

Albemarle County Planning Commission
May 19, 2009

The Albemarle County Planning Commission held a public hearing and meeting on Tuesday, May 19, 2009, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Don Franco, Linda Porterfield Marcia Joseph, Calvin Morris, Bill Edgerton, Thomas Loach, Vice Chair and Eric Strucko, Chairman. Julia Monteith, AICP, non-voting representative for the University of Virginia was absent.

Other officials present were Gerald Gatobu, Principal Planner, Joan McDowell, Principal Planner; John Shepherd, Manager of Zoning Administration; Rebecca Ragsdale, Senior Planner; David Benish, Chief of Planning; Steward Wright, Permit Planner; Sherri Proctor, Permit Planner; Ron Higgins, Chief of Zoning; Bill Fritz, Director of Current Development and Andy Herrick, Deputy County Attorney.

Call to Order and Establish Quorum:

Mr. Strucko 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. Strucko invited comment from the public on other matters not listed on the agenda. There being none, the meeting moved to the next item.

Review of Board of Supervisors Meeting – May 13, 2009

Mr. Benish reviewed the actions taken by the Board of Supervisors on May 13, 2009.

Consent Agenda:

Approval of Minutes: April 14, 2009

ZTA-2009-00010 Downtown Crozet District ZTA - Resolution of Intent (Rebecca Ragsdale)

SDP-2009-00018 Blue Ridge Shopping Center – Major Amendment

The request is for approval of a major site plan amendment and waiver of Section 18-21.7 to allow grading and landscaping activities within a required buffer. The property, described as Tax Map 56, Parcel 110 is zoned HC, Highway Commercial. The property is located in the Whitehall Magisterial District at 550 Radford Lane [Private], at its intersection with Rockfish Gap Turnpike [State route 250]. The Comprehensive Plan designates this property as Urban Center [CT 5] in the Crozet Community. (Elizabeth Marotta)

SDP-2009-00021 Patricia Ann Byrom Forest Preserve Park Improvement – Preliminary

The request is for preliminary site plan approval to allow the construction of a sixty-five (65) space parking lot, park access road, and gravel pedestrian path. This application includes a request to modify Section 18-4.2 to allow for disturbance of critical slopes. The property, described as Tax Map 6 - Parcel 28D, contains approximately 213.9230 acres and is zoned RA, Rural Areas. The site, known as Byrom Forest Preserve is located on the west side of Blackwells Hollow Road (SR 810) northeast of its intersection with SR 629. This parcel is located in the White Hall Magisterial District and is designated as Rural Area in the Comprehensive Plan. (Summer Frederick)

Mr. Strucko asked if any Commissioner would like to pull an item on the consent agenda.

Ms. Porterfield asked to pull the Blue Ridge Shopping Center site plan for discussion. She asked if the violation was self-reported or by a neighbor.

Mr. Gatobu replied that the violation was caught by staff during review. There had been some disturbance of the buffer and this was a remedy to that disturbance.

Ms. Porterfield asked if the adjacent neighbors were satisfied.

Mr. Gatobu replied yes. Staff is trying to get the buffer reestablished in order to make it better than it is now through getting the area revegetated. The applicant did not know that an undisturbed buffer meant that they could not do anything or plant anything unless they come to the Commission for a waiver. The applicant put in some plants, which staff caught during the site plan review. Staff suggested that the applicant submit a waiver request, which could be placed on the consent agenda, so the applicant could put back the vegetation even better with stringent constraints to make sure they put back a sufficient amount of landscaping.

Ms. Porterfield asked if staff would make sure it was an adequate buffer.

Mr. Gatobu replied yes that staff would make sure that the buffer was put back adequately.

Ms. Porterfield noted that the explanation was acceptable.

Motion: Mr. Morris moved and Ms. Porterfield seconded for approval of the consent agenda as presented.

Ms. Joseph noted that the park looks fabulous.

The motion passed by a vote of 7:0.

Mr. Strucko noted that the three consent agenda items were approved as recommended by staff, as follows.

SDP-2009-00018 Blue Ridge Shopping Center – Major Amendment was approved with the following condition:

1. The applicant revises the Schedule of Landscaping on Sheet SP1 so that *Juniperus squamata* is properly spelled and listed as “L18”.

ZTA-2009-00010 Downtown Crozet District

RESOLUTION OF INTENT

WHEREAS, the Crozet Master Plan describes downtown Crozet as the historical focal point for cultural and commercial activities in Crozet and the surrounding areas; and

WHEREAS, one of the findings and recommendations of the Crozet Master Plan is to focus on the redevelopment and invigoration of the downtown area; and

WHEREAS, one of the strategies recommended in the Crozet Master Plan to implement the Plan is to establish a zoning district specific to downtown Crozet having regulations specifically designed to be consistent with the Crozet Master Plan; and

WHEREAS, on June 11, 2008, the Board of Supervisors established the Downtown Crozet zoning district in Section 20B of the Zoning Ordinance for the purpose of implementing the Crozet Master Plan and adopted a corresponding amendment to the zoning map to establish the district's boundaries; and

WHEREAS, since the Downtown Crozet zoning district was established, County staff has identified several provisions in the Downtown Crozet zoning district's regulations that should be revised to further clarify district requirements and to promote the redevelopment and invigoration of the Crozet downtown area, and these provisions recommended for amendment include, but are not limited to, the regulation of signs, the standard of review for waivers from sidewalk requirements considered by the Planning Commission, and the applicable setbacks for secondary buildings when multiple buildings exist on the same lot.

NOW, THEREFORE, BE IT RESOLVED THAT for purposes of public necessity, convenience, general welfare and good zoning practices, the Planning Commission hereby adopts a resolution of intent to amend Section 208 of the Zoning Ordinance and any other related regulations of the Zoning Ordinance deemed appropriate to achieve the purposes described herein; and

BE IT FURTHER RESOLVED THAT the Planning Commission shall hold a public hearing on the zoning text amendment proposed by this resolution of intent, and make its recommendation to the Board of Supervisors, at the earliest possible date.

Items Requesting Deferral:

ZMA-2005-003 UVA Research Park -North Fork (Sign # 18). PROPOSAL: The request is to rezone approximately 30.56 acres from RA Rural Area which allows agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots) to PDIP Planned Development Industrial Park, which allows industrial and ancillary commercial and service uses and no residential uses), for 700,000 square feet of office and research use and 534 ± Acres to be rezoned from PDIP to PDIP to amend proffers and application plan associated with ZMA 1995-04. PROFFERS: Yes. EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Industrial Service- warehousing, light industry, heavy industry, research, office uses, regional scale research, limited production and marketing activities, supporting commercial, lodging and conference facilities, and residential (6.01-34 units/acre). ENTRANCE CORRIDOR: Yes

LOCATION: on the north side of Airport Road (Route 649) approximately one third of a mile from the intersection of Airport Road and Route 29 North in the Community of Hollymead. TAX MAP/PARCEL: Tax Map 32 Parcels 18, 18a, and a portion of 6A requested to be rezoned from RA Rural Areas; Tax Map Parcels 32-18B, 19F, 19F1, 19G, 19H, 19H1, 19H2, 19J, 22B1 and 22B2 rezoned from PDIP to PDIP to amend proffers. MAGISTERIAL DISTRICT: Rio

AND

SP-2008-00015 UVA Research Park (Parking) PROPOSED: Parking Structure in PDIP Planned Development Industrial Park ZONING CATEGORY/GENERAL USAGE: PDIP - Planned Development Industrial Park - industrial and ancillary commercial and service uses (no residential use). SECTION: 27.2.2(16) Parking Structures.

AND

SP-2008-00062 UVA Research Park-Laboratories, medical, Pharmaceutical PROPOSED: Allow laboratory uses in association with the UVA Research Park. ZONING CATEGORY/GENERAL

USAGE: PDIP - Planned Development Industrial Park - industrial and ancillary commercial and service uses (no residential use). SECTION: 27.2.2(16) Laboratories, medical or pharmaceutical.

AND

SP-2008-00063 UVA Research Park-Supporting Commercial Uses PROPOSED: Allow supporting commercial uses within the UVA Research Park, not to exceed a total of 110,000 square feet of floor area. ZONING CATEGORY/GENERAL USAGE: PDIP - Planned Development Industrial Park - industrial and ancillary commercial and service uses (no residential use). SECTION: 27.2.2(14) Supporting commercial uses (reference 9.0).

AND

SP-2008-00064 UVA Research Park-Hotels, Motels, Inns PROPOSED: Allow motel, hotel or conference facilities within the UVA Research Park not to exceed 190,000 square feet of floor area. ZONING CATEGORY/GENERAL USAGE: PDIP - Planned Development Industrial Park - industrial and ancillary commercial and service uses (no residential use). SECTION: 29.2.2(2) Hotels, motels, inns (reference 9.4.2). (Rebecca Ragsdale)

Mr. Strucko asked if the applicant was requesting deferral.

Mr. Benish applicant is requesting deferral to June 23. Ms. Echols provided an email to the Commission to provide some advance background. June 23 would be out of sequence of our new deferral process. So staff had advised of some other alternative times for that, but the applicant has requested June 23. The applicant wants to speak to the reason for the deferral.

Fred Missel, representative for the UVA Foundation, noted that the reason for the deferral is relatively simple. They got some clarification from staff last Wednesday regarding several of the factors that are listed as unfavorable in the staff report and they simply have not had a chance to understand the implications or the issues that might arise from agreeing to those. Therefore, they just need a little more time to study that and better understand it. Their preference would be to move to the June 23 date at which point they would hopefully be able to address those issues more specifically.

Ms. Joseph noted that there was an indication in Ms. Echols' email that the applicant was going to submit additional information and staff was concerned that they would not have enough time to review the new information before it comes back to the Commission.

Mr. Missel noted that he could address that. He spoke with Ms. Echols a couple hours ago and he thought that it was not clear to her what level of information they would be coming back with. When he explained to her the fact that they would be coming back specifically addressing essentially those three items that are listed as unfavorable in various sequent form he thought that she was in agreement. They understand that there is a potential that when they come back on June 23rd that the Commission may want staff to review it and they may have to come back at a later date. Honestly, they thought that it was relatively simple the issues that needed to be addressed. So they hope that when they come back on the 23rd there can be a recommendation for approval on the Commission's part to the Board of Supervisors at which point they can finalize any tweaking that they need to do with the language. That is their desire.

Mr. Strucko pointed out that there was concern about the timing of the deferral.

Mr. Benish said that based the 23rd date the Commission would not have a revised staff report or recommendation from staff. Based on the review process staff would not have the ability to do that. So the Commission would basically be receiving that information from the applicant at that time. He did not think the applicant was planning to change any proffers that would be subject to review. Staff's recommendation would stand for that June 23rd meeting. The issue is whether the Commission wants any staff feedback on the clarifications being made by the applicant or new information that is being proposed and how it addresses the issues raised by the staff.

Mr. Strucko said that there are two other dates proposed, one later in July and the other in early August.

Mr. Missel pointed out it was June 21 and August 24.

Mr. Benish said that the August 24 date is a date that would allow for an additional round under our review process for staff to provide feedback back to the applicant. But if the applicant submitted information on June 1 staff would have time to evaluate it and provide a recommendation to the Planning Commission and receive its comments from all of the other reviewing staff that they have to consider and provide that to the Commission by the late July date. Those are two dates that are available.

Mr. Strucko asked Mr. Missel if he had concerns about pushing this further along in the calendar.

Mr. Missel replied that their preference would be to not delay it two more months just on what they think will be a relatively simple conversation. So their desire would be to not have that delay. It ends up being about a month and half if they go from June 23 to August 4.

Ms. Porterfield asked if they were only dealing with negatives in the staff report is it possible for staff to do just a very short white paper on their reaction to what Mr. Missel brings in.

Mr. Benish said that one of the things staff was trying to get away from in changing the deferral process was not to do responses on the fly to basically give the other reviewing agencies two weeks to review requests, for Planning staff to evaluate and assess those and put forth a recommendation to the Commission on how to act on the proposal before them. To do that in an effective time for all of the parties involved staff has tried to avoid the last minute type of white paper response type of thing. Staff tries to keep things within a process that is predictable for all of the reviewing agencies. He believed the other issue is that there still may be concern whether the applicant has sufficiently addressed the issues raised in terms of the proffer changes. But he did not believe the applicant is proposing any proffer changes. He believed that the applicant was looking for an affirmative action with conditions to the Board that proffers would be modified to address those issues. He believed that has not been the Planning Commission's preferred approach here recently. The Commission has wanted to see those proposed proffers and not take an action indicating that future proffers would be provided between the Commission's review and the Board's review.

Mr. Missel agreed that was a good summary. They would prefer to be able to leave the June 23rd meeting with direction that they could then translate into proffers and an affirmative action on the Commission's part to the Board of Supervisors. If that is uncomfortable for anyone and if there is the potential for the June 23rd meeting to result in no action, then they would prefer to go through the process with the staff and come to the Commission with those issues resolved.

Ms. Joseph suggested that if the applicant did not have all of the information on June 23rd the Commission could treat it as a work session.

Mr. Morris noted that it would be his preference to have the applicant come before the Commission and have enough information to take action on with all of the knowledge that staff and the applicant normally provides without actually going through and doing the staff work while they sit here. That is frustrating to everyone. So he would love to have the hearing on June 23rd if everything is ready and the Commission has all of the information. But if not, then he wanted to wait until all of the information was ready.

Ms. Porterfield supported Ms. Joseph's comments.

Mr. Loach agreed with Mr. Morris that the Commission needs to have all of the information before setting the public hearing or if not set up a work session.

Mr. Strucko opened the public hearing and invited public comment. There being none, the public hearing was closed and the matter before the Commission.

Mr. Benish noted that the earliest option that Ms. Echols laid out as a possibility was July 21.

Mr. Herrick noted that a deferral to a date certain prevents the need to readvertise assuming that the proffers don't change materially.

Mr. Benish noted that the request may have to be readvertised anyway.

Ms. Porterfield questioned if they are deferring the request to the right date because Ms. Echols' email said that if they wanted comments before the hearing then the hearing date would be August 4. If they wanted to go straight to a public hearing without receiving additional comments then it could be tentatively scheduled on July 21.

Mr. Benish agreed that there were two options. The longest one that allows for a second round of comments back to the applicant would be August 4. He presumed in trying to balance expediency but keep it on an acceptable schedule would be July 21. He checked with Ms. Echols and the earlier date was doable.

Motion: Mr. Morris moved and Ms. Porterfield seconded to approve the applicant's request for deferral of SP-2008-62, SP-2008-63, SP-2008-64, SP-2008-15 and ZMA-2005-003 UVA Research Park -North Fork to July 21, 2009.

The motion passed by a vote of 7:0.

Mr. Strucko said that this item is being deferred and will be brought back to the Planning Commission on July 21, 2009.

Mr. Benish asked the Commission to keep the attachments to the staff report for further review. Staff will provide new staff reports.

Public Hearing Items:

SP-2009-00002 Keswick Hunt Club (Sign # 107 & 108) PROPOSED: New treetop facility in an avoidance area (South West Mountains Historic District). ZONING CATEGORY/GENERAL USAGE: RA, Rural Areas-; EC Entrance Corridor overlay. SECTION: 10.2.2 (48) Special Use Permit, which allows for Tier III personal wireless facilities in the RA Zoning District. COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas uses in Rural Area 2. LOCATION: Tax Map 80, Parcel 6A: in the Keswick area at the intersection of Louisa Road [State Route 22] and Hunt Club Road [State Route 744]. MAGISTERIAL DISTRICT: Rivanna (Gerald Gatobu)

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

- The request is to install a Tier III personal wireless service treetop facility. The proposed facility consists of an 89-foot tall steel monopole, and associated equipment. This property is located in the South West Mountains Rural Historical District, therefore, the facility is held to Tier III standards, and is allowed in the Rural Area per section 10.2.2 (48) of the Zoning Ordinance which allows for Tier III personal wireless facilities in the Rural Areas [RA] Zoning District by Special Use Permit. Section 31.2.4.2 requires Planning Commission review of applications for

Special Use Permit. The tower will be located on property that is within the South West Mountains Rural Historic District. Historic districts are identified as “avoidance areas” by the zoning ordinance.

- The proposed facility consists of an 89-foot tall wood monopole to be painted Sherwin Williams Java Brown, which is a color that has been previously approved as an appropriate color for Tier II and Tier III facilities at other sites in Albemarle County. The top elevation of the monopole is 531.5 feet, measured above mean sea level (AMSL). The proposed monopole will be 10 feet higher than the identified reference tree. The monopole will be equipped with three (3) flush-mounted antennas, a two (2) foot long lightning rod, and coaxial cables that will be run in the monopole’s interior. Supporting ground equipment will be contained within a proposed 18’x 30’ AT&T wood fence and lease area.
- Access to the facility will be provided off an existing gravel access road off Hunt Club Road that currently provides access to the property and runs parallel to the tree line of the wooded area surrounding the location of the proposed tower. The personal wireless service facility will be located approximately 95 feet south of the nearest property line, and away from existing horse arenas.
- A balloon test was conducted on March 3, 2009. The balloon was raised to the same height as the proposed pole, ten-foot above the reference tree. The balloon was minimally visible from various sections of the entrance corridor. Visibility of the proposed monopole at ten feet above the tallest tree is not expected to have any negative impacts on the State Route 22 (entrance corridor). The ground equipment is not expected to be visible due to the vegetation existing between the state road and the facility.
- The ARB reviewed the tower on April 20, 2009 and recommended approval with conditions. The applicant has addressed most of the recommended conditions. The conditions stressed tree conservation and making sure that there was an arborist report. The applicant will provide that information. No trees are going to be removed.
- The tower is actually 9.2 feet above the reference tree and the balloon was flown at 10 feet. It is a decision for the Commission to make.

Staff has identified the following favorable factors:

- New ground equipment cabinet will not be visible from neighboring properties.
- Minimal clearing is necessary for the placement of the monopole, antennas, and equipment.

Staff has identified the following factors as unfavorable to this request:

- None identified.

RECOMMENDED ACTION:

Based on findings presented in the staff report, staff recommends approval of this personal wireless service facility at the proposed height of ten (10) feet above the reference tree, with the conditions as listed in the staff report.

Mr. Strucko opened the public hearing and invited the applicant to address the Commission.

Valerie Long, representative for AT&T, presented a PowerPoint presentation to explain the request. Also present was Jerry Sharp, consultant for AT&T, who had been working on this site.

- As Mr. Gatobu stated this is technically a special use permit because the property is in the historic district. Otherwise, it would be a typical Tier II wireless facility. The wireless facility is exactly the same as other Tier II wireless facilities that the Commission has reviewed over the last few years. The only difference is that it is located in the historic district. She explained the layout of the access road, the existing trees on the site, the horse show grounds and the proposed equipment.

- On Sunday she visited the site during a horse show to confirm for their benefit that where they were locating the facility in the grove of trees was not going to be in the way and to get a feel on the way the circulation would work with the cars. She felt that it would work very well since the facility would not be visible from the arena and would be screened by the grove of trees. There was some parking on the grassed area. She noted that there was a nice row of trees between the railroad and the property. The trees in the area provide a nice buffer and provide screening.
- The driveway will be a small extension of the existing drive. There will be a 10' X 18' concrete pad with two radio cabinets. The area will be fenced with board fencing to protect the equipment, which was requested by the landowner to visually screen it from the public during their events. The reference tree is #235. There is a perfect spot to tuck some equipment in the area without having to remove any trees.
- She explained the balloon test which showed that even during the winter months they don't expect the tower to have an adverse impact. She reiterated that they don't need to remove any trees. They think it is a very good location. The Historic Preservation Planner reviewed the plan, attended the balloon test and indicated that there would be no adverse impact on the historic resources or any other elements of the historic district. They have been working very well with the landowners. They looked at the balloon tests from Keswick Hall and the visibility is very minimal. She asked that the Planning Commission recommend approval to the Board of Supervisors.

Mr. Strucko invited questions for the applicant.

Ms. Joseph thanked Ms. Long for the chosen site. This is what was envisioned when the Commission was talking about the 25' from the tree itself. It was envisioned as something that was nestled within the trees.

Ms. Long noted that Jerry Sharp and his colleagues worked really hard with the landowners to find a site that meets the criteria. It is not easy to find a site with a willing landowner and still be located in the right spot for coverage purposes. The real challenge is that they want it nestled in the trees like they said, but they don't want to get it too close to any of the trees and start damaging the tree roots and things like that. It is a tough balance. They think that they have found it here. They will continue to work towards that balance.

Mr. Strucko invited other public comment. There being none, he closed the public hearing to bring the matter before the Commission.

Motion: Mr. Morris moved and Mr. Loach seconded to recommend approval of SP-2009-00002, Keswick Hunt Club for the personal wireless service facility at the proposed height of ten (10) feet above the reference tree, with the following conditions:

1. The proposed personal wireless service facility must be developed in general accord with the plan prepared by BC Architects and Engineers with a revision date of 4-28-2009, and a certified engineer's seal and signature dated 5-01-2009.
2. AT&T must provide a tree conservation plan prepared by a certified arborist prior to issuance of a building permit. The installation, operation and maintenance of the facility shall be conducted in accordance with the tree conservation plan.
3. Should use of the antenna site at this location become discontinued at anytime in the future, AT&T and/or its assignee(s) must remove the facility within 90 days.
4. After the proposed personal wireless service facility has been installed, AT&T must submit annual reports updating the user status and equipment inventory of the facility within the required time period per section 5.1.40(c)(7):of the Albemarle County Code.

5. Address all conditions outlined by the Architectural Review Board. The applicant must obtain a certificate of appropriateness from the Architectural Review Board staff.

The motion passed by a vote of 7:0.

Mr. Strucko said that SP-2008-00002 Keswick Hunt Club would go to the Board of Supervisors on July 1 with a recommendation for approval.

Public Hearing Items:

SP-2008-00025 Earlysville Service Center (Sign # 21 & 24) PROPOSED: Special Use Permit to relocate an existing vehicular repair garage from the east side of an 11.833 acre parcel (zoned C-1 Commercial) to the west side of the subject parcel (zoned RA Rural Areas); the existing garage is currently located on the property would remain, but the garage use would be abandoned. ZONING CATEGORY/GENERAL USAGE: RA -- Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots); C-1 Commercial - retail sales and service uses; and residential use by special use permit (15 units/ acre). SECTION: 10.2.2 (37) Public Garage. COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/ acre in development density). ENTRANCE CORRIDOR: No. LOCATION: West side of Earlysville Rd. (Rt. 743) approx. 775 ft. north of Reas Ford Rd. (Rt. 660). TAX MAP/PARCEL: TMP 31-14. MAGISTERIAL DISTRICT: Rio (Joan McDowell)

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

- This is a request for a special use permit to relocate an existing vehicular repair garage from the east side of an 11.833 acre parcel (zoned C-1 Commercial) to the west side of the subject parcel (zoned RA Rural Areas); the existing garage structure currently located on the property would remain, but the garage use would be abandoned.
- The garage would occupy approximately two acres of the parcel. Upon completion of the proposed garage, the existing garage use would be abandoned and the occupied residence located in the center of the parcel would remain unchanged. The proposed garage would contain approximately twelve bays, an office and waiting area, a restroom and a paved parking area with 46 parking spaces on an approximately 2.17-acre portion of the property with up to twelve employees. A three-sided covered storage shed on the rear of the building would provide storage for an air compressor, tires and fluid containers. The applicant has requested that the proposed garage retain the present hours of operation: 8 AM to 6 PM Monday through Friday. The proposal would eliminate the need to park cars in the areas where they are currently being parked.
- The applicant has proposed a site design that is sensitive to its Rural Areas environs through the following measures:
 - the limited clearing of existing trees, landscaping around the impervious area;
 - offsetting the garage and parking from the access;
 - a 20-foot wide undisturbed buffer and a 10-foot wide evergreen screening planting buffer (with landscape materials relocated from the area being cleared, if possible) between the adjacent neighbor to the west and the parking area; and around the garage site; and
 - a 75-foot front setback that will include retention of a portion of the existing wooded area buffer between the garage and Earlysville Road.

Planning and Zoning History:

- 1970 Comprehensive Plan -- Earlysville was one of the original 14 Villages designated in the Comprehensive Plan (including the subject parcel);
- 1977 Comprehensive Plan -- Earlysville Village Land Use Designation;

- 1982 Comprehensive Plan -- South side of Route 743 (including the subject parcel) was deleted from the Earlysville Village land use designation, since it drains into the South Fork Rivanna River Watershed, and was designated Rural Areas;
- 1989 Comprehensive Plan -- Earlysville Village (across Earlysville Road from the subject property) continued as a village designation;
- 1996 Comprehensive Plan -- all the Villages were removed as land use designations and became Rural Areas with the exception of Rivanna; and
- ZMA 79-07 -- approved rezoning of a 2-acre portion of the property from A-1 (Agricultural) to B-1 (Commercial); the remaining portion remained in the A-1 (Agricultural) district; the B-1 was later changed to C-1 (Commercial); the existing garage is in this rezoned 2-acre portion of the property.
- RA public garages – previously approved public garages in the Rural Areas (Attachment C).

SUMMARY:

Staff has identified the following factors favorable to this application:

1. The public garage is an existing operation that provides a service to the community.
2. The proposed garage would provide an interior space to repair cars and provide adequate, organized parking arrangements.
3. The use is consistent with the Rural Area with the mitigation of impacts.

Staff has identified the following factor unfavorable to this application:

1. The proposed garage site would be closer to an existing residence on an adjacent property and would be across the street from a residential subdivision.

RECOMMENDED ACTION:

Based on the findings contained in this staff report, staff recommends approval of SP200800025 Earlysville Service Center, subject to the conditions in the staff report.

Mr. Strucko invited questions for staff from the Commission.

Mr. Loach questioned if they need conditions about noise limitations since a garage uses power equipment or is that just a taken that there is a Noise Ordinance they would have to meet.

Ms. McDowell replied that the applicant would have to meet the Noise Ordinance.

Ms. Porterfield asked if there was any consideration in keeping the garage in the C-1, Commercial zoning. In other words, if the applicant could rebuild the garage in the C-1 zone rather than moving it to the rural side of the property.

Ms. McDowell replied that the applicant's representative was present and could address that.

Ms. Joseph pointed out that there was a C-1 zone with an existing use and it is non-conforming in the way it has been used. She assumed that there was no site plan to establish this use.

Mr. Herrick replied he was not familiar with the history of that location.

Ms. Joseph asked if the current use was abandoned could it be reestablished. In other words, could they have two garages going on simultaneously?

Mr. Herrick replied theoretically yes, because whatever is by-right in a C-1 zone would remain by-right on that particular property. However, condition #2 is that a public garage use in the existing building

shall be permanently terminated. So if the Commission were to recommend approval of the special use permit with this condition and if a garage were hypothetically to reopen in the existing location, while it might not be in violation of the existing zoning, it would be in violation of the special use permit if it were adopted with these condition.

Ms. Joseph asked if the special use permit did not only cover the portion that was zoned Rural Areas, but the entire property.

Mr. Herrick replied that was correct.

Mr. Edgerton asked to follow up on that. The C-1 zoning designation that allows the existing garage operation is going to stay regardless of what they do here.

Mr. Herrick replied that there was no request to downzone the property.

Mr. Edgerton said that with the restriction of abandoning the existing garage use that if they tried to open it up it would be in violation of the special use permit. But if they tore the existing garage down and wanted to put up another garage there would be nothing to stop them from doing that if the use is allowed under the C-1 zoning.

Mr. Herrick pointed out that the way the condition is worded the public garage use shall be permanently terminated and does not reference a specific existing building. It talks about the public garage use.

Mr. Edgerton asked if that would apply to the whole C-1 district.

Mr. Herrick replied that was correct in that it would apply to the reconstruction of a new building that was being used as a public garage.

Mr. Edgerton noted that the site plan in Attachment B there appears to be quite a bit of land there that is C-1. He asked would an additional public garage activity be forbidden in any of that area.

Mr. Herrick replied that the condition as written does not preclude that, but a differently worded condition might.

Mr. Edgerton noted that one of the concerns is that there will be a second garage on the property. He asked staff if this property was rezoned after the concern was noticed about being in the Rivanna Watershed. According to the staff report when the property was in the Village designation there was thought of it. but then the land in the watershed was downzoned to RA.

Ms. McDowell replied that the land was rezoned in 1979 and was considered the Earlysville Village since the 1970's and maybe before that.

Mr. Edgerton asked when it was downzoned was there already a garage there.

Ms. McDowell replied that there was a garage there when it was rezoned. The property used to be zoned A-1 and then it was rezoned to B-1. Then the B-1 category changed to C-1. The garage has been existing since the 1930's. According to old file there was a building and there was some consideration of tearing it down and redoing the garage on that site.

Mr. Herrick noted that if the Commission is concerned about demolition of the existing building and replacement of a new garage on the same site that one way to address that would be to rephrase

recommended condition #2 to read a public garage use on the property shall be permanently terminated and delete the words “in the existing building.”

Ms. McDowell noted that they wanted to clarify on the property because it is split zoned.

Mr. Edgerton said that with all the history it appears that there was some consideration given to the fact that there was an existing commercial activity on this corner of the property when all of the rezoning occurred, which is still there and is not being abandoned. That is not being downzoned. So if this special use permit is approved they are basically giving another special use permit for the commercial activity in the Rural Area, in which an earlier Planning Commission and Board were concerned about the watershed impacts. He felt that they need to have their eyes wide open in what they are doing here. This particular individual wants to clean the site up and make it a better thing, which is great. But the C-1 zoning is going to stay there and if somebody wants to come in and do something different unless they address that they are basically putting a pocket of commercial into the current Rural Area. It is a fairly significant size operation. He thinks that the Commission needs to focus on that. He likes the design and felt it was good proposal, but was concerned with the intensification of use of the property. He suggested that perhaps the applicant could reassure him.

Mr. Strucko opened the public hearing and invited the applicant to address the Commission.

David Wyant, engineer for the applicant, Mr. White and the present garage operator, Roger Perkins spoke for the application.

- To address the concerns expressed by the Commission there is no intent to have a second garage. Mr. White has wanted to provide a cleaner operation, provide a waiting space for customers and to have public restrooms in the facility. The structure they looked at and talked about is located in south side Virginia. They want to have a pull in lane by the waiting room where customers can drop their cars off for service. The parking spaces are needed on the lot for the drop off of cars. In these tough economic times they have problems with folks paying for the repairs. This will avoid the cars from being parked across the street because they don't have enough parking spaces on site. This is a way to clean up the Earlysville area.
- Environmentally he really likes what they are working on to handle the oil and grease. The stormwater will be handled and run into storage containers. He has done a number of these projects in the city where it will be detained. They work the oil and grease off of the parked area through a bio-filter and then it goes into the same storage container. Then they recycle that and use the water on the plants on the property. They have a separate pump that operates out of that storage container. It is a kind of recycling system that minimizes the amount of runoff, which protects the drainage area and reservoir. It is a fairly gentle slope in that area.
- He suggested that the wording of condition #2 be worked on so that the area on the northeast corner of that portion of the 11 acres to be designated to never to be a public garage or to be permanently abandoned. He acknowledged that staff has worked with other operations in giving a month's grace period to move equipment. He asked for that same kind of consideration so that he would not have to deal with violations and come back again.
- Regarding Mr. Loach's question raised about noise, vibration and the engineer's report, he pointed out that the new compressors are very quiet. The old compressors use to make a lot of noise. The air compressor that runs most of their equipment will be in the shed, which is on the back side of the building. In addition, that is where the tires and barrels to store the fluids will be stored. DEQ approval is required on this as on all garages. He proposed a berm in case there is a spill. They will make sure that they put a roof over top of it so that the rain water does not get in there and cause spill over.

- The applicant is asking not to have to install the fence on the west side. They have a 20' buffer and felt that the evergreen trees would screen the west side. They have a concern that when people park their cars that the leaves will pile up.
- This operation has been in the family since the 1930's and the applicant's sons want to continue the business operation. The addition of the restrooms will be a big improvement. He asked that the Commission recommend approval of the special use permit.

Mr. Strucko invited questions from the Commission.

