

Albemarle County Planning Commission
April 21, 2009

The Albemarle County Planning Commission held a public hearing, work session and meeting on Tuesday, April 21, 2009, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

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

Other officials present were Steward Wright, Permit Planner; Sherri Proctor, Permit Planner; Ron Higgins, Chief of Zoning; Wayne Cilimberg, Director of Planning; Bill Fritz, Chief of Current Development; Scott Clark, Senior Planner; John Shepherd, Manager of Zoning Administration; Mark Graham, Director of Community Development and Greg Kamptner, 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.

Public Hearing Item:

SP-2007-00052 Nortonville Church of God Facility Expansion

PROPOSED: Addition of 14,000 square foot Family Life and Music Center for up to 500 attendees to existing church.

ZONING CATEGORY/GENERAL USAGE: RA -- Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre)

SECTION: 10.2.2.35 Church building and adjunct cemetery.

COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/ acre)

ENTRANCE CORRIDOR: No

LOCATION: 1550 Simmons Gap Road (Route 663), 0.67 miles southeast of the intersection with Route 810

TAX MAP/PARCEL: Tax Map 9 Parcel 4

MAGISTERIAL DISTRICT: White Hall
(Scott Clark)

Mr. Clark made a power-point presentation and summarized the staff report.

- This is a special use permit to allow a new building to be constructed at an existing church. The existing church already has a special use permit. The proposed addition would be an approximate 14,000 **(with a request for 15,020)** square foot Family Life and Music Center for up to 500 attendees to existing church.
- For the size of the building the amount of earth moving will be fairly minor because it is a fairly level site.
- Staff has identified the following factors favorable to this application:
 1. There are no known significant physical limitations that would prevent this expansion.
- Staff has identified the following factors unfavorable to this application:
 1. The scale of the new building is large for a rural church. However, it is intended to accommodate the church's existing activities, for which they currently do not have enough space.

- Based on the findings contained in this staff report, staff recommends approval of SP 2007-00052 Nortonville Church of God with the conditions listed in the staff report, amended with the addition of the two sentences in condition 1 as follows:
 1. The development of the site shall be in general accord with the "Conceptual Site Plan" prepared for Nortonville Church of God by TCS Engineering Co., LLC, dated April 3, 2009 (hereinafter, the "Conceptual Plan"), provided that the maximum building size shall be governed by Condition 2 rather than the Conceptual Plan. Minor variations from the Conceptual Plan may be approved by the Zoning Administrator in conjunction with site plan review to ensure compliance with the Zoning Ordinance. **The arrangement of parking spaces may be altered so that County standards for safe and convenient access may be met. The total number of parking spaces shall be in accord with a parking study approved by zoning staff before approval of the preliminary site plan for this use.**
- The two sentences added to condition 1 had inadvertently been left out of the conditions sent previously in the staff report. The purpose of the two sentences is to ensure that when the request comes in for its site plan review the parking arrangement probably is going to change from what is on the conceptual plan to make some minor adjustments to ensure the traffic flow will work. The church will be building part of a new road way and adding parking to mess in with the existing parking. Also, the church does not have a parking study that shows exactly how many spaces will be needed for a 500 person facility, which is likely going to be more than what is shown in the conceptual plan. Staff does not have any concerns because there is plenty of room on the site to accommodate the additional parking. But staff does not have an exact number yet. The purpose of the condition is to make sure when the applicants work that out with zoning during the site plan review that they don't need to come back and amend the whole special use permit just because that number will change. Otherwise, the recommended conditions are unchanged.

Mr. Strucko invited questions for staff.

Mr. Loach noted that on page 3 in the last sentence under the section Conformity with the Comp Plan it says while this is a new structure it is larger than what most rural churches need for the activities held by an active congregation. He asked if there is some specific methodology that staff used to determine that or was that just based on the size and experience with this size of a church. He asked how staff determined that it was needed for the activities of a congregation of this size.

Mr. Clark replied that it was based on the statements of the applicants. The church representatives said this is what they need to do the activities they have planned and in fact to meet the needs for activities that they are already having on site. There is no standard in the Comp Plan. The Comp Plan calls for meeting places that are traditional rural scaled, but it is not quantified.

Mr. Loach asked how far the nearest residence is from the proposed new structure.

Mr. Clark replied that he did not have the exact distance, but pointed the location out on the slide of the closest residence being near the block of text. Along the back line there is nothing visible. Toward the east there are several very thin parcel lines that run down together and make up a wide driveway that goes to residential lots back behind and off to the corner of the church. There really is only one residence close that is directly adjacent to the existing parking area.

Ms. Joseph asked staff to help clarify the church camp concept that is in the staff report. Normally they ask for a special use permit for a camp. She wanted to make sure that everyone is aware that from their conversation that it is not like a normal stay over camp but it is just like vacation bible school.

Mr. Clark replied that a camp in this case does not mean over night stays or summer week long programs and things like that. It is more like Sunday school during the week as he understands it. It is church education during the day and it does not require a separate special use permit.

Ms. Joseph said that this church will be used a whole lot more than they normally see a church used such as on Sundays and Wednesdays or whatever. The church is going to be a very intensively used place.

Mr. Clark noted that there will be weekday and weekend use. It is a fairly large facility. Again, from what he had heard from the applicants they are trying to make space for a lot of things that they are already accommodating without the necessary buildings.

Mr. Strucko said that basically they use the church this way now.

Mr. Clark noted that the church would be able to better accommodate some of the activities, such as musical events, indoors.

Ms. Joseph hoped that staff is contemplating changing the ordinance because the way they have been interpreting federal law and the way our attorneys have told us to interpret it that they really don't have any say over what goes on here and they are wasting a whole of people's time. This includes the time of staff, the Commission and the congregation if there is really nothing that they can do in this instance.

Mr. Cilimberg noted that this subject will be discussed at the rural area strategies meeting coming up with the Board. Mr. Kamptner can speak to this better. But, generally speaking where they can focus their attention is on the health, safety and welfare impacts of a facility like this if they exist at all. As an example, we need to review for insufficient road systems leading to the church and problems of that sort. They are somewhat restricted. Therefore, he felt that it very definitely deserves a different approach from our ordinance. They have been talking about this for a while anyway because so many of the church requests have the same kind of circumstances. There have been occasions where they have seen a church in a particular location of a size impacting the neighboring areas and concerns raised regarding that where the special use permit process has given the Commission the opportunity to send the applicants back and to further look into what they are proposing. So there is a fine line there that was not absolute in all cases.

Ms. Porterfield asked what would be staff's guess as to the number of parking spaces that are going to be required.

Mr. Clark replied that right now the conceptual plan is showing 127 spaces, which staff's normal calculation would be for 380 people. It would be in the range of 160 to 170 parking spaces instead of the 127 for 500 people.

Ms. Porterfield asked will the parking stay in the current location.

Mr. Clark said that the existing church parking is around the church building and along the edge of road will stay where it is. It is important to the church to have the new parking where they have shown it. They may need to add some more in the existing area or possibly add some more around the loop at the back of the site. There is a lot of open space back at the picnic shelter that could be used for some more parking if necessary. They also expect that some more parking would go up front. He suggested that the applicant could answer the question.

Ms. Porterfield asked where the tot lot was located and if it was fenced.

Mr. Scott pointed out the location of the tot lot. He noted that there is a fence along the tree line, but he did not know if the tot lot would be fenced.

Ms. Porterfield suggested that if parking is back there that the tot lot be fenced so that there would not be children running across parking lots.

Mr. Cilimberg noted that there are site plan requirements for tot lots and other activities near by. He could not tell her exactly how that works, but it would be addressed at the site plan stage.

Ms. Porterfield said that because of the size of the new building it is going to have a fire suppression sprinkler system. She assumes this is on a well and asked if there is enough pressure to run that system.

Mr. Clark replied that one of the conditions staff recommended was that the Fire Department would approve that. There is no detailed water supply study at this time. However, it is entirely possible that with water storage there would be an available supply of water for that.

Ms. Porterfield asked if that would be required at the site plan stage, and Mr. Clark replied yes that it would be addressed at the site plan stage.

Mr. Edgerton noted that he was concerned that from the plat he could not figure out what parking existed since it did not show up on the drawing very well. The staff report says there were 76 or 79 parking spaces.

Mr. Clark noted that he rechecked it earlier today and found 79 existing parking spaces.

Mr. Edgerton said that they are proposing 76 plus 79 spaces which add up to 155. Staff just gave them a much bigger number. He was concerned that even with that larger number it was not a realistic amount for a building of this size which they are hoping to be able to put 500 people in. Their math based on the staff report suggested that if they did use the building to capacity that every car that came would have to have over 3 people in it with the spaces they have. He was concerned about putting that off and not dealing with it until the site plan because it may not work at all.

Mr. Clark noted that one (1) space per three (3) seats use to be the requirement for churches. Now they don't have a fixed requirement for rural churches and ask the applicant to do a parking study to meet their needs. A lot of times staff does fall back on that 1 per 3 number that they did use for quite a while.

Mr. Edgerton expressed some concern that this site will be overwhelmed with parking to meet the requirements. With that in mind he was a little surprised with condition 2 that somehow the building that was shown very clearly as 1,400 square feet grew to 1,550 square feet. He questioned how that happened.

Mr. Clark noted that staff generally tries to avoid the applicant to have to come back for another special use permit amendment.

Mr. Edgerton said that when they reference a conceptual plan that shows 1,400 square feet and then they amend it by 150 he gets a little nervous about whether the Commission is actually reviewing anything other than the concept. He noted that maybe that is all the Commission is being asked to do here.

Mr. Clark said that certainly the Commission or Board could change that number. He believed that he added just a little over 10 percent to be absolutely sure that something that was generally the same scale but that would allow for the changes that typically happens during the site plan process when things get moved around and changed a bit. Overall it is not a major change that would bump it into a different category of scale.

Mr. Edgerton said perhaps the applicant could reassure him a little more.

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

John Grady, representative for the Nortonville Church of God, said that he would try to clear up a couple of the concerns he had heard.

- Regarding existing uses or activities there are no more planned uses or activities other than what is going on at the church right now. This is not a growth plan. This is to take care of what is currently going on and taking the relief and some of the use off the main sanctuary. There is additional room for the church to grow with numbers in the existing sanctuary. What they are trying to do is develop a family life center, music center and a gymnasium that may be used by its church personnel keeping their personnel and their children there and around the area.
- Ms. Porterfield addressed the need for fire suppression. The building is being designed by an architect and they are laying it out it will be fire stopped at the right square footage so they will not have to use a fire suppression system. The Building Code requires a fire suppression system at 12,000 square feet. They will have sections that are 10,000 square feet or less so that a sprinkler system is not necessary. They have already gone over that with an architect and engineer and it can be done by just building material. Regarding the response time Earlysville Fire Department would normally get this, but they have talked to the people at Dike. The Dike Fire Station, although it is in Greene County, is only 2 miles away from the church. The fire call will go to Earlysville, but Dike will respond as well. So that means Dike Fire Station would be there much sooner than the 14 minutes that is indicated in the staff report. They will open their doors to area residents during emergencies or disasters.

Mr. Strucko invited questions for the applicant.

Mr. Loach asked what the hours of operation would be and if there would be any commercial use of the building. For instance, his church has a hall and they rent it out for weddings.

Mr. Grady replied not rental, but that the church has concerts that currently use the sanctuary that would be moved over to this. There will be a stage behind the basketball goals. But, he was not aware of any leasing.

Nelson Morris, Pastor of Nortonville Church of God, said that the church uses the present sanctuary for weddings for church members that attend.

Mr. Loach asked if the church is used for the wedding reception and there will be cooking.

Pastor Morris replied that right now they use the existing sanctuary and fellowship halls for those types of events right now. It includes weddings, receptions and things as such.

Mr. Loach asked if this is a 7 day a week operation and what are the hours of operation.

Pastor Morris replied that they only have 2 or 3 staff members there Tuesday through Friday and sometimes on Saturday. Then they have Wednesday night and Sunday services and a Tuesday night prayer meeting. Usually everything is done by 9:00 p.m. It is certainly not going to be consistent day meeting activities.

Ms. Porterfield asked how big a wedding can the church handle in the current sanctuary and if they anticipate being able to increase that number with the new buildings.

Pastor Morris replied about 250 people and that if they need to move the reception over to the new building they would do so. They would try to accommodate whatever the need is.

Mr. Edgerton asked for some discussion about the parking.

Mr. Grady said that the existing parking around the sanctuary around the back, the sides and up the northeast property line is the 70+ spaces that staff referred to. They were hoping to not have to put in any more parking spaces than what they are showing now in front of the new building. That is something they will talk with Mr. Clark about when they do the site plan submittal. They certainly don't want to put in more parking spaces than necessary. There are 79 existing parking spaces.

Staff had some heart burn about 3 or 4 spots that were out to the road because they were parallel to some of the entrances. They can make those spaces go away. If there is an engineering concern that they make block or restrict site distance they will certainly do what they need to do.

Mr. Strucko invited public comment.

Eunice Steen, an adjacent property owner, said that she wished that the church would not expand. They have been her neighbors for 35 years and Pastor Allison has been there for 18 years. They are very good neighbors. However they are very noisy and trashy neighbors. The groundwater pressure is much lower since the new church was built 10 years ago. There are a couple of misconceptions. The ground is not level. The reason the ground appears level is because in previous buildings they basement and all of the stuff was pushed over into a deep gully that is about 8' high and she was contending with mud washes. She was contending with her lawn and garden being washed. There was one small house adjacent to the church when it was first built in 1950. There are now 11 residences. The proposed building is about 100' in front of the closest residence. The parking is about 50' from her house. There is no longer a fence because when they made that parking they pushed the fence over. Their motto is a growing church for a growing community. This building is to accommodate their growth. She was saying that when a church grows in town or out if the location is not permissible they move to a different location and sell the old church to a different one. She thought there were many parcels of land within a 2 to 5 mile radius owned by church members where they could expand. If this is real rural more expansion commercial like this is going to make it unfit for residential until they bring in public water and sewer and control mud slides.

Ms. Porterfield asked where her property is located.

Ms. Steen replied that it was where the 93 is located. The volley ball court and basketball court area was a deep ravine and it got pushed in. It is now washing down. She has let the area grow up in woods in the front and back since her mother passed away. It affects her 3 acres more than it does any other neighbor. There may be some traffic problems getting in and out at times. At the corner of her property is a stream that goes into Beaver Creek, which is where the mud is flowing down the back carrying with it a lot of trash and soccer balls, baseballs and basketballs. She felt that it was too much for a rural area. There was too much under pavement and asphalt and too much activity for that area and that narrow of a road.

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

Mr. Loach suggested that this might be a case where good fencing makes good neighbors. He suggested adding some landscaping and fencing along her side of the parking lot to help improve this. He felt that some plantings or vegetation might help out in this situation.

Mr. Clark noted that staff had conceived that early in the review. But, because the parking along that edge is so close to the property line there is no room between the parking spaces and the edge of the property to do planting. Behind the parking there is room but that is past where the existing parking is. He was not sure about landscaping between the parking and the property line because there is not really much room.

Mr. Strucko asked if the parking area comply with setback rule and is it appropriately off the property line itself.

Mr. Clark replied that there were no conditions in the prior special use permit for commercial setbacks on parking. It was not done in this case.

Mr. Loach asked if it was allowed as part of the conditions for the church to put the plantings and the fence on her property if she allows it.

Mr. Kamptner noted that they had done something like that before provided that permission is granted. Part of the problem is that unless she volunteers to accept the fencing and vegetation it does take away from her use of the property to a certain extent.

Mr. Loach favored churches getting larger, but was trying to resolve the issues.

Mr. Grady noted that the church would certainly offer screening and a fence. They know that they have approximately 4' to 5' from the end of the parking space to the property line. They will do whatever screening is required. They will offer something on a site plan.

Mr. Loach noted that his other concern was in regards to the fire suppression which was part of the conditions. He would hope with 500 people that they make sure that there will be adequate water pressure in the site plan review.

Mr. Clark said that staff felt it was important in this case to include a condition for fire/rescue approval.

Mr. Edgerton pointed out that the applicant indicated that the architect was somehow going to work around that requirement so they would not have to fire suppression in there. He asked with this condition it would require that if it was over 12,000 square feet.

Mr. Clark noted that in talking with the Inspections Department the Building code requires sprinklers for new structures of 12,000 square feet or more. They did not talk about any exceptions to that rule if the building is broken up into small fire proofed sections.

Mr. Edgerton said that worried him that if there were 500 people and no fire suppression system. He agreed with Mr. Loach that they should hold firm on that. It worried him that their architect said they could work around that.

Mr. Clark pointed out that it was explained that they would not be able to get the building permit and the certificate of occupancy if they did not have that. If there is some way around that rule that is permissible under the Building Code that could be done through engineering that would still have to be approved before those permits could be issued.

Ms. Porterfield questioned the size of the facility with the proposed 500 people fitting into the 300 parking spaces. From the neighbor's viewpoint she did not understand the trash situation. Also, she was trying to figure out who was going to use the basketball and other facilities.

Mr. Grady said that he did not know where the 500 people came from. The current Sunday morning services normally run from 220 to 250, which is the largest service of the day. When they are talking about some 400 or 500 people it may be for a wedding that now has around 350 people. That wedding could take place in the existing sanctuary. But they would rather take some of the heat off of the existing building and offer these services in the multi-purpose room.

Mr. Strucko pointed out that in the chart for occupancy it says the number on Saturday is 500 and Sunday is 980. There are two services being an evening and morning worship on Sunday. On Friday the occupancy is 381. On Wednesday it is 360. It drops off on Monday to 72. He was not sure if these are absolute maximums. This says it is the occupancy estimates.

Pastor Morris pointed out that they were asked to project what would be the total usage per week to include the total attendance for Sunday School, morning worship, Sunday night and Wednesday night to get one common number as to how many people may attend during a week's time. They were told to project what would be a usage for the total there. Admittedly they misunderstood the question. That does not mean that at any particular service that number of 500 is there.

Ms. Joseph pointed out that the numbers in the table had to do with the septic. The projections are what is the flow going to be and how big the septic site should be.

Pastor Morris noted that there could be up to 500 people attending a concert or wedding. But that is not a normal usage of it on a regular basis. During the week there are only 3 staff people there during the day along with those attending their regular services. There is not a 9 to 5 Monday through Friday situation where there is 300 to 500 people there during the week.

Ms. Joseph asked how many people does their sanctuary seat.

Pastor Morris replied that it was 325 maximum seating. They have a fellowship hall that will seat about that same amount. Then the old sanctuary would seat about 140, which would now be used as the youth room. For normal events other than funerals and weddings the church is able to seat everyone.

Mr. Loach supported SP-2007-00052 with conditions as amended by staff.

Ms. Joseph asked if he wanted to talk about the screening.

Mr. Loach added that the screening for the neighbor be provided.

Mr. Cilimberg noted that it seems from the aerial that there may already be vegetation right up to the property line on the adjacent property. In the slide it looks like the trees go up to the property. He asked if the Commission prefers that screening to be in the form of a fence.

Mr. Loach said that he would like the condition to state that the church work out with the adjoining neighbor some sort of screening condition be it a fence or shrubbery and trees, for whatever is acceptable. He understands the neighbor's concern. He thought that the fencing or the shrubs may cut down on some of the noise that gets there and possibly some of the trash. If they can come to an agreement he felt that is a plus.

Mr. Kamptner asked if that is for the length of the parking spaces or that whole side of the parcel. That can be worked out between the neighbor and church.

Mr. Loach asked that it be an acceptable length to accommodate the neighbors.

Mr. Strucko asked if the Commission was okay with condition 2. There was some earlier discussion about the size of the structure not to exceed 15,500 square feet versus what is on the site plan.

Ms. Porterfield preferred it be the 14,000 square feet as shown on the site plan.

Mr. Cilimberg suggested that the Commission not cut it completely to the chase. They have had circumstances where they have had repeated requests. Normally they ask for a little bit of wiggle room for folks so that it is not absolute at the dimensions.

Ms. Porterfield asked if the church has drawn the plans up yet because this is simply a schematic.

Mr. Clark replied that the church does have detailed building plans worked up. Most of the drawings he has are interior drawings that are not too relevant to a land use review. But, he does know that the church has had pretty detailed drawings worked up by their architect.

Ms. Porterfield asked at the 14,000 square feet, and Mr. Clark replied yes.

Ms. Porterfield suggested conditioning it to 14,050 square feet.

Mr. Loach asked for a wiggle figure from planning staff.

Mr. Clark replied that at least 500 square feet would be necessary just for changes happening during the site plan process.

Mr. Loach amended the motion to include 14,500 square feet.

Ms. Porterfield asked if the fence could be required on both sides because they are going to end up with a parking lot on the opposite side when this building is being put up to take care of the neighbor opposite. What they are trying to do is screen the parking lots from both sides. She assumed that the parking lot would go all the way across when they build this building. She asked if they could screen the parking lots from both sides and if he would accept that in the motion.

Mr. Loach amended the condition to state that the fencing and the cover be provided for those neighbors that make accommodations with the church to have it. This way if the other neighbor wants it fine, but if not it would be okay. Obviously the one neighbor has expressed some concerns.

Mr. Clark pointed out that the difference between the two sides is parcel 96H, which is not directly adjacent to the church property. There are several small parcel lines that come down in between there where there is a drive way to the houses that are farther in the back of the parcel. There are some trees there and it is not as direct.

Mr. Loach asked that they keep the condition open to what he said so to accommodate the neighbors. Then they can work it out with the neighbors on either side within the structures that they have either within their own grounds or within the neighbor's property.

Mr. Cilimberg asked Mr. Kamptner if he could write a condition like that.

Mr. Kamptner replied absolutely. On the lower side closest to 96H he assumed that all of the fencing and landscaping, if the neighbors decided it was needed, would be on the church property.

Mr. Loach replied that was correct.

Mr. Clark said that hopefully fencing will work there. There is an area where a septic field will come down close to that property line where it would be difficult to have plantings because it would interfere. Hopefully this working out process can also accommodate that.

Mr. Strucko reiterated that Mr. Loach's motion is on the table for the conditions as amended by staff, plus the screening requirements and the size.

Ms. Porterfield asked if a dumpster enclosure would be required because it would help with the trash situation.

Mr. Cilimberg noted that the dumpster would be covered during the site plan review.

Ms. Joseph suggested that on page 4 regarding the recommended action that staff should change the name of the church.

Motion: Mr. Loach moved and Ms. Porterfield seconded to approve SP-2007-00052, Nortonville Church of God Facility Expansion with the conditions as recommended by staff, as amended, including adding the conditions about the screening and size.

1. The development of the site shall be in general accord with the "Conceptual Site Plan" prepared for Nortonville Church of God by TCS Engineering Co., LLC, dated April 3, 2009 (hereinafter, the "Conceptual Plan"), provided that the maximum building size shall be governed by Condition 2 rather than the Conceptual Plan. Minor variations from the Conceptual Plan may be approved by the Zoning Administrator in conjunction with site plan review to ensure compliance with the Zoning Ordinance. The arrangement of parking spaces may be altered so that County standards for safe and convenient access may be met. The total number of parking spaces shall be in accord with a parking study approved by zoning staff before approval of the preliminary site plan for this use.

2. The footprint of the building identified on the Conceptual Plan as "Proposed Multi-Purpose Building" shall not exceed 14,500 square feet.
3. A dwelling used by the church's staff, located within the church, may be permitted as an accessory use.
4. All structures shall meet commercial setback standards as set forth in Section 21.7(b) of the Albemarle County Zoning Ordinance. The tot lot is not subject to this condition.
5. A fire-suppression water supply meeting the approval of the Albemarle County Fire/Rescue Department shall be required before approval of the preliminary site plan for this use.
6. Health Department approval of well and/or septic systems.
7. 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 all property lines to no greater than 0.3 foot candles shall be submitted to the Zoning Administrator or their designee for approval.
8. There shall be no day care center or private school on site without approval of a separate special use permit;
9. If the use, structure, or activity for which this special use permit is issued is not commenced within sixty (60) months after the permit is issued, the permit shall be deemed abandoned and the authority granted there under shall thereupon terminate.
10. The church should work out an agreement with the adjoining neighbor(s) to provide some sort of screening be it a fence, shrubbery, trees, or whatever is acceptable. The screening is to reduce the noise and trash. On the lower side closest to Parcel 96H, all of the fencing and landscaping, if the neighbors decided it was needed, would be on the church property. Note: The fencing and other screening should be provided for those neighbors that make accommodations with the church to have it.

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

Mr. Strucko said that SP-2007-00052 Nortonville Church of God Facility Expansion would go to the Board of Supervisors on June 10, 2009 with a recommendation for approval.

SP-2008-00048 Mathney Development Rights

PROJECT: SP-2008-00048 Mathney Development Right Request

PROPOSED: Request for one additional development right for a family subdivision.

ZONING CATEGORY/GENERAL USAGE: RA -- Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots);

SECTION: 10.2.2.28, Divisions of land as provided in section 10.5.2.1

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 lots)

ENTRANCE CORRIDOR: No

LOCATION: 2839 Craigs Store Road (Route 635), approximately 2000 feet south of the intersection with White Mountain Road (Route 736).

TAX MAP/PARCEL: Tax Map 84 Parcel 14E

MAGISTERIAL DISTRICT: Samuel Miller
(Scott Clark)

Mr. Clark made a power-point presentation and summarized the staff report.

- The applicants are requesting an additional development right for the purpose of giving a grandchild approximately 2 acres of land (out of their 4.9-acre parcel) for a new home. The new parcel would be added to a group of five small residential parcels on the west side of Craigs Store Road, all belonging to members of the same family. Those five parcels contain all the acreage of the single parcel that was distributed to family members. If this special use permit is approved, a more detailed subdivision plat meeting the County's subdivision requirements would be required before the lot could be created.
- Staff has identified the following factors favorable to this application:

1. The proposal can be accommodated without significant health or safety impacts on the area.
- Staff has identified the following factors unfavorable to this application:
 1. Additional development rights are not normally in accord with the purposes of the Rural Areas zoning district. Staff proposes to address this concern with a condition of approval that would require the subdivision to be processed as a family subdivision, which would keep the land in the family for at least four years.
- Staff recommends approval of Special Use Permit SP-2008-028 with the one condition listed in the staff report.
 1. The proposed subdivision of Tax Map 84 Parcel 14E shall only be permitted as a “family subdivision” as provided by Chapter 14 of the Albemarle County Code.

Mr. Strucko invited questions for staff from the Commission.

Mr. Edgerton asked how many of the previous parcels given away to family members have been built on and Mr. Clark replied all of them.

Mr. Edgerton said that the owner has used up all the development rights they have and there are no development rights left. He questioned if they would be asked to give two more development rights. He was struggling with why they would want to give additional development rights and thought it was a terrible idea. He asked if a family division needs development rights

Mr. Cilimberg pointed out that for the parcel requesting this additional right there is not enough land to do more than one more additional division because that particular property only has 4.9 acres. So as a family division for that particular property there is only one more possible division.

Mr. Edgerton noted that Parcel 64-14E, which was one of the parcels cut off from the original parcel, used up a development right.

Mr. Cilimberg said without the special use permit they can't do anything. If the Board ultimately grants a special use permit the applicant could only do one more division with the allowance through special use permit of an additional development right.

Mr. Edgerton said that he did not have anything against trying to help family members out, but at the same time they have some larger parcels in the back and they may be asked later, too. This is totally contrary to everything in the Comp Plan. He did not have anything against the concept, but he did have a hard time in the rural area adding development rights to existing parcels that have already used up their development rights.

Mr. Cilimberg noted that the Commission and Board have been very strict about that. He believed if they go back in history about the only times in the recent years that has been an added development right has been for a family member. There were other requests which were not granted.

Ms. Joseph pointed out that a development right was given to a family, but there was also land that was given to the fire station.

Mr. Cilimberg noted that ended up being one additional development right and the land that was given to the fire station.

Mr. Strucko asked if in order to do a family subdivision there has to be an unused development right.

Ms. Joseph replied that was correct.

Mr. Cilimberg said that was the subject of the special use permit and the Board had to grant the additional development right before the applicant could even do it.

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

Ms. Janie Matheny, property owner, said that the request is for their 21 year old grandson that needs a place to live. They had this one place where there is enough land they could give to this one grandchild to build on. Rent and everything is so high now it is hard for a person to make it, especially if they are not married. They would also like to put it with his dad's name on it so that he could not sell it. The other lots they gave to their four sons. She built a house and lived on one of the lots, lot 4, because one of their sons preferred to live in Crimora. They would like to give their grandson part of the lot. They feel like that is the best thing they could do for their grandson so that he would have a place where he could go out on his own and be there with family. She asked the Commission to grant the special use permit.

Mr. Strucko invited questions for the applicant.

Mr. Loach asked if all of the other subdivisions that were divided are currently occupied by family members, and Ms. Matheny replied yes.

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

Ms. Joseph agreed with Mr. Edgerton. She found it very difficult to grant this because she did not see any compelling reason to grant this at this time.

Mr. Loach understood their objections, but also understands family and the fact that all of the other divisions are now occupied by family and given the fact that this is being retained in the family. There is a lot of credibility that this is being about keeping family together in hard times. He would be very honest that he understands where they are coming from, but this is one he could support.

Mr. Franco said that he had the same opinion as Mr. Loach. He struggled with this when he first read it because of the development of the rural area. He asked if there is a way that they could allow a second unit to be built on the parcel but not have a subdivision.

Mr. Clark said that they would still need a development right.

Mr. Franco said he was not sure if it accomplishes anything, but in his mind it keeps it from creating one more lot in the rural area. It probably would keep it so it would be more difficult to sell. What they are trying to do is house a family member so selling the property is not as much of an issue. He felt that would be a better safeguard if that was possible.

Mr. Kamptner said that the development right is needed to add the second dwelling. The way that zoning looks at it is that they when they analyze the second dwelling they want the dwellings situated so it complies with all the zoning regulations in the event that there was a division. So a development right is needed.

Mr. Cilimberg said the question was whether they could issue a special use permit granting the development right with a condition that it not be divided.

Mr. Franco replied that is the questions, but he was not sure if that does anything for us.

Mr. Kamptner replied that legally they could impose that condition. But whether or not that works for zoning in their analysis he was not sure. The other problem that they often hear is that it is going to be very difficult for the owners to get financing.

Mr. Franco said that he was not sure if the owners agree with that or if it even made sense. He knows that it will be hard to get financing to build it and it creates a lot of other issues. But it does not create another lot.

Ms. Joseph said that it is not just the lot. The fact is that there would be another dwelling on there. There would be more wheels on the roads. There will be more children in the schools, etc. There will be another well and septic. She felt that would not make any difference.

Mr. Franco agreed with Mr. Loach. He struggled given the fact that there are 5 lots and they are all still occupied by family members is very compelling.

Mr. Strucko said that this one is tough for him as well. First he is a strong component of the principle that they don't want to encourage or expand development in the rural areas. However, they have always been respectful of family subdivisions. However, this particular situation the existing development rights were all utilized. That is what he sees as the legal capacity of the existing parcel. So this grants something new. He was thinking of the longer term impacts as well. So as difficult that this would be he could not support this proposal.

Ms. Porterfield said she could not support this proposal for basically the same reasons as Mr. Strucko and only supported the use of the allowed number of development rights. She did not want to set a precedent in voting for it.

Motion: Ms. Joseph moved and Mr. Edgerton seconded to deny SP-2008-00048, Mathney Development Rights.

The motion passed by a vote of 4:2. (Loach and Franco voted nay.)

Mr. Strucko said that SP-2008-00048, Mathney Development Rights would go to the Board of Supervisors on June 10, 2009 with a recommendation for denial.

The Planning Commission took a ten minute break at 7:10 p.m.

The meeting reconvened at 7:22 p.m.

Work Session:

ZTA-2009-00001 Wind Turbines

Consider possible Zoning Ordinance Amendment to allow wind turbines. (Mark Graham)

Mr. Strucko noted that prior to receiving the staff report that Jeremy Hayes, of Skyline Turbine, would provide some background information. He invited Mr. Hayes to come forward and address the Commission.

Jeremy Hayes, President of Skyline Turbine, presented a PowerPoint presentation entitled "The Future Is Wind Power". (Attachment: PowerPoint Presentation and Related Information) The presentation outline included their mission statement and the motivation for small wind power in Albemarle County specifically. He worked the outline towards what he heard in previous work sessions about the three tiered system that the Commission has been working towards. The photos, in his opinion, show how turbines or more appropriately the installations themselves fit inside those tiers as he understands them. At the end of the presentation he would open the floor for questions from the Commissioners.

Mission Statement: Skyline Turbine is a renewable energy supplier for residential and small business customers. Skyline Turbine's mission is to research, implement, and install wind power appliances to meet the specific requirements of each customer. We envision a day when all aspects of wind, solar, and energy efficiencies will be brought together to make our structures self-supporting and contributing to the community. Skyline Turbine is committed to supporting local governments and its citizens by fostering open communication and utilizing all available means to successfully accomplish each installation.

Motivation: Dispelling the Image of Wind Power

•Large wind farms define the common thought of wind power

- Most people envision:
- Large loud objects
- Threat to wildlife
- Detachment from the natural environment and daily life
- Obstruction of view

Motivation: Small Wind Power

•Schmidte Installation

•Several of advantages include:

- Generation of power at the homestead
- Revenue incentives to sell back to the grid
- Affordability
- Energy cost reduction

•Blends into environment:

- Blades closer together
- Can be seen by wildlife and acts as deterrent
- Reduced decibel levels

Most commonly what people are familiar with when thinking of wind power is large looming objects 300' in height that are commonly a threat to wildlife with migratory birds primarily. A large portion of things that may be against wind turbines in this area would be something to do with view sheds. The reason to use small wind power is that they are much smaller apparatuses. The diameter of the spinning blades themselves is a very small blade disc about 12' in diameter. In the Skystream 3.7 model the 12' blade diameter is very easy for wildlife and birds to see. Typically a large portion of bird death problems happen when migratory birds fly between two of the very large blades that have a long distance apart and are not privy to the blades even coming their way.

There are many reasons to look at small wind power for residences and small businesses. One reason would be to have each individual have the opportunity to generate some portion or even all of their own power by using a wind power device and/or coupling it with a solar device to reduce or entirely eliminate energy consumption by an individual. Typically these can be done through installing a very small appliance. In the photograph the turbine shown in front of the White House is one of the largest that is used for residences. Those turbines are put in place in front of people's homes to reduce the overall cost and in some cases contribute their power back to the grid for people in their community.

Ms. Joseph asked if the turbine was actually installed in front of the White House.

Mr. Hayes replied that the turbine was installed only for a short time for demonstration purposes. Other motivations to use wind power include:

Motivation: Tax Incentives and Energy Independence

- 30 % Federal Tax Rebate.
- Grid Inter-Connection Possible In Virginia.
- Visualize Free Electricity.

Ms. Joseph asked if the 30 percent federal tax rebate was for the total cost.

Mr. Hayes replied that for the equipment and installation currently the federal government will rebate on your taxes 30 percent of that installation at the end of the year.

Ms. Joseph asked if there was any state tax rebate.

Mr. Hayes replied that currently in the state of Virginia there is none. There are incentives in a tax rebate fashion very much like the federal government in both Maryland and North Carolina. In Virginia they have the federal rebate to count on and the interconnection agreement. The interconnection agreement is a big portion of it because it does allow people to get credit back for power that they put on the grid. That is a very efficient way to afford one of these appliances.

Tier I: Turbines by Right

In side of what the Commissioners have spoken previously in the tiered system for an ordinance for Albemarle County it is his understanding that Tier 1 Turbines would be by right, which would mean that someone would apply for a building permit prior to installation. These turbines would in most cases solve all of the common issues that pop up around turbines. Fall zones for the actual towers for turbines are commonly an issue.

For some of the newer types of turbines, such as the Helix which is a vertical access turbine, they have very short towers and the fall distances are negligible and in some cases not worth mentioning. The Helix turbine operation is very quiet in the 5db decibel range. They generally don't require much of a footprint to install at all. Generally it takes about a 10' diameter circle. They can provide power for a home in the nature of 2.5kw to 5kw of power given that they have the wind resource. In Albemarle County he would estimate that 60 percent of the people have some resource or some percentage of their power they could provide with wind power. Another product that is a very small turbine, an Air Breeze, has a 2' blade diameter and creates very much a smaller amount of power. There is a similar type of turbine on Rio Road currently. These are two turbines that could be examples of a Tier 1 installation

Tier II: Dinardo Installation

In a Tier II installation would be turbines that have some sort of a tower and need to be looked at overall for view shed or other concerns. The primary concerns would be noise and view shed concerns. The footer and foundation for this particular piece of equipment is rather small. It is a 6' X 6' X 3' deep cube. The photos show the apparatus in the center, which is the bolt diagram for the tower itself, and the pole installation itself for scale. That installation was done about a month again in Rockbridge County. Most of the 60' monopole is above the trees. They had to get a special use permit in order to put the monopole in, which included review by the Planning Commission, Board of Supervisors and State Park Service. The State Park Service cleared this turbine for view shed reasons.

Tier III: Large Residential and Small Business

The Tier III would be anything that qualified for residential or small business use. But typically these are appliances that are quite a bit louder and generate quite a bit more electricity in the nature of 10kw. These particular turbines do have applications in Albemarle County and are generally looked at as large residential or small commercial business use. He would suggest that this type of application be looked at through a full special use permit application. As he previously said there could be applications where people have properties larger than 2 acres and are far enough from other homes and view sheds where they could be employed and really not be noticed by most people and be very effective for their owners. This could be an example of a Tier III. He offered to answer any questions.

Mr. Strucko invited questions from the Commissioners.

Ms. Joseph asked when he went before the Planning Commission and Board of Supervisors in Rockbridge was there public input and if so what kind of concerns were expressed by the Planning Commission, the Board and the public.

Mr. Hayes replied yes there was public comment. The comments were really exactly about the same concerns, which would have to do either with the safety measures of the fall zones of the tower, which is typically the height of the tower or a diameter or circle around it, and the noise levels of the particular equipment. The noise levels of everything that he had showed the Commission today had a maximum

level of 110 decibels judged at a distance of 500. That is for the noisiest of the equipment. Many of the other models, such as the Helix, are a 5 decibel rating and it really makes about as much noise as a laptop. The Skystream 3.7 has a 45 to 50 decibel level rating and from 150' away someone can have a conversation with somebody and overcome the noise of the turbine and a 12 mile an hour wind.

Ms. Joseph asked if the turbine that went up in Rockbridge had a 110 decibel level.

Mr. Hayes replied that the turbine in Rockbridge has a 45 decibel rating, which was the Skystream 3.7. It is mounted in the front parking lot. With a 12 to 15 mile wind inside the home one cannot hear it. The decibel level of 45 decibels is monitored at 150'.

Ms. Porterfield asked what would be the distance for the ice throws for the turbines he was showing that might fit in the Tier I.

Mr. Hayes replied that on that particular model there are no ice throws. Ice throws are typically ice that is gathered on blades and then thrown from it when they spin. There are things that are done to prevent that. For a vertical access turbine, as the one shown in the photo, they actually prevent ice from forming on them because the whole mechanism is spinning vertically. There are no ice throws on that model.

Ms. Porterfield asked if there is any amount of setback from other buildings or other things like that for this type.

Mr. Hayes replied that it was not brought up in any of the other conversations. He was not privy to information that could tell them that.

Ms. Porterfield noted that he did not know if it does need a setback or not.

Mr. Hayes replied that he did not know, but would be more than happy to find that out and provide that information.

Mr. Loach noted on the Helix power output it is 2.5kw or 5kw. He asked what that means for an average family use.

Mr. Hayes replied that an average family of 4 in the United States consumes 2,600 watts per month or 2.6 kilowatts. They will find a very wide range on both sides of what people actually use.

Mr. Loach asked if in using it are there peaks and valleys depending on the wind. He asked if there is any way to store the power.

Mr. Hayes replied that there is no way to store the power effectively beyond battery use. At this time, in his opinion, battery use can be hazardous for the average person to hold in their household. That is why he strongly advocates when power is generated in excess of the use by the residential owner that it flows freely back onto the grid to be used by others when it is connected with the grid. That person receives a monetary credit. He refers to that as a "monetary battery".

Mr. Loach asked on the accepted 60' tower besides the safety concerns and the noise was there much concern about the visual impact of the tower itself.

Mr. Hayes replied that the visual impact was studied by the State Park Service from a distance of a quarter mile away and they determined that at no point on the Skyline Drive could they see that appliance and have it affect them. They actually rented a lift, went out to the site and elevated it to a height of 60' and used a 4' X 4' target card painted bright pink for them to photograph.

Ms. Porterfield asked what kind of equipment is needed to send power back to the grid.

Mr. Hayes replied that at the meter a disconnection would be needed. It freely flows into a 20 amp breaker in the panel box. There is a physical disconnect at the meter that is required for UL listings

nationwide because they are capable of producing enough power to hurt a lineman. That is there so that the power companies themselves can come shut that appliance off themselves even though there is a double redundant electronic relay on the inside of each one of these units to stop that power from going back onto the grid during times when it is down.

Ms. Porterfield asked if it is traveling through conduit of some type to that box.

Mr. Hayes replied yes.

Ms. Porterfield asked if they don't have any other structures or anything like that if it is just literally going to the breaker box.

Mr. Hayes replied that is correct.

Mr. Strucko asked in the case of a general power outage during a storm if his turbine is humming away does he have power.

Mr. Hayes replied no that he would not. The UL listing in the United States requires that there are redundant safety switches on inside of these turbines so that if the power grid goes down they also turn themselves off for protection of the linemen themselves for every interconnected turbine. It is not the case with non-grid connected turbines.

Mr. Loach asked what the cost range is.

Mr. Hayes replied that the cost range currently is between \$12,000 and \$25,000 in typical installations, which can be reduced by the 30 percent federal rebate.

Ms. Porterfield asked if it is not connected to the grid and Mr. Strucko's power goes out does he still have power.

Mr. Hayes replied yes because he is entirely independent.

Ms. Porterfield asked if there is much upkeep.

Mr. Hayes replied that there is very little upkeep except for the waxing of the blades in the first five years. They have not had anyone take that one on yet.

Mr. Strucko thanked Mr. Hayes for taking the time to come and give the presentation.

Mr. Loach asked if in any other areas they have co-located cell towers of any other type.

Mr. Hayes replied that there was not anything that he is aware of in the state of Virginia. But there is precedence for that in many other states.

Mr. Strucko noted that he assumed that flush-mounted antenna would have to be used.

Mr. Hayes replied that he was not familiar with that whole conversation yet. He was interested himself in what the vibrations of the turbines will actually do to those antennas. He wondered if it was even possible to co-locate them.

Mr. Graham noted that staff has been working with two Commissioners and would like to extend thanks to Ms. Joseph and Mr. Edgerton for providing the guidance that they need to get something going here. It is a three-tiered approach as referred to by Mr. Hayes. He walked through the three tiers in a PowerPoint Presentation. (Attachment – PowerPoint Presentation)

Tier I Wind Turbines –

- Only in Rural Areas zoning district

- Meets building height requirements (35' Maximum, measured to highest point)
- Supplementary Regulations:
 - Not allowed in either Entrance Corridors or within Mountain Contour List (MOD)
 - Setback from property lines = height of structure plus 20' (That is the fall zone staff is looking for to make sure the structure does not go onto an adjacent property.)
 - No lighting on structure
 - No collocation of personal wireless antenna

Tier II Wind Turbines

- Possible waivers or modifications of Supplementary Regulations:
 - Locating within Entrance Corridors or within Mountain Contour List (MOD)
 - Locating within other zoning districts, with height not to exceed allowed building height
 - Reduced setback from property lines
 - Lighting on structure
 - Collocation of personal wireless antenna

Tier III Wind Turbines

- Special Use Permit
 - Allow height to exceed maximum building height in zoning district
- Consider Tier II waivers or modifications simultaneously with Special Use Permit.

Remaining Issues

- Establish considerations for approving a Tier II or Tier III (e.g. visual impact from entrance corridor)
- Establish application requirements for Tier II and Tier III
- Establish administrative process for processing of applications (e.g. building permits, fees)

Mr. Graham pointed out that the Tier II proposal noted by Mr. Hayes in Rockingham County would actually be a Tier III proposal under this proposal.

Mr. Strucko invited public comment.

Morgan Butler, speaking on behalf of the Southern Environmental Law Center, asked to make one general point, add one suggestion and then just ask a couple of clarifying questions of staff.

- The general point is that they think that the tiered approach is a good idea and commend both staff as well as Ms. Joseph and Mr. Edgerton for their work in coming up with this. They realize that this is just a basic framework with some specifics yet to be filled in, but support the overall strategy of trying to rank proposals by the potential impacts and then adjusting the level of review accordingly. They think that the main point here is it needs to make sure that they are not stifling residents from putting a reasonably sized wind turbine on their property, but to also have a system in place to provide some case specific analysis when the potential impacts of a proposed turbine passes a certain threshold. The general framework set forth in the executive summary seems to do just that.
- As a suggestion under the administrative section of the staff report where it talks about Tier II turbines the staff report says, "As part of approving a waiver or modification for a particular turbine application the Planning Commission may establish reasonable conditions to assure the ordinance intent is maintained. He emphasized "ordinance intent". Similarly the Board of Supervisors might establish conditions for a turbine that requires a special use permit and those conditions would also need to have some relation to the intent of the ordinance. Because conditions need to have some type of nexus to the intent of the ordinance they would urge the Commission to set forth a wide range of intent in the preamble to the section of the supplemental regulations that will address wind turbines. The intent should probably note that the purpose of the ordinance is to find the right balance between allowing and encouraging renewable energy sources and protecting against the potential visual, noise, environmental, safety and property noise concerns. By specifically referencing those visual, environmental, safety and property noise concerns it helps them ensure that future site specific conditions that are crafted to protect

those concerns are deemed within the authority of the Planning Commission and the Board of Supervisors.

- He noted several questions that he would like addressed:
 - He questioned why the by-right aspect of this is focusing just within the rural areas. It seems that a lot of the impacts they are trying to protect against are now as applicable in the developable areas.
 - With respect to the Comprehensive Plan's Mountain Contour list, he noticed those were categorized by different contours. There is a 700', 800' up to 1,200' contour. He was curious if the restriction would only apply to the portions of those named mountains that are above that contour line. It also mentions unnamed mountains and references a concept map to find them. He questioned how the unnamed mountains would be dealt with.
 - He questioned how the underlying noise restrictions within each zoning category would be dealt with. He asked if those would also be a by-right consideration.

Jeff Werner, representative for Piedmont Environmental Council, noted that they have been working on this for over two years. He talked with Ms. Joseph sometime last fall and bounced some ideas off of some folks within PEC. There are a lot of people in the county struggling with wind turbine issues in order to make it happen, which includes the following.

- There are some aesthetic issues that will create some problems. There was overall consensus among the folks he talked to that this tier approach is the way to do it. He had some discussions on how it is different from the cell tower industry versus this private homeowner use, which don't get into problems with discrepancies with cell towers.
- He thought that Mr. Butler hit on the good questions that the Planning Commission should bring up in their discussions. He was surprised with the noise issue that the gentleman brought up from Skyline. He did not know that turbines got that big and became that loud. He remembered when the Commission talked about the grinders and the noise issues were a big deal. He questioned if they need to address that in this regulation. It would be nice if someone in the growth area could come in with some way to be able to do this. He asked if there are models out there that might encourage it.
- The last part that they might have to contemplate on is in regards to the accessory structure issue. There are a lot of people who have conservation easements in the rural areas who have restrictions on these sorts of structures. He did not know if there has to be some notice that it might be by-right in the zoning, but it may not be allowed by the provisions of a conservation easement. It is just something to contemplate on whether that is just in there as a note for staff to make sure they check this to make sure that a landowner does not end up in a dispute that they don't need to be in.
- This is a wonderful idea and he was glad staff was bringing it to the floor. He hoped that they have a positive discussion and they get this proposal approved.

There being no further public comment, Mr. Strucko closed the public comment to bring the matter back to the Commission for discussion.

Mr. Edgerton pointed out that there was one small point that jumped out on the top of page 2 under the definition for the small wind turbines. The definition was fine, but he did not understand why they had to include the last line, "provided the power sold is not in excess of that typically used for the primary use of the property." He knows currently that the net metering system in Virginia has a provision in there that protects the utilities from having to pay someone who is producing more energy than they are using. They very successfully lobbied this through the General Assembly as the way for the net metering system. But he did not know why they needed to get involved in that. If somebody is producing more electricity than they are using they should not be punished for that. The General Assembly has already locked that up a little bit. He was hoping that some day soon they will have a true net metering system where anybody producing electricity through renewable energy will be treated the same way a power producer is in that capacity. He knew in Colorado that the utility company has to accept the power and credit people at the rates they charge. They have different rates for different times of day and night. That is a true net metering system. There are actually facilities in Colorado that have been there for quite some

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time been producing more solar energy than they are using at their facilities. The ultimate dream is that they can get to the point where they can be providing all of the energy they need with renewable energy. They are a ways away from that. But he would hate to have that in the ordinance unless there is some overriding legal reason that they have to include it in there.

Mr. Graham noted that he could speak to what the idea was in crafting that. It was that the wind turbines were an accessory use and not a primary use on the property. For example, if someone does not have one turbine on there that is supplying the power for their property but 30 wind turbines along the ridge line on their property for the purpose of selling it is not consistent in what they envision for these small wind turbines.

Ms. Joseph noted that when she and Mr. Edgerton worked on the ordinance language one of the things they looked at was the tier process. If someone was putting in more than one that is when they would go to special use permit. That is when it became apparent. What they are hearing from Mr. Hayes also is that these things the way they are designed are going to limit themselves anyways. Maybe that is something within the language that it could not be anything more than 2.5 kilowatts and if it produces anything more than that then that is when they start getting a little bit questionable. If that is all a family needs, then why would they need more than that? Or maybe the ordinance says if there is more than one of these on the property they get a special use permit so that there is a little more regulation. The way these things are defined and manufactured may actually limit the output of the, but she really did not know the specifics.

Mr. Graham said that the reality is that unless they are requiring the property owner to give us their electric bills they are not going to know how much electricity they are generating or how much they are using.

Ms. Joseph noted that she did not want to have to hire another person to have to look at somebody's electric bill.

Mr. Edgerton said that if they are worried about someone trying to do a commercial application he would love to figure out another way to restrict that.

Mr. Graham suggested limiting the number on the property or one per primary use for example.

Mr. Edgerton said that he thought that would be preferable. He was optimistic that with some increased acceptance of the use of renewable energy that in a very short order there will be a more standardized net metering system in this country. It will probably come down on the federal level. He would hate for our ordinance to be more restrictive than what should actually be happening. But it has not made it in Virginia yet.

Mr. Joseph asked to talk to something that Mr. Butler brought up. When they were talking about the Tier I, Tier II and Tier III it was contemplated in the rural areas because one anticipates the acreage to be greater per parcel and that it would have less of an impact than it might on adjacent neighbors then maybe the Tier II that would be allowed within the development area. It would be allowed in zoning other than RA so that the adjacent owners would be notified that this was happening and if they did not care then it could go ahead and be approved administratively. But it was because the lots are smaller. When talking to other localities somebody brought up the fact that it would be good to allow them in other zoning districts. Circumstances like a home owners association might have a larger piece of land and might want to put up something to run the pool house or pump. It was contemplated that in a Tier II or beyond it would be allowed in other zoning districts, but with a little more regulatory action on it. It would affect neighbors more. Now that they are hearing the noise aspects it would just make more sense.

Mr. Loach agreed that he would like to see the development areas included in this. He was just thinking back to his neighbor's first satellite dish, which was 15' to 20' across. The technology has gotten better. He assumed that this technology is going to continue that way, too. So he would like to at least have the development areas included in the discussion and get public feedback at a time later.

Mr. Edgerton noted that Mr. Graham, Ms. Joseph and he agree that there should be an opportunity for it to be in all zoning districts. One of the ideas they started with was just treating it as an accessory structure and then allowing the current height restrictions in the different districts to determine how high it could be in different districts. If they needed to go higher than that then it would have an impact. If he put up a shed in his back yard he could make it 35' high as an accessory structure. The argument was why this couldn't be treated like an accessory structure. One of the issues is the sound issue that they have to worry about. As Mr. Hayes was explaining there are sounds, but they do have a Noise Ordinance in the county.

Mr. Graham noted that the noise level is 60 decibels during the day and 55 decibels at night.

Mr. Edgerton pointed out that the noise is measured at the property line. Therefore, it depends on how far away you are. The ones that Mr. Hayes was suggesting as possible Tier I units were both less than that and he thought would not be a problem. As Ms. Joseph pointed out in the rural areas that hopefully the noise would not impact anybody if it was a by-right situation.

Mr. Strucko asked if they considered the impact on a conservation easement.

Ms. Joseph noted that there are a lot of things that are not allowed in some conservation easements. They are all different. Some owners have agreed to not have any kind of a commercial enterprise when receiving conservation easements. But they can have a winery. There are other things that are allowed within our ordinance that the covenants or the conservation easements speaks to specifically for that parcel. She thought what Mr. Werner was asking was as people come in just as general knowledge when staff is talking with them to just say that they better check their conservation easement to see whether they can do this or not. She questioned whether it was up to the county's responsibility to determine that.

Mr. Edgerton noted that different conservation easements have different standards right now.

Mr. Graham noted that when talking about conservation easements they are still talking about a building permit being required for these. Over the last few years they have taken the development tracking system in County View and modified it and listed all the properties that have conservation easements. When somebody applies for a building permit a flag pops up if that property happens to have a conservation easement on it. If it is one that PFRA takes care of they research the easement agreement. Otherwise, they notify the easement holder that this building permit has been applied for.

Mr. Kamptner noted that there are some existing conservation easements that have expressly authorized wireless facilities. If the county determines under its zoning regulation that the small wind turbines are accessory to a residential use very likely without amending their conservation easement they may fall within the scope of a permitted use on the property.

Ms. Porterfield felt that it was a good idea, but would like to see them go into the process in a gentler way. She was very concerned about making these by right to start out with since they should wait to should see what happens in terms of the number of applications received in the next two to four years Glenmore is in the development area but abuts a lot of rural area zoning. With the 35' height limitation adding 20' and being set back 55' off the lot lines she felt that many people would be affected in Glenmore in the development area. Even in the rural area mulching proposal there was a lot of concern about the noise. She asked that they not create problems visually. If they had that turbine sitting on top of a house at 55' it would be an eyesore for a lot of people who cherish what things look like around here. She noted that Mr. Loach's district also has a lot of land that abuts up against a lot of rural area. This particular ordinance also needs something in it about what happen when a structure becomes derelict so that if the county has to take it down they can send them a bill. Including the enforcement of some of these things would make it easier to administer.

Ms. Joseph suggested that some of the language can be replicated from the cell tower ordinance. She felt that it should be made easy for people to do since it is an accessory use. When people live next door to rural areas there are things that happen. She felt that it should be allowed in other zoning districts

since there are other mechanisms to be used.

Mr. Porterfield said that with larger parcels there needs to be some wording that the turbine has to be located X # of ft from lot lines. She felt that they need to know the concerns of that particular application.

Mr. Graham asked if she was saying there should be a special use permit required for all cases.

Ms. Porterfield replied yes at this time so they can try it to see and then revisit it in a few years after they have some history.

Mr. Loach wondered how onerous it would be someone to go through the special use permit process. He would love to hear feedback from the public on whether it will be visually obtrusive, which he felt was Ms. Porterfield's point.

Mr. Edgerton agreed that some of Ms. Porterfield's thoughts have merits in that this should be considered carefully. It is the reality of the expense in the cost of the special use permit that is scary. Just to get the application in would cost. The compromise suggested has been through lots and lots of suggestions and should be considered. The compromise is that by right would only allow the turbines to be treated as accessory and be limited in height. There is no 55' tower in a by right situation the way it was described. It would be limited to 35' to the top of the blade. If go higher they would have to go through the special use permit process. That is a way seeing the type of interest to get it achievable in the rural area if people want to do it.

Ms. Porterfield questioned that it would double the cost in the process to require a special use permit.

Mr. Graham noted that when staff went out to the community they were told that their cost of the special use permit was running \$25,000 to \$35,000 for cell towers, which includes engineering plans, attorney fees, balloon test, etc.

Ms. Porterfield suggested coming up with a very simple process, but that it be still be a public process with neighbor involvement. She was not saying to have everyone fly a balloon.

Mr. Graham emphasized wind energy and explained the cost benefit. But there is a potential that the applicant will want to go higher to get up above the trees. There will be lots of situations for measuring visual impact, which is what staff has seen in the process with cell towers. The higher the height proposed the more material needs to be submitted.

Mr. Loach agreed with Ms. Porterfield's approach to go slow until they get more comfortable. He did not know what they would do when the height starts to go up. They have had people complaining about the 7' to 10' above the trees for cell towers.

Mr. Edgerton supported the proposed compromise for the by right turbines at the 35' height limitation as suggested.

Mr. Cilimberg said that he heard that there might be interest by one commissioner that all of the tiers be special use permit. That is just one comment for tonight that could be taken forward to the Board of Supervisors. At this point it is just a work session for the Commission's input to take forward to the Board.

Ms. Joseph asked what the work session would be with the Board. She asked if staff planned on taking this and amending the documents with Planning Commission diverse comments. Mr. Graham replied frankly he did not have time for that now because the staff report for the Board was due today. All he would do is verbally communicate whatever comments the Commission wanted to pass along to the Board.

Ms. Joseph asked if they would have the ability to do those themselves. She suggested instead of trying to unravel or package this that they concentrate on whether there are any questions that could be cleared up before they go to the Board.

Mr. Strucko said that he hoped that the public comments that happened tonight and the rest of the comments since this is in the work session category of our agenda that if the timing is such that this is the report that gets submitted to the Board of Supervisors he would think that there would be a supplement that says here is the result of the work session by the Planning Commission on this evening. He felt that they would want to include some of the comments they heard from Morgan Butler and Jeff Werner as well as some of the Commission's discussion here. It sounds like Ms. Porterfield, perhaps with the support of Mr. Loach, that they are supportive of a more go slow approach where this is a new entity in our community and that perhaps every one of these tiers should be under a special use permit. He was hearing from Ms. Joseph and Mr. Edgerton, which he would add himself to that as well, did not think that there was a real issue with the Tier 1 small wind turbine going by right. Of course, they have not heard from Mr. Franco at all.

Mr. Franco made the following comments.

- Mr. Loach referred to the 35' height and the 4' to 7' height above the trees for the cell towers. This is 35' above the ground is his understanding and not above the tree line. So it is a completely different impact. He wanted to make sure that his understanding was correct.
- He liked the tier approach and the by-right component of a tiered approach. He felt that was important in order to move this technology forward.
- With respect to the noise component he questioned the following:
 - Is that up wind or down wind the 145' distance?
 - He asked how loud a 12 mile per hour wind is.

Jeremy Hayes replied that it was also important to note that was also along with the wind. If they hear a 45 decibel noise coming from a turbine with a 20 mile per hour wind that is traveling along with it the maximum velocity of the wind and decibel level of the machine. At that same time there is an incredible amount of other noises caused by the trees themselves, people's wind chimes, etc. He has a video of a 12 mile per hour wind and a conversation between two people about 5 feet apart is largely louder than the turbine at 75 feet away.

Mr. Franco felt that the concerns he was hearing from Mr. Loach and Ms. Porterfield would be answered as part of the process and he would hope that public input and concerns would come out during this process so that they could include the by-right components. He asked that they keep that in mind. The last comment is that on page 2 of the attachment under the definitions under tier 1 he was not sure if it was a definition or a commentary that is in italics where it says these facilities are anticipated to result in very little or not impact to the community. He might change to say "negative impact" because one of the reasons they are exploring this is because of the potential positive impacts that this brings. He felt that they need to stress that as part of the reason why they are pursuing this.

Ms. Joseph asked that Mr. Hayes be invited to the joint meeting.

Mr. Edgerton noted that he already has been invited.

Ms. Porterfield said that if they are not going to give them any information from this meeting she did not see that they have achieved a lot. She really thinks that they are going to have to pull together something that the Board of Supervisors gets based on the comments that were made here. She did not say that because she has a negative feeling about one of the items. She just thinks it makes sense.

Mr. Cilimberg agreed noting that at a minimum the Board will get the Commission's action memo which outlines the points that were made. If possible they will also have the draft minutes for the Board. But it is a short turn around. Therefore, he could not guarantee that. What he could guarantee is that they would get the action memo that the Commission reviews. That action memo would include all of the comments noted tonight.

Ms. Porterfield asked staff to tell the Commission the date and time of the meeting. She suggested that in the future that staff allow enough turn around time to get the materials to the Board.

Mr. Graham noted that the Board would hear it on May 6, but that the time has not been scheduled yet. Typically these types of work sessions are held in the late afternoon. But they have been scheduled in the morning. It depends on how the schedule is going. He noted that this is a little bit different for everybody. Typically if the Board says this is something that they want staff and the Planning Commission to work on they go work on it. In this case as part of the discussion on the department's work program they ask just to see what is going on or to check in. He was not sure what the Board is hoping to accomplish. He was assuming that what the idea is was to just look at the direction this seems to be going and see if they are comfortable with that direction before they go to the next step of actually drafting an ordinance.

Ms. Joseph pointed out that they need to remember that they are still at work session stage. It is okay because all of this is going to come out at the work session also. So they are not going to them with anything other than this document and some ideas at this point.

Mr. Graham noted that they don't even have a resolution of intent to amend an ordinance at this point.

Ms. Joseph said that at that a point she would expect that some parameters would be set. Then from that point on then they can start. She asked that this not be rescheduled from May 6 because she really wanted it to go forward.

Mr. Graham said that he was very interested to find out if this is what people are going to be comfortable moving forward with. In January he was saying that it looked like this was too complicated and was suggesting perhaps that they put it on the shelf. Ms. Joseph and Mr. Edgerton graciously volunteered to assist staff. He was at the point that he felt that they need to decide is this something that they can reach an agreement and move forward or not.

Ms. Porterfield pointed on based on what she had been saying with Mr. Loach's support she would like to see if he had a different way of going at Tier One. If it is not going to come in as a special use permit is there a different way of going at it. Does there have to be a minimum acreage before one can have this. Do these have to be kept X number of feet from any property line. There are some things if they want to go with the less for the applicant to do she felt that they need to solve a few of the problems going in, which are number one the visual part of it and the noise. They know from a past thing that noise is going to be an issue on this. If they come up with saying that Tier One is not going to be a special use permit then they are going to be allow it by-right, but by-right for which properties. Do they have to have a minimum of 5 or 10 acres? Do they have to keep the apparatus at least 1500' from any property line? There are some things that they could probably do to make sure that whatever comes in is going to work.

Ms. Joseph noted that would be ordinance language and Mr. Graham does not want to do that right now.

Mr. Graham noted that he wanted to do what the Planning Commission and Board want to do.

Ms. Porterfield pointed out the one thing that has come up in this discussion is how to handle Tier One. She asked if there are any other ideas that could be ready in two weeks if the Board wants to hear any other ideas that come from some of the things that they have talked about. She questioned whether staff could come back with something.

Mr. Edgerton asked Mr. Graham if he was going to the seminar on Friday at James Madison University on writing an ordinance.

Mr. Graham replied that he was going to try to attend the seminar.

Mr. Edgerton noted that he and Ms. Joseph were going to attend the seminar.

Ms. Joseph noted that she was not sure.

Mr. Edgerton pointed out that there is a seminar that is being put on by James Madison University by the Shenandoah Planning District Commission in Staunton on Friday. It is an all day event and the whole

experience is that they are going to hear how other counties have addressed this and what they have done. They will come back with a model ordinance which he intends to share with everybody. He got some literature on it today. There is an outline of a model ordinance which has a tier system in it that he thinks will give us the benefit of some of the experience that some of these counties have had. There has been a varying degree of responses from other counties. The ones that have been the most negative, as Mr. Hayes pointed out, were for these large turbines that have to be on mountain top ridges. He did not think that was something that any of us would advocate.

Ms. Joseph noted that they were not even considering that at this point. This ordinance does not even contemplate that. What they were thinking about was all about the personal turbine. It is not about producing all kinds of energy for New York City.

Ms. Porterfield asked to clear up one thing. What is the cost of a type of turbine that they are talking about? Is it \$12,000 to \$25,000? She needed to understand that because of what Mr. Edgerton said about the cost of making application to the county. She asked if they are talking about a minimum of \$12,000.

Mr. Hayes replied that the minimum level to buy one of these turbines with full installation is \$12,000 and reduced by the 30 percent tax credit.

Ms. Porterfield asked if it costs that much to apply to the county.

Mr. Strucko noted that the expense for going through the special use permit process they are looking at an expense of about \$12,000 for the applicant.

Mr. Edgerton said that he was worried that the cost would put it out of the market.

Mr. Loach understood what Ms. Porterfield was saying was that she wanted a process that was easy, but also accessible. She did not want to make it to be an onerous cost so the public can get in to make their opinion. The comparison of the turbine and balloon test comes with the upper tiers with the 30' above the tree line. At that tier it is distinct. He asked how do they say to a company that you spend X number of tens of thousands of dollars to go 3' to 7', but that an individual what do we hold them to go 30' above the tree line. That was his question.

Mr. Franco noted that does require per this going through that process.

Mr. Loach noted that was his point in what would be the criteria for that.

Mr. Strucko said that there are different gradations here. A Tier One is by right. A Tier Two requires a waiver. A Tier Three requires a special use permit. So could a Tier One require less of a waiver; a Tier Two a waiver and a Tier Three a special use permit? That is Ms. Porterfield's point. The less of a waiver might not be so cost onerous because one would not have to hire a \$12,000 attorney to take you through the special use permits process. But they could meet some more basic standards that are not as onerous or costly to get the Tier One instead of going directly by right. That is the sentiment. That is a legitimate point. It should be something that the Board of Supervisors should hear as part of the discussion there. But they have spent over an hour discussing this here. They had a presentation by Mr. Hayes. It is a little baffling why they would have to have this entire thing all over again in front of the Board of Supervisors. Perhaps a report could maybe inform that later discussion and may be cut right to some of these issues. He did not know. He felt that they need to communicate this to the Board that the Commission did wrestle with this particular issue and that there were merits on both sides. By right makes it very simple and it achieves some of the public good. That is that a lot of the environmental concerns and issues, but going through a public process does protect some of the neighbors from something that is quite new. They could debate that on both sides. Certainly the Supervisors should hear if they have not considered that already that these are issues that are worthy of debating or discussion.

Mr. Cilimberg asked that the Commissioners pay attention to the action memo in the appendix where it

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will note all of the comments they have heard so that they have all of that right. If that is all they are able to get to the Board at least that will be a very important piece.

Mr. Strucko said that the Commission would not decide anything here tonight. Staff just wanted to gauge their reactions and see what they are going to take to the Board. He felt that they got a pretty rich set of comments.

Mr. Edgerton suggested that an addendum could be added to the staff report to clarify what was being suggested for the by right in that it be limited to whatever the current zoning regulations is in height. This does not deal with the sound. But it should be limited in height to what accessory structures are limited to if he understood what they had been talking about. But that does not really jump out at you in the staff report. He felt that it was a very important consideration.

Ms. Joseph noted that there should be a reminder to everybody that they do have a noise ordinance. She suggested that staff remind the Board what the Noise Ordinance states and what the acceptable decibel levels are. There are a lot of things already on the books that can be used for this.

Mr. Strucko asked for the sake of time he would like to move along. He asked if all of the concerns been aired on this issue. He thanked Mr. Hayes for coming.

- The Planning Commission plans to participate with the Board of Supervisors in the wind turbine work session on May 6.

In summary, the Planning Commission held a work session on ZTA-2009-00001 Wind Turbines. Jeremy Hayes, President of Skyline Turbine, presented a brief PowerPoint presentation to help the Commission understand what sort of turbines might be available in Albemarle. Mark Graham presented a PowerPoint presentation and explained the proposed ordinance amendment and responded to the questions raised by the Commission. The Commission took public comment, asked questions and provided comments and suggestions. The Planning Commission asked staff to consider their suggestions and to pass their comments on to the Board of Supervisors before the joint May 6 work session, as follows:

- Mr. Franco said to answer the concerns he was hearing from Mr. Loach and Ms. Porterfield that this was part of a process and he would hope that public input and concerns would come out during this process so that they could include the by-right components. They should keep that in mind. On page 2 of the attachment under the definitions under Tier 1, he was not sure if it was a definition or a commentary that is in italics where it says these facilities are anticipated to result in very little or no impact to the community. He suggested changing that to say "negative impact" because one of the reasons they are exploring this is because of the potential positive impacts that this brings. They need to stress that as part of the reason why they are pursuing this.
- Mr. Hayes should be invited to the joint Board meeting.
- Ms. Porterfield and Mr. Loach supported pursuing a different way of going at Tier 1. If the wind turbine request is not going to come in as a special use permit then is there a different way of going at it. The following questions were raised: Does there have to be a minimum acreage before one can have this? Do these have to be kept X number of feet from any property line? If they want to go with less for the applicant to do they need to solve a few of the problems going in, which include the visual part of it and the noise. If they come up with saying that Tier 1 is not going to be a special use permit then they are going to allow it by-right, but by-right for which properties. Do they have to have a minimum of 5 or 10 acres? Do they have to keep the apparatus at least 1500' from any property line? There are some things that they could probably do to make sure that whatever comes in is going to work. The one thing that has come up in this discussion is how to handle Tier 1. Are there any other ideas that could be ready in two weeks if the Board wants to hear any other ideas that come from some of the things that they have talked about on how to handle Tier 1?
- Mr. Loach noted what Ms. Porterfield was saying was that she wanted a process that was easy, but also accessible and not at an onerous cost. The comparison of the turbine and balloon test comes with the upper tiers with the 30' above the tree line. At that tier it is distinct. What criteria could be used for an individual to go 30' above a tree line when come companies spend X number of tens of thousands of dollars to go 3' to 7' above the tree line. There are different gradations here. A Tier 1 is

by right. A Tier 2 requires a waiver. A Tier 3 requires a special use permit. So could a Tier 1 require less of a waiver; a Tier 2 a waiver and a Tier 3 a special use permit? The lesser waiver might not be so cost onerous because one would not have to hire a \$12,000 attorney to take them through the special use permit process. But they could meet some more basic standards that are not as onerous or costly to get the Tier 1 instead of going directly by right. It should be something that the Board of Supervisors should hear as part of the discussion there.

- The Commission wrestled with this particular issue. There are merits on both sides. By-right makes it very simple and it achieves some of the public good. That deals with a lot of the environmental concerns and issues. But, going through a public process does protect some of the neighbors from something that is quite new. They could debate that on both sides. Certainly the Supervisors should hear if they have not considered that already that these are issues that are worthy of debating or discussion.
- The Planning Commission plans to participate with the Board of Supervisors in the wind turbine work session on May 6. Several Commissioners asked for the following changes to the staff report:
 - An addendum could be added to the staff report to clarify what was being suggested for the by-right in that it be limited to whatever the current zoning regulations are in height. This does not deal with the sound. But it should be limited in height to what accessory structures are limited to. That does not really jump out in the staff report. That is a very important consideration.
 - There should be a reminder to everybody that they do have a noise ordinance. Staff should remind the Board what the Noise Ordinance states and what the acceptable decibel levels are. There are a lot of things already on the books that can be used for this.

ZTA-2009-00006 Accessory Structures in required yards – Resolution of Intent

The work session was for review of a resolution of intent for the zoning text amendment for the restoration of front setback for accessory structures and establishment of minimum separation between accessory and primary structures. (John Shepherd)

Mr. Shepherd presented a PowerPoint presentation and summarized the staff report. He introduced Steward Wright, Permits Planner, and noted that he had helped with the presentation and the work that went behind it. This proposed zoning text amendment is for restoration of a front setback for accessory structures and establishment of minimum separation between accessory and primary structures.

The background is that in 1983 the Zoning Ordinance was amended to increase accessory structure setbacks from 5' to 6' and to prohibit the location of accessory structures in front yards adjacent to streets and access easements in the rural areas and residential districts. That has been from 1983 up until 2002 the standard development pattern for accessory structures on lots.

In 2002 Section 4.11.2.1 was amended again to primarily add the provisions to allow accessory structures to be located 3' from alleys and provide the criteria for allowing that to happen. In the course of doing that amendment prohibit of the location of accessory structures adjacent to streets was in staff's opinion inadvertently dropped. This proposed amendment seeks to correct that by doing the following things:

1. It restored the prohibition of the location of accessory structures including detached garages in required front yards.
2. It addresses side and rear setbacks for accessory structures and setbacks for these structures adjacent to alleys.
3. It preserves and makes clearer a requirement that easement holders approve encroachments into their easements.
4. It includes certain things that could go into a required yard. Retaining walls would be added to that list.
5. It has been drafted to require accessory structures located closer than 1' to a primary structure to meet the primary setback.

Currently an attached structure can be located within 6' of a property line. But just a portion of a building that is attached to the primary structure must meet the primary setbacks. If someone is just adding a

garage to a house the setback would be 15' from the side. If it was detached it could be 6' from the side property line. A literal meaning of those words and the way staff has been interpreting that allows a ½" separation between two structures to qualify for that closer location to a property line. The proposal is to truly separate structures before they are eligible for this closer location. Staff's opinion is that a foot was a good compromise between clearly separating the buildings but also providing as much flexibility to a property owner as possible in locating a house and a storage building on a relatively small lot. That is not just rearranging or restoring old provisions. That is a new concept that staff is bringing forth.

Staff reviewed several questions for the Commission to address and the list of accessory structures permitted in required yards. This list included fences, freestanding mailboxes, newspaper boxes, signs, shelters for school children traveling to and from school and telephone booths that currently are allowed right up to the property line. Staff suggests adding to that list retaining walls, which is something staff has done by administrative practice for years. He agreed with the suggestion that ATM machines be added to this list since they are very similar to telephone booths. Staff agrees that signs be removed from this list or that they specifically reference Section .15 sign regulations, which allows signs to be located 5' from the right-of-way. There is no reason to talk about signs twice. Staff suggests that dumpsters not be added to this list because they are regulated in other ways. Dumpsters are not structure and are surrounded by fences, which are allowed to be close to the property line, but are controlled by Building Code regulations.

Mr. Strucko invited questions for staff.

Ms. Porterfield suggested that since a lot of ATM machines are drive ups that it should be handled from inside the property and not from outside the property if they are on the property line.

Mr. Shepherd noted that typically ATM machines are attached to a building or under a canopy.

Ms. Porterfield asked that if ATM machines are allowed that there should be a caveat that access to the ATM machine has to be from the property and not from outside the property. This would preclude the ATM machine being accessed from outside the property if the machine is put on the property line and there is a sidewalk or street on the other side.

Mr. Cilimberg noted that any comments would be helpful to staff during the development of the ordinance.

Mr. Edgerton applauded staff for picking up the loophole that allows something to be ½" away and be considered an accessory structure. He did not think that a foot is enough. He felt that they need at least 5'.

Ms. Joseph noted that she was thinking the size of a manhole or 3' or at least 5'.

Mr. Loach asked what the Fire Code is that would have to be adhered to.

Mr. Edgerton said that he thought it was 5' plus 5' or 10'.

Ms. Porterfield asked if it was 3' to make the building fire resistant.

Mr. Shepherd pointed out that the Fire Code says that there is no required separation between a dwelling and an accessory structure provided they are both on the same parcel. There is a fire separation.

Mr. Edgerton asked in any zoning district on two separate lots how close can two buildings be located.

Mr. Franco replied that there are planned developments with 3' side setbacks. There are zero lots lines too, but they would take that out of the play.

Mr. Cilimberg noted that 6' was actually what they ended up with when they did the zero lot line. Mr. Edgerton asked if all Commissioners were happy with 6'.

Ms. Joseph agreed with 5' or 6'.

Mr. Loach noted that they needed enough space with their air pack to be able to put the fire out since it was so close.

Mr. Wright pointed out that staff came up with the 1' because they had to look at the person that has the smallest lot in the county so they would be able to fit something as simple as a 100 square foot shed that they purchase from Lowe's on their property. The people with the smallest lot would be those with mobile home lots, which is why staff came up with 1'. It still could be sticky for them to meet that requirement.

Ms. Porterfield asked if garages are considered accessory structures, and Mr. Wright replied yes.

Ms. Porterfield asked if there is a way to split this so they could give someone the shed but not a garage.

Mr. Shepherd replied no because that would be very difficult to administer. They should have one standard for accessory buildings. He was hearing a consensus from the Commission for more than 1' but no more than 6', but somewhere in a range.

Mr. Strucko agreed with 6'.

Mr. Franco said that 3' was probably the minimum that he would use so it could be maintained. It would be tight but one could get in there.

Mr. Wright asked that they think about a mobile home lot where the side setback is already 6'. So to add a 3' separation they are asking an applicant to build a 3' deep shed.

Mr. Franco asked if steps or landings into the mobile homes considered accessory or part of the structure.

Mr. Kamptner replied that they are exempt from the yard requirements.

Ms. Joseph suggested that the Commission pass the resolution of intent.

Mr. Edgerton pointed out that there were a couple of questions not in the staff report that were raised by staff.

Ms. Joseph noted that she had called staff and asked those questions.

The Commission reviewed and responded to the following questions, as follows.

- Is the 1' separation appropriate?

It was the consensus of the Planning Commission that the appropriate separation is more than 1' but no more than 6'. Mr. Franco preferred a minimum of 3' so that the structure could be maintained.

- Should signs be eliminated from proposed 4.11.2 (c)?

It was the consensus of the Planning Commission that the signs should be eliminated from proposed 4.11.2(c).

- Should ATMs be added to proposed 4.11.2 (c)?

It was the consensus of the Planning Commission that the ATMs should be added to the list. If located on the property line, the Commission agreed with Ms. Porterfield's recommendation that the ATM be accessed from within the property.

- Should dumpsters be added to proposed 4.11.2 (c)?

It was the consensus of the Planning Commission that the dumpsters should not be added to the list.

Motion: Mr. Edgerton moved and Mr. Franco seconded for approval of the attached resolution of intent for ZTA-2009-00006 Accessory Structures in required yards.

RESOLUTION OF INTENT

WHEREAS, setback and yard regulations in the Zoning Ordinance establish the minimum distances from lot lines and street lines to structures; and

WHEREAS, it is desired to amend the setback and yard regulations pertaining to accessory structures in Zoning Ordinance §§ 4.11.2, 4.11.2.1, 4.11.2.2 and 4.11.2.3 and to add regulations pertaining to the location of structures within easements.

NOW, THEREFORE, BE IT RESOLVED THAT for purposes of public necessity, convenience, general welfare and good zoning practices, the Albemarle County Planning Commission hereby adopts a resolution of intent to amend Zoning Ordinance §§ 4.11.2, 4.11.2.1, 4.11.2.2, and 4.11.2.3 and any other regulations of the Zoning Ordinance deemed appropriate to achieve the purposes described herein, and to add regulations as described above; 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.

* * * * *

The motion was approved by a vote of 6:0.

Mr. Strucko noted that the resolution of intent passes.

ZTA-2009-00007 Temporary Construction Headquarters, Yards (Section 5.1.18) – Resolution of Intent

The work session was for review of a resolution of intent for a zoning text amendment for deletion of the 18-month time limit for construction headquarters and provisions for consistent administrative regulation of both temporary construction headquarters and temporary construction yards (John Shepherd)

John Shepherd and Sherry Proctor were present to present the ZTA.

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

- This amendment seeks to delete the 18-month time limit and provisions for consistent administrative regulations of temporary construction headquarters and construction yards. Section 5.1.18 allows construction headquarters to be located on a site until 30 days after completion of a project. Section 4.1.18.2 restricts temporary construction yards to a period not to exceed 18 months. There is a conflict between the two. Both of these uses are currently designated as mobile office trailers and are permitted with a building permit.
- The two uses are similar and should be administered consistently. The proposal also shifts the review from a building permit to a zoning clearance process. For a larger construction project the 18-month time frame really is not adequate. For a large project like Martha Jefferson Hospital they would be coming back asking for a modification of the regulations from the Planning Commission, which is the basis of Mike Mathew's support of the ZTA that was forwarded by email.
- Provisions being proposed include:
 1. Delete the 18-month limit for temporary construction yards.

2. Limit the headquarters on the yards to a time period limited to 30 days prior to commencement of the project and a termination date 30 days after completion of the project or the end of active construction activity. The point is that there were different dates across the board for these different uses. Staff is suggesting making it consistent.
 3. The review should be done by a zoning clearance process and not a building permit. There would still need to be building permits for the location of a mobile office trailer, installation of power and sewer, etc.
 4. The term "within the recorded subdivision" should be replaced with the word "site". There is also some reorganization and clarification of the regulation to make it easier to follow.
- There also was a question from Ms. Joseph to add definitions to the regulations as well. Typically with uses they define them with the definition section and then add supplemental regulations to further regulate uses. In this case these uses are actually defined both in terms of the duration and their location in their being called temporary in the supplemental regulations now. There is a concern that if they try to define them they might just set off unintended consequences that make staff reluctant to do that. Staff thinks that the definition for storage yards does clearly state that storage yards are off site and these are clearly defined as being on site.

Staff requests that the Planning Commission approve the resolution of intent and seeks any advice that they might have.

Mr. Strucko asked what if there is a hotel project where suddenly the partnership falls apart and financing fails and the construction site is affected.

Mr. Kamptner pointed out that staff still needs to come up with a definition for active construction because that is when the headquarters and the yard need to be removed. Over the years staff may have come up with a working definition that they use when active construction is deemed to stop, but they will need to come up with something to insert so that in that situation the construction yard and the mobile home have to go away.

Ms. Porterfield suggested instead of granting an approval forever that they stick with the 18-month expiration with the ability for staff to extend the time so that it does not have to come back to the Planning Commission. Staff would have the right to extend it. That way staff would know what is going on at the site and could give an extension that is appropriate for the construction project that is happening at the time.

Ms. Joseph suggested that Mr. Franco could address this better. She noted that during construction sometimes things happen that are hidden on the site which takes a lot more time. She felt that the way it is written is fine.

Ms. Porterfield noted that obviously they are setting this up for Martha Jefferson Hospital to a certain extent. She asked how many things are like that which staff could administratively go ahead and extend the permit without having to come to the Commission. She asked if that was possible.

Ms. Joseph said she did not want to hire more staff to do one more thing that they could just change the ordinance language as Mr. Kamptner was saying to define active construction.

Ms. Porterfield pointed out that somebody is going to have to go out and make sure that project stays active.

Ms. Joseph said that staff will know if they stop working on the project.

Mr. Franco said that if it was site construction there is going to be an E & S Officer out there at least once a month. If it was building construction he would imagine they would be getting permits and inspections for that as well. Therefore, there is going to be someone out there on a routine basis. He did not think they would have an issue about staff not knowing what is going on out there.

Mr. Shepherd noted that zoning inspectors are also on the sites. With the zoning clearance they have the opportunity to add conditions if there was a particular aspect of a project that warranted it.

Mr. Kamptner pointed out that there is a different zoning text amendment that the Commission has already seen regarding the Enforcement/Administration which clarifies what a zoning clearance is and what the zoning administrator can do. So in any given circumstance the zoning administrator can impose conditions to deal with any particular circumstances.

Ms. Porterfield noted that she would go along with Mr. Franco's suggestions.

Motion: Mr. Edgerton moved and Mr. Franco seconded for approval of the attached resolution of intent for ZTA-2009-00007 Temporary Construction Headquarters, Yards – Section 5.1.18.

The motion was approved by a vote of 6:0.

Mr. Strucko noted that the resolution of intent for ZTA-2009-0007 was approved.

RESOLUTION OF INTENT

WHEREAS, Sections 5.18, Temporary Construction Headquarters, Yards, 5.18.1, Temporary Construction Headquarters, and 5.18.2, Temporary Construction Yards, of the Zoning Ordinance establish regulations pertaining to temporary construction headquarters and yards serving a project while construction is ongoing; and

WHEREAS, it is desired to amend Sections 5.1.18, 5.1.18.1 and 5.1.18.2 to revise the duration during which temporary construction headquarters and yards may remain on a site, to revise terminology, and to reorganize those sections.

NOW, THEREFORE, BE IT RESOLVED THAT for purposes of public necessity, convenience, general welfare and good zoning practices, the Albemarle County Planning Commission hereby adopts a resolution of intent to amend Zoning Ordinance §§ 5.1.18, 5.1.18.1 and 5.1.18.2 and any other 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.

* * * * *

Mr. Shepherd said that a public hearing will be scheduled on both ZTA-2009-0007 and ZTA-2008-0006.

Old Business:

Mr. Strucko asked if there was any old business.

- In response to a prior Commission request, when a staff report is completed early staff will email the staff report to the Commissioners ahead of the paper copies to give the PC more time to review and get back to staff with any questions.
- In response to a prior Commission request, staff plans to email the Commissioners the link in the County system to the comment letters that are done in the review process for special use permits and rezonings.
- In response to a prior Commission request, staff is still working with Current Development on what early information can be provided for site plans and subdivisions.

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

New Business:

Mr. Strucko asked if there was any new business.

- There will be no meeting on April 28, 2009. The next meeting will be May 5, 2009.
- Staff will notify the Commission via email the time of the May 6 work session with the Board on wind turbines.

Adjournment:

With no further items, the meeting adjourned at 9:16 p.m. to the Tuesday, May 5, 2009 meeting at 6:00 p.m. at the County Office Building, Second Floor, Auditorium, 401 McIntire Road, Charlottesville, Virginia.

V. Wayne Cilimberg, Secretary

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