

**Albemarle County Planning Commission
June 9, 2009**

The Albemarle County Planning Commission held a public hearing, meeting and work session on Tuesday, June 9, 2009, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Linda Porterfield Marcia Joseph, Calvin Morris, Bill Edgerton, Thomas Loach, Vice Chair and Eric Strucko, Chairman. Eric Strucko arrived at 6:05 p.m. Don Franco and Julia Monteith, AICP, non-voting representative for the University of Virginia were absent.

Other officials present were Summer Frederick, Senior Planner; Wayne Cilimberg, Director of Planning; Joan McDowell, Principal Planner; Ron Higgins, Chief of Zoning; Rob Heide, Zoning Enforcement Manager; Amelia McCulley, Director of Zoning/Zoning Administrator and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

Mr. Loach called the regular meeting to order at 6:02 p.m. and established a quorum.

Committee Reports:

Mr. Loach invited committee reports from the Commissioners.

- Mr. Morris reported that the Pantops Master Plan Steering Committee held an Open House a week and half ago. The committee is working on a report from the data received to report to the Commission and Board of Supervisors in September.
- Ms. Joseph reported that the MPO Tech Committee met. Most of the meeting was spent in discussion with the consultant hired to look at the transit system.

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

Other Matters Not Listed on the Agenda from the Public:

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

Review of Board of Supervisors Meeting – June 3, 2009

Mr. Cilimberg reviewed the actions taken by the Board of Supervisors on June 3, 2009.

Mr. Strucko arrived at 6:05 p.m. and took over the meeting as Chair.

Consent Agenda:

Approval of minutes: March 24, 2009

SUB-2009-00061 Foxcroft Multi-Use (Playfield)-Waiver

The request is for approval to construct a play area in common open space, in accordance with Sec. 4.7.2, and of waiver of Sec. 4.2 to allow disturbance of critical slopes. The property, described as Tax Map 76M1, Section 4, Parcel 0A0, contains approximately 4.42 acres and is zoned PUD- Planned Unit Development. The site is located within the Foxcroft Subdivision at the southern end of Rolling Valley Court. This parcel is located in the Scottsville Magisterial District and has a Neighborhood Density Comprehensive Plan designation within Urban Area 4. (Summer Frederick)

ZTA-2009-00011 Definitions including Home Occupation's – Resolution of Intent (Amelia McCulley)
(Note: **See Attachment 1** – Resolution of Intent)

Mr. Strucko read the items on the consent agenda so that members of the public present to discuss these matters would know. He asked if any Commissioner would like to pull an item from the consent agenda.

Ms. Joseph requested to ask Ms. Frederick a couple of questions about SUB-2009-00061 Foxcroft Multi-Use (Playfield) Wavier. She asked if the owner is now the Foxcroft Homeowner's Association who has taken over the majority of it and if Attachment D reflects what they want to do.

Ms. Frederick replied that was correct.

Motion: Mr. Morris moved and Ms. Joseph seconded for approval of the consent agenda.

The motion passed by a vote of 6:0.

Mr. Strucko noted that the consent agenda was approved.

Items Requesting Deferral:

SP-2008-00060 Albemarle Baptist Christian School (Signs # 2 & 22) PROPOSED: Private school with up to 40 students and up to 5 teaching staff on a 6.26 acre property in conjunction with the existing Albemarle Baptist Church. ZONING CATEGORY/GENERAL USAGE: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots); EC Entrance Corridor - Overlay to protect properties of historic, architectural or cultural significance from visual impacts of development along routes of tourist access. SECTION: 10.2.2.5 Private schools. 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: Yes. LOCATION: 1685 Roslyn Ridge Rd. at n/w corner of Hydraulic Rd. (Rt. 743) and Roslyn Ridge Rd. TAX MAP/PARCEL: 06100000001E0. MAGISTERIAL DISTRICT: Jack Jouett (Eryn Brennan)

DEFER TO JUNE 23, 2009, DUE TO A SIGN POSTING ERROR

Mr. Strucko noted that there has been a deferral request for SP-2008-00060 to June 23, 2009.

Mr. Cilimberg noted that the deferral was requested by staff due to a sign posting error in each case. Staff wants to make sure that they had the proper sign posting before the public hearing.

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

Motion: Ms. Porterfield moved and Mr. Morris seconded to approve staff's request for deferral of SP-2008-00060, Albemarle Baptist Christian School to June 23, 2009.

The motion passed by a vote of 6:0.

Mr. Strucko said that this item is being deferred to June 23, 2009. The Planning Commission would welcome public input at that time.

SP-2008-00066 20 South Office Amendment (Signs # 19 & 28) PROPOSED: Amend SP 200200022 (Home Occupation Class B) to allow three storage sheds for an existing catering business 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 (31) Home Occupation Class B. 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: 1156 Roundtop Farm; east side of Rt. 20 Scottsville Road, approx. 1400 feet north of Rt. 708 Red Hill Rd. TAX MAP/PARCEL: 10200000017E0. MAGISTERIAL DISTRICT: Scottsville (Eryn Brennan)

DEFER TO JUNE 23, 2009, DUE TO A SIGN POSTING ERROR

Mr. Strucko noted that staff has requested deferral due to a sign posting error. He asked if there was anyone present that came specifically to address this. He opened the public hearing and invited public comment. There being none, he closed the public hearing to bring the matter before the Commission.

Motion: Ms. Porterfield moved and Mr. Morris seconded to approve staff's request for deferral of SP-2008-00066, 20 South Office Amendment to June 23, 2009.

The motion passed by a vote of 6:0.

Mr. Strucko said that this item is being deferred to June 23, 2009.

Regular Items:

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

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

Mr. Strucko noted that SDP-2009-00021 Patricia Ann Byrom Forest Preserve Park Improvement was a deferred item back before the Commission.

Ms. Frederick said this request was deferred from the May 19 meeting and the staff report remains the same from that meeting. Staff emailed some additional information to the Commission last night. That included some other staff reports and a letter that was sent by a representative from Parks and Recreation to neighbors that attended a meeting on site and also a revised plan which was shown on the screen. The items revised in this project include:

The parking has been reduced from 60+ spaces to just over 29 spaces.

There has been an addition of a fence across the front of the property and along the boundary. The access will be gated and will be opened and closed by a person designated by Parks and Recreation. Representatives of Parks and Recreation are present to answer any questions.

Mr. Strucko invited questions from the Commission for staff.

Mr. Loach asked if the original parking was 57 spaces.

Ms. Frederick replied that it was 57 original parking spaces plus 8 horse trailer parking spaces. It has been reduced to 29 regular parking spaces and 4 horse trailer parking spaces.

Mr. Loach asked what the reduction from 57 to 29 parking spaces based on.

Ms. Frederick replied that the applicant cut the parking in half. There were concerns from the neighbors regarding traffic coming in and out of the park. They asked to start out with this number and then if the need arises for more parking they will add it at that point.

Mr. Loach asked if there was room for parking expansion on the plan.

Ms. Frederick replied yes because what calls for grading in the area designated for future parking will all be done at once. It just won't be constructed.

Mr. Loach noted that he had suggested that the gate opening be automated instead of hiring someone to open the gates in the morning and close them at night.

Ms. Frederick referred the question to the Parks and Recreation staff.

Bob Crickenberger, with Parks and Recreation, replied that in response to the question they feel and find that it would be best if they had an attendant to go to the park and hopefully hire someone local to do this. To have someone on site in the morning to open the park, check out the facility, report any damages or anything that needs intermediate attention as well as do the exact same thing in the evening is vital to this operation. There were a lot of questions and concerns from the neighbors in regards to the ongoing maintenance schedule. Parks and Recreation does this at all of their other facilities and it works very nicely.

Mr. Loach said that with regards to the neighbors he felt that with Park's proposal they would know who was in the park and at what time they left the park.

Mr. Crickenberger pointed out that they would be able to regulate the horse back riding from internal permitting. In terms of a gate opener this has worked in the past. They feel that to have someone physically check out the facility morning and noon work better than an actual gate keeper.

Mr. Strucko opened the public hearing and invited public comment.

Joe Ford, resident of 5758 Chap Place Lane, said that his family's property adjoins the proposed park. They did have a meeting with Ms. Frederick, the architect, Mr. Loach, Mr. Crickenberger and others. He agreed with Mr. Crickenberger to have someone open and close the park. They also feel it is vital to the operation of the park. Parks and Recreation does a good job at their other parks. They have a neighbor who lives in the community that works for Mr. Crickenberger. With meeting on the park topics, he as an adjoining land owner and representing others, they really are not in favor of the park. However, they feel that the park is coming and that Mr. Crickenberger and his staff have done a good job in addressing their concerns. They have a letter from Mr. Crickenberger in which they feel that they have addressed their major issues. They are for reducing the parking and hopefully reducing the traffic on a two-lane very crooked road. He was still not happy about the disturbance of critical slopes and how much the county frowns on that at least for individuals. They need to make sure that they use a fair trail when they smooth the mortar out to make sure that individuals get the same consideration that the county does. As far as the park, he felt that Mr. Crickenberger's staff is very professional. They addressed the issues with the commercial horseback riding, the hunting on the property, the hours of operation and the noise. Again, they still don't feel that this is a great place for a park. It is out in the middle of nowhere. The major issue that still needs to be addressed is how emergencies are going to be handled out there. Basically, that is the only question that remains or stone left to be unturned. He thanked everyone for meeting on the property. It meant a great deal showing them where the entrances as well as the land that will be disturbed. They also look forward to being on the board, which Mr. Crickenberger has proposed to have adjoining landowners on a board and be represented. Mr. Loach spoke that he would like to have someone from Crozet on that board. He was not for or opposed to that, but just thinks that the neighbors who live out in the middle of nowhere should know best about that. He would leave that up to them to decide.

Keith Ford noted that they would have permits before trailers come in with the horses. He suggested that they consider that other parks have a fee for that. That fee is used for the clean up. There can be an abundance of trash with a lot of horse people coming in. They have been picking up trash on 810 for 19 ½ years. Their sign will come down when the park goes up because they will not be able to keep up. The last time they got 39 bags of trash, which included old tires, commodes and ice boxes. They are going to have to abandon ship and won't be able to do it. He suggested that Mr. Loach talk to VDOT and see if they can get the mowing of the sides cut back more than one time a year. They are riding in a tunnel right now. The Planning Commission knows that 810 was made a scenic bicycle road. They have bicycles everywhere. Now they are going to triple the cars coming in and going to the park with big horse trailers. He owned a horse trailer and knew they don't move them too fast around 810. The Commission should take into consideration that there has never been but one alteration on 810 since 1956 that means widening the road or anything of that nature. One bridge in White Hall was widened due to the loss of three lives. He asked that they look into that. He asked with the current economic situation how they would afford this park. He asked if anyone had done a graph on how much it is going to cost the taxpayers. He was really shocked at the meeting to learn that they had paid \$150,000 of taxpayer's

money to enter this park. This park adjoins the Shenandoah National Park that runs for miles on end. He thought that they ought to go to the drawing board to see what the impact this will have on the poor people. If they get their tax increased more they will be doing the same thing to the middle class man that they did when the national park took over. He was not in favor of the park, but knew that it is coming. The adjoining property owners need to know what their buffer zones are. It does need to be in writing. They need to know if this is going to start off at a little scale and then explode like a lot other parks because the roads will not handle it out there. He asked that they get into those details. He felt those were some things that need to be addressed. He suggested that the first move to make is to go to VDOT about keeping the mowing down. If not there is going to be a tragedy with the roads like they are now.

Ms. Joseph asked staff to read the letter from Parks and Recreation so everyone knows what Parks Rec has offered to do.

Ms. Frederick read the letter from Bob Crickenberger to the neighbors regarding an agreement about the operation of the park. (**ATTACHMENT 2** – Memo dated JUNE 9, 2009 FROM BOB CRICKENBERGER OF PARKS AND RECREATION ADDRESSED TO Tim and Sarah Henley, Joe and Ginny Ford, Keith and Mary Ford, Hunter Lewis and Chris Ripper regarding Patricia Ann Byrom Forest Preserve Park)

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

Mr. Loach asked regarding fees if it is a probability to charge fees for the horse trailers to cover some of the clean up costs as Mr. Ford had suggested there will be with it.

Mr. Crickenberger replied that they have not gotten to that point at this level. They could certainly look at that and the feasibility. That would be one advantage that they will have by having Mr. Ford and other members of the community on that task force or committee to help Parks and Rec develop not only the internal but the overall governing policies of the park itself.

Mr. Loach assumed as far as the mowing that they will be mowing the areas inside and adjacent to the fence. He asked if Parks and Rec could do the roadway since they were already there as well or is that strictly VDOT.

Mr. Crickenberger replied that is generally VDOT.

Mr. Loach noted that the Commission approves critical slope waiver when they are appropriate for the project.

Mr. Strucko asked staff to describe the critical slopes disturbance proposed for this site.

Ms. Frederick noted that there are critical slopes for the access way, a small portion of the parking lot that is adjacent to the property line and some of the trails as well.

Mr. Loach agreed with the no hunting rule since families using the park would feel uncomfortable if hunting was allowed. Parks and Recreation did a good job in addressing all of the issues. He was glad to see that there would be room for expansion if needed. It felt that it is important to have Crozet represented on the park board because the park will serve the whole area.

Mr. Strucko noted that another concern expressed was about the emergency services. This is serviced by Western Albemarle Rescue Squad and Crozet Fire Department with Earlysville as the second responder.

Mr. Crickenberger noted that they were also going to be installing a call box for 911.

Mr. Strucko pointed out that the response time was going to be long.

Ms. Porterfield asked if the purchase of this land in the budget.

Mr. Crickenberger replied yes that it was 600 acres of dedicated land. The additional property that was purchased for access was in the county budget and the development of the park was in the current CIP.

Mr. Morris thanked Mr. Ford and others who brought this to the Commission's attention. He felt that staff, Mr. Loach and Parks and Recreation responded very quickly along with the neighbors and residents out there and he was very impressed with the results.

Motion: Mr. Loach moved and Mr. Edgerton seconded to approve the critical slopes waiver for SP-2009-00021, Patricia Ann Byrom Forest Preserve Park Improvement – Preliminary with the proposed changes.

Ms. Porterfield asked if the approval includes all the things in the letter from Parks and Recreation.

Ms. Frederick said that the information in the letter is regarding the park's operation. That is an agreement that Parks and Recreation has agreed to do in regards to what happens at the park. That is not part of the critical slopes waiver.

Mr. Kamptner said that if it is going to be made a condition the conditions need to be connected to the critical slopes waiver itself.

Mr. Morris said that he did not see the need to tie it in. Parks and Recreation has always lived up to their agreements.

Mr. Loach noted that they were forming a board to discuss this further with the community. There will probably be some more issues that will be ironed out by then. He did not want to preclude the Commission from making conditions when there may be more later.

Ms. Porterfield asked that the minutes reflect this letter and the fact that the neighbors have become willing to go ahead and work with Parks and Rec because they are going to do this type of thing. (Attachment 2)

Mr. Strucko asked to personally thank Mr. Joe Ford. He also apologized because the last time he was here he exhibited a great deal of patience and persistence. That is quite admirable. He enabled the Commission to get better educated and fully understand this particular issue and how it impacts the neighbors. He thanked him since the neighbors really benefited from his persistence and patience with the Commission. He was glad that they were able to catch this prior to the end of their last meeting which enabled the meeting to be held between him, county staff and Mr. Loach. He felt that all and all it worked out well. It would not have happened without him being here. He apologized again for not making it clear what they were doing in their consent agenda at their last meeting. Changes in their approach to the consent agenda have been made due to his actions. As he noticed at the beginning of this meeting he read the consent agenda items to make sure that there was no further confusion.

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

Mr. Strucko said SP-2009-21, Patricia Ann Byrom Forest Preserve Park Improvement – Preliminary was approved. This request does not go to the Board of Supervisors.

Public Hearing Items:

SP-2008-00058 Harris Garage (sign # 23) PROPOSED: Amend SP 00-49 Thomas Harris Garage to expand the public garage on approximately a .60 acre portion of a 3.17 acre property. 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 (37) Public Garage. COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/ acre in development lots). ENTRANCE CORRIDOR: No. LOCATION: 6929 Markwood Road, approx. one-half mile north of Davis Shop Road. TAX MAP/PARCEL: 00800000035A0. MAGISTERIAL DISTRICT: White Hall (Joan McDowell)

Ms. McDowell noted that last month the Planning Commission held a public hearing for Harris Garage

and recommended approval for both the garage and the critical slopes waivers. Unfortunately, there was an error in our notifying the public in the sign that was supposed to be placed in front of the property was not done correctly. A citizen called it to staff's attention. The sign was placed correctly that same day. Staff decided that the public had an interest in having the full public hearing occur for the Planning Commission and the Board. The request could stay on the Board's schedule if the Commission held the public hearing tonight. Essentially this is a do over. She summarized and updated the staff report, as follows.

This an amendment to an existing staff report for SP-2001-49 to allow an expansion of the auto repair garage that was approved in 2002 for Harris Auto. It is an existing garage located in the rural areas. There is a lot of history which is included in the staff report. The approval of SP-2001-49 corrected some violations and brought Harris Auto into compliance with the Zoning Ordinance and Building Code. In 2004 zoning determined that a garage addition to enclose an outside lift and to provide some storage space would not constitute an expansion of the special use permits and that building was built. In December, 2008 new violations were recorded and the notice of violation was mailed to the applicant. Consequently SP-2008-58 was submitted as a request to amend the earlier special use permit in order to correct the violations and make the plan current.

To give an idea of the changes on the site staff presented side by side aerials of the site. The earlier aerial in 2002 provides an idea of the site differences between the application then and what has taken place now. She noted the changes to the garage in 2001 and how it looked now with the addition. The proposal is for two carports, the paint mixing building, additional parking for 15 spaces, paved parking and access (which has already been done), an outside car lift, relocated trash dumpster to area of critical slopes disturbance and to incorporate the building expansion into the special use permit. Additionally there is a storage unit and specifically to designate the garage area from the residential or the personal space. This has been a very big issue. It was discussed in the staff report to designate a specific area only for the garage. If the applicant decides to park in the garage area and use those spaces, then those spaces are used. This was determined to be the best solution by not only the applicant but staff in feeling like if they could separate these two uses it would better serve the applicant and the zoning enforcement.

Staff reviewed the concept plan noting that the driveway was relocated with the special use permit in 2002. She noted the expanded garage, the new storage garage, the existing dumpster, two carports (a 2-space and 3-space carport) existing and private parking behind the residence. She also noted the two areas of critical slopes.

Staff has identified the following factors favorable to this application:

1. The public garage is an existing operation that provides a service to the surrounding community.
2. The applicant has made improvements to the garage and the parking area.
3. The use is consistent with the Rural Area, if all impacts of this use are mitigated through the conditions.

Staff has identified the following factor unfavorable to this application:

1. The garage, if conditions are not implemented, compromises the character of the Rural Areas district.

Based on the findings contained in this staff report, staff recommends approval of SP2008-58 Harris Garage Amendment, subject to the conditions of approval as listed in the staff report.

There is also a request for a critical slopes waiver. The applicant has applied for critical slope waivers for disturbances that already have been made on two areas of the property: generally between the garage and the adjacent neighbor on the north and between the garage and the Beaver Dam Creek on the east. The applicant has planted some evergreens. The applicant has graveled behind the garage. The staff report discusses the critical slopes and the engineering analysis. The Planning Commission approved the critical slopes waiver with the three recommended changes to the conditions at the last meeting.

Mr. Strucko invited questions for staff. There being none, he opened the public hearing and invited the applicant to address the Commission.

Dave Wyant, engineer and representative for the Harris family, pointed out that not putting the sign out turned out to be a blessing because the Harris' were not present at the last meeting and it allowed him the opportunity to go over this agreement with the Harris'. He went over each condition one by one to make sure that the Harris' clearly understand what they write as conditions on the plan. After going over the proposal with the applicant he asked the Planning Commission to consider the following three changes to the conditions:

1. The Harris' would like to change the hours of operation from 8:00 a.m. to 8:00 p.m. to 10:00 a.m. to 10:00 p.m. He distributed a letter from all the adjacent neighbors in support of the change in condition 7.
2. Condition 8 keeps the personal cars separate from the business vehicles. They are asking the Harris' to screen their personal cars, but nobody else in the county is asked to screen their personal vehicles. He asked to leave the planting of the Bradford Pears along that area. As far as 20' in width the plantings already out there are staggered. He asked that the condition be made clear and specific so as to avoid problems with enforcement in the future.
3. Regarding the buffer in the critical slopes waiver in condition 3, he had discussed with Glenn Brooks about putting in 10 pine trees. He emailed Mr. Brooks, but did not receive a response. He looked back and found that he had recommended 16 Hawthorne trees in a staggered row in that area, which trees grow from 20' to 30' tall and 20' to 30' in width. It is about 170' across that area. If they put 8 in a row staggered 15' in the front the trees will just barely touch each other when full grown. The buffer is not for screening everything, but protection of the stream that is on the adjacent property. The water that runs down the back side of this property sits in a swale and sort of ponds in that area. So the Hawthorne trees are tolerant to a wet condition. There is a little berm at the edge of the property on the Harris property that would retain the water running off of this slope.

Mr. Strucko invited public comment.

Preston Gentry spoke in support of Harris' Garage and asked that the special use permit be approved. He uses the garage quite often and he conducts a respectful clean business. The garage is an asset to our community. Mr. Harris has quite often helped at Crozet Fire Department to repair vehicles in a timely manner. He does a very good job and sets a good example for our county and community.

Fred Burrelle spoke in support of Harris' Garage because he provides support to a rural community that has no gas stations. The shop is the only shop in their area. He lives about 4 miles from the garage in Greene County. He is an auto mechanic willing to help the community and is an asset to their community. He attested to Mr. Harris' character and asked that the request be approved.

Scott Burrelle said that Harris Garage is a vital asset to their community. He goes above and beyond what one would expect from a typical auto repair shop. He treats each and every customer fairly and honestly. The buildings and grounds are always kept up. He noted that his wife was a rural carrier and that the change in hours to 10 a.m. to 10 p.m. would be fantastic. He asked that the request be approved.

Joel Snow, resident of Dyke, spoke in support of the Harris request. He noted that he was in favor of the request because of Mr. Harris' involvement in the community. The garage has been an asset to the rural community for many years as a mechanic. He felt that Harris' Garage was a good example of someone being in compliance with what has been asked.

Thomas Scholar, resident of Bentivar, said that he had known Mr. Harris for well over 25 years. He brings his vehicles to him to repair. He echoed what everyone has said about Harris' Garage. He is without a doubt the most competent, fair person he had ever met doing his line of work. He has recommended many other persons to go out to him. It is really nice to be able to get off work and take your vehicle out to the garage rather than take time during the day. He asked the Commission to approve the request.

Joe Ford said that he had known Mr. Harris for a long time. He asked where in the county there was another garage that is kept like Mr. Harris keeps his property. He noted that this garage is definitely an asset to the community not only for what Mr. Harris does for them as residents but also it is one of the few garages that are not an eyesore. He asked the Commission to approve the critical slopes waiver.

Nelson Morris, an adjoining neighbor, said that Mr. Harris is an asset to their community. He keeps the garage very neat. His biggest concern is that Mr. Harris will pull out because of all of the hassle he is getting. He hoped that would not happen and he would stay in the community. He asked the Commission to approve the request.

Rick Morris, an adjoining neighbor, said that his house was directly across the road from the garage. He had no complaints since Mr. Harris has been a very good neighbor. He is an asset to the community. He had no problem with the headlights or noise from the garage. He supported his operation and asked the Commission to approve the request.

Keith Ford said that since the park is coming and they know there will be more traffic on their road he thought that it is a great need for J.R. Harris' garage to stay open. He thinks that they need to consider that. He had been at his shop several times and seen no soil erosion problems or polluted streams. He knows that he has done a great deal for the Blue Ridge School. The garage will provide a good service to those traveling on 810. He asked for approval of the request.

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

Ms. Joseph asked how they act on this when they have already approved it.

Mr. Strucko noted that the applicant had proposed some changes to the conditions.

Ms. Joseph asked what the process was and if they need to void what the Commission has already done or open it back up.

Mr. Kamptner replied that since there was a defect in notice the Planning Commission can essentially treat the prior action as a nullity.

Mr. Loach questioned the Eastern Red Cedars as opposed to the Hawthorns.

Ms. Joseph recalled that the Cedar carries a contaminant to the Hawthorns or vice a versa. So the two trees are not good for companion plantings. The Hawthorn by itself would be fine. One tree is an evergreen and one is deciduous.

Ms. McDowell said that the Eastern Red Cedars was recommended since it does not drop it leaves and there is a clear view of the house next door from the garage on that area of critical slopes. She did not learn about the Hawthorns until today. She talked to the county landscape architect and he noted that there are different kinds. He said that a Washington he believed might be okay, but in the rural areas they really like to have a variety of plantings and naturalized rather than a staggered row kind of thing. It is her understanding that what was proposed was on the critical slopes in the back between where the parking is. It would just replace the naturalized landscaping that was removed before the slope was disturbed, which would be satisfactory.

Ms. Joseph asked if the purpose was to hold the soil or to be a visual barrier.

Ms. McDowell replied that there were two purposes. The county engineer's purpose is to hold the soil. In some instances the purpose is not only to hold the soil but to also shield the property next door.

Ms. Joseph noted that Mr. Wyant was looking for something that liked wet feet, which she was not so sure the Cedars will.

Ms. McDowell noted that Brent Nelson had suggested the Red Cedars.

Ms. Joseph asked if they have to specify the plants at this point. Is that something that the applicant and staff can work out?

Ms. McDowell replied yes. She noted that for some reason in the letter sent to Mr. Wyant the height of the planting was left out in the new condition 8. But in the staff report it is actually there.

Mr. Cilimberg noted that in condition 8 it says that the land screening shall supplement existing landscape approval with the last special use permit and consists of existing Red Cedar or other material approved by the planning director. Therefore he felt that the flexibility is already there.

Mr. Loach and Mr. Morris said they had not problem with the 10 a.m. to 10 p.m. change in hours of operation.

Ms. Porterfield said if they go to 10 a.m. to 10 p.m. they need to put in that the neighbors said overwhelmingly that they would like those hours.

Ms. Joseph noted that she had no problem with 10 a.m. to 10 p.m. because it is an off time. It is not going to put traffic on the same road that people are getting and forth to work on. The hours help dilute that.

Ms. McDowell noted that she was surprised that the neighbors were not present to speak who called saying that the sign was not there and that they would really wanted the public hearing held again. But she could say that they had some concerns. One concern she heard more than once was that at night and in the daytime when the cars were tested there is some going up and down the road sometimes at a high rate of speed. There was some concern about that. They have heard from the adjacent neighbors that everything is okay, but that there were some voices stating their concerns.

Mr. Strucko noted that the existing law talks about noise and speed.

Ms. Porterfield said she had some concerns with the hours from 10 a.m. to 10 p.m. She felt that 10 p.m. was too late. She suggested 9 a.m. to 9 p.m.

Mr. Strucko noted that they had heard that the off hours help accommodate families on a 9 a.m. to 5 p.m. schedule.

Mr. Morris noted that due to the location and the very rural nature of the area that the time requested makes more sense from 10 a.m. to 10 p.m. But that is just his opinion.

Mr. Loach agreed.

Mr. Strucko asked Mr. Wyant if there were any other changes proposed.

Mr. Wyant pointed out that the Hawthorns were proposed in the area of the stream buffer and not up front. Due to the storm water requirement he was looking for something that could tolerate the wetness of that lower area in the back.

Ms. Joseph noted that the screening being requested to be removed was in the front.

Mr. Wyant replied yes that it was where the personal cars are parked. He noted that the problem in the back that they had was the shallow soil. It was rocky. What Glenn Brooks has proposed is a 3' retaining wall and then they would put in some top soil and shrubs. The reason the trees were removed from back there was that they were falling on the building. Therefore, the Harris' over the past several years have cut them down. The Harris' are going to put some top soil and shrubs on the slope to stabilize the area. It was a critical slope area. He just wanted to clarify those few things.

Mr. Loach noted that it was worth mentioning that the Commission did pass this request on May 5 by a vote of 5:0 including the critical slopes waiver just for clarification. He suggested approval of the request with changes to the conditions as discussed tonight that the parking hours change to 10:00 a.m. to 10:00 p.m. and that condition 8 was covered with the language to be a variety so that the Hawthorns could be planted.

Ms. Joseph pointed out that one of the things Mr. Wyant brought up was the screening required in the front for their own personal vehicles, too.

Mr. Kamptner noted that it was in condition 8 beginning in the third line.

Mr. Loach felt that concern could be worked out with staff. He had objection to him leaving it out since it deals with the personal side rather than the business side.

Mr. Cilimberg asked if they would take out the section that says "and between the areas designated as parking for personal vehicles and Markwood Road."

Mr. Loach replied yes.

Ms. McDowell noted that normally she would not have included that, but because they have 15 cars or personal vehicles with a variety of chassis that is why that was added.

Mr. Loach felt that staff's concerns were legitimate, but he could live without that condition.

Mr. Kamptner asked for clarification if the remaining part of that condition should remain, and Mr. Loach replied yes.

Mr. Kamptner asked does the minimum height of the tree need to be the 4' as stated in the staff report. The height is missing as Mr. Wyant pointed out.

Mr. Loach asked that the condition include the minimum height of the tree as 4'.

Ms. Joseph requested to ask Ms. McCulley a question. She asked if inoperable vehicles are defined in the ordinance.

Ms. McCulley replied yes.

Ms. Joseph asked if someone can have as many operable vehicles on your personal property as you want, and Ms. McCulley replied yes.

Ms. Joseph noted that it was alright as long as there is a tag on the vehicle.

Ms. McCulley replied that the car has to have a current inspection and tag. Part of being operable is that they have to be assembled. For example, if someone had a current inspection and tag but it was completely disassembled with no motor, then it is inoperable.

Ms. Porterfield pointed out that she voted for the request last time, but could not go for the 10 a.m. to 10 p.m. hours.

Action on SP-2008-00058:

Motion: Mr. Loach moved and Mr. Morris seconded to approve SP-2008-00058, Harris Garage Amendment with the recommended conditions as specified and amended at the meeting.

1. Development of the use shall be in accord with the conceptual plan titled "Amended Site Plan Harris' Garage", prepared by DW Enterprises, and dated March 16, 2009 (hereinafter, the "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in accord with the plan, development shall reflect the following major elements within the development essential to the design of the development:
 - The size, height and location of the proposed buildings (16' X 30'/maximum 24' high);
 - The area designated for the special use (public garage);
 - The size, height and location of the existing buildings/structures (original garage – 1,936 square feet/24 feet high/3 vehicle bays; garage expansion – 1,496 square feet/24 feet high/1 vehicle bay;

enclosed compressor room; paint mixing room; one outside lift; one dumpster pad/fence enclosure; 3 parking spaces carport; 2 parking spaces carport);

- The number (maximum 15 spaces public garage) and location of the vehicle parking spaces;
 - The two (2) signage locations at the entrance to the special use permit area. The signs shall state, "All vehicles beyond this point must be placed in a marked parking space" and be a maximum of four (4) square feet.
 - The sign location at the area designated as "Parking for Private Vehicles." The sign shall state, "Parking for only personal vehicles of the Harris Family" and be a maximum of four (4) square feet.
2. Gasoline sales are prohibited;
 3. The sale or rental of vehicles or other motorized equipment is prohibited;
 4. All repairing or equipping of vehicles shall take place inside the existing garage, with the exception of vehicles being repaired on the vehicle lift located adjacent to the garage;
 5. The outdoor storage of parts, equipment, machinery and junk is prohibited;
 6. Only personal vehicles may be parked in the area marked "parking for personal vehicles" on the Conceptual Plan. No more than fifteen (15) vehicles associated with the public garage use shall be located outside the garage. All vehicles associated with the public garage use shall be parked in the spaces shown as "for garage only" on the Conceptual Plan. Any vehicles parked outside the area marked "parking for personal vehicles" shall be considered to be associated with the public garage and are counted in the fifteen (15) vehicle maximum.
 7. The hours of operation shall be between 10 A.M. and 10 P.M., Monday through Saturday. These hours of operation do not prohibit customers from dropping off vehicles before 8 A.M. on the days of operation; and
 8. Within three (3) months following approval of the site plan or site plan waiver, the permittee shall install and thereafter maintain a minimum twenty (20)-foot deep landscape evergreen-screening buffer to shield the view of the garage and garage parking from Markwood Road. This landscape screening shall supplement existing landscape approved with SP 2001-49 and consist of Eastern Red Cedar or other material approved by the Planning Director, a minimum 4 feet high at planting, and planted in staggered rows with a maximum of ten (10) feet on center spacing between the landscape materials. The permittee shall also submit a landscape plan with the site plan application that will be subject to the approval of the Planning Director or the Planning Director's designee; and
 9. All outdoor lighting shall be only full cut-off fixtures and shielded to reflect light away from all abutting properties. A lighting plan (for new lighting) 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.

The motion passed by a vote of 5:1. (Porterfield voted nay) (Franco absent)

Ms. McDowell pointed out that that a motion was needed on the critical slopes waiver. There were some changes discussed and agreed to at the last meeting. The changes are in the action letter.

Motion on Critical Slopes Waiver:

Motion: Mr. Loach moved and Mr. Morris seconded to approve the critical slopes waiver request associated with SP-2008-00058 Harris Garage – Amendment with the conditions recommended by staff as amended removing the recommended condition 1 and amending condition 3 to remove the language between the parentheses.

1. The retaining wall proposed in the rear of the garage building must be at least 3' high, and topsoil, matting, and permanent seed or mulch and shrubs must be applied to the cut slope for adequate stabilization.
2. To provide stormwater management and replenish the buffer, the entire buffer area within the property should be planted in accordance with the Chesapeake Bay Riparian Buffers Modification and Mitigation Guidance Manual no later than three (3) months following the approval of this critical slopes waiver. These shall be bonded as a guarantee of survival for a minimum of 5 years.

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

Mr. Strucko said SP-2008-00058, Harris Garage Amendment would go to the Board of Supervisors on June 10 with a recommendation for approval.

Mr. Cilimberg pointed out that the critical slopes waiver action was final and did not go to the Board.

The Planning Commission took a break at 7:18 p.m. and the meeting reconvened at 7:30 p.m.

ZTA-2009-00002 Beauty/Barber Shops in CO district. Amend Sec. 23.2.1, By right, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 23.2.1 to add beauty shops and barber shops as permitted accessory uses in the Commercial Office (CO) zoning district. A copy of the full text of the ordinance is on file in the office of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia. (Elaine Echols)

Ron Higgins summarized the request.

This application came as a citizen initiated application as a result of a sign issue on Rio Road. In looking at temporary signs for a single chair operator barber shop staff determined that she had moved from one building on Rio Road to another assuming that it was all the same. She went from a Planned District that allowed the barber shop/beauty shop to a Commercial Office District, which does not. The basis issue here is that they are asking that the use and CO that lists all of the customary accessory uses be expanded to include the beauty shop and barber shops in CO. What they found in their research is that this is a reasonable and customary use in Commercial Office District. These uses are allowed in all commercial districts, Planned Districts, C-1, and HC. But these uses are not allowed in any fashion in the CO district. Staff felt that was something of an omission since the use is being proposed as an accessory use the kinds of uses that are in that accessory use list are pretty extensive and not unlike this kind of use. Staff found that it was fairly common to see these kinds of uses.

There have been questions asked. Ms. Joseph had written about other incidental uses in a barber shop or beauty shop. Without a definition staff had looked at the kinds of activities when putting this together and it all hinges on cosmetology. Most of the definitions include that. Cosmetology is hair and skin care, which would include all of those things that one would normally expect to be used for those kinds of things. It is incidental to just hair cutting.

Staff recommends that the ordinance be amended to include the beauty shop and barber shop by-right. Ms. Maxwell, the initiator of the request, asked about it and staff realized that it had been left out of the ordinance. It had never come up. But staff found many instances in an office building in Albemarle, including Commercial Office, where they have uses that predate any approvals.

Mr. Strucko invited questions for staff.

Ms. Joseph said when they look at the CO and the uses allowed it allows medical offices. So it is not a matter of water use or anything like that.

Mr. Higgins noted that it does not have any correlation with other kinds of impact. He did some research to find out if there was a particular reason it was left out and they simply could not find any evidence of it. He pointed out that there was a slight wording change in #6 in the way it describes the 20 percent rule, which just states it more clearly.

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

Motion: Mr. Morris moved and Ms. Porterfield seconded to recommend approval of ZTA-2009-00002 Beauty/Barber Shops in CO district.

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

Mr. Strucko noted that the motion passes and would go before the Board of Supervisors at a date to be determined.

**ZTA-2009-00002 Beauty/Barber Shops in CO district – Proposed Zoning Text Amendment
Language**

ORDINANCE NO. 09-18()

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE III, DISTRICT REGULATIONS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article III, District Regulations, is hereby amended and reordained as follows:

By Amending:

Sec. 23.2.1 By right

Chapter 18. Zoning

Article III. District Regulations

Sec. 23.2.1 By right

The following uses shall be permitted in any CO district, subject to the requirements and limitations of these regulations:

1. Administrative and business offices.
2. Professional offices, including medical, dental and optical.
3. Financial institutions.
4. Churches, cemeteries.
5. Libraries, museums.
6. Accessory uses and structures incidental to the principal uses provided herein. ~~Such~~ The aggregate of all accessory uses in combination shall not occupy more that twenty (20) percent of the floor area of the buildings on the site. The following accessory uses shall be permitted:
 - Eating establishments;
 - Newsstands;
 - Establishments for the sale of office supplies and service of office equipment;
 - Data processing services;
 - Central reproduction and mailing services and the like;
 - Ethical pharmacies, laboratories and establishments for the production, fitting and/or sale of optical or prosthetic appliances on sites containing medical, dental or optical offices;
 - (Repealed 3-17-82)

-Sale/service of goods associated with the principal use such as, but not limited to: musical instruments, musical scores, text books, artist's supplies and dancing shoes and apparel.; (Added 12-3-86)

-Barber shops:

-Beauty shops.

- 7. Electric, gas, oil and communication facilities, excluding tower structures and including poles, lines, transformers, pipes, meters and related facilities for distribution of local service and owned and operated by a public utility. Water distribution and sewerage collection lines, pumping stations and appurtenances owned and operated by the Albemarle County Service Authority. Except as otherwise expressly provided, central water supplies and central sewerage systems in conformance with Chapter 16 of the Code of Albemarle and all other applicable law. (Amended 5-12-93)
- 8. Public uses and buildings including temporary or mobile facilities such as schools, offices, parks, playgrounds and roads funded, owned or operated by local, state or federal agencies (reference 31.2.5); public water and sewer transmission, main or trunk lines, treatment facilities, pumping stations and the like, owned and/or operated by the Rivanna Water and Sewer Authority (reference 31.2.5; 5.1.12). (Amended 11-1-89)
- 9. Temporary construction uses (reference 5.1.18).
- 10. Dwellings (reference 5.1.21). (Added 3-17-82)
- 11. Temporary nonresidential mobile homes (reference 5.8). (Added 3-5-86)
- 12. Day care, child care or nursery facility (reference 5.1.6). (Added 9-9-92)
- 13. Stormwater management facilities shown on an approved final site plan or subdivision plat. (Added 10-9-01)
- 14. Tier I and Tier II personal wireless service facilities (reference 5.1.40). (Added 10-13-04)

(§ 20-23.2.1, 12-10-80; 3-17-82; 3-5-86; 12-3-86; 11-1-89; 9-9-92; 5-12-93; Ord. 01-18(6), 10-9-01 ; Ord. 04-18(2), 10-13-04)

I, Ella W. Jordan, do hereby certify that the foregoing writing is a true, correct copy of an Ordinance duly adopted by the Board of Supervisors of Albemarle County, Virginia, by a vote of _____ to _____, as recorded below, at a regular meeting held on _____.

Clerk, Board of County Supervisors

	<u>Aye</u>	<u>Nay</u>
Mr. Boyd	_____	_____
Mr. Dorrier	_____	_____
Ms. Mallek	_____	_____
Mr. Rooker	_____	_____
Mr. Slutzky	_____	_____
Ms. Thomas	_____	_____

ZTA-2009-00008 Body Shops and Towing Services in HI Heavy Industrial District Amend Sec. 28.2.1, By right, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 28.2.1 to add body shops and the towing and temporary storage of motor vehicles as by right uses in the Heavy Industry (HI) zoning district. A copy of the full text of the ordinance is on file in the office of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia. (Elaine Echols)

Ron Higgins summarized the request.

- This is an item that staff brought forward at the same time because it was a similar issue. In investigating another site and a towing service that had moved from one site to another on Route 29 North staff found that they have moved from an LI, Light Industry site to a HI, Heavy Industry site. Staff found that the use was not allowed in HI and feels that this is an omission. The towing and storage of motor vehicles is two different uses. There was a towing service for Hall's Body Shop located down the hill that moved their operation up into the yard where Hall's Body Shop keeps all of their cars waiting to be fixed. So there was a small area of the site that had a towing service and storage of vehicles in a yard that was storing vehicles as part of a body shop.
- On further investigation staff realized that the body shop was not allowed in HI. Hall's Body Shop has been located at this site for 20+ years. Staff looked at the purpose and intent of the HI and a little bit of the logic of the uses that are in LI and HI. The uses are allowed in LI with a special use permit. Staff felt that it would be useful to have this kind of use allowed somewhere by right. Therefore, staff asks for that to be amended and to correct this omission.
- Staff suggests if the Commission recommends approval that they make a slight wording change to the two line items #27 and #28 on page 6.
 1. Body Shop (5.1.3.1) – should say .3.1.a and b so that it would tell them specifically what applies to the by-right uses. Paragraph C would have not meaning since it talks about special use permits.
 2. In #28 it should reference 5.1.3.2.b. to help clarify that.

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

Motion: Mr. Porterfield moved and Mr. Morris seconded to recommend approval of ZTA-2009-00008 with the two modifications as noted by staff.

Discussion:

Mr. Kamptner asked to clarify the provisions that apply in 5.1.32. Is it really only the last clause that should not be applying in subsection a.

Mr. Higgins replied that he thought about that initially when he got the inquiry. But then when looking at the first sentence it states the obvious. This provision is intended to provide locations for the towing and temporary storage of collision and disabled vehicles.

Mr. Kamptner asked if the second sentence, "No body and mechanical work, painting, etc." is not to be allowed for a towing and temporary storage of motor vehicles use.

Mr. Higgins noted that they are about to allow body shops by right. Therefore, it seemed a little strange to have that.

Mr. Kamptner said that they were overlapping. All of these things that are excluded in 5.1.32.a would be allowed under 5.1.31.

Mr. Higgins replied yes.

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

Mr. Strucko noted that the motion passes and ZTA-2009-00008 would go before the Board of Supervisors at a date to be determined.

ZTA-2009-00008 Body Shops and Towing Services in HI Heavy Industrial District

ORDINANCE NO. 09-18()

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE III, DISTRICT REGULATIONS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article III, District Regulations, is hereby amended and reordained as follows:

By Amending:

Sec. 28.2.1 By right

Chapter 18. Zoning

Article III. District Regulations

Sec. 28.2.1 By right

Except as otherwise limited by section 28.2.2.14, the following uses shall be permitted by right in the HI district: (Amended 2-13-85)

1. Automotive, farm and construction and machinery products assembly.
2. Brick manufacturing, distribution.
3. Concrete mixing plant, storage, distribution.
4. Dry-cleaning plants.
5. Fire and rescue squad stations (reference 5.1.09).
6. Machine shops, tool and die, blacksmithing, boiler shops and similar operations.
7. Manufacture of heavy household, commercial and industrial appliances.
8. Manufacture of building components.
9. Manufacture, distribution, service of individual sewage disposal systems.
10. Manufacture and recycling of tires.
11. Metal fabrication and welding operations.
12. Mobile home manufacturing, distribution.
13. Moving businesses, including storage facilities.
14. Petroleum, gasoline, natural gas and manufactured gas bulk storage (reference 5.1.20).
15. Recreational vehicle and components manufacturing, distribution.
16. Sawmills (reference 5.1.15), planing mills, wood preserving operations, woodyards.
17. Veterinary or dog/cat hospitals, indoor accessory kennels (reference 5.1.11).
18. Warehouse facilities.
19. Storage yards. (Amended 11-12-08)
20. Electric, gas, oil and communication facilities excluding tower structures and including poles, lines, transformers, pipes, meters and related facilities for distribution of local service and owned and operated by a public utility. Water distribution and sewerage collection lines, pumping stations and appurtenances owned and operated by the Albemarle County Service Authority. (Amended 5-12-93)

- 21. Public uses and buildings including temporary or mobile facilities such as schools, offices, parks, playgrounds and roads funded, owned or operated by local, state or federal agencies (reference 31.2.5); public water and sewer transmission, main or trunk lines, treatment facilities, pumping stations and the like, owned and/or operated by the Rivanna Water and Sewer Authority (reference 31.2.5; 5.1.12). (Amended 11-1-89)
- 22. Temporary construction uses (reference 5.1.18).
- 23. Temporary nonresidential mobile homes (reference 5.8). (Added 3-5-86)
- 24. Stormwater management facilities shown on an approved final site plan or subdivision plat. (Added 10-9-02)
- 25. Tier I and Tier II personal wireless service facilities (reference 5.1.40). (Added 10-13-04)
- 26. Heavy equipment and heavy vehicle parking and storage yards. (Added 11-12-08)

27. Body shops (reference 5.1.31.a and b)

28. Towing and temporary storage of motor vehicles (reference 5.1.32.b).

(§ 20-28.2.1, 12-10-80; 2-13-85; 3-5-86; 11-1-89; 5-12-93; Ord. 02-18(6), 10-9-02; Ord. 04-18(2), 10-13-04)

I, Ella W. Jordan, do hereby certify that the foregoing writing is a true, correct copy of an Ordinance duly adopted by the Board of Supervisors of Albemarle County, Virginia, by a vote of _____ to _____, as recorded below, at a regular meeting held on _____.

Clerk, Board of County Supervisors

	<u>Aye</u>	<u>Nay</u>
Mr. Boyd	_____	_____
Mr. Dorrier	_____	_____
Ms. Mallek	_____	_____
Mr. Rooker	_____	_____
Mr. Slutzky	_____	_____
Ms. Thomas	_____	_____

ZTA-2009-00005 Enforcement and Administration Amend Secs. 3.1, Definitions, 31.1, Enforcement, zoning administrator, 34.3, Appeal to the board of zoning appeals, and 36.1, Violations; amend and renumber Secs. 31.2.2, Building permits, 31.2.3.1, Certificate of occupancy, 31.2.3.2, Zoning compliance clearance, 31.2.4, Special use permits, 31.2.4.1, Reserved to board of supervisors, 31.2.4.2, Application, 31.2.4.2.1, Limitation of filing new application after original denial, 31.2.4.2.2, Withdrawal of application, 31.2.4.3, Conditions, 31.2.4.4, Revocation, 37.1, Criminal penalty, 37.2, Civil penalty, and 37.3, Injunctive relief and other remedies; add Secs. 31.3, Zoning permits, 31.4, Certificate of occupancy, 31.5, Zoning clearance, 36.2, Enforcement; repeal Secs. 31.1.1, Enforcement of board of zoning appeals decisions, 31.1.2, Enforcement of minimum requirements, 31.1.3, Interpretation by zoning administrator, 31.2, Permits (heading only), 31.2.3, Certificates of occupancy; zoning compliance clearance (heading only), and 31.2.5, Review of public uses for compliance with the comprehensive plan; and repeal (but relocate substance into new secs.) Secs. 31.2.1, Permits required; conformance, 31.2.3.3, Authority not to issue certificate of occupancy or zoning compliance clearance, 36.2, Notice of violation, 36.3, Remedies not exclusive, 36.4, Complaints regarding violations, 37.1, Criminal penalty, 37.2, Civil penalty, and 37.3, Injunctive relief and other remedies; of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 3.1 to define several terms commonly used in the Zoning Ordinance; would amend and reorganize Sec. 31.1 by restating the authority of the zoning administrator and repealing subsections 31.1.1, 31.1.2, and 31.1.3; would amend and reorganize Sec. 31.2 by clarifying the duty of

the zoning administrator to review and act on building permit applications, repealing subsections 31.2.1 and 31.2.2; would add Sec. 31.3, to establish the duty of the zoning administrator to determine a proposed structure's compliance with the zoning ordinance where it is not subject to the Building Code, Sec. 31.4, to establish the duty of the zoning administrator to review and act on certificates of occupancy, and Sec. 31.5, to delineate when zoning clearances are required and to establish the duty of the zoning administrator to review and act on zoning clearances; would renumber Sec. 31.2.4, Special use permits, and its subsections, to Sec. 31.6, and reorganize that section with corrections to cross-references; would amend and reorganize Sec. 34.3 by restating the requirements for appealing a decision to the board of zoning appeals and by adding that an appeal of a decision pertaining to temporary or seasonal commercial uses must be filed within 10 days of the decision if the notice of violation states that the 10-day appeal period applies, rather than the generally applicable 30-day appeal period; would amend and reorganize Sec. 36.1, which declares various violations of the zoning ordinance to be unlawful; would repeal Secs. 36.2, 36.3 and 36.4 and incorporate those sections into new Sec. 36.2, which comprehensively establishes the authority of the zoning administrator to enforce the zoning ordinance and to establish general procedures; would renumber and amend current Sec. 37.2 to 36.3, to establish procedures and maximum civil penalties for violations of the zoning ordinance; would renumber and amend current Sec. 37.1 to 36.4, to establish procedures and maximum criminal penalties for violations of the zoning ordinance; would renumber and amend current Sec. 37.3 to 36.5, allowing any violation to be enforced by injunctive relief or other remedies. A copy of the full text of the ordinance is on file in the office of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia. (Rob Heide)

Rob Heide presented a PowerPoint presentation and summarized the executive summary. (Attachment)

ZTA 2009-005 - Zoning Amendments relating to Enforcement and Administration

Origin

This ZTA results from an effort to improve procedure and provide clarity in administering the Zoning Ordinance.

- This ZTA proposes to:
 - Reorganize the current ordinance;
 - Update sections to better align with Virginia State Code;
 - Add new provisions for Zoning administration and enforcement.

Background

Many of the proposed amendments involve housekeeping-type updates, such as:

- Reformatting/renumbering sections and language within sections;
- Adding definitions, where previously absent;
- Changing staff titles to reflect current organizational structure;
- Outlining current process and procedure for specific zoning practices.

New Ordinance Content

Generally speaking, the proposed additions involve establishing new procedures to more effectively administer the Zoning Ordinance. The proposed changes include:

- Establishing a definition for Zoning Permit; (Note: Currently a building permit is used for several different things and it gets confusing from time to time. This will certainly make it clearer to applicants.)
- Specifying cases where an approved final zoning inspection acts in the place of a new CO; (Note: In certain activities there is not a need for a new CO. It is unclear right now on how a change to a building interior ends and is it okay to occupy at this point. This proposal clears it up a little bit.)
- Administratively approving site plan bond extensions beyond one year; (Note: Currently that is a requirement in the ordinance for the Board of Supervisors to do. Having recently taken one to them the Board indicated a desire for staff to be able to do that at our level.)
- Applying the same safety standards of Certificate of Occupancy approval to that of Zoning Clearance; (Note: There are cases where a CO is not required, but a new business entity is going in. With this change staff would have the ability to look at the new entity and find out if there are any additions to a site that need to be made for safety considerations. Currently the ordinance allows staff to do that for CO and they are

- requesting that it be extended to the zoning clearance.)
- Shortening the appeal period for violations relating to temporary events; (Note: This is something new in the State Code. It would allow staff to be more efficient in dealing with those scenarios.)
- Delineating investigative tools provided for in the Virginia State Code; (Note: It would better align our ordinance with what the state authorizes us to do already.)
- Providing ordinance language for a violation ticket system and expanded notice of violation delivery methods.

Outcomes

We have identified two broad service improvements to the community:

- Improves clarity and procedures relating to applications;
- Improves efficiency and effectiveness for administration of the Zoning Ordinance.

Ms. McCulley distributed a revised full copy of the proposed text and outlined the changes highlighted in yellow, as follows. These changes came up after the report was sent out with the draft text. A couple of the changes came up after consideration of some questions Ms. Joseph had.

Latest Editions to Executive Summary

- (page 3) Section 31.1 a 5: Add reference to Section 15.2-2311C to be consistent with Virginia Code;
- (pages 7 & 8): Section 31.5 a: Changed references about uses to be consistent between #1, 2 and 3; (Note: In the section on zoning clearances there was an inconsistency in the reference that talked about commercial and industrial uses. Staff thought it would be more appropriate to be uniform because they are all non-residential other than agricultural uses that they regulate by a zoning clearance.)
- (page 10) Section 31.7: Decided not to remove reference to compliance with the Comp Plan even though it is self-executing; (After Ms. Joseph expressed a concern staff along with the County Attorney's Office decided that there was no harm in leaving the reference.)
- (page 11) Section 34.3 e: Added language to clarify that an appeal will not be forwarded to the BZA until the fee is paid; (Note: Staff found that a lot of people are appealing notice of violation just to stay their enforcement activity against them and then they don't pay the fee. The request then hangs open. This change means that staff would not have to process the appeal to the BZA and expend a lot of staff time until the fee is paid.)
- (page 14) Section 36.3h: Clarified term "land development" with descriptive language. (Note: This change resulted from a question from Ms. Joseph. It is confusing from the State Code. There is an exclusion of enforcement of violations by civil penalties that relate to land development. The way it was worded was very unclear. Mr. Kamptner added some language to try to make it clearer as to what is and is not excluded.)

Mr. Heide noted that staff recommends approval of ZTA 2009-005 Zoning Amendments relating to Enforcement and Administration as submitted and updated.

Mr. Strucko invited questions from the Commission.

Mr. Edgerton asked on page 7 and 8 the highlighted parts regarding nonresidential other than agricultural use is that because the Code forbids them to regulate through zoning agricultural use.

Mr. Kamptner replied that this is just to capture what our zoning ordinance has provided up until now. He suggested that Ms. McCulley can explain it better. He noted that zoning clearances are called zoning compliance clearances which focus on changes to existing or new commercial or industrial uses. The terminology that is used here highlighted in yellow is broader. They are trying to capture everything that is not a residential use excluding agricultural uses.

Mr. Edgerton questioned if other than agricultural if that because the State Code prohibits regulation of agricultural use. Agricultural use would be exempted from this if he was reading it correctly.

Mr. Kamptner replied that the kind of activities they are trying to capture through the zoning clearance process does not include agriculture. A lot of structures and activities are exempt from local regulation under state law. The zoning clearance process has always been intended to address the other types of uses.

Mr. Edgerton noted that he was just curious because he was recently in Maryland and drove through some rural land north of Baltimore and saw a number of silos that were about 200' high. There was a lot of crop land and grazing land in that area. He noted that they don't see that in Albemarle County. He asked if that is something that would be totally exempt from any zoning if someone wanted to build a tall silo. He was curious because they had been discussing height limitations on wind turbines.

Ms. McCulley replied that there is a height exemption for silos.

Mr. Kamptner noted that there were a couple of other things that can clarify why agricultural is singled out. An agricultural use is defined in the zoning ordinance as the cultivation and tilling of the soil for the production of crops or trees or horticultural or vita-cultural purposes. The other thing is that under federal law under USDA regulations the federal perspective is that in certain context that agriculture is really an industrial type of activity. This helps differentiate agriculture from the type of industrial activities that they are trying to capture through the zoning clearance process.

Ms. McCulley noted that to answer the question about the silo there is an express exemption from the height limitations for silos in Albemarle County.

Ms. Joseph questioned why staff put in the definition of family in the proposed language of this section. She asked in the definition of family if they can't have more than four unrelated people.

Ms. McCulley replied that it depends on the zoning district.

Ms. Joseph acknowledged that they have different definitions for family. In the proposed language they are putting in two different places that they make sure that everyone knows it is a violation if they have more people in the house than allowed. This really bothered her because it really smacks a political decision to do something like this. She was wondering why they are making this an issue.

Ms. McCulley replied that they are not so much making it an issue as trying to adopt all the tools that they have given through the Virginia Code. It really has not been so much of an issue here. But in the event it became an issue and they had to enforce some of the occupancy limitations it is extremely difficult without some of the provision that they would have for an inspection warrant and things like that. One of the things Ms. Joseph was referring to was on page 12, Section 36.2.c Subpoenas duces tecum. It gives a tool for determining if there is an occupancy violation.

Ms. Joseph asked if this was an occupancy that the building inspector would determine that there are too many people living here or this would be based on the family definition.

Ms. McCulley replied that it would be based on the family definition.

Ms. Joseph noted that she was not crazy about that addition.

Mr. Loach pointed out that from having come from an area where this was really problematic, especially with rental units, he can see the applicability of these sections. He understands what Ms. Joseph was saying, but that on the other side of the coin it is not pretty.

Ms. Porterfield suggested one minor correction in defining the zoning administrator. She always thought when defining something that you should not use the same words. She suggested saying the officer charged to administer and enforce Chapter 18 Zoning or his or her designee. She was just making a suggestion and could live with it either way.

Mr. Kamptner noted that staff would take a look at that.

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

Motion: Ms. Porterfield moved and Mr. Morris seconded to recommend approval for ZTA-2009-00005 Enforcement and Administration.

Ms. Joseph voted aye with reservations.

The motion was approved by a vote of 6:0. (Franco absent)

Mr. Strucko noted that ZTA-2009-00005 would go before the Board of Supervisors meeting on July 1 with a recommendation for approval of the following.

ORDINANCE NO. 09-18()

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE I, GENERAL PROVISIONS, ARTICLE IV, PROCEDURE, AND ARTICLE V, VIOLATION AND PENALTY, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article I, General Provisions, Article IV, Procedure, and Article V, Violation and Penalty, are hereby amended and reordained as follows:

By Amending:

Sec. 3.1 Definitions
Sec. 34.3 Appeal to the board of zoning appeals

By Amending and Renaming:

Sec. 31.1 ~~Enforcement, zoning administrator~~ Designation of zoning administrator; authority
Sec. 36.1 Violations —~~generally~~

By Amending, Renumbering and Renaming Where Noted (old section number first, followed by name, followed by new section number):

Sec. 31.2.2	Building permits	Sec. 31.2 (part) and Sec. 31.3 (part)	Zoning permits
Sec. 31.2.3.1	Certificate of occupancy	Sec. 31.4	
Sec. 31.2.3.2	Zoning compliance clearance	Sec. 31.5	
Sec. 31.2.4	Special use permits	Sec. 31.6	
Sec. 31.2.4.1	Reserved to board of supervisors	Sec. 31.6(part)	
Sec. 31.2.4.2	Application	Sec. 31.6(part)	
Sec. 31.2.4.2.1	Limitation of filing new application after original denial	Sec. 31.6(part)	
Sec. 31.2.4.2.2	Withdrawal of application	Sec. 31.6(part)	
Sec. 31.2.4.3	Conditions	Sec. 31.6(part)	
Sec. 31.2.4.4	Revocation	Sec. 31.6(part)	
Sec. 31.2.5	<u>Review of public uses for compliance features to determine substantial accord with the comprehensive plan</u>	Sec. 31.7	
Sec. 37.1	Criminal penalties	Sec. 36.4	
Sec. 37.2	Civil penalties	Sec. 36.3	
Sec. 37.3	Injunctive relief and other remedies	Sec. 36.5	

By Repealing:

Sec. 31.1.1 Enforcement of board of zoning appeals decisions
Sec. 31.1.2 Enforcement of minimum requirements
Sec. 31.1.3 Interpretation by zoning administrator
Sec. 31.2 Permits (heading only)
Sec. 31.2.3 Certificates of occupancy; zoning compliance clearance (heading only)

By Repealing But Moving Substance Into a New Section (old section number and name first, followed by new section number:

Sec. 31.2.1	Permits required; conformance	Sec. 31.2(part), Sec. 31.3(part) and Sec. 36.1(part)
Sec. 31.2.3.3	Authority not to issue certificate of occupancy or zoning compliance clearance	Sec. 31.3(part) and Sec. 31.4(part)
Sec. 36.2	Notice of violation	Sec. 36.2
Sec. 36.3	Remedies not exclusive	Sec. 36.2
Sec. 36.4	Complaints regarding violations	Sec. 36.2

Chapter 18. Zoning

Article I. General Provisions

Sec. 3.1 Definitions

...

Building code. The term “building code” means the Virginia Uniform Statewide Building Code.

...

Building permit. The term “building permit” means a permit issued by the building official under the building code that is subject to the fees stated in Albemarle County Code § 5-201.

...

Certificate of occupancy. The term “certificate of occupancy” means a certificate issued by the building official and the zoning administrator after final inspections under the building code and this chapter certifying that a building or structure is in compliance with the building code and this chapter.

...

Chapter, this. The term “this chapter” means chapter 18 of the Albemarle County Code, also known as the Albemarle County zoning ordinance, and all applicable proffers, special use permits and their conditions, certificates of appropriateness and their conditions, variances and their conditions, application plans, codes of development, site plans, zoning compliance clearances, waivers, modifications and variations and their conditions, and all other approvals and their conditions authorized by this chapter.

...

~~Code, The.~~ The Code of Virginia as the same may be amended from time to time.

...

Site. The term “site” means one or more lots, or any part thereof, including one or more lots shown on a subdivision plat, site plan, or application plan. References in this chapter to “premises,” “land,” “lands,” “lots” or “parcels” are to a site.

...

Virginia Code. The term “Virginia Code” means the Code of Virginia, 1950, as amended, including the latest edition or supplement unless otherwise indicated. References in this chapter to the “Code of Virginia” and the “Code” are to the Virginia Code.

...

Zoning administrator. The term “zoning administrator” means the officer serving as the county’s zoning administrator and charged to administer and enforce this chapter, or his or her designee.

...

Zoning clearance. The term “zoning clearance” means a written determination by the zoning administrator that a proposed use or structure complies with this chapter. References in this chapter to “zoning compliance clearance” are to a zoning clearance.

...

Article IV. Procedure

Section 31. Administration, and Enforcement and Interpretation

Sec. 31.1 Enforcement, zoning administrator Designation of zoning administrator; authority

~~This ordinance shall be administered and enforced by an officer to be known as the zoning administrator who shall be appointed by the board of supervisors of Albemarle County, Virginia. The zoning administrator shall have all necessary authority on behalf of the board of supervisors to administer and enforce the zoning ordinance, including the ordering in writing of the remedying of any condition found in violation of this ordinance and the bringing of legal action to ensure compliance with this ordinance, including injunction, abatement or other appropriate action or proceeding. The zoning administrator shall be guided in all of his actions pursuant to this ordinance by the purposes, intent and spirit of this ordinance and the standards set forth in sections 1.4 through 1.6 of this ordinance. The zoning administrator may be assisted in the enforcement of this ordinance by the local office of the Virginia Department of Health, sheriff and all other officials of Albemarle County pursuant to their respective fields.~~

In addition, the zoning administrator shall maintain the zoning map, and such map shall be kept current and shall reflect amendments as soon as practicable after adoption by the board of supervisors.

The office of zoning administrator is hereby established, subject to the following:

- a. Authority. The zoning administrator shall have all necessary authority on behalf of the board of supervisors to administer and enforce this chapter. This authority includes, but is not limited to:
 1. Interpreting this chapter and the official zoning map;
 2. Administering this chapter by making determinations and decisions on any matters arising under this chapter, including but not limited to, how a building, structure or use should be classified, whether a use is permitted within a particular zoning district, whether a proposed building or structure complies with setback, height, bulk and other requirements, whether a building, structure, use or lot is nonconforming, and whether a lot meets minimum lot size requirements.
 3. Ordering in writing the remedying of any use or structure determined to be in violation of this chapter;
 4. Insuring compliance with this chapter, bringing legal action, including an action for injunction, abatement, civil penalties or other appropriate action or proceeding subject to appeal as provided by Virginia Code § 15.2-2311 and this chapter;
 5. In specific cases, making findings of fact and, with concurrence of the county attorney, conclusions of law regarding determinations of rights under Virginia Code §§ 15.2-2307 and 15.2-2311(C);

6. Enforcing the provisions of this chapter regulating the number of persons permitted to occupy a single-family residential dwelling unit, provided such enforcement is in compliance with applicable local, state and federal fair housing laws; and
7. Making decisions and determinations as to whether a pending site plan, subdivision plat, building permit application or any other application subject to review and approval by the county or the program authority complies with this chapter.

b. Absence of specific authority not a limitation. The specific authority expressly granted to the zoning administrator in other sections of this chapter shall not be construed to be a limitation on the authority of the zoning administrator to administer and enforce those sections where specific authority is not expressed.

State law reference – Va. Code § 15.2-2286(A)(4), (14).

Sec. 31.1.1 – Enforcement of board of zoning appeals decisions

It shall be the duty of the zoning administrator to see that the decisions of the board of zoning appeals are complied with.

Sec. 31.1.2 – Enforcement of minimum requirements

In enforcing the minimum requirements in districts, the zoning administrator shall notify by registered mail any person responsible for an alleged violation, stating the reason why it is believed that a violation exists in fact.

Sec. 31.1.3 – Interpretation by zoning administrator

In case of any dispute over the meaning of a word, phrase or sentence, whether defined herein or not, the zoning administrator is hereby authorized to make a definitive determination thereof, being guided in such determination by the purposes and intent of this ordinance as set forth in section 1; provided however, that an appeal may be taken from any such determination as provided in section 34.3.

Sec. 31.2 – Permits

Sec. 31.2.1 – Permits required; conformance

Buildings or structures shall be started, reconstructed, enlarged or altered only after a building permit has been obtained from the building official. No building permit or certificate of occupancy shall be issued in violation of zoning or other local ordinances. (Amended 10-3-01)

(§ 31.2.1, 12-10-80; Ord. 01-18(6), 10-3-01)

Sec. 31.2.2 – Building permits

The zoning administrator shall review each application for a building permit to ensure that the building or structure proposed is in accordance with the terms of this ordinance. No permit shall be issued for any construction for which a site development plan is required to be approved by the commission in accordance with section 32.0 of this chapter unless and until such plan shall have been so approved. Thereafter, any item shown on such plan as approved shall be deemed *prima facie* in accordance with the terms of this ordinance. No permit shall be issued for any structure to be served by an individual well subject to a Tier 1 groundwater assessment under Albemarle County Code § 17-400 until the applicant complies with Albemarle County Code 17-401. (Amended 2-5-05)

Each applicant shall provide a copy of the most recent plat of record of the land to be built upon unless no such plat exists, in which case the applicant shall provide a copy of the most recent deed description thereof.

~~Any other information which the zoning administrator may deem necessary for consideration of the application may be required. If the proposed building or use is in conformity with the provisions of this ordinance, a permit shall be issued to the applicant by the zoning administrator. One (1) copy of the drawing shall be returned to the applicant with the permit.
(§ 31.2.2, 12-10-80; Ord. 04-18(4), adopted 12-8-04, effective 2-8-05)~~

Sec. 31.2 Building permit applications

The zoning administrator shall review building permit applications submitted to the building official as follows:

- a. Review. The zoning administrator shall review each building permit application to ensure that the proposed building or structure complies with this chapter. Each applicant shall provide two (2) copies of the building plans, two (2) copies of the approved site plan if applicable, and a copy of the most recent plat of record of the site to be built upon unless no such plat exists, in which case the applicant shall provide a copy of the most recent deed description of the land. Each applicant shall also provide any other information the zoning administrator deems necessary to review the application.
- b. Approval. If the proposed building or structure and stated use comply with this chapter, the zoning administrator shall approve the building permit application as to its compliance with this chapter. Upon approval of the building permit, one (1) copy of the building plan shall be returned to the applicant with the permit.
- c. Circumstances when building permit shall not be approved. The zoning administrator shall not approve a building permit in the following circumstances:
 1. No building permit shall be issued for any building or structure for which a site plan is required unless and until the site plan has been approved.
 2. No building permit shall be issued for any structure to be served by an individual well subject to a Tier 1 groundwater assessment under Albemarle County Code § 17-400 until the applicant complies with Albemarle County Code § 17-401. (Amended 2-5-05)
 3. No building permit shall be approved in violation of any provision of this chapter. (Amended 10-3-01) (§ 31.2.1, 12-10-80; Ord. 01-18(6), 10-3-01)
- d. Other information for building official. The zoning administrator shall inform the building official of any other applicable laws or any other provision of the Code to which the building or structure would not comply and, therefore, a building permit application should not be approved by the building official.

(§ 31.2.2, 12-10-80; Ord. 04-18(4), adopted 12-8-04, effective 2-8-05)

Sec. 31.3 Zoning permits

The zoning administrator shall review requests for zoning permits for those buildings and structures not required to file a building permit application, as follows:

- a. When required. Prior to starting, establishing, constructing, reconstructing, enlarging or altering any buildings or structures for which a building permit application is not required under the building code, the applicant shall request a zoning permit.
- b. Review. The zoning administrator shall review each zoning permit application to ensure that the proposed building or structure complies with this chapter. Each applicant shall provide a copy of the most recent plat of record of the land to be built upon unless no such plat exists, in which case the applicant shall provide a copy of the most recent deed description of the land. Each

applicant shall also provide any other information the zoning administrator deems necessary to review the application.

c. Approval. If the proposed building or structure and stated use comply with this chapter, the zoning administrator shall approve the zoning permit application.

Sec. 31.2.3 Certificates of occupancy; zoning compliance clearance (Amended 9-9-92; 10-3-01)

Sec. 31.2.3.1 Certificate of occupancy

~~It shall be unlawful to use or permit the use of any structure or premises, or part thereof, hereafter created, erected, changed, converted, altered or enlarged, wholly or partly in its use or structure, until a certificate of occupancy indicating completion of the work for which a permit was issued, is issued therefor by the zoning administrator. Final inspection approval or approvals may serve as the certificate of occupancy for any addition or alteration to a structure for which a certificate of occupancy has already been issued. The certificate shall show that the structure, premises or part thereof, and the proposed use thereof, is in conformity with the provisions of this chapter. (Amended 10-3-01)~~

~~When structures are completed and ready for occupancy prior to the completion of all improvements required by the site plan, and the zoning administrator determines that the site may be occupied consistently with the public health, safety and welfare: (Amended 10-3-01)~~

- a. ~~Except as provided in subsection (c), the owner may provide a certified check, bond with surety satisfactory to the county, a letter of credit satisfactory to the county, or other form of surety satisfactory to the county approved by the county attorney, in an amount sufficient for and conditioned upon the completion of the improvements related to the structure for which the permit is sought, within one (1) year. Upon the providing of such bond with surety, a permit may be issued for the occupancy of those structures already completed. (Added 10-3-01)~~
- b. ~~The board of supervisors may extend the period of the surety if the applicant demonstrates that the extension is required because of adverse weather conditions or other unusual circumstances beyond the applicant's control, rather than the applicant's failure to diligently pursue completion or other reasons. (Added 10-3-01)~~
- c. ~~A certificate of occupancy shall not be issued, and a surety shall not be accepted, if the zoning administrator determines that improvements directly related to health and safety, such as fire hydrants and safe and convenient access to public roads, have not been completed and are not operational. (Added 10-3-01)~~

~~(§ 31.2.3.1, 12-10-80, 6-2-82, 9-9-92; Ord. 01-18(6), 10-3-01)~~

Sec. 31.4 Certificates of occupancy

The zoning administrator shall review certificates of occupancy submitted to the building official as follows:

- a. Review. Prior to issuance of a certificate of occupancy, the zoning administrator shall review the certificate to ensure that the building, structure and improvements comply with this chapter.
- b. Approval. If the proposed building, structure and improvements, and the proposed use thereof, comply with this chapter, the zoning administrator shall issue the certificate of occupancy. The final zoning inspection approval or approvals may serve as evidence of the zoning administrator's approval of the certificate of occupancy for any addition or alteration to a building or structure for which a certificate of occupancy has previously been issued or is not required under the building code.
- c. Certificate of occupancy where improvements not completed. Upon the request of a developer, the zoning administrator may approve a certificate of occupancy where the buildings or structures

shown on a site plan are completed in compliance with the building code and this chapter before all improvements required by the site plan are completed, as follows:

1. Required findings. The zoning administrator may approve a certificate of occupancy upon finding that: (i) the improvements still to be completed and operating are not directly related to health and safety, such as fire hydrants and safe and convenient access to public roads; and (ii) the site may be occupied without endangering life or public health or safety prior to full completion of the improvements required by the site plan.
2. Surety. Before issuing a certificate of occupancy, the zoning administrator may require the developer to provide a certified check, bond with surety, a letter of credit, or other form of surety, all of which shall be in a form satisfactory to the county attorney, in an amount sufficient for and conditioned upon the completion of the improvements within one (1) year. Upon the request of the developer prior to the expiration of the surety, the zoning administrator may extend the period of the surety if the developer demonstrates that an extension is required because of adverse weather conditions or other unusual circumstances beyond the developer's control, rather than the developer's failure to diligently pursue completion or other reasons.

(§ 31.2.3.1, 12-10-80, 6-2-82, 9-9-92; Ord. 01-18(6), 10-3-01)

d. Circumstances when certificate of occupancy shall not be issued. The zoning administrator shall not issue a certificate of occupancy in the following circumstances:

1. No certificate of occupancy shall be issued in violation of this chapter. (Amended 10-3-01) (§ 31.2.1, 12-10-80; Ord. 01-18(6), 10-3-01)
2. No certificate of occupancy shall be issued if, after review of any building, structure or site, the zoning administrator determines that additional improvements are necessary to protect the public health or safety, regardless of whether the improvements are shown on the site plan. (Added 9-9-92; Amended 10-3-01) (§ 31.2.3.3, 9-9-92; Ord. 01-18(6), 10-3-01)

e. Other information for building official. The zoning administrator shall inform the building official of any other applicable laws or any other provision of the Code to which the building or structure does not comply and, therefore, a certificate of occupancy should not be issued by the building official.

Sec. 31.2.3.2 Zoning compliance clearance

~~An occupant shall obtain a zoning compliance clearance from the zoning administrator when: (1) a new commercial or industrial use is first established on a parcel; (2) an existing commercial or industrial use is changed or intensified; or (3) the occupant of a non-residential use changes. The zoning compliance clearance shall be issued only if the zoning administrator determines that the structure or premises and its use comply with the requirements of this chapter. For purposes of this section, production agriculture is not a commercial or industrial use; a home occupation is a commercial use. (Added 9-9-92; Amended 10-3-01)~~

~~(§ 31.2.3.2, 9-9-92; Ord. 01-18(6), 10-3-01)~~

Sec. 31.5 Zoning clearance

The zoning administrator shall review requests for zoning clearances as follows:

a. When required. A zoning clearance shall be required in the following circumstances:

1. New use. Prior to establishing a new **non-residential, other than an agricultural, use.**

2. Change or intensification of existing use. Prior to changing or intensifying an existing **non-residential, other than an agricultural, use.**
 3. Change of occupant. Prior to a new occupant taking possession of an existing **non-residential, other than an agricultural, use.**
 4. Specific buildings, structures or uses. Prior to establishing any building, structure or use for which a zoning clearance is required under section 5.
- b. Approval. If the proposed building, structure, improvements, and site, and the proposed use thereof, comply with this chapter, the zoning administrator shall issue the zoning clearance.
- c. Circumstance when zoning clearance shall not be issued. The zoning administrator shall not issue a zoning clearance if, after review of any site, the zoning administrator determines that additional improvements are necessary to protect the public health or safety, regardless of whether the improvements are shown on the site plan. (Added 9-9-92; Amended 10-3-01) (§ 31.2.3.3, 9-9-92; Ord. 01-18(6), 10-3-01)
- d. Commercial and industrial uses defined. For the purposes of this section 31.4, production agriculture is not a commercial or industrial use, and a home occupation, class A or class B, is a commercial use. (Added 9-9-92; Amended 10-3-01)
- e. Effect of renumbering and renaming. Any other section of this chapter that refers to section 31.2.3.2 or to a zoning compliance clearance shall be deemed to be a reference to section 31.4 or a zoning clearance.

(§ 31.2.3.2, 9-9-92; Ord. 01-18(6), 10-3-01)

~~Sec. 31.2.3.3 Authority not to issue certificate of occupancy or zoning compliance clearance~~

~~Notwithstanding sections 31.2.3.1 and 31.2.3.2, nothing contained herein shall be deemed to obligate the zoning administrator, following review of any building or premises, to issue a certificate of occupancy or zoning compliance clearance in any case in which the zoning administrator determines that additional improvements are necessary as precedent to issuing a certificate of occupancy or a zoning compliance clearance to protect the public health or safety, whether or not the improvements are shown on the approved site plan. (Added 9-9-92; Amended 10-3-01)~~

~~(§ 31.2.3.3, 9-9-92; Ord. 01-18(6), 10-3-01)~~

Sec. 31.2.4 31.6 Special use permits

Sec. 31.2.4.1 31.6.1 Reserved to board of supervisors

The board of supervisors hereby reserves unto itself the right to issue all special use permits permitted hereunder. Special use permits for uses as provided in this ordinance may be issued upon a finding by the board of supervisors that such use will not be of substantial detriment to adjacent property, that the character of the district will not be changed thereby and that such use will be in harmony with the purpose and intent of this ordinance, with the uses permitted by right in the district, with additional regulations provided in section 5.0 of this ordinance, and with the public health, safety and general welfare.

Sec. 31.2.4.2 31.6.2 Application

Application for a special use permit shall be made by the filing thereof by the owner or contract purchaser of the subject property with the zoning administrator, together with a fee as set forth in section 35.0 of this ordinance. No such permit shall be issued unless the board of supervisors shall have referred the application therefor to the commission for its recommendations. Failure of the commission to report within ninety (90) days after the first meeting of the commission after the application has been referred to

the commission shall be deemed a recommendation of approval. Provided, however, any day between the date an applicant requests or consents to a deferral or continuance of the consideration of the application by the commission until the date of the deferred or continued hearing by the commission shall not be counted in computing the ninety (90) day review period. The board of supervisors may extend the review period upon a request by the commission.

The board of supervisors shall act upon such application and render a decision within a reasonable time period.

No such permit shall be issued except after notice and hearing as provided by ~~section 15.2-2204 of the Code and~~ Virginia Code § 15.2-2204 and section 33.8 of this chapter ~~POSTING OF PROPERTY.~~
(Amended 5-5-82; 6-19-96)

Sec. ~~31.2.4.2.1~~ Limitation of filing new application after original denial

a. Limitation of filing new application after original denial. Upon denial by the board of supervisors of any application filed pursuant to section ~~31.2.4.2~~ 31.6.2 above, substantially the same petition shall not be reconsidered within twelve (12) months of the date of denial. (Added 6-19-96)

Sec. ~~31.2.4.2.2~~ Withdrawal of petition

b. Withdrawal of petition. An application shall be withdrawn, or be deemed to be withdrawn, as provided herein: (Added 10-3-01)

a~~1~~. An application filed pursuant to section ~~31.2.4.2~~ 31.6.2 above may be withdrawn upon written request by the applicant. The written request must be received by the body considering the application prior to it beginning consideration of the matter on the meeting agenda. Upon receipt of the request for withdrawal, processing of the application shall cease without further action by the commission or the board. Substantially the same application shall not be reconsidered within twelve (12) months of the date of the withdrawal unless the body considering the application at the time of withdrawal specifies that the time limitation shall not apply. (Added 6-19-96; Amended 10-3-01)

b~~2~~. If the applicant requests that further processing or formal action on the application be indefinitely deferred, the application shall be deemed to have been voluntarily withdrawn by the applicant if the commission or the board does not take action on the application within twelve (12) months after the date the deferral was requested. Upon written request received by the director of planning ~~and community development~~ before the application is deemed to be withdrawn, the director may grant one extension of the deferral period for a period determined to be reasonable, taking into consideration the size or nature of the proposed use, the complexity of the review, and the laws in effect at the time the request for extension is made. (Added 10-3-01)

(§ 31.2.4.2.2, 6-19-96; Ord. 01-18(6), 10-3-01)

Sec. ~~31.2.4.3~~ 31.6.3 Conditions

The board of supervisors may impose upon any such permit such conditions relating to the use for which such permit is granted as it may deem necessary in the public interest and may require a bond with surety or other approved security to ensure that the conditions so imposed shall be complied with. ~~Such~~ The conditions shall relate to the purposes of this ordinance, including, but not limited to, the prevention of smoke, dust, noise, traffic congestion, flood and/or other hazardous, deleterious or otherwise undesirable substance or condition; the provision of adequate police and fire protection, transportation, water, sewerage, drainage, recreation, landscaping and/or screening or buffering; the establishment of special requirements relating to the building setbacks, front, side and rear yards, off-street parking, ingress and egress, hours of operation, outside storage of materials, duration and intensity of use, building height and/or other particular aspects of occupancy or use. Except as the board of supervisors

may otherwise specifically provide in a particular case, any condition imposed under the authority of this section shall be deemed to be essential to and nonseverable from the issuance of the permit itself. (Amended 10-3-01)

(§ 31.2.4.3, 12-10-80; Ord. 01-18(6), 10-3-01)

Sec. 31.2.4.4 31.6.4 Revocation

Any special use permit issued pursuant to this chapter may be revoked by the board of supervisors, after notice and hearing pursuant to Virginia Code § 15.2-2204, for willful noncompliance with this chapter or any conditions imposed under the authority of section ~~31.2.4.3~~ 31.6.3. If the use, structure or activity for which a special use permit is issued is not commenced within twenty-four (24) months after the permit is issued, the permit shall be deemed abandoned and the authority granted thereunder shall thereupon terminate. For purposes of this section, if the use authorized by the permit requires the construction of one or more structures, the term "commenced" means starting the lawful physical construction of any structure necessary to the use authorized by the permit within twenty-four (24) months after the permit is issued. The board of supervisors may, as a condition of approval, impose an alternative period in which to commence the use, structure or activity as may be reasonable in a particular case. A determination that a permittee has commenced a use, structure or activity under this section is not a determination that the permittee has acquired a vested right under Virginia Code § 15.2-2307. (Amended 10-3-01)

(§ 31.2.4.4, 12-10-80; Ord. 01-18(6), 10-3-01)

Sec. ~~31.2.5~~ 31.7 Review of public uses for compliance features to determine substantial accord with the comprehensive plan

~~No street, park or other public area, or public structure, or public utility, public building or public service corporation other than railroads, whether publicly or privately owned, shall be constructed, established or authorized, unless and until the general location or approximate location, character and extent thereof has been submitted to and approved by the commission as being substantially in accord with the adopted comprehensive plan or part thereof. In connection with any such determination, the commission may establish such conditions of approval as deemed necessary to insure compliance with the comprehensive plan.~~

~~Widening, narrowing, extension, enlargement, vacation or change of use of streets or public areas shall likewise be submitted for approval, but paving, repair, reconstruction, improvement, drainage or similar work and normal service extensions of public utilities or public service corporations shall not require approval unless involving a change in location or extent of a street or public area.~~

~~The foregoing notwithstanding, the provisions of section 15.2-2232 of the Code shall apply to any such review.~~

For any public facility not already shown on the comprehensive plan, the commission shall determine whether the location, character and extent of any public facility subject to Virginia Code § 15.2-2232 is in substantial accord with the comprehensive plan.

Sec. 34.3 Appeal to the board of zoning appeals

~~Appeal to the board of zoning appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the county affected by any decision of the zoning administrator. Such appeal shall be taken within thirty (30) days after the decision appealed from by filing with the zoning administrator, and with the board of zoning appeals, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board of zoning appeals all the papers constituting the record upon which the action appealed from was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board of zoning appeals that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order~~

~~granted by the board of zoning appeals or by a court of record, on application and on notice to the zoning administrator and for good cause shown.~~

An appeal to the board of zoning appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the county affected by any decision of the zoning administrator, or from any order, requirement, decision or determination (collectively, the "decision") made by any other administrative officer in the administration or enforcement of this chapter, as provided herein.

a. Time for filing appeal. A notice of appeal (an "appeal") shall be filed within thirty (30) days after the decision appealed, provided that an appeal of a decision pertaining to temporary or seasonal commercial uses shall be filed within ten (10) days after the decision if the notice of violation states that the ten (10) day appeal period applies.

b. Filing and contents of appeal. An appeal shall be filed with the zoning administrator and with the board of zoning appeals. The appeal shall specify the grounds for the appeal.

c. Transmittal of record. Upon the filing of an appeal, the zoning administrator shall forthwith transmit to the board of zoning appeals all the papers constituting the record upon which the action appealed from was taken.

d. Stay of proceedings. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board of zoning appeals that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board of zoning appeals or by a court of record, on application and on notice to the zoning administrator and for good cause shown.

e. Payment of fee. No appeal shall be processed, no record shall be required to be transmitted as provided under subsection 34.3(c), no proceedings shall be stayed as provided under subsection 34.3(d), and the time for which the appeal must be heard and acted on by the board of zoning appeals shall not begin, until the fee required by section 35 is paid. The failure of the appellant to pay the required within the time for filing an appeal shall not be a basis to refuse to accept the appeal or to dismiss the appeal.

State law reference – Va. Code §§ 15.2-2286(A)(4), 15.2-2311(A), (B).

Article V. Violation and penalty

Sec. 36.1 Violations --generally

~~Any building erected contrary to any of the provisions of this ordinance or contrary to any condition imposed upon any conditional rezoning, issuance of a special use permit or approval of a site plan, and any use of any building or land which is conducted, operated or maintained contrary to any of the provisions of this ordinance or any condition imposed upon any conditional rezoning, issuance of a special use permit or approval of a site plan, shall be a violation of this ordinance and the same is hereby declared to be unlawful. The zoning administrator may initiate injunction, mandamus, abatement, criminal warrant or any other appropriate action to prevent, enjoin, abate or remove such erection or use in violation of any provision of this ordinance. (Amended 12-20-89)~~

The following are violations of this chapter and are declared to be unlawful:

a. Uses. Any use of a structure, improvement or land, established, that is conducted, operated or maintained in violation of any provision of this chapter or any approved application plan, site plan, code of development, zoning clearance, or condition accepted or imposed in conjunction with any county approval under this chapter.

b. Structures or improvements. Any structure or improvement that is established, conducted, operated or maintained in violation of any provision of this chapter or any approved application

plan, site plan, code of development, zoning permit, zoning clearance, or condition accepted or imposed in conjunction with any county approval under this chapter.

c. Structures without building permits. Any structure for which a building permit application is required that is started, established, constructed, reconstructed, enlarged or altered without a building permit.

d. Use of structure or site without certificate of occupancy. Any use of a structure or site for which a certificate of occupancy is required that is conducted, operated or maintained without a certificate of occupancy.

(Subsection c: § 31.2.1, 12-10-80; Ord. 01-18(6), 10-3-01; subsection d: § 31.2.3.1, 12-10-80, 6-2-82, 9-9-92; Ord. 01-18(6), 10-3-01))

Sec. 36.2 Notice of violation

Upon becoming aware of any violation of any provisions of this ordinance, the zoning administrator shall serve notice of such violation on the person committing or permitting the same, and if such violation has not ceased within such reasonable time as the zoning administrator has specified in such notice, he shall institute such action as may be necessary to terminate the violation.

Sec. 36.3 Remedies not exclusive

The remedies provided for in this section are cumulative and not exclusive and shall be in addition to any other remedies provided by law.

Sec. 36.4 Complaints regarding violations

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the cause and basis thereof shall be filed with the zoning administrator. He shall record properly such complaint, immediately investigate and take action thereon as provided by this ordinance.

Sec. 36.2 Enforcement

The zoning administrator is authorized to enforce this chapter as follows:

a. Investigation. Upon receipt of a complaint or a request to investigate whether this chapter is being violated, the zoning administrator or his designee shall conduct an investigation.

b. Inspection warrants and search warrants. The zoning administrator is authorized to request and execute inspection warrants issued by a magistrate or court of competent jurisdiction to allow the inspection of dwellings authorized under Virginia Code § 15.2-2286(A)(15). The zoning administrator also is authorized to request and execute search warrants issued by a court of competent jurisdiction as provided by law. Prior to seeking an inspection warrant or a search warrant, the zoning administrator or his agent shall make a reasonable effort to obtain consent from the owner or tenant to enter the structure or property to conduct an inspection or search.

c. Subpoenas duces tecum. Whenever the zoning administrator has reasonable cause to believe that any person has engaged or is engaging in any violation of this chapter that limits occupancy in a dwelling unit and, after a good faith effort to obtain the data or information necessary to determine whether a violation has occurred, has been unable to obtain such information, he may request that the office of the county attorney petition the judge of the general district court for a subpoena duces tecum against any person refusing to produce the data or information, as authorized under Virginia Code § 15.2-2286(A)(4).

d. Notice of violation; exception. If, upon completion of the investigation, the zoning administrator determines that a violation of this chapter exists, a notice of violation shall be issued to the person

committing and/or permitting the violation if the zoning administrator determines to pursue enforcement; provided that a notice of violation shall not be required to be issued for a violation initiated by a ticket under section 36.3(a).

1. *Contents of notice.* The notice shall include the following information: (i) the date of the notice; (ii) the basis for the decision; (iii) a statement informing the recipient that the decision may be appealed to the board of zoning appeals within applicable appeal period provided in section 34.3 and that the decision shall be final and unappealable if it is not timely appealed; and (iv) the time within which the violation shall be abated.
 2. *Delivery of notice.* The notice shall be either hand delivered, posted on the door of a building on the site, or mailed by regular or certified mail, provided that notice to the property owner, sent by certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall satisfy the notice requirements of this section.
- e. *Remedies.* In the enforcement of this chapter, the zoning administrator may pursue any remedy authorized by law. The remedies provided in sections 36.3, 36.4 and 36.5 are cumulative and not exclusive except to the extent expressly provided therein, and shall be in addition to any other remedies authorized by law.

Sec. 36.3 Civil penalties

Any person, whether the owner, lessee, principal, agent, employee or otherwise, who violates any provision of this chapter as provided in section 36.1, or permits either by granting permission to another to engage in the violating act or by not prohibiting the violating act after being informed by the zoning administrator that the act violates this chapter as provided in section 36.2, shall be subject to the following:

- a. *Procedure.* Proceedings seeking civil penalties for all violations of this chapter under this section 36.3 shall commence either by filing a civil summons in the general district court or by the zoning administrator or his deputy issuing a ticket.
- b. *Minimum elements of a civil summons or ticket.* A civil summons or ticket shall contain, at a minimum, the following information: (i) the name and address of the person charged; (ii) the nature of the violation and the section of this chapter allegedly violated; (iii) the location and date that the violation occurred or was observed; (iv) the amount of the civil penalty being imposed for the violation; (v) the manner, location and time in which the civil penalty may be paid to the county; (vi) the right of the recipient of the summons to elect to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of a court; and either the date scheduled for trial, or the date for scheduling of such trial by the court.
- c. *Amount of civil penalty.* Any violation of this chapter shall be subject to a civil penalty of two hundred dollars (\$200.00) for the initial summons, and a civil penalty of five hundred dollars (\$500.00) for each additional summons arising from the same set of operative facts.
- d. *Maximum aggregate civil penalty.* The total civil penalties from a series of violations arising from the same set of operative facts shall not exceed five thousand dollars (\$5,000.00). After the civil penalties reach the five thousand dollar (\$5,000.00) limit, the violation may be prosecuted as a criminal misdemeanor under section 36.4.
- e. *Each day a separate offense; single offense in 10-day period.* Each day during which a violation is found to exist shall be a separate offense. However, the same scheduled violation arising from the same operative set of facts may be charged not more than once in a ten (10) day period.
- f. *Option to prepay civil penalty and waive trial.* Any person summoned or ticketed for a violation of this chapter may elect to pay the civil penalty by making an appearance in person or in writing by mail to the department of finance prior to the date fixed for trial in court. A person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense

charged. A signature to an admission of liability shall have the same force and effect as a judgment of court. However, such an admission shall not be deemed a criminal conviction for any purpose. If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law. A finding of liability shall not be deemed a criminal conviction for any purpose.

g. Civil penalties are in lieu of criminal penalties. A violation enforced under section 36.3 shall be in lieu of any criminal penalty and, except for any violation resulting in injury to persons, such a designation shall preclude the prosecution of the particular violation as a criminal misdemeanor, but shall not preclude any other remedy available under this chapter.

h. Violations excluded. Section 36.3 shall not be construed to allow the imposition of civil penalties: (i) for activities related to land development where, for the purposes of this section, the term "land development" means a human-made change to, or construction on, the land surface including, but not limited to, land disturbing activity within the meaning of chapter 17 of Albemarle County Code or the construction of buildings, structures or improvements under an approved site plan or subdivision plat, but does not mean the land development project's compliance with this chapter; or (ii) for the violation of any provision of this chapter relating to the posting of signs on public property or public rights-of-way.

(§ 37.2; Ord. 00-18(5), 6-14-00; Ord. 02-18(3), 2-13-02; Ord. 05-18(3), 3-16-05; Ord. 06-18(1), 7-05-06)

State law reference – Va. Code § 15.2-2209.

Sec. 36.4 Criminal penalties

Any person, whether the owner, lessee, principal, agent, employee or otherwise, to whom the five thousand dollar (\$5,000.00) maximum aggregate civil penalty provided in section 36.3(c) has been reached and who continues to violate any provision of this chapter as provided in chapter 36.1, or permits either by granting permission to another to engage in the violating act or by not prohibiting the violating act after being informed by the zoning administrator that the act continues to violate this chapter as provided in section 36.2, shall be subject to the following:

a. The person shall have committed a misdemeanor offense punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00).

b. If the violation is uncorrected at the time of conviction, the court shall order the person convicted to abate or remedy the violation in compliance with this chapter, within a time period established by the court. Failure to remove or abate such violation within the time period established by the court shall constitute a separate misdemeanor offense punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00), and any such failure during any succeeding ten (10) day period shall constitute a separate misdemeanor offense for each ten (10) day period, punishable by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand five hundred dollars (\$1,500.00).

c. Notwithstanding subsections (a) and (b), any conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwelling units shall be punishable by a fine of up to two thousand dollars (\$2,000.00). Failure to abate the violation within the specified time period shall be punishable by a fine of up to five thousand dollars (\$5,000.00), and any such failure during any succeeding ten (10) day period shall constitute a separate misdemeanor offense for each ten (10) day period punishable by a fine of up to seven thousand five hundred dollars (\$7,500.00). However, no such fine shall accrue against an owner or managing agent of a single-family residential dwelling unit during the pendency of any legal action commenced by such owner or managing agent of the dwelling unit against a tenant to eliminate an overcrowding condition in accordance with Chapter 13 or Chapter 13.2 of Title 55, as applicable. A conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwelling units shall not be punishable by a jail term.

(§ 37.1; Ord. 00-18(5), 6-14-00)

State law reference – Va. Code § 15.2-2286(A)(5).

Sec. 36.5 Injunctive relief and other remedies

Any violation of this chapter may be restrained, corrected, or abated as the case may be by injunction or other appropriate relief.

(§ 37.3; Ord. 00-18(5), 6-14-00)

State law reference – Va. Code § 15.2-2208.

Sec. 37.0 Penalties and remedies (Amended 6-14-00)

Sec. 37.1 Criminal penalty

~~Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any provision of this chapter, or permits any such violation, or fails to comply with any of the requirements hereof, or who erects any building or structure or uses any building, structure or land in violation of this chapter or any site plan or other detailed statement or plan submitted by one of the above-described persons and approved under the provisions of this chapter, shall be subject to the following:~~

~~A.—— The person shall have committed a misdemeanor offense punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00).~~

~~B.—— If the violation is uncorrected at the time of conviction, the court shall order the person convicted to abate or remedy the violation in compliance with this chapter, within a time period established by the court. Failure to remove or abate such violation within the time period established by the court shall constitute a separate misdemeanor offense punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00), and any such failure during any succeeding ten (10) day period shall constitute a separate misdemeanor offense for each ten (10) day period, punishable by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand five hundred dollars (\$1,500.00).~~

~~(Ord. 00-18(5), 6-14-00)~~

~~**State law reference** — Va. Code § 15.2-2286.~~

Sec. 37.2 Civil penalty

~~Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any provision of this chapter, or permits any such violation, or fails to comply with any of the requirements hereof, or who erects any building or structure or uses any building, structure or land in violation of this chapter or any site plan or other detailed statement or plan submitted by him and approved under the provisions of this chapter, shall be subject to the following:~~

~~A.—— Any violation of this chapter shall be subject to a civil penalty of two hundred dollars (\$200.00) for the first violation, and a civil penalty of five hundred dollars (\$500.00) for each subsequent violation arising from the same set of operative facts (Amended 3-16-05; Amended 7-5-06).~~

~~B.—— Each day during which a violation is found to exist shall be a separate offense. However, the same scheduled violation arising from the same operative set of facts may be charged not more than once in a ten (10) day period, and the total civil penalties from a series of such violations arising from the same set of operative facts shall not exceed five thousand dollars (\$5,000.00) (Amended 3-16-05; Amended 7-5-06).~~

~~C. Any person summoned for a scheduled violation may elect to pay the civil penalty by making an appearance in person or in writing by mail to the department of finance prior to the date fixed for trial in court. A person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. A signature to an admission of liability shall have the same force and effect as a judgment of court. However, such an admission shall not be deemed a criminal conviction for any purpose. If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law. A finding of liability shall not be deemed a criminal conviction for any purpose.~~

~~D. A violation enforced under section 37.2 shall be in lieu of any criminal penalty and, except for any violation resulting in injury to persons, such a designation shall preclude the prosecution of the particular violation as a criminal misdemeanor, but shall not preclude any other remedy available under this chapter. (Amended 7-5-06)~~

~~E. Section 37.2 shall not be construed to allow the imposition of civil penalties: (i) for activities related to land development within the meaning of Virginia Code § 10.1-603.2; or (ii) for violation of any provision of the zoning ordinance relating to the posting of signs on public property or public rights-of-way. (Amended 7-5-06)~~

~~(Ord. 00-18(5), 6-14-00; Ord. 02-18(3), 2-13-02; Ord. 05-18(3), 3-16-05; Ord. 06-18(1), 7-05-06)~~

~~State law reference — Va. Code § 15.2-2209.~~

~~Sec. 37.3 Injunctive relief and other remedies~~

~~Any violation of this chapter may be restrained, corrected, or abated as the case may be by injunction or other appropriate relief.~~

~~(Ord. 00-18(5), 6-14-00)~~

~~State law reference — Va. Code § 15.2-2208.~~

I, Ella W. Jordan, do hereby certify that the foregoing writing is a true, correct copy of an Ordinance duly adopted by the Board of Supervisors of Albemarle County, Virginia, by a vote of _____ to _____, as recorded below, at a regular meeting held on _____.

Clerk, Board of County Supervisors

	<u>Aye</u>	<u>Nay</u>
Mr. Boyd	_____	_____
Mr. Dorrier	_____	_____
Ms. Mallek	_____	_____
Mr. Rooker	_____	_____
Mr. Slutzky	_____	_____
Ms. Thomas	_____	_____

Old Business:

Mr. Strucko asked if there was any old business. There being none, the meeting moved to the next item.

New Business:

Mr. Strucko asked if there was any new business. He noted that at the last Planning Commission meeting Places 29 was discussed. The Commission went through a lengthy discussion about taxes, financing and the time value of money. He felt that it was a good discussion. Since that meeting the

Free Enterprise Forum issued a report and press release that has caused a lot of concern among the Commissioners. With the help of staff he put together a response, which was emailed today. He asked to read the statement into record and solicit comments from other Commissioners.

Ms. Porterfield suggested that the Commission address the issue next week since Places29 was on the agenda. Since she was absent from the meeting on Places29 she would not oppose it, but would abstain from the discussion.

Mr. Strucko read a response to the Free Enterprise Forum's press release on Places29.

Public Statement from the Albemarle County Planning Commission

June 10, 2009

"On May 28, 2009 the Free Enterprise Forum (FEF) released a report titled *Places 29 Reality Check Report*. The report contrasts an approach of discussing Places 29 costs in terms of current dollars with an approach using projected future dollars, with assumptions made by FEF about future increases. While we respect and understand FEF's approach in using assumptions about future increases to project costs into the future, the Planning Commission's intent was to provide as reliable an estimate as possible in terms of what we absolutely know, which is current dollar values. We certainly realize that there will be an escalation factor, as there would be with any road construction project envisioned for the future here in our community. We thoroughly discussed this very fact at our last work session on Places 29 on May 12, 2009 (at which FEF was present), a full two weeks prior to the FEF report release. We discussed and vetted the issue in a public venue and an open Planning Commission meeting which was duly recorded in our minutes for that meeting. These minutes are available to any interested member of the public for their review.

Given that, it was very concerning to us to read the comments in the statement which accompanied the release of the report, which portrayed the Planning Commission's approach as "beyond bad project management, it is deceitful." That is an irresponsible, accusatory, and false statement which is at odds with the type of civil discourse about critical community issues that FEF promotes by its mission. According to the FEF website, that mission is "providing clear positive balance to the discussions of important issues of the day." FEF's statement is not positive, balanced, or accurate.

We welcome FEF's continued involvement in and scrutiny of the Places29 Master Plan, as much is gained by energetic public engagement in this type of process and many suggestions from FEF and others have helped shape the plan to this point. We also hope that the tone of FEF's participation improves and becomes mutually respectful and mindful of the fact that reasonable and well-intentioned people can differ in how they view community issues."

It was the consensus of the Commission to release the media statement. (Mr. Loach, Ms. Joseph, Mr. Edgerton, Mr. Strucko and Mr. Morris were in favor.) Ms. Porterfield abstained. Mr. Franco was out of town and had not responded to the email.

Mr. Strucko noted that he would email the statement to the Commission and if there were no major concerns then he would issue the release sometime between now and the next meeting. Upon receipt of an affirmative response from each Commissioner he would immediately issue the media statement.

Mr. Cilimberg suggested that for help with getting the statement to the media Mr. Strucko could work through Lee Catlin on that.

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

Adjournment:

With no further items, the meeting adjourned at 8:14 p.m. to the Tuesday, June 16, 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)