Ms. Porterfield said that part of this property is zoned C-1 and it seems logical to keep this use on the C-1 property and rebuild the garage on that property. She asked why they are not doing that.

Mr. Wyant replied one reason was that the current garage does not have restrooms. The biggest difficulty would be that tearing the current garage down would require the applicant to not operate the garage for 7 to 10 months.

Ms. Porterfield suggested with this amount of space they could build behind the existing garage and then tear it down and make the entrance into the new facility. She was concerned that they would now have a pretty heavy commercial use in the Rural Areas and have the ability for more commercial in what is already zoned commercial. They would be trapping a piece of Rural Area land in between, which she had a problem with.

Mr. Wyant said that the commercial use is not going to be any heavier than it is today. The proposal would clean up the area. Currently there are cars parked everywhere and they have been doing that for many years. This will be a site where the cars will be parked out of the way

Mr. Strucko invited public comment.

Jimmy Heyward, a resident of Earlysville, said that his farm was adjacent to the garage proposed. He had nothing but good things to say about Mr. White and Mr. Perkins and was really in favor of the request. He hoped the Commission would go ahead and take care of it for him.

Bill Archambault, an adjacent property owner, said that he lived directly behind the current C-1 property on Village Woods Lane. He had an opportunity to watch the garage operation. By all appearances it is a well run business. From his perspective having looked at the plans and having had the opportunity to meet with the folks that have worked through this seems like a reasonable approach and he had no objections.

Nora Archambault said having pulled in and out of the property she felt that it is in a dangerous location right at the intersection on the road. Due to the large amount of cars on the road she felt that moving the business away from that congested area will be make it safer. She asked the Commission to support the special use permit request.

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

Mr. Morris said that based on the input this evening as well as the emails received this makes a lot of sense. He understands that they are moving the business from C-1 to a Rural Area, but there are reasons for it. It will be safer and easier to access. However, he agreed with Mr. Edgerton that a modification of the second condition might make it clearer in the long run.

Mr. Strucko asked Mr. Edgerton if he would like to talk about the second condition.

Mr. Edgerton said that he liked Mr. Herrick's suggested rewording. If the intent is not to have another garage there that it should be applied to the whole C-1 piece and not just the specific building, which is the way it is written.

Mr. Loach agreed with Mr. Morris. He supports the family business that has been there for several decades that seems to have support from the community and neighbors.

Ms. Joseph said that this is a good example of what the Commission is hopefully going to talk about with the Board about different ways that they can allow some businesses to be of a certain size to be able to be in the Rural Areas. That is what they have been talking about as their loss of industrial land, etc. The other thing that she was reminded of was that she used to shop in Mr. White's store and it is hard to conceive of that area as Rural Areas because it is very built up. That is another issue. It was a village, but fortunately they have people in the Agricultural/Forestral District that are adjacent to this area. There were a lot of residential properties in the area and considering the fact that the garage is beloved and they do great work because they seem to be very busy is another reason. The garage keeps people off the roads by having customers that are near by.

Mr. Strucko noted that it is a cross roads village and there is a lot of long standing commercial activity there with Mr. White's Store and others. He agreed with Ms. Joseph's point.

Mr. Porterfield asked if they eliminate the public garage from the C-1 what else can be put on that property.

Ms. McDowell replied that the rezoning to B-1 had a lot of proffers that eliminated quite a lot of uses, but she did not have that information. It did not eliminate a public garage, which was called something else.

Mr. Benish pointed out that it precluded a service station, which was defined differently and could not have gas sales. But under that old ordinance a garage was permitted. Staff will make sure that information is available to the Board as to the remaining uses.

Ms. McDowell suggested that if the Commission wants to reword condition #2 it could state something like a public garage use on the C-1 portion of the parcel shall be permanently terminated upon issuance of a Certificate of Occupancy for SP-08-25.

Mr. Strucko noted that change in wording of condition #2 would help the Commission move forward.

Mr. Franco asked if staff has any comment with respect to Mr. Wyant's request to eliminate the fencing.

Ms. McDowell pointed out that the fence was not put up just for the visibility because certainly the landscaping would certainly help with that. The fence was also put up as a sound barrier because it is a wooded parcel now and it is much closer to the residents next door. Staff was really concerned because this is a new use next door to the neighbors and it would help to have a permanent wood fence to help with the sound. There are going to be a lot of cars coming in and out. It was really more about the sound than visibility at that point. But it does help with visibility. She knows that the applicant was concerned about leaves and she was a little confused about that because there is a curb and gutter on the other side of that 10-foot buffer and new landscaping according to the plan.

Mr. Strucko asked for thoughts on the fencing requirements.

Mr. Loach said that he did not know if there was a way to have your cake and eat it too. In other words to meet the fence requirement, but make it optional based on future noise levels. Then later on if there was a need from the neighbor's perspective that it be installed at that time.

Mr. Porterfield noted that another possibility was that they should get a rake and rake up the leaves.

Ms. McDowell noted that staff has not had a request for a waiver from paving requirements. The applicant has a site plan on hold right now until this is taken care of. The applicant could ask for a waiver and have it gravel. Right now until that happens it is supposed to be asphalt or some kind of surface material.

Mr. Strucko said that he thought he saw it specifically mentioned.

Mr. Loach agreed that if they had a problem with leaves and fire he felt they could remove the leaves.

Ms. Porterfield said they supposedly were going to have numerous people working here. So it seems that if they have a leaf problem they could just clean it up when it needs to be. She would think they would want to keep their facility looking good

Mr. Strucko noted that the Commission would want to require the fence there for the reasons outlined by Ms. McDowell and they are looking to modify condition #2.

Mr. Herrick noted after hearing comments from Mr. Wyant and Ms. McDowell he agreed that the better wording would say, "A public garage use in the existing C-1 zone of the property shall be permanently terminated."

Motion: Mr. Morris moved and Mr. Loach seconded to approve SP-2008-00025 Earlysville Service Center with the conditions recommended by staff with the modification of condition 2.

1. Development of the use shall be in accord with the conceptual plan titled "Special Use Permit Earlysville Service Center, 4036 Earlysville Road Earlysville, VA 22936", prepared by DW Enterprises and dated March 23, 2009 (hereafter, the "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in accord with the Concept Plan, development shall reflect the following major elements within the development essential to the design of the development:
 - The area designated for the special use (public garage)
 - The size, height and location of the proposed building, including the shed, (no more than 5,500 square feet / maximum 35' high)
 - The location of the perimeter landscaping and limits of clearing, with the exception of minimum clearing possible to install drainfields and utilities
 - The number of parking spaces (maximum 46 spaces) and general location / arrangement of the parking spaces;
2. A public garage use on the C-1 Commercial district portion of TMP 31-14 shall be permanently terminated upon issuance of a Certificate of Occupancy for the garage constructed with SP 2008-25.
3. Additional landscape materials, either replanted from the area to be cleared for the garage site or new landscape materials, shall be installed in the undisturbed buffer area inside the boundary of the special use permit as may be necessary to achieve very little visibility between the garage site and the public right-of-way and adjacent properties, as depicted on Attachment B;
4. A minimum 6' high fence shall be constructed in the location shown on Attachment B (20' inside the special use permit boundary and outside the 75' front setback) to provide an additional buffer for the adjacent property (TMP 31-14H);

5. The sale or rental of vehicles or other motorized equipment is prohibited;
6. Gasoline sales are prohibited;
7. The outdoor storage of parts, equipment, machinery and junk is prohibited. All storage shall take place inside the storage shed and/or inside the building;
9. All repairing or equipping of vehicles shall take place inside the existing garage;
10. Parking of vehicles associated with the public garage shall take place only in the parking spaces depicted on the Concept Plan;
11. The hours of operation shall be no earlier than 7:00 A.M. nor later than 10:00 P.M., Monday through Friday, and no earlier than 8:00 A.M. nor later than 1:00 P.M. on Saturdays. These hours do not prohibit customers from dropping off vehicles before or after the permitted hours of operation;
12. A maximum of twelve (12) employees shall be permitted on-site at any one time;
13. All outdoor lighting shall be only full cut-off fixtures and shielded to reflect light away from all abutting properties. A lighting plan limiting light levels at the north, west, and south property lines and the east boundary of the area designated to the special use permit to no greater than 0.3 foot candles shall be submitted to the Zoning Administrator or their designee for approval;
14. Approval from the Department of Environmental Quality shall be required prior to issuance of the Certificate of Occupancy;
15. Approval from the Health Department shall be required prior to issuance of a building permit;
16. If the use, structure, or activity for which this special use permit is issued is not commenced by August 5, 2016, the permit shall be deemed abandoned and the authority granted there under shall thereupon terminate.

