

**COUNTY OF ALBEMARLE
PLANNING STAFF REPORT SUMMARY**

Project Name: ZMA201700007 Hogwaller Farm		Staff: Tim Padalino, AICP	
Planning Commission Public Hearing: May 1, 2018		Board of Supervisors Public Hearing: To Be Determined	
Owner: Franklin Street Land Trust II; Charles Wm Hurt & Shirley L Fisher Trustees		Applicant: Justin Shimp, PE	
Acreage: 7.52 acres		Rezone from: LI Light Industrial to RA Rural Areas	
TMP: 07700000002000 Location: West side of Moore’s Creek (“river left”), across from RWSA Moore’s Creek Treatment Plant. Adjacent to properties within the City of Charlottesville (east side of Nassau Street near intersection with Florence Road).		By-right use: The entirety of the property is in the Flood Hazard Overlay Zoning District (FHOD) which limits by-right LI uses to the following uses, provided that there is only fine grading done for the use: • Public uses, including public recreational uses (floodway fringe and floodway) • Water, sewer, public utility, and telecommunication lines (floodway fringe and floodway); poles in floodway fringe only • Temporary events • Farmers markets • Temporary construction storage yards (floodway fringe)	
Magisterial District: Scottsville		Proffers: Yes	
Proposal: Rezone 7.52-acre parcel from Light Industrial (LI) which allows industrial, office, and limited commercial uses (no residential uses), to Rural Areas (RA) which allows agricultural, forestal, and fishery uses as well as residential uses.		Requested # of Dwelling Units: None	
DA (Development Area): Neighborhood 4 – Southern and Western Urban Neighborhoods		Comp. Plan Designation: Parks and Green Systems. In the Southern and Western Urban Neighborhoods Master Plan.	
Character of Property: Undeveloped with riparian forest land cover. Moore’s Creek runs along the eastern property boundary. The western property boundary is the jurisdictional boundary between the County of Albemarle and the City of Charlottesville.		Use of Surrounding Properties The former Charlottesville Livestock Market (stockyard) and vacant land in the City; across Moore’s Creek is the RWSA Wastewater Treatment Plant.	
Factors Favorable: 1. The proposal would provide an opportunity for low-intensity use of this subject property which presently has few permissible uses (by right) due to the base zoning (LI Light Industrial) and zoning overlay (Flood Hazard). 2. The proposed use is expected to create relatively few impacts with regards to public infrastructure, and to require relatively few County services.		Factors Unfavorable: 1. Few limitations are proposed for use of the property: there is no proffered plan, and no commitments to limit by-right uses that would be permissible on the subject property if zoned to RA. 2. The applicant proposes to remove vegetation from a currently vegetated stream buffer and floodplain along an impaired stream. 3. A proposed “undisturbed riparian buffer” is insufficient in width. To be consistent with buffer requirements in the Development Areas the proposed buffer should (at minimum) be 100’ in width rather than 35’ in width. 4. The applicant is proposing to have farming activities within the regulatory Floodway which is not recommended for environmental and safety reasons.	
RECOMMENDATION: Staff cannot recommend approval of ZMA201700007 Hogwaller Farm as proposed. However, Staff could recommend approval if the proposal were limited to uses and the arrangement of uