of Albemarle County and expecting us to support her no matter what the consequences will be - loss of tranquility and incredibly increased traffic on a substandard lane and a half dirt road; potentially decreased property values and adverse noise pollution. Initially she applied for a special use permit requesting 24 events per year, 150 attendees each, and 250 attendees at 4 events. When she realized the county had overwhelming neighbor opposition to stifle her ability to conduct an event with a special use permit she threatened the neighbors with opening a farm winery. By establishing the property as a farm winery she can bypass county controls such as number of attendees, number of events, noise levels, traffic issues, and inability to use buildings that were built after 2007. While the county has very diligently worked at maintaining defined commercial development areas separate from strictly rural areas this runaround will be devastating to the county's efforts and could permanently affect the rural character for which our county is recognized. Her property is surrounded by conservation easements with the Virginia Outdoor Foundation and Department of Forestry. In fact, she shares a one mile property line with conservation easements.

Ms. Breci explained that the neighbors feel that these conservation easements restrict the use of property by the owners. As you will see in the next video our road is a serious situation. We feel that because it is a lane and a half it is gauged out by gullies when it rains; it is not big enough for two-lane traffic; and, it is really a 1 ½ lane road. We have embankments that are actually taller than a roof of a car and drop offs that if a car went too far over they would fall off the edge of the road. We also have a serious situation in the lower half of the road because in the three mile length we have a .9 mile at 15 miles per hour and .6 mile at 10 miles per hour which is about ½ the length of our road. The county really needs to reconsider making this a priority. (Ms. Breci started the video for Ms. Rotach-Hunt. The sound in the video did not work.)

Sibylle Rotach-Hunt, resident of 4110 Ballards Mill Road since 1999, supported Nancy Breci's presentation by also expressing concern about the safety on Ballards Mill Road. Ballards Mill Road is a narrow gravel county road which can accommodate residential and legitimate farm use, but is not suitable for heavy commercial traffic as you will see in the video. (Video presented by Ms. Breci) Since the sound did not work Ms. Rotach-Hunt

pointed out the standard shuttle bus on the road that would be used for the proposed winery use. She pointed out as you can see the road is very narrow and it is a gravel road. In some places it is very hard for vehicles to cross, particularly larger vehicles. The embankment can be quite steep and in some places it is hard for vehicles to pass. Basically, they are concerned about the safety on the road since it is used by children walking and riding bikes and horses.

Bob Breci, of 4051 Ballards Mill Road, apologized for the sound not working in the video. He agreed with the other speakers about the real hazard and safety issues on the road resulting from the winery events including weddings.

Elizabeth Neff said for the past 23 years she has lived in Free Union on Ballards Mill Road. She is addressing the Commission as there is a major flaw in the winery, brewery, and distillery ordinance. The ordinance to allow by-right events, specifically weddings was created to augment income for wineries, distilleries or breweries. Hosting events was to help offset some of the expenses incurred with the production of wine, beers or in spirits. The flaw in the ordinance as it now stands has no formula in which to gauge the income as a result of events versus the production of alcohol beverages. Why does this concern me? She lives on Ballards Mill Road, a dirt road in Free Union, which is quite rural with fewer than 20 people per square mile. Across the road from her is Waterperry Farm owned by Kathleen Cane and Olan West who would like to host weddings on their property with 15 weddings or like events after 200 guests per event a year. They have had a website in the gardens at Waterperry Farm for close to a year as well as an article in Virginia Livings April issue triumphing Waterperry's gardens as the ideal wedding venue. When it became apparent the entire neighborhood with owners of 74 properties signing a petition against Waterperry's special permit for events, and the Cane/West decided to pursue being licensed as a Class A Farm Winery. Their plan is to rent in Nelson County four acres of wine producing grapes and have an half acre of hybrid grapes at Waterperry. They will also buy the minimally equipment to qualify. Please note the Cane/West are not required to actually produce any wine. The website nor the Virginia Living's article mentions wines nor winery, which is because their intent is not to produce wine but to state wedding events as a by right to having a Class A Farm Winery license. The farm winery, brewery and distillery ordinance was not created to by-pass special use permits for events. The ordinance was not created to make events the primary source of income. Unless the Planning Commission and the Board of Supervisors have some criteria to ensure the ordinance is not abused, then unfortunately it will be. Thank you for your time and consideration.

Steve Blaine, attorney representing Elizabeth Neff, said he has consulted with a number of the neighbors who live on Ballards Mill Road. You may recall that he spoke to the Commission at a work session earlier this summer when the topic of tonight's ordinance came up. He thinks it is fair to say as a general proposition my clients are not opposed to the notion of supporting our Virginia wineries, breweries and distilleries, which he mentioned at the work session. He represents a number of those wineries. But, he thinks the way to reconcile their views is that where you have as in their instance in their neighborhood someone's primary intent is to have a wedding events planning and it is not really at all about the farm winery. What was intended by the legislation that supports these ordinances is to have these events as ancillary or supplemental to the primary goal, which is to promote the winery industry, the breweries and other traditionally agriculturally related events. So what are they asking the Commission to do? He has advised his clients that this statute does say that you must treat these uses in a certain way. He has sent a memo to Mr. Kamptner and they would ask that the Commission urge the Board of Supervisors to adopt a resolution to improve upon these ordinances so that we may get to the bonafide uses we are intending to promote, the bonafide uses being wineries, breweries and in the case of the most recent changes in the state law, distilleries. But, where we are finding in areas that are entirely inappropriate for this intensive use he thinks that this law could be applied and abused anywhere in the rural areas. He thinks the Ballards Mill Road is just an extreme example. But, can you stop the problem before it occurs? We think you can if you try to address this bonafide use issue. We have some ideas from other localities. Faulquer County is trying to tackle this. It does not cause you to stop doing what you are doing tonight in adopting this law that is mandated by statute; but, he thinks a further amendment to the ordinance is in order. So we would ask you to consider this and as he said if you could use your offices to urge the Board. We would also be speaking to the Board of Supervisors to look into this. With that he will conclude and submit a petition signed by 70 neighbors. (Attachment: Petition signed by 70 neighbors)

Mr, Morris asked if he was planning on going to the Board of Supervisors with this presentation, and Mr. Blaine replied yes, sir.

Neil Williamson, with the Free Enterprise Forum, said he appreciates the concerns that have been raised. He thinks it is rather important that we recognize that the road is not owned by the county; but, it is owned by the state. If the state mandates that the road needs to be updated, the state can update the road. The county actually can't since it is a state owned road. In addition, the Farm Wineries Act, in my opinion having 20 years of work with it, is not an easy thing to do in getting a class A farm winery license. In fact, when we were first discussing the events portion and the other portions of this it was determined that if you jump through the hoops to achieve that farm winery whether you are utilizing leased vineyards or vineyards on site that was a high enough barrier. He gets very concerned that the idea of the right to farm and the right to move forward with a property owner's right on their property is hindered by the state's action on a road, which is probably not somewhere that the county wants to get into. It may prove to be helpful if Mr. Kamptner shares what the State Code suggests. The idea of an independent enterprise being forced to open their books to determine what portion of their revenue comes from what, he thinks is simply not right. Thank you very much.

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

Review of Board of Supervisors Meeting – October 7, 2015 and October 14, 2015

Mr. Benish reviewed the actions taken on October 7, 2015 and October 14, 2015.

Consent Agenda:

a. **Approval of Minutes**: August 11, 2015

b. **SDP-2015-00035 Old Trail Block 27 – Private Street Request**
Request to authorize two private streets with exceptions from sidewalk and planting strip requirements (J.T. Newberry)

Mr. Morris asked if any Commissioner would like to pull an item from the consent agenda for further review.

Mr. Randolph asked to have discussion about SDP-2015-35 Old Trail Block 27 – Private Street request. Looking at the streets that are proposed to be private streets the likelihood is there that these streets could experience traffic that would drive through there. Knowing how children oftentimes gravitate to back streets and alley ways, as they have also used the term in the Crozet/Old Trail area for discussion. He thinks it is hard for children to distinguish between what is an alley way and what is, in fact, here a road that will be considered a road that there should not be traffic on. The only way they can ensure that there will not be traffic on both Fennel Road and Oldham Drive is to consider having bollards there so emergency vehicles could get through, but it would prevent through traffic. He was a little concerned looking at this from a public safety standpoint and knowing that there would probably be children in that roadway.

Mr. Loach pointed out there is open space between the Fennel Road and Oldham Drive. This is the way that Old Trail has been handling them. The houses on the interior between Oldham and that would be served by that open space. That is the only reason he did not have much of a problem with it. He has seen them do it before; everything in Old Trail is handled by alleys and there has not been any problems. If it was not for the open space that they have, the availability between the two houses on either side of that to move back and forth and to get to the other areas by sidewalks he would have some concerns. He thinks it is alright for the area.

Ms. Monteith asked if it could be addressed by signage. Depending on the type of retractable bollards used it can be an investment because you need access for fire access.

Mr. Loach noted those are service lanes, too.

Mr. Dotson noted the packet did not include a letter from engineering explaining their cautions. The first question is the scope of their caution restricted to Old Trail or is it a larger issue county wide. The second question is if there were more private streets, what would be the problem with that.

Mr. Newberry replied that engineering staff provided their comments just internally to staff. Their primary concern with approving private street requests is they note that it can put an onus on homeowners to have to pay to

maintain those streets. They felt like if you were taking a strict stance on the ordinance that perhaps in this case it would not meet the criteria in a way that they would like it to. He thinks planning staff looked at it and felt like it was consistent with the Neighborhood Model. It was allowing private streets that would give rear access to face a common amenity, which was a part of the Neighborhood Model that we want to support. One of the conditions of the sidewalk waiver request is to make sure there is a walkable sidewalk within the open space that connects to the broader sidewalk network. So there should not be a necessity for anyone to be crossing these streets nor do we anticipate there being traffic volume at a speed that would be unsafe. But, the default preference is always for public streets in the eyes of engineering. In order to achieve Neighborhood Model principles in this case planning staff felt that private streets were appropriate.

Mr. Dotson said in terms of intensity he was taking that the engineers felt like they had a preference for not granting the private street, but it is not a major issue and just a preference.

Mr. Newberry agreed, noting it meets all the design standards and fire/rescue has no problem with it.

Mr. Loach noted that those streets serve as the alley ways into the garages, which are in the back, so that they are not heavily traveled or used as cut through. It is consistent with what they have done throughout Old Trail and there have not been any problems that he knows of.

Mr. Randolph noted he thinks Ms. Monteith raises a good question do we need to go the bollard route as perhaps being slightly extreme. But, he wanted to raise that for discussion. He would be comfortable if it was a raised surface there on both of them so traffic would have to slow down and it was alerted that you had to slow down so that they can't have cars racing through. He thinks it is great that they have put together a plan with open space and expecting the children will play in the open space. But, the reality that kids with stickball and the soccer, etc. they may prefer actually being on an asphalt surface. He would just feel a lot more comfortable knowing that kids could be in what they are calling roads and drives here, which really do function very similarly to an alley way, that if they have some way to ensure that the traffic cannot speed through there he was comfortable with it. But, he thinks that is a missing piece and would like to see that considered in the design for this.

Mr. Loach said he heard what Mr. Randolph was saying, but did not think anything else additional is needed.

Motion: Mr. Loach moved and Mr. Lafferty seconded for approval of the consent agenda.

The motion carried by a vote of (5:1). (Randolph nay) (Firehock absent)

Mr. Morris said the consent agenda was approved, as follows.

SDP-2015-35 Old Trail Block 27 – Private Street Authorization Request

The Planning Commission approved the **three (3)** requests outlined below:

1. Section 14-233 and 14-434 - Authorization of two Private Streets within the Development Areas (Oldham Drive and Fennel Road).

2. Section 14-422 (E)(2) - Exception of the sidewalk requirement with conditions.
   Conditions of approval for the sidewalk waiver include:
   a. No sidewalk will be required for Oldham Drive and Fennel Road, as shown on the final site plan for Block 27 dated July 1, 2015.
   b. A five foot sidewalk across the length of the open space shall be provided, as shown on the final site plan for Block 27 dated July 1, 2015.
   c. Sidewalks shall be provided along Belgrove Street and Orion Lane to connect the sidewalk within the open space to the sidewalk system on Ashlar Avenue and Golf View Drive.

3. Section 14-422 (F)(2) - Exception of the planting strip requirement with conditions.
   Conditions of approval for the planting strip waiver include:
   a. No planting strip will be required for Oldham Drive and Fennel Road, as shown on the final site plan for Block 27 dated July 1, 2015.

b. Planting strips are required for all other roads adjacent to Block 27.

The meeting moved to the next agenda item.

Regular Items

a. **AFD-2015-00001 Moorman's River Addition – Rinehart**
Notice is hereby given that the Albemarle County Planning Commission will hold a public hearing to receive public comments regarding the addition of the following parcels to the Moorman's River Agricultural and Forestal District (Albemarle County Code § 3-222) on October 20, 2015, at 6 p.m., in the Auditorium of the Albemarle County Office Building, 401 McIntire Road, Charlottesville, Virginia. The parcels proposed for addition (Tax map 58, parcels 65A4, 65E, and 65I) total approximately 27.37 acres in size and are located at 1283 Tilman Road. The Albemarle County Agricultural and Forestal Districts Advisory Committee has recommended approval of this addition. (Scott Clark)

AND

b. **AFD-2015-00002 Jacob's Run Addition – Dick**
Notice is hereby given that the Albemarle County Planning Commission will hold a public hearing to receive public comments regarding the addition of the following parcel to the Jacob's Run Agricultural and Forestal District (Albemarle County Code § 3-218) on October 20, 2015, at 6 p.m., in the Auditorium of the Albemarle County Office Building, 401 McIntire Road, Charlottesville, Virginia. The parcel proposed for addition (Tax map 19A, parcel 9) is approximately 21.19 acres in size and is located at 1775 Double Eagle Trace. The Albemarle County Agricultural and Forestal Districts Advisory Committee has recommended approval of this addition. (Scott Clark)

AND

c. **AFD-2015-00003 Blue Run Addition – Carpenter**
Notice is hereby given that the Albemarle County Planning Commission will hold a public hearing to receive public comments regarding the addition of the following parcel to the Blue Run Agricultural and Forestal District (Albemarle County Code § 3-208) on October 20, 2015, at 6 p.m., in the Auditorium of the Albemarle County Office Building, 401 McIntire Road, Charlottesville, Virginia. The parcel proposed for addition (Tax map 35, parcel 37A1) is approximately 25.1 acres in size and is located approximately 1,330 feet northwest of Virginia Route 20 from a point approximately 1,650 feet north of the intersection of Route 20 and Burnley Station Road (Route 641). The Albemarle County Agricultural and Forestal Districts Advisory Committee has recommended approval of this addition. (Scott Clark)

Mr. Morris noted the next items for review are three AFD additions. They have asked Mr. Clark to brief all of the requests and then the Commission would ask questions and open it up for public comment. The three items can be handled in one motion.

Scott Clark presented a PowerPoint presentation and individually summarized the staff reports for all three district addition requests.

AFD-2015-1 Moorman's River Addition – Rinehart

Proposal: It is a very large district is located in the northwest portion of the county. This proposal would add three parcels to the district totally over 27 acres. The entire 27 acres has high quality soils, which are distributed on the three parcels and are largely open land.

AFD201500001 Rinehart: This proposal would add three parcels to the District:

Requested Additions			
Parcel	**Acres**	**Acres of Important Soils**	**Notes**
58-65I	8.46	8.46	
58-65A4	5.00	5.00	
58-65E	13.91	13.91	Two dwellings

Recommendation: At their meeting on July 15, 2015, the Agricultural-Forestal Districts Advisory Committee voted unanimously to recommend approval of this addition to the Moorman's River District.

Mr. Clark moved to the second proposal.

AFD2015-00002 Jacob's Run Addition – Dick

Proposal: This proposal would add one parcel to the District:

Requested Additions			
Parcel	Acres	Acres of Important Soils	Notes
19A-9	21.19	17.3	One dwelling

The parcel is approximately half wooded and half open.

Recommendation: At their meeting on July 15, 2015, the Agricultural-Forestal Districts Advisory Committee voted unanimously to recommend approval of this addition to the Jacob's Run District.

Mr. Clark moved to the third request.

AFD2015-00003 Blue Run Addition – Carpenter

Proposal: This proposal would add one parcel to the District:

Requested Additions			
Parcel	Acre	Acres of Important Soils	Notes
35-37A1	25.1	25.1	

The parcel is approximately two-thirds wooded and one-third open.

Staff Recommendation: At their meeting on July 15, 2015, the Agricultural-Forestal Districts Advisory Committee voted unanimously to recommend approval of this addition to the Blue Run District.

Based on the Agricultural-Forestal Districts Advisory Committee's actions staff recommends the Planning Commission recommend approval of all three additions to the Board of Supervisors. He would be happy to answer any questions.

Mr. Morris invited questions for staff. There being no questions for staff, Mr. Morris opened the public hearing and invited applicants or members of the public to come forward and address the Planning Commission on any of three four items.

Neil Williamson, Free Enterprise Forum, said the Free Enterprise Forum has no position on these particular parcels; however, we do want to draw attention to what he would consider to be a policy issue that the Commission cannot do anything about. He believes it is a state issue. However, he is very impressed that the county has a committee that considers the agricultural/forestal additions. The districts last 10 years and then come back and have to go through the committee again, to the Planning Commission and then the Board of Supervisors. He believes the committee is well published in the district. At the Planning Commission and Board of Supervisors meeting public input is taken with regard to this because there is a certain tax and community benefit to having these lands in agricultural forestal districts. None of this happens with a conservation easement, and it is forever. That is a flaw and he did not know how to solve it. It can't be solved in this room. But, he really would think that given the import that they are putting on public input to an agricultural forestal district that is 10 years that something that is in perpetuity probably deserves a little more attention.

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

Mr. Morris invited discussion.

Mr. Dotson asked Mr. Keller if he was on the Agricultural Forestal Committee. He was wondering in view of the fact that these are relatively small additions (20 acres, 5 acres or so) and at least 2 of them are relatively freestanding and distance from abutting agricultural/forestal parcels if there was discussion of that or whether this looked such a good thing that it did not require a lot of discussion.

Mr. Keller replied that there was discussion, which actually brings up something that he would bring up in new business. He thinks they need to have a bit more clarification on the part of staff on the approval and the disapproval portion of information that is brought forward. In fact, he emailed staff earlier asking if they would discuss this point and had not received a response to that. There is an ongoing discussion that has been brought forward by one of the supervisors. It is my understanding that staff is sort of thinking about these smaller lots and the ramifications of their addition. He asked if staff or Mr. Kamptner would speak to that and explain where that is in the process right now.

Mr. Benish pointed out Mr. Kamptner would have to speak to that because it is with the County Attorney's office.

Mr. Kamptner said this is an issue that is being studied by the Citizens Resource Advisory Committee. The small parcel sizes are an issue. The county has some latitude in the State Agricultural Forestal District statute to require additional information that it deems to be relevant and parcel size is certainly something that could be considered. The committee is also looking at changing the minimum acreage for qualifying for land use taxation. Right now they have low acreage requirements for agriculture and horticultural uses as just 5 acres. For right now he thinks the way the Agricultural Forestal District regulations are set up they are generally consistent with those other regulations. But, there has been discussion about raising those thresholds up to 25 acres, which is the minimum size in other localities.

Mr. Keller said to answer Mr. Dotson's question there was a lot of discussion along this line. The reason the votes went the way they were is because this is under consideration and others had been accepted previously based on our current understanding. That is why he had asked that staff might speak to this first so that they could maybe move along on this, but be aware of the fact that it is most likely going to be a forthcoming issues for discussion. We learned, for instance, that there are counties, such as Louisa, that have elected not to have forestry as a land use. So there are ways within our state enabling legislation where there can be modifications. That gets into the whole budgetary issue, which is beyond our preview. But, it is one of those sets of discussions that are going on in the county right now that would affect agricultural forestal districts and potentially areas under easement as Mr. Williamson has pointed out as all of this is rethought.

Mr. Dotson said that is very helpful, thank you. He had a couple of minor thoughts. Looking at the map with the Moorman's River the Rinehart parcel is relatively isolated from the balance of the district. However, he then looked and there is also an isolated parcel on Barracks Road and one over off Reas Ford Road. So that may be the kind of precedent that Mr. Keller was speaking about. He did not know if there was anything in our policies or ordinances that addressed distance or proximity to other properties that might be under a conservation easement or an agricultural forestal district to sort of give some credence to the notion of being a part of a larger whole.

Mr. Clark replied that there is a very specific policy or requirement about the distance from a district, but none about parcel acreage. The County Code requires that any parcel that is going to be added to a district be within one mile of the core of the district. The core of the district is the first set of parcels that were added to the district when it was first formed and not the later parcels that were added. This keeps the individual districts from sprawling a long way across the landscape. It also has encouraged having the 20 some districts that they have now. That is a legal requirement as far as the distance goes and the Rinehart property met that. However, as far as the acreage or the development potential of a property there is nothing specific in the ordinance about that. It has been a topic of discussion on the committee and among staff for a long time. It seems the Board has now requested this report from the County Attorney's office that will begin to address whether or not we should in fact have a policy about acreage or development potential on top of our rather permissive approach over the last many years of basically taking all comers to these districts and not questioning them based on acreage.

Mr. Dotson noted in just looking at the map, which does have a scale on it, it would not appear that the property is within a mile.

Mr. Clark replied unfortunately you cannot easily show what is core and what is not from here. However, staff always measures that distance when the applications come in.

Mr. Dotson said he would take Mr. Clark's word for it. The other question he had involved trying to figure out the motivation since none of the applicants were here. In trying to figure out what the motivation is he suggested using the Dick proposal as an example. It looks like it is a 21 acre lot perhaps as part of a development, and he was guessing that it has no further division rights and that no additional development could take place on it. So he was trying to figure out would this give it a reduction in taxes; and, if so what is the benefit to the county since it has no further development potential in any case.

Mr. Clark replied that it has been a clear pattern since 6 or 8 years ago when the County Assessor's Office began doing bi-annual revalidations for land use tax that a lot of people who for a very long time had been qualifying for the agricultural category or something without having to revalidate would remain in that category over many years. Once the revalidations came along and because they were less capable of doing farming or qualifying quite the way we would expect, a lot of the parcels we have seen come to the agricultural-forestal district since that time have been 21 to 25 acre parcels with no development potential meaning you are correct that Jacob Run addition is a 21 acre parcel with no further development possible. Again, for 20 plus years they have been taking all comers and not judging based on development potential. The question they are trying to settle now is should we, in fact, be doing that.

Mr. Benish said it has not been the role of the Agricultural and Forestal District to adjudicate on whether something qualifies for use value taxation. It looks to be a benefit of the agricultural forestal district. That had been less of an issue until the revalidation started. There are obviously policies across these two programs that need to be rectified. But, that has not been in the past a role of the agricultural district to consider use value. Also, in terms of 21 acre lots that the way our ordinance is structured we consider a 21 acre lot an agricultural lot. That is why the non-division right lots are 21 acres. In the 30 years he has been at the county they have discussed having that be a larger lot size without much success.

Mr. Dotson asked is there time pressure to address these. Does it confer a benefit this calendar year if acted upon now as opposed to defer it to such time as the report is returned about some of these issues.

Mr. Clark pointed out the people who are using their memberships in the Agri-Forestal Districts to qualify for the open space tax category for next year need to get into this during this year to qualify. That is obviously a large part of their motivation.

Mr. Dotson said he would like to hear comments from other commissioners.

Mr. Randolph said just to make an observation that today's outlier might be tomorrow's cluster, and we have to think about that. Since that little isolated green spot may attract other people in the future and that cluster thereby one or two outliers can grow and become a cluster. That is something we have to keep in mind.

Mr. Dotson agreed. He noted that an agricultural/forestal district can become a conservation easement in the future.

Mr. Keller said so many pieces of this have come in. Mr. Blaine spoke about the possibility of bonafide agriculture or whatever in terms of the winery there comes those kind of issues. Really now the questionnaire is beginning to be much more specific about what that agricultural/forestal/horticultural use would be. Then there is the open space. The open space is where it sort of butts up against the easement that someone who is going for an open space would be putting their land under easement or not. Or, is there some total of everything that they are getting under some degree of protection looking towards our comprehensive plan's focus on the rural areas and maybe does not need to be tweaked. But, those are the kinds of discussions that are going on and if it interests our commission he was sure that the agricultural forestal committee would be glad to have an opportunity to meet and have further dicussions. He thinks there is a bit of a frustration about where all of these things come

together. Really, we are not in the business of speaking about the fiscal side of things. It is the land use. From a land use standpoint it seems to be a relatively effective tool possibly because of that review.

Mr. Morris invited further discussion.

Mr. Clark noted staff has been discussing which items and information about these parcels they wanted to bring forward to the Commission in these public hearings. We do have an assessment of the development potential of each parcel that is under review. There will be a second round of additions for this year coming to the Planning Commission next month. If the Commission would like staff can include that in the presentation to say the acreage and the development potential.

Mr. Morris agreed that information would be helpful.

Mr. Dotson said most of the staff report was about the district in whole and not about the parcel to be added, which ought to be added.

Mr. Clark pointed out staff has always included acreage and soil information about the individual parcels. If the Board directs staff and the Committee to consider development potential as well we can easily work that in.

Mr. Keller said there was just one last piece on that. Mr. Dotson asked the question about the involvement. He knows the committee would like to see representatives who are coming before the committee in person. In the two meetings he has attended that has not been the case in the majority of cases that we are reviewing it. So if we thought that was important all the way through the process, then the Commission could make that recommendation to staff that it go forward to the Supervisors to consider that. But, again that involves more staff time in finding these folks and inviting them. Then they get into that staff timing issue.

Mr. Dotson noted Mr. Keller said he was going to raise something on this topic under new business. He suggested the Commission discuss that under new business.

Mr. Keller agreed.

Mr. Morris said he would entertain a motion for the three requests.

Motion: Mr. Randolph moved and Mr. Keller seconded to recommend approval of AFD-2015-00001 Moorman's River Addition – Rinehart, AFD-2015-00002 Jacob's Run Addition – Dick, and AFD-2015-00003 Blue Run Addition – Carpenter.

The motion passed unanimously by a vote of 5:1. (Dotson nay) (Firehock absent)

Mr. Morris noted it was recommended the requests for additions to AFD-2015-00001 Moorman's River Addition – Rinehart, AFD-2015-00002 Jacob's Run Addition – Dick, and AFD-2015-00003 Blue Run Addition – Carpenter go to the Board of Supervisors on December 2, 2015.

The meeting moved to the next agenda item.

ZMA-2015-00004 Commonwealth Senior Living
MAGISTERIAL DISTRICT: Rivanna
TAX MAP/PARCEL: 07800-00-00-055A1
LOCATION: 1550 Pantops Mountain Place - approximately 430 feet from the intersection of Pantops Mountain Road and US Route 250 West.
PROPOSAL: Request to amend proffers associated with ZMA99-01 and ZMA01-011. Proposed uses to include assisted living and independent units with an increase of units from 100 up to 140 units on 3.85 acres.
PETITION: Request to amend proffers on property zoned PRD (Planned Residential Development) which allows residential uses at a density of 3 – 34 units/acre with limited commercial uses. Proposed density up to36 units/acre. No change to the building footprint is proposed.
ENTRANCE CORRIDOR: Yes
PROFFERS: Yes

STEEP SLOPES MANAGED: Yes
COMPREHENSIVE PLAN: Urban Density Residential – residential (6.01-34 units/acre); supporting uses such as religious institutions, schools, commercial, office and service uses.
(Claudette Grant)

Ms. Grant presented a PowerPoint presentation regarding ZMA 2015-00004, Commonwealth Senior Living.

This proposal is located at 1550 Pantops Mountain Place. It is located approximately 430 feet from the intersection of Pantops Mountain Road and US Route 250 West. This existing building is the former Pantops Place. The property is zoned PRD (Planned Residential Development). The Pantops Master Plan designates this property as Urban Density Residential. The applicant requests to amend proffers associated with ZMA-99-01 and ZMA-2001-11. The proposed uses include assisted living and independent units with an increase of units from 100 up to 140 units.

This parcel is part of a larger Planned Residential Development (PRD). Over the years there have been various rezonings, site plans and subdivisions relating to this PRD making it sometimes hard to follow the various actions related to each parcel. Ms. Grant apologized for any confusion this may have caused and provided an overview of the PRD, which included the subject parcel, the parcel dedicated to open space and the two parcels designated for the cottage units. The property adjacent to Route 250 is the Peter Jefferson Overlook property.

Staff displayed the revised application plan. The footprint of the existing building will not change. The applicant wishes to convert 86 existing units to no more than 70 independent living units and the balance of units would be set aside as assisted living units providing up to a total of 140 units. As mentioned in the staff report, the only change to the site is an expansion of the amenity area which is already approved with a site plan. The amenity area is a little area near Route 250.

As you may be aware the proffers relate to different actions. Some of the proffers had been completed, some need to be updated, and some still need to be referenced because the original intent is still applicable. In the staff report staff had recommended that we keep proffer 8; however, after discussions with the county attorney proffer 8 can be eliminated because it is covered by the revised proffer language. There are technical revisions that need to be provided to the proffers. Staff has been working with the applicant regarding the needed revisions to the proffers. Staff recommends the applicant work with staff and the county attorney to fix the technical revisions needed prior to the Board public hearing.

Factors Favorable:
- The rezoning request remains consistent with the Comprehensive Plan and the intent of the original rezoning.
- The increase in units provides services to a larger segment of the senior population.
- The footprint of the building remains unchanged.

Factors Unfavorable
- The proposed proffer revisions eliminate proffers that address impacts and issues which remain valid and relevant to this site.

Staff Recommendation

Staff can recommend approval of ZMA-2015-00004, Commonwealth Senior Living, provided that the technical revisions are made to the proffers, per the applicant, county attorney and staff satisfaction prior to the Board of Supervisor public hearing.

Ms. Grant offered to answer any questions.

Mr. Morris invited questions for staff.

Mr. Dotson asked was there a community meeting or was that waived,

Mr. Morris replied no, Mr. Keller and he were at that meeting that took place about two months ago. There was a nice turn out and by and large people were in favor of it.

Mr. Lafferty asked what the holdup was on the proffers since staff had made it one of the conditions that they renegotiate the proffers.

Mr. Benish replied that staff just have not reached final language with the county attorney yet. He did not believe there was a substantive issue, and the applicant can speak to it. But, they don't have final language.

Mr. Kamptner explained that proffer 4 deals with maintaining an interconnection and proffer 6 and 7 deal with buffering. The applicant may have believed that those proffers could be deleted because they are in place right now. But, the proffers in all three cases are standards that are above and beyond the minimum standards for a site plan. So it is staff's recommendation that those three proffers continue on.

Mr. Benish pointed out there was some technical work necessary for some updates.

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

Steve Blaine, representative for the applicant, said that Kevin Willis, project manager from Commonwealth Assisted Living, was also present. He noted that Commonwealth Assisted Living is a locally based company that has been in business for about 13 to 15 years and has 20 senior living facilities throughout Virginia that they own or manage. This is the first one that they will actually own and operate in Albemarle County. Their business model has been to address affordable senior housing and they have been quite successful in repurposing as in this instance a building that may have suited the market place better 15 or 20 years ago. This is on independent living. The notion here is to convert these maybe smaller units more affordable, but to address a need for assisted living and memory care. So those would be uses that we have identified as much needed in the area and this is to address that. Ms. Grant did a great job describing the application and we are in agreement with the characterization regarding the proffers. When looking at the proffers they appear somewhat inaccurate because they talk about improvements that were really constructed or put into place 15 years ago. But, we agree with the notion that they should remain because future redevelopment may actually come into play with those proffers. So they are in agreement with the need to update references to tax map/parcels that no longer exist because they have been consolidated and that type of thing. So they are happy to answer any questions, but would appreciate a recommendation for approval.

Mr. Morris invited questions.

Mr. Dotson said he was curious about something that the county does not regulate. The units are occupied as independent living now and some will be converted to memory care and assisted care. He asked what happens to the people who are in those units now.

Mr. Blaine said that was a very good question because that was a question that folks raised at the neighborhood meeting. Obviously, the company is not going to evict current residents. So as folks move out the building can be converted in phases. They are not going to close the existing operations to convert the building all at one time.

There being no further questions for the applicant, Mr. Morris invited public comment.

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

Mr. Dotson said he had one thought and perhaps this is helpful redundancy. On the application plan sheet 3 there is a statement that says the applicant reserves the right to adjust the ratio of assisted living to independent living units for this site based on the parking requirements shown and the proffers associated with this application. He suggested that it would be useful redundancy to add that to condition 8 at the very end. If someone does not necessarily pick it up on the site plan, then the applicant has that flexibility to pick it up in the conditions. Therefore, he offers the suggestion as useful redundancy.

Mr. Morris asked if there were any other comments. There being none, he asked for a motion.

Mr. Randolph moved for approval of ZMA-2015-00004, Commonwealth Senior Living, with a proviso that the proffers provided in January 5, 2000 to the previous owner would remain applicable and those proffers are 4, 5, 6, 7 and 8 as amended and recommended by staff.

Mr. Kamptner noted it actually should just be 4, 6 and 7 since proffers 5 and 8 have been addressed and are no longer applicable.

Mr. Randolph agreed because he had proffer 5 written as done.

Mr. Benish said your comment would just apply to the property and we will incorporate it, and Mr. Randolph agreed.

Mr. Kamptner said just to be clear does that include Mr. Dotson's addition of the note from sheet 3 of the application plan.

Mr. Randolph replied yes, it does include Mr. Dotson's addition of the note from sheet 3 of the application plan: "The applicant reserves the right to adjust the ratio of assisted living to independent living units for this site based on the parking requirements as described on sheet 3 of the application plan and the proffers associated with this application plan."

Mr. Keller seconded the motion.

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

The motion passed by a vote of 6:0. (Firehock absent)

Mr. Morris noted that ZMA 2015-00004, Commonwealth Senior Living would be forwarded to the Board of Supervisors with a recommendation for approval at a Board of Supervisors meeting to be determined.

The meeting moved to the next agenda item.

ZTA-2015-00002 Farm Distilleries

The Planning Commission will hold a public hearing to receive comments on its intent to recommend adoption of an ordinance amending Secs. 18-3.1, Definitions, 18-5.1.25, Farm wineries, 18-5.1.57, Farm breweries, 18-10.2.1, By right (Rural Areas district (RA)), 18-10.2.2, By special use permit (RA), 18-11.3.1, By right uses (Monticello Historic district (MHD)), 18-11.3.2, By special use permit (MHD), and 18-31.5, Zoning clearance, and adding Sec. 18-5.1.59, Farm distilleries, to Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 18-3.1 by amending and adding definitions pertaining to farm distilleries; amend Sec. 18-5.1.25 by requiring a special use permit when there may be 200 visitors' attendance in the aggregate at any time for farm winery events, weddings, wedding receptions, or other similar activities; amend Sec. 18.1-57, by requiring a zoning clearance when farm brewery events or activities may generate more than 50 vehicle trips per day or they are on sites less than 21 acres in size and require a special use permit when there may be 200 visitors' attendance in the aggregate at any time for farm brewery events, weddings, wedding receptions, or other similar activities; add Sec. 18-5.1.59 by establishing regulations applicable to farm distilleries ("limited distilleries" are required to be permitted by Virginia Code § 15.2-2288.3:2, effective July 1, 2015) by delineating the uses, events and activities ("uses") allowed by right and by special use permit, the requirements for establishing those uses, requiring a zoning clearance when farm distillery events or activities may generate more than 50 vehicle trips per day or they are on sites less than 21 acres in size and require a special use permit when there may be 200 visitors' attendance in the aggregate at any time for farm distillery events, weddings, wedding receptions, or other similar activities, sound generation from outdoor amplified music, and minimum yards; and prohibiting restaurants and helicopter rides; amend Secs.18-10.2.1, 18-10.2.2, 18-11.3.1 and 18-11.3.2 by adding farm distilleries as being allowed by right or by special use permit as provided in Sec. 18-5.1.59; amend Sec. 18-31.5 by requiring a zoning clearance for certain events and activities at farm wineries licensed after the effective date of this ordinance, farm breweries, and farm distilleries that may generate more than 50 vehicle trips per day or they are on sites less than 21 acres in size, and in order to play outdoor amplified music at a farm distillery. A

copy of the full text of the ordinance is on file in the office of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia. (Francis McCall)

Mr. McCall presented a PowerPoint presentation regarding ZTA 2015-00002, Farm Distilleries. He handed out a revision to Attachment E. (Attachment E – Available in the Office of the clerk with the written minutes)

As you are aware, from our previous work sessions this ZTA has come about as a result of Senate Bill 1272 at the 2015 General Assembly session. It deals with "limited distilleries" or as we have termed them "farm distilleries". What a limited distillery is permitted to produce per the ABC regulations is 36,000 gallons/year of distilled spirits on land with agricultural zoning, and must use products grown on the farm. These regulations went into effect statewide on July 1, 2015.

Background

SB 1272 - Limited Distilleries

- Production, harvesting, manufacturing, sales, storage & tasting protected
- Restrictions shall be reasonable & take into account economic impact, the agricultural nature of activities & whether they are usual & customary
- Usual & customary activities must be permitted unless there is a "substantial impact" on public health, safety & welfare

Meetings Held In Past:

- March 17 ROI for farm distilleries
- May 12 PC Work Session
- June 2 Revised ROI to include farm wineries, breweries & distilleries
- July 1 SB 1272 takes effect
- August 11 PC Work Session

The ordinance before the Planning Commission does the following:

First, it adds distilleries as a use in the Rural Areas (RA) zoning district and Monticello Historic District along with some revised definitions. It also addresses the total number of persons attending one or more events at a single operation. This may occur if one licensed operation proposes more than one event or if at one site there were multiple ABC licensed operations where each licensed operation holds an event at the same time.

The 200 person limitation is a longstanding limitation (2009) in the County regulations, on the total number of persons/guests at a site at one time. As discussed previously with the Commission staff has now revised this ordinance to clarify that this limitation is to a total of 200 persons onsite regardless of the number of events or ABC licenses.

Lastly, the ordinance proposes to add the requirement to obtain a zoning clearance for all new farm distilleries, any new farm brewery or new farm winery established after the date of the adoption of the ordinance amendment by the Board Of Supervisors if a licensed operation will be on a site that is less than 21 acres in size and wants to hold events or activities or if an event or activity generates more than 50 vehicle trips per day. This requirement is already a standard that VDOT uses when requiring commercial entrance improvements, and both of these requirements are what the County has already adopted for events and activities at Agri operations. The handout provided was an update to Attachment E that lays out changes to those particular uses, the farm winery and farm brewery and adding farm distilleries.

Mr. MacCall said he would be happy to answer any questions and Mr. Kamptner would be able to assist in that.

Mr. Morris invited questions for staff.

Mr. Randolph said his reading of the regulation changes here addresses the multiple same owner operations contiguous to each other. However, does it also successfully address different multiple owners having contiguous operations.

Mr. McCall replied that he did not believe it does right at the moment as far as the cumulative impact of those because the ordinance does not specifically address that at this time. He believed staff is going to try to evaluate that in a second stage, which was discussed at the previous work session.

Mr. Kamptner noted that is one of the phase 2 ZTA's as they continue to look at this. This is something that the Board is also interested in, which will be discussed at a November meetings when they are going over the Community Development work plan.

Mr. Randolph said it is very easy for parties on the outside to look at Albemarle County and say Albemarle County overregulates. But, in point of fact if we don't address this there is a loophole in here large enough to drive the titanic through sideway. That is a concern that we've all talked about. So he was happy it was going to be addressed in a second phase

Mr. Keller added that from an economic development standpoint some of this piggybacking that they are seeing is actually positive. He was thinking of Carter's Mountain that now has added Bold Rock along with Prince Michel and the orchard part. He thinks that there are many positives to be viewed from that. However, they need to think about how we deal with contiguous events from multiple owners at one local. He thinks if this is a successful business model they will see more of it.

Mr. Morris opened the public hearing for public comment. He invited public comment.

Neil Williamson, with the Free Enterprise Forum, said when they get to the cumulative impacts and property owners who happen to be next to each other and are pursuing economic development of their property you can anticipate that we all be very involved with that discussion. In this case he would like to draw the Commission's attention to Attachment A, page 3. Perhaps this has already been addressed by staff. The bottom of the page does not make any sense or there is a tense or something missing. At the last meeting he made a point to say the core element of this is about the events. This is totally and separate and apart from state permitted and required by-right uses including making the wine. He completely understands the idea. But, in the past it said are in attendance at any time. Now it says, "In the aggregate or attend one of more uses allowed. He was kind of lost by that. It is repeated again on page 6. When you get to page 7, for the purposes of this section the phrase in the aggregate refers to one or more events authorized under this section or section 5.1.2.5 or 5.1.5.9, which is the brewery section and the distillery section. He knows the intent is to one event. Quite honestly most of the wineries that he deals with only one has one event. Frankly, some of them are kind of tired of having events. But, the reality is that he did not think this language is as clear as it could be. He was hopeful as they move it forward it can be cleaned up so that it truly does what the intent is.

Mr. Kamptner replied that it will be. He realized this past week that all of the aggregating language that appears in all three main sections is not as clear as it could be. So he is going to work with that before it goes on to the Board.

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

Mr. Dotson said he thinks this is as good a job as we could do. But, he comes back to the introductory paragraph that says must be located on a farm. Have we defined that? How would he know whether it was on a farm and must use agricultural products? It is probably in there, but he could not find it in the ordinance.

Mr. Kamptner pointed out that farm is a defined term in Section 3.1 that has existed in the zoning ordinance for a number of years. It is a fairly broad term that mirrors the state definition, which is land under the same ownership within the Commonwealth. Farm wineries are a kind of beast. It is the same thing with farm breweries and farm distilleries in that the state enabling authority refers to the agricultural products being grown on the farm. The state definition is as equally broad.

Mr. Dotson said what he is saying is it is a very vague definition, but we are stuck with it.

Mr. Kamptner replied that we are stuck with it. However, he won't say it is a vague definition, it is a broad definition. It is not what we necessarily think of as the farm. It is not the commonly understood meaning of the term when we are talking about it.

Mr. Dotson asked what about the use of agricultural products.

Mr. Kamptner noted that we also definite agricultural products. He thinks all the farm wineries in Albemarle County are Class A license. Therefore, 51 percent of the grapes have to be grown on the farm. Farm breweries and farm distilleries are required in order for them to obtain a license they have to use agricultural products grown on the farm. But, there is nothing that establishes a floor amount of agricultural products that have to be used. Staff met with an ABC agent two weeks ago and they found no regulations. He did not recall there even being any guidance as to what the minimum threshold is. So it may be a single row of hops or something for a brewery. They will consider that in their overall evaluation. When they are considering a license application they will look at the legitimacy of the operation, but recognize there is no minimum amount of agricultural product that has to be used in the alcohol.

Mr. Dotson asked does the State Code for breweries and distilleries allow for a local definition of a use threshold paralleling the winery threshold.

Mr. Kamptner replied the licensing requirements are established by the state, and we have no latitude to tweak those licensing requirements in any way. When you look at the events and activities that we have discretion to allow we allow those and it has to be either for the purposes of agri-tourism or towards marketing the product. So if there is very little or no product actually being produced, if there is no real agriculture going on and if it is just a single vine then we are going to look at whether or not they are actually entitled to engage in those types of activities. For example, to host wedding events. If it is not promoting agri-tourism or marketing the sale of their product, then they really are not eligible to engage in these other events and activities.

Mr. Dotson asked how that would come to our attention.

Mr. Kamptner replied it would be by complaint.

Mr. Morris invited other discussion.

Mr. Loach said in 2 respects, one is just to follow up on Mr. Blaine's comments and what Mr. Dotson just talked about what the definition is of farm. He wanted the definition of bonafide primary agricultural activity. It is mentioned a couple times in the ordinance. He thinks it goes across the board be it wineries, distilleries or breweries. He can't believe they couldn't come up with some objective definition on what the underlying agricultural activity is that you are supporting. In the case that was brought up tonight the operator of the property basically said I don't want to run a wedding chapel and I couldn't do that. So in order to do that he would put in one-half an acre of wines and that is my farm. He was not sure under what he would see as the definition that is a primary agricultural activity for the property. The other thing is the sentence that any regulation of usual and customary events is allowed only when there is substantial impact on health, safety or general welfare. He thinks tonight what they saw is a perfect example of a concern of health, safety and the general welfare. It does not matter whether that road belongs to the state or the county, and it does not matter if the state is responsible. It is the condition of that road that you have to deal with in its context to where the farm or the applicant is going to be. It seems they have to recognize there is a big difference between, as an example, the King Family Farm that is on an asphalt road contiguous to the growth area that has a double yellow line, and you can get traffic in and out. He would be amazed if they went to the police, fire or rescue and said to them do you not see a problem with this road. The fact is that when you add to it buses with multiple persons you compound the potential accident injuries that you are going to have. Imagine trying to get up on that road in a fire truck or trucks, heavy rescue squad, multiple ambulances and police vehicles. If you think that road is bad now try it at night. It is even worse at night with dust. He was lucky coming home if there was not another car on that road because like was said you have to slow down and stop. He saw six deer and one fox, and thankfully did not hit any of them. He would like to suggest though when we look at substantial impact the sentence reads, "an impact that may arise from an event or activity." Well my question is when they talked about this in a cumulative nature his problem is what happens if the situation is that even before that the infrastructure would not support it whether or not there is one of more. So this is a situation with the one they are talking about. What he thinks we need to do two things, particularly

because this is a work session. One, go back and have the county attorney review Mr. Blaine's definitions and what he wants to do. Second, he would like to see since the only thing the county can do is deal with health and safety is that we come up with parameters that define whether there are objective reasons why something should not be done and not wait until somebody complains about it or there is an accident. He believes there are conditions like the one they saw tonight that are contraindicated by their very nature to having large 200 person events on them. Those are the two things he really would like to see. He would suggest that this does involve the health and welfare of our citizens and has to be looked at.

Mr. Dotson pointed out this is not a study session tonight, though, this is for action.

Mr. Morris agreed.

Mr. Loach said if that is the case then he do not think this is by any nature complete. He knows what Mr. Dotson is saying that a lot of time has gone into it, but he did not think it is the best we can do. He thinks they have an obligation to the citizens to protect their health and safety. If that is the case, then he would vote no because it needs another looking at if only for those reasons. It was interesting when they looked at the picture that most of the properties in this area were under conservation easement. That says that the residents of that area have put their time, effort and money in what they want to do into defining the character of that community. He thinks that has to be taken into consideration when they make those decisions. If it is not, then he thinks it is incomplete.

Mr. Keller noted when they had the agritourism round tables there were several people who had been quite involved with the advisory or spin off committee to the state legislator in trying to think through a definition of what bonafide agriculture was. As he remembered we could never come up with a definition of bonafide agriculture. So he wanted to remind the Commission that something that seems so simple has not been able to come to a definition at the state level where they actually gave us the legislation that we are having to deal with. As a side, Augusta County has in their efforts come up with a definition of what bonafide agriculture is. But, again, they are a different kind of agricultural community and county than we are.

Mr. Kamptner pointed out we have a definition that clarifies the term agricultural operation.
On the screen there is the definition of agricultural operation. The zoning ordinance also defines what the phrase devoted to the bonafide production of crops, animals or fowl. It is a very lengthy definition.

Mr. MacCall noted it applies particularly to agricultural operations.

Mr. Keller said the second point is on these rural roads that we all are concerned with he raised the same issues on Glendower Church and the daycare center. Because there was not the video the same kind of concerns of people driving fast on the gravel road and the issues then when they had the presentation by the TJPDC about the rural roads and the issues of could gravel roads go away because the upgrading through the state's rural road program if they begin to have a high traffic count. There are a lots of interesting things that come together that are under our preview that interact and they need to think holistically about all of those. It is not necessarily this evening, but when they have these different related issues he encourages us all to think broadly about how they interact. He supports Mr. Loach's concerns on those rural roads.

Mr. Loach noted the difference is the amount of traffic that they are talking about with that being a daycare center versus 150 people going to a wedding where alcohol would be consumed. The second thing is there are rural roads and rural roads. Tonight they could see visually that maybe one of the rules that we put into place is that if you have a road that is only a lane and a half wide that by itself is a reason for not approving farm wineries with 200 people on these roads. He was not saying all of them will be, but he was saying there is a difference in the roads. That is why he is saying to go back and look at and see if you can define parameters to find what would not be safe. It is what road conditions in the rural area would be contraindicated to having large events being held in their proximate location. That is what he is saying.

Mr. Morris asked Mr. Kamptner if the county has the capability of putting that into our ordinance as far as what the state has mandated.

Mr. Kamptner replied we have the ability to protect public health, safety and welfare. If the events and activities were determined to be usual and customary. He was not sure that any in the list that applies to breweries and

distilleries are usual and customary. He thinks those two classes are different from the farm wineries. We can regulate the usual and customary events and activities only if we first determine there is a substantial impact on public, health, safety or welfare. That is part of the phase 2 analysis that we will be doing. He would imagine that will be one that will start pretty quickly to deal with these types of issues. The one reason why this ordinance is a little easier simpler is because we have this legislation that became effective July 1 and we feel that we do need to get something in place.

Mr. MacCall noted that to some extent they are addressing some substantial impact by doing the zoning clearance for 50 vehicle trips and the acreage at least for right now. One thing they are not considering is the number of events. He believes that Loundon is one that does limit a certain number of events per licensed operation. That is one thing that is not in the consideration. That would definitely would limit things as far as certain impacts if that was a limitation.

Mr. Morris said he must agree with Mr. Loach on this that the health, safety and welfare of our citizens has to be paramount in our minds. My question is this as well as the number of contiguous events and so on going to be addressed in phase 2 and when will phase 2 hit the street roughly.

Mr. McCall noted that Mr. Cilimberg would be able to speak to that.

Mr. Cilimberg replied that is to be decided by the Board as part of the work program. In fact, several of us have been working with Mr. Graham just today on the information going back to the Board for their November meeting to really flush out the final work program particulars and the resources necessary. He cannot give the Commission a timeline right now, but our understanding has been this is pretty important to the Board as well as we know it is for you.

Mr. Loach asked if these are approved then they go to phase 2, everything done before this is then by right under those rules and they are not affected by that.

Mr. Kamptner replied generally that is going to be the case. But, if we hold off this ordinance that is also going to be the case so that any distilleries that come in will not be subject to any other regulations other then what they are authorized to do under state law. It is the nature of zoning. Part of it would be based on whether they have any vested rights associated with any particular regulatory change.

Mr. Cilimberg said it was worth keeping in mind that with these amendments we are clarifying the whole question of cumulative events on site in one location either because of multiple events or because of multiple operations, say a brewery and a distillery together which could operate on the same site. It is not addressed right now in the ordinance and is one area that is getting some new attention by the amendments being proposed. It also includes the zoning clearance for new wineries as well as distilleries and breweries, which had been only attached to agri-operations in the prior amendments. So there is some level of additional regulation relating to health/safety that is a part of these amendments. The larger question may be the more cumulative multi parcel issue that would be addressed as part of phase 2 along with location. One of the big issues actually is the question of bonafide agriculture. There is a pretty extensive definition right now that is tied to agri-operations, which we will also be looking at in terms of wineries, breweries and distilleries and how it could be tied into those.

Mr. Loach pointed out his opinion would be if they can get an operation with a half an acre of grapes as a bonafide farm, then you got beat.

Mr. Lafferty asked how we currently judge health, safety and welfare without being subjective.

Mr. Kamptner noted that part of it is related to the definition of substantial impact. So as we evaluate impacts we will look at the effects on abutting lots for the neighborhood, any rural road, natural resource, cultural resource, or historic resource. We will also look at the generation of traffic, noise, dust, artificial outdoor light, trash, storm water runoff, excessive soil compaction, the failure to provide adequate traffic controls and sanitation facilities, cumulative effects of large number of events and activities occurring simultaneously, and events and activities that are incompatible with existing production of agriculture. So those are the types of impacts that we have identified that affect public health, safety and welfare.

Mr. Lafferty thanked Mr. Kamptner.

Mr. Keller said he was prepared to support this, but just wants to say that the definition can be tested. It is a series of conditions that would be relatively easy to meet without necessarily having a bonafide agricultural operation.

Mr. Morris asked if there was a motion.

Motion: Mr. Randolph moved and Mr. Keller seconded to recommend approval of the draft ordinance found in Attachment A for ZTA 2015-00002, Farm Distilleries.

Mr. Dotson asked is there a way in sending that forward that we can also summarize two or three residual concerns to be addressed in the phase 2 study.

Mr. Loach said he would just like to make sure that Mr. Blaine's documentation is included with the minutes and goes forward to the Board.

Mr. Morris asked if this can be done to ensure that.

Mr. Kamptner suggested if the Commission wants to take action on the ordinance itself, then by a separate motion they can articulate the additional issues that you wish the Board direct staff to examine as part of the next related phase 2 study.

Mr. Morris noted the first motion was to recommend approval and it had been seconded. He asked for a roll call.

The motion passed by a vote of 5:1. (Loach nay) (Firehock absent)

Mr. Morris noted that the Commission by a vote of (5:1) is forwarding a recommendation for approval of the draft ordinance to the Board at a time to be determined.

Mr. Morris asked if there was an additional motion.

Mr. Dotson said he had a question of the content of this phase 2 study. He asked does that get at the concerns that Mr. Loach expressed.

Mr. Morris asked Mr. McCall if the phase 2 study gets to the issues that Mr. Loach was bringing up.

Mr. Loach said that was basically to define any parameters that by their very nature would be contraindicated to having a winery, brewery or distillery in the same local proximity. It would be like the road that we saw today with those kind of conditions.

Mr. McCall replied that he believed that would be the definition of substantial impact and they should be able to roll that into it.

Mr. Loach said it seemed to indicate substantial impact from the activity and what if the condition exists prior to even initiating activity that would have an event.

Mr. McCall said that would probably take a change in the definition, but that could be evaluated.

Mr. Loach agreed that was what he was trying to get at.

Mr. Dotson suggested maybe nothing is needed or maybe a second motion would be to convey to the Board of Supervisors the importance of proceeding as rapidly as possible with the phase 2 study.

Mr. Loach agreed.

Motion: Mr. Dotson moved and Mr. Loach seconded to convey to the Board of Supervisors the importance of proceeding as rapidly as possible with the Phase 2 Study for ZTA 2015-2, Farm Distilleries

Mr. Keller said there are two areas that they have really highlighted, the one that Mr. Loach brought up about the transportation safety and the second one that Mr. Blaine brought up which is getting at this issue of what constitutes a bonafide operation. Maybe they can't get there, but it would be worth a bit more exploration on that one.

Mr. Morris invited further discussion. There being none, he asked for a roll call.

The motion passed by a vote of 6:0. (Firehock absent)

Mr. Morris noted that ZTA 2015-2, Farm Distilleries would be forwarded to the Board of Supervisors with a recommendation for approval to be heard at a time to be determined.

The Planning Commission took a break at 7:45 p.m. and reconvened at 7:52 p.m.

Mr. Morris noted the next item was ZTA-2015-00010 Sign amendments to address the Reed Supreme Court Ruling

Work Session

ZTA-2015-10 Sign amendments to address Reed Supreme Court Ruling - Work Session 2

In a work session Mr. Higgins, with input from Mr. Kamptner, presented a PowerPoint presentation on ZTA-2015-00010 SIGN ORDINANCE ZTA to comply with U.S. Supreme Court Decision of June 18, 2015 in Reed v. Town of *Gilbert, Arizona.*

Purpose of this Work Session

The primary purpose of this session is to get feedback and answer questions from the Planning Commission on the proposed draft sign ordinance changes.

Mr. Higgins provided a brief review of the first work session held on October 6.

BEFORE AND AFTER REED

Before Reed:
- Signs that were *viewpoint neutral* were deemed to be *content neutral.*

After Reed:
- Sign regulations pertaining to noncommercial signs are *content based* if the laws that apply to particular signs depend on the topic discussed or the idea or message expressed
- Viewpoint neutrality is no longer the relevant consideration

Staff has drafted changes to assure *content neutrality.*

What will not change:
- Requirements for sign permits.
- Most regulations pertaining to "time, place, and manner" (size, number, height, location). (1)
- Special Permits for certain signs by BZA (off-site signs, electronic message signs).
- ARB review of signs in the Entrance Corridors.
- Regulation of commercial signs. (2)

  - Heights for temp signs have been standardized to 12 feet, instead of 10' or 12'.
  - Maximum numbers of signs allowed have been added for signs not requiring a sign permit.
  - Commercial speech is not really addressed in *Reed.*

Proposed Reed Changes:

- Main objective is to remove content-based elements from the current sign ordinance.
- Secondary objective is to reorganize and simplify the sign ordinance in order to make it easier to understand and use.

The major differences were reviewed in the chart in the executive summary.

Content Based Sign classifications
Many of these are being deleted or amended in the definitions to assure content neutrality (other such signs: Farm, Private Drive, Real Estate, Residential, Subdivision)

Consolidated sign types
- More to come on these.

≤ 4 Sq. Ft. signs exempt from permits
- Private warning signs. Others include: Commemorative plaques, estate signs, Home Occ. signs, incidential.,

≤ 32 sq. ft. signs exempt from permits
- Noncommercial speech sign and public sign.

Temporary Sign heights
- Sign height on left 5 feet ± (For Lease sign 7 feet), sign on right 8 feet ±

Temporary Wall sign heights
- Varying heights

Wall signs in the rural areas
- Sign on left 15 sq. ft. Sign on right 30 sq. ft.

Warning/incidential signs – exempt
- Public and private examples.

Real estate signs – exempt
- Sign on left 9.5 feet tall. Sign on right 11 feet tall.

Construction signs – exempt
- Signs on the right 8', 6', 9' & 8'.

Ag product/farm signs – exempt

Sandwich Board Signs
- Commercial area and rural area examples.

Next steps in the schedule
- **November 17, 2015 – Planning Commission public hearing on ZTA-2015-00010.**
- **December 2015 – BOS Public Hearing.**

Staff will review this draft before the public hearing to further address some content neutrality.

Prohibited sign
- "Floating" and "roof" sign.

The Planning Commission held a discussion on the proposed ordinance.

Mr. Morris invited public comment.

Public comment received from the following persons:

- Travis Pietila, with the Southern Environmental Law Center, noted the following concerns:
  - Concerned that a number of the proposed changes go well beyond what Reed requires and could undermine existing protections. He highlighted a number of areas that would mean a substantial increase in what is currently allowed including a jump from 20 to 40 square feet to wall signs in lower density residential areas. Numbers 6 and 7 contain similar changes to existing size related regulations. Having different size limits for different zoning district are exactly the type of content neutral standards that should not implicate the Reed case at all. It does not appear that Reed requires many of the changes being proposed and that they are instead focused on making the ordinance easier to administer. He urged avoidance of unnecessarily weakening the ordinance by keeping this process focused on those amendments that are in fact necessary to comply with this case.
- Neil Williamson, with the Free Enterprise Forum, noted the following concerns:
  - With regard to real estate sign on page 10 the language suggests a sign used to advertise the sale, lease, rental **(needs the word "or")** development of the lot on which the sign is located. Later in the ordinance there is language that speaks of structure. This would eliminate commercial real estate signs because they are not on a lot. It is a parcel and it is a part of what is going on the property. Farm signs are equally questionable. Lots are defined elsewhere in the ordinance, and that clarification can be made.
  - In regard to noncommercial flags, on page 31, it speaks to up to 3 noncommercial flags per lot provided the flags shall not exceed 24 square feet in sign. It should be each flag. He asked if this reflects American flags as well as other noncommercial flags. He noted there has been some Code that has been put forward on that.

Mr. Morris asked if there was anyone else that would like to address this. There being no one, the public comment was closed and the matter before the Planning Commission for discussion.

The Planning Commission discussed the proposed ordinance and were in agreement with staff's proposal with the following suggestions and concerns:

- Proliferation of flags (particularly large flags) used for commercial purposes.
- Advertising vehicle paragraph – suggestion to change inoperative vehicle to operative vehicle and add advertising vehicle could not be located closer to a street than would be allowed for a sign for the same business.

Staff to work on the draft ordinance for the November 17 Planning Commission public hearing taking in consideration the comments and concerns.

The meeting moved to the next agenda item.

Old Business

Mr. Morris asked if there was any old business.

Old Business

- Provide in staff report staff's opinion on favorable and unfavorable comments.
- Existing standards in zoning ordinance that apply to certain areas or aspects of development.
- PC request to provide input on Economic Development effort on industrial needs.

There being no further old business, the meeting proceeded.

New Business

Mr. Morris asked if there was any new business.

- Request to include information on community meetings in staff report.
- October 26, 2015 Joint meeting with the 3 Sub-Committees of The Places29 Community Advisory Committee at 7:00 P.M. in Lane Auditorium
- There will be no Planning Commission Meeting on Tuesday October 27, 2015 and Tuesday November 3, 2015.

- The next regular Planning Commission meeting will be held on Tuesday, November 10, 2015 at 7:00 p.m. in Lane Auditorium.

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

Adjournment

Mr. Randolph moved and Mr. Lafferty seconded to adjourn to the Joint meeting with the 3 Sub-Committees of The Places29 Community Advisory Committee at 7:00 p.m. in Lane Auditorium.

With no further items, the meeting adjourned at 8:38 p.m. to the Places 29 Committee Meeting on October 26 at 7:00 p.m. at the County Office Building, Second Floor, Lane Auditorium, 401 McIntire Road, Charlottesville, Virginia.

David Benish, Secretary

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