The motion passed by a vote of 6:1. (Porterfield voted nay)

Mr. Strucko said that SP-2008-00025 Earlysville Service Center would go to the Board of Supervisors at a date to be determined with the recommendation for approval.

The Planning Commission recessed 7:20 p.m. and reconvened at 7:28 p.m.

ZTA-2009-00006 Accessory structures in required yards Amend Secs. 4.11.2, Structures in required yards, 4.11.2.1, Accessory structures, 4.11.2.2, Public telephone booths, and 4.11.2.3, Fences, mailboxes, and similar structures, and add Sec. 4.11.4, Structures within easements, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Secs. 4.11.2, 4.11.2.1, 4.11.2.2 and 4.11.2.3 by reorganizing them into a single section, prohibiting accessory structures within required front yards with exceptions, revising the types of structures allowed within required yards currently delineated in Secs. 4.11.2.2 and 4.11.2.3 by deleting signs, which are subject to other yard requirements and adding automated teller machines; and by requiring that accessory structures be physically separated from the primary structure up to 6 feet or it be subject to primary structure yard requirements. This ordinance would also add Sec. 4.11.4 to prohibit structures within an easement without the consent of the easement holder and provided that the structure does not adversely affect the easement purpose. 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. (John Shepherd)

Mr. Shepherd presented a PowerPoint presentation and summarized the staff report. He introduced Steward Wright, Permits Planner, who has worked hard with this process.

ZTA-2009-0006 is to:

- Restore the requirement that accessory structures meet the primary front setback in the residential districts and the rural areas.

- Establish a minimum separation between the primary structure and an accessory structure that is allowed in a required yard.
- Reorganizes and clarifies sections 4.11.2, 4.11.2.1 and 4.11.2.3 to provide a clearer ordinance.

The Planning Commission held a work session on this proposal on April 21, 2009. The Commission adopted the Resolution of Intent and advised staff as follows, which are covered in the proposed changes:

- The originally proposed 1-foot separation between primary and accessory structures should be increased to 6 feet.
- Signs, which are regulated in section 4.15, should be eliminated from the list of accessory structures that are allowed in required yards.
- Automated Teller Machines and retaining walls should be added to the list of accessory structures that are allowed in required yards.
- Dumpsters, which are subject to screening requirements of section 4.12.19 and 32.7.9, should not be added to the list of accessory structures that are allowed in required yards.

Taking that discussion into account staff comes to the Commission with these revisions all together.

- Section 4.11.2.a restores the prohibition to locate accessory structures, including detached garages in front yards. Section 4.11.2.b really makes no changes but continues to provide for side and rear setbacks for accessory structures that are next to alleys. 4.11.2.c includes retaining walls and ATM's in the list of structures that are permitted in required yards. 4.11.2.d is the section that will increase the distance between the two structures from 1' to 6'.
- The 6' separation will limit the area that will be available for locating sheds and other accessory structures on small parcels. They are thinking particularly of a mobile home lot since a mobile home itself is a small structure relatively speaking and it needs storage and the 6' separation limits the ability to locate these things on those parcels. Staff would ask for another discussion about an appropriate distance between structures.
- Lastly Section 4.11.4 just reiterates and clarifies the requirement that any structure places in an easement requires the written permission of the owner of the easement. The language requires an easement holder to approve in writing the location of an accessory structure in their easement. An example is putting an accessory structure in a power line easement.

Staff recommends approval of this amendment to the ordinance as provided. He highlighted the sections that have been changed.

Ms. Porterfield asked if the County has always required written permission or confirmation from the easement holder for mailbox placement. She wondered whether they really want to do that because in her area a lot of the utility easements are in the front yards by the road.

Mr. Shepherd said that it is not a change. They have always carefully restricted the location of any structures in easements. As far as mailboxes in the public right-of-way along a road he did not know how that works.

Ms. Porterfield said that she was more concerned about including mailboxes for written consent.

Stewart Wright noted that a mailbox would not require a permit whatsoever from the county. They may look at it as a structure, but it is not something that the county has ever regulated in the past.

Ms. Porterfield noted the language under discussion was asking for written consent for mailboxes, which she did not think the County did before.

Mr. Shepherd pointed out that he would go back and find exactly what they are thinking about changing.

Mr. Edgerton said that Ms. Porterfield had a good point in that part of the ZTA staff is proposing to eliminate Section 4.11.2.3 fences, mailboxes and similar structures. On page 2 of the draft section 4.11.2.3 that actually addresses mailboxes, but what is being proposed here is that is being deleted.

Mr. Shepherd replied that was correct. Staff does not regulate mailboxes now, which can be located on a person's property without our regulation. If people are locating mailboxes in a VDOT right-of-way it would be a VDOT issue. A permit is not required by the county for the location of a mailbox.

Mr. Edgerton asked why staff wanted to delete that whole section.

Mr. Herrick clarified that the new proposed section 4.11.2.c does allow mailboxes. The old 4.11.2.3 is being replaced by 4.11.2.c.2. The bigger issue may be the potential conflict with 4.11.4 which is new.

Ms. Porterfield pointed out that she was suggesting it say except for mailboxes in 4.11.4. The other noted items require written consent for placement in an easement. If a mailbox is placed in an easement, written consent is one hoop an owner shouldn't have to jump through. She was not talking about VDOT. She was referring to a situation where somebody's mailbox happens to be in the easement that their electric or gas line is running through, written consent could be required. She was not sure if they want to start having county residents get permission to put in a mailbox. Obviously if an individual is smart, before erecting a mailbox he/she will blue stake the property. A mailbox has to be put in certain places if one wants to get mail.

Mr. Shepherd suggested that in locating a post for a mailbox which is sunk into the ground it might be wise to know if there are buried cables or pipes that go to an easement.

Ms. Porterfield questioned if they were going to create a problem if they required an actual piece of paper from the easement holder.

Mr. Loach noted that the postal authorities designated where mailboxes could go because that is where they will deliver. Once they have made that designation does it supersede this because it is the federal government designating where mailboxes go.

Mr. Franco asked why they want to have 4.11.4 in there. He asked why the county wants to enforce that if it is a private easement that the county is not involved in.

Mr. Wright replied that a lot has to do with the whole public safety and welfare. If someone wishes to build a shed that is within a power line easement. The power company wants to know what that structure is going to be used for just in case a power line did fall. They run into this more often with sign permits because signs are also out by the road where the utilities are. The sign permit application requires written approval from the easement holder all the time.

Ms. Porterfield said that they have removed signs from this portion of the ordinance. So if they have done that, could they get rid of 4.11.4? She thought that if she erected something in an easement it was at her own peril. If she was asked to remove it by the easement holder, then she had to take it out. She has always understood in places she lived before that she needs to make sure that she knows where the easements are and what and where the utilities run. In some cases, she had to get permission to erect something in an easement. But it is her peril and not the county's peril for whatever she put in the

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easement. She agreed with Mr. Franco that county enforcement in a private easement is not needed particularly if it is only for signs which are no longer in this section.

Mr. Edgerton felt that they need something in there. He had utility easements running across the front of his property that if he was to put a post in that it would not be in his peril but at the peril of everybody down the street that are served by that easement. If he was the people down the street he would like to be protected against that and require anybody who wants to put something in an easement to check with the easement holder and make sure that they do it appropriately.

Ms. Porterfield noted that her point is that she did not have the right to build a shed in an easement that she does not own. She would have to get permission. If she did not get permission and went ahead and put in the shed, then she could be asked to take it out. Since most everybody has a mailbox, she questioned if the County would be creating a paperwork monster that they don't want to have.

Mr. Strucko said that this final section also requires submitting the written consent to the Department of Community Development for a file. He asked if the purpose is simply to have a record and that the county may not be a party to it.

Mr. Shepherd said that it would be verification that the easement holder had granted permission. It is part of a definite enforcement mechanism for what was the first sentence in the original 4.11.2.1 - no structure shall be permitted in an easement in a way that adversely affects the easement. This makes that clearer and provides a mechanism to enforce that.

Mr. Franco suggested that the language be rearranged so that if there is an easement on the property and he was allowed to have a fence that is now a structure and he would have to come in and present evidence. Even though his easement that someone else holds on his property permits him to put the fence in by right it is excluded as one of the things that one can control. If you did not like the fence coming in he has now given them an extra power by having the county say he needed to get written consent to have the fence in there. It does not talk about the condition of the easement like 4.11.2.1 use to. It talks about needing that written consent. It is written so to potentially give someone more power than the easement may give them.

Mr. Shepherd suggested that they could address this by going back to the existing language to say no structure shall be permitted in an easement in a way that adversely affects the easement.

Ms. Joseph and Mr. Edgerton agreed.

Mr. Strucko noted that would be the concluding sentence and replace all of the proposed language in 4.11.4.

Ms. Porterfield noted that the Commission previously said that ATM machines should be accessed from within the property. She wondered if they should add that in the language so that it is clear that somebody can't put an ATM on the edge of the property and have it accessed off the property. The Commission asked that it be added.

Mr. Shepherd pointed out that could be handled at site plan rather than a requirement at this point. He suggested that it be made subject to a site plan so it could be evaluated so that the traffic circulation around it or pedestrian traffic to it could all be accommodated. He suggested that they preclude the opportunity for that in any and all cases.

Ms. Joseph suggested that if it was confusing they should take it out and continue doing what they have been doing.

Mr. Fritz noted that there may be some cases where they want to have ATM's closer to the property line, particularly in the Downtown Crozet District and in some planned developments where they are trying to focus on pedestrian focused development. It may make sense particularly if they have a pedestrian wall where the property line is they would want it right on the property line or within close proximity. If it was a drive through ATM it would require a special use permit.

- It was the consensus of the Planning Commission that ATMs are acceptable as portrayed in the proposed language.

Mr. Franco responded to staff's request for discussion on the 6' separation. As last time he was comfortable with something smaller on the order of 3'. He was not comfortable with the 1' that staff originally proposed. But he thought that that 3' is plenty of space to maintain something.

Mr. Loach suggested that staff check with the Division of Fire Safety since he thought that it would matter on the height of the building. If he had to ladder a building in that space between the buildings to get to somebody to make a rescue he had to get a ladder up and get several people on that ladder with air packs on their backs. He would have fewer problems with the single story than if he did it with two- or three-stories. He suggested that staff check with Fire Division to see if less than that would be adequate on a multi-story building.

Mr. Shepherd said that he checked with the building official who is looking at the Fire Code as well. He reported that on a residential parcel there is no requirement to separate two structures except in cases where there is a garage with motor vehicles in it that does have some fire separation requirement.

Mr. Loach noted that the Building Codes do not respect fire fighter's safety. He supported a 6' separation when the building is above one story if only to make sure that they can get in to get a rescue.

Mr. Edgerton supported the 6' separation.

Ms. Porterfield noted that a shed potentially could have a lawn mower and can of gas.

Ms. Joseph agreed with the 3' separation.

Mr. Morris agreed with a 3' separation in some areas, but would stipulate if it was over one story then it has to be a minimum of 6' separation. He did not want to put the fire fighter in jeopardy.

Ms. Porterfield agreed with Mr. Morris for a 3' separation unless the primary structure is higher than one story it is 6'.

- The 6' separation was agreed upon by the Planning Commission.

Mr. Strucko opened the public hearing and invited public comment. There being none, the public hearing was closed and the matter before the Commission.

Mr. Strucko reiterated the comments and edits recommended by the Commission:

- In the last section scale back the language to a single sentence to read, "No structure shall be permitted in an easement in a way that adversely affects the easement."
- The ATMs are acceptable as portrayed in the proposed language.

- The 6' separation should be kept.

Motion: Mr. Edgerton moved and Mr. Morris seconded to recommend approval of ZTA-2009-006 Accessory structures in required yards to the Board of Supervisors with the one edit to the proposed language, as follows.

1. In the last section scale back the language to a single sentence to read, “No structure shall be permitted in an easement in a way that adversely affects the easement.”

The motion passed by a vote of 7:0.

Mr. Strucko said that ZTA-2009-006 Accessory structures in required yards would be heard by the Board of Supervisors on a date to be determined with a recommendation of approval.

ZTA-2009-00007 Temporary construction headquarters and yards Amend Secs. 5.1.18, Temporary construction headquarters, yards, 5.1.18.1, Temporary construction headquarters, and 5.1.18.2, Temporary construction yards, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Secs. 5.1.18, 5.1.18.1 and 5.1.18.2 by reorganizing the sections into a single section and amending the regulations pertaining to the duration (by requiring that the use terminate within 30 days after construction of the last building is completed or active construction is discontinued, and eliminating the limitation that construction yards exist for not more than 18 months), location (by clarifying the requirement that the use be located on the same site (rather than the same lot) as the construction and that construction yards be set back from existing public streets and dwellings) and maintenance, the screening of temporary construction yards as determined by the zoning administrator, and by authorizing the zoning administrator to approve such uses with a zoning clearance rather than a temporary permit. 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. (John Shepherd)

Mr. Shepherd presented a PowerPoint presentation and summarized the staff report. He introduced Sherry Proctor, Permits Planner who has worked hard with this process.

This is ZTA-2009-0007 Temporary construction headquarters and yards set forth in Section 5.1.18. The primary interest to this amendment was to eliminate the 18-month time limit that was imposed on temporary construction yards. This amendment proposes a consistent time lines for both construction yards and also construction headquarters. They want to treat these in the same way as far as the time goes. Both of these uses are designated as mobile office trailers, which is a Building Code designation and are now reviewed and approved as building permits. They want to change that to review and approve them as zoning clearances. This amendment also reorganizes Section 5.1.18 so it is clearer.

In a work session in April the Planning Commission requested clarification of the term “discontinued construction”. That has been redefined in the draft to make it clearer.

The revisions include:

- Both the temporary headquarters and temporary construction yards are limited to a time period of 30 days before the project begins and 30 days after the project is completed or 30 days after construction is discontinued which will now be defined as abandoned or suspended.
- They are replacing the temporary permit with a zoning clearance.
- They are replacing the phrase, “within a recorded subdivision” with the term “site”.

- They have aligned the definition of “discontinued construction” with terms that are found in the Building Code. They add the proviso that if it has been suspended on account of inclement weather that a letter to the zoning administrator could verify that and it could be extended on that basis.

The language under headquarters is not mirrored word for word. He suggested that staff would revise the provisions under duration to match. There are just a couple of sentences left out that had to do with the finding of suspended or abandoned. It will make each to be subject to the same terms and conditions for yards and headquarters.

Mr. Strucko invited questions for staff.

Ms. Joseph distributed an email received from Morgan Butler who could not be present. (Attachment) He had agreed with her comment last time that she thought they needed a definition for these two items. Mr. Butler looked up a place in Nevada in Franklin County that does have a definition for these two. They use these words, but there is no definition in the ordinance that tells us what these words mean for what a temporary construction yard is or a facility.

Mr. Shepherd noted that staff’s first reaction was that the ordinance as written basically contains the definition of a yard within it. That was their first take on this. It requires that it be on the site, that the time limit is there and the setbacks are there. He takes this basically as something that would be a good thing. It always helps to have a clear definition and to make clear what they are doing. It is important to amend either of these definitions slightly to make sure that what they are talking about in Section 5.1.18 are yards that are on the site serving that site and only that site so that this is clearly distinguished from a contractor’s office and equipment storage yard, which can be used for a contractor to serve any site that they are working on. They would want to make certain that they don’t get these two uses mixed up. That could be done by adding the term onsite in this case.

Mr. Morris supported the addition of the definitions.

Ms. Joseph noted that it would just go in the definition section.

Mr. Herrick asked if that would be Chapter 3 Definitions in the zoning ordinance, and Ms. Joseph replied yes that was correct.

Mr. Edgerton supported the idea of adding the definitions and Mr. Shepherd’s suggestion to tie it to the specific site. The way it is written if they don’t tie to the specific site someone building a subdivision could set up one thing and run it for 30 to 40 projects. If they are going to tie these to the actual construction activity on a specific site they need to be tied to that specific site. He supported Mr. Shepherd’s suggested language.

Mr. Morris asked if a developer was going to open up section four of an area would this require a construction facility for each one of the homes going in or would one for section four do it.

Mr. Shepherd replied that one would do it. That is why they want it to have a looser word like site rather than trying to tie it to a particular parcel.

Ms. Porterfield asked if a project was phased, would they be allowed to leave the construction headquarters on site or would it have to come off until they started the next section.

Mr. Shepherd replied that if construction is completed or suspended or abandoned then it must be removed. They would have to keep the project rolling. In other words if they build out a phase and stop then they would have to shut these down. Then when they gear up again they could reestablish it.

Ms. Porterfield asked if the 150' from any preexisting dwelling not owned or leased by the owner is measured on the subject property or a total of 150'. In other words, could they put this location right on the lot line and have the 150' be the other person's property.

Mr. Shepherd replied that they could set the compass on any dwelling at 150' and spin the pencil and this has to be outside that line.

Mr. Franco said that he was assuming if it was subject to a building permit it would still be subject to the yard requirements of the zoning district. There would still be a minimum separation of whatever that side yard is and so it can't be on the property line.

Ms. Proctor pointed out that anytime they have a permit for a mobile office trailer it meets the commercial setback regardless.

Mr. Strucko opened the public hearing and invited public comment. There being none, the public hearing was closed and the matter before the Commission.

Motion: Ms. Porterfield moved and Mr. Morris seconded to recommend approval of ZTA-2009-007, Temporary construction headquarters and yards with the addition of the definition of construction yard and temporary construction facility to the draft ordinance.

Mr. Herrick asked to clarify a couple things on the motion. The words in the existing Albemarle Ordinance are temporary construction headquarters and temporary construction yards. He asked if she was looking to having those terms defined as the present proposal.

Ms. Porterfield replied yes.

Mr. Shepherd asked for clarification to have an understanding that staff will work with Ms. Joseph and take the best of both proposed definitions and combine them to come to the definition rather than using one of these in particular. This is going to take a little bit of wordsmithing just to make it understandable.

Mr. Strucko supported the suggestion and that it was acceptable.

The motion passed by a vote of 7:0.

Mr. Strucko said that ZTA-2009-0007, Temporary construction headquarters and temporary construction yards would go before the Board of Supervisors with a recommendation of approval at a date to be determined.

Ms. Joseph noted that this was John Shepherd's last meeting and she wanted to express how grateful she was for the service he has given the Planning Commission. She really appreciates all of the work that he has done.

Mr. Strucko congratulated John Shepherd on behalf of Albemarle County for his years of service, too. The Planning Commission appreciates his commitment to this community and thanks him.

Old Business:

Mr. Strucko asked if there was any old business.

- Regarding Places²⁹ Ms. Joseph requested that the Planning Commission reconsider the potential Development Area expansion between Hollymead and the Urban Area as a possible way to support construction of needed road improvements including Berkmar Drive Extended and bridge. The Planning Commission agreed to reconsider, and asked that staff provide recommendations and review criteria/development expectations that will guide decisions on development proposals in the expansion area.

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

New Business:

Mr. Strucko asked if there was any new business.

- The Commission was invited to a VDOT presentation to the Board of Supervisors on July 1 around 2:00 p.m. about the Route 29 Corridor.
- No meeting on May 26, and June 2, 2009.
- The next meeting will be held on Tuesday, June 9, 2009.
- The PC will be meeting with the Board of Supervisors on June 3, 2009 at 2:30 p.m.

Mr. Shepherd introduced Mr. Joe Ford who wanted to speak about the Byrom Park request and did not understand the consent agenda procedure. He asked if the item could be reopened.

Joe Ford asked if he had missed it because he had been here since 5:30 p.m. He pointed out that several other people were present to speak on Byrom Park but got frustrated and left.

Mr. Strucko noted that they did not know that he was here for that particular reason and the Commission approved it in the consent agenda. He asked in order to reconsider what would be the procedure.

Mr. Herrick said that the item had already been approved. If the Commission wants to hear from this gentleman they can under new business. But the Commission has already acted on it.

With the consensus of the Commission, Mr. Strucko invited public comment on SDP-2009-00021 Patricia Ann Byrom Forest Preserve Park Improvement – Preliminary.

Joe Ford, resident of 6758 Chap Place Lane, said that he was disappointed to hear that the Commission approved it without hearing from county residents. He said his property adjoins the proposed park. However, he had tried to contact the county on three occasions to set up an appointment to find out the location and stipulations of the county park. His father is also an adjoining land owner. He reviewed the maps for the first time tonight. He received a letter to be here at 6 p.m. to speak about it. So he had been here since 5:30 p.m. He would like to understand the Commission's feelings about the park. There was no cell phone service available. It also shows horse back riding, which the county does not provide. However, the adjoining landowner whose father donated the land does have an operation for a commercial horse back riding facility that he is putting in that adjoins this park. The proposed parking does adjoin to his property. So he was not aware that the Planning Commission approves entrances where a commercial use could be using county land. There are several things they have for security issues, which have not been discussed with any adjoining landowners or residents in the community. It includes such issues as is it going to be gated at night. Emergency services take a lot of time to get to this area. He asked if the park would be policed or gated. The Commission approved the critical slopes for

the park. Most of the land his family owns is critical slopes. They would love to be able to build houses on their land for their children and grandchildren, which they might not be able to do. He was not that opposed to it, however he thought that there ought to be bigger communication between Albemarle County and the residents who live there. There has been no communication with the adjoining property owners. It has all been kept under the radar. They were told that this property would be open from October 1 until January 31 for hunting. He was very concerned that they have approved something where maybe all of the cards have not been put on the table. That is the biggest issue that they have. It is going to be commercialized. The property has already been cleared for the stable and in the critical slopes. Everybody in the community is shocked with the topo of this land that someone can actually mountain bike it and actually put a park on a small two-lane road. Route 810 is a very narrow road and he cannot believe that it passes the sight distance. He guessed that if the Commission has already approved it that they have to take their concerns on to the Board of Supervisors.

Ms. Joseph pointed out that the critical slope waiver would not go to the Board of Supervisors.

Mr. Benish noted that it was a waiver request for the park.

Ms. Joseph asked who can appeal the decision.

Mr. Herrick said that staff would have to look into it. Obviously the plan has not been finalized. If any resident had any concerns he was sure that the staff in Parks and Rec or Bob Crickenberger who is listed on this would be happy to meet with anybody that had concerns about the development of the park.

Ms. Porterfield asked if the Commission can reconsider it.

Mr. Herrick said that he did not know if a motion to reconsider would be in order.

Mr. Strucko apologized to Mr. Ford that if he had known the concern earlier in the meeting he was sure that the Commission would have taken care of it. Had the Commission have known of these concerns he was sure they would have pulled this item off the consent agenda.

Mr. Ford pointed out that he was not only concerned about the critical slopes but the streams that would be crossed getting to the parking area and trails. The critical slopes are not accurately shown on this plan. They are going to cut out the side of a mountain and it is basically straight up. He questioned how they would keep a road established. He suggested the Commissioners visit the property and that there should be a buffer provided.

Mr. Herrick said that if the Chair wishes to entertain a motion to reconsider made by somebody that voted in favor of it, the Chair might consider that at this point.

Motion: Ms. Porterfield moved and Mr. Loach seconded to reconsider SDP-2009-00021 (Patricia Ann Byrom Forest Preserve Park Improvement – Preliminary) at their next meeting on Tuesday, June 9, 2009,

The motion passed by a vote of 7:0.

Mr. Strucko thanked Mr. Ford for his assistance in helping them correct an error. He noted that SDP-2009-00021 Patricia Ann Byrom Forest Preserve Park Improvement – Preliminary – would be reconsidered on June 9, 2009 with staff providing the following additional information: visit site and provide clearer images of the subject property, a status of where this project is, and what notification process is required.

Adjournment:

Wit no further items, the meeting adjourned at 8:56 p.m. to the Wednesday, June 3, 2009 Board of Supervisors joint meeting at 2:30 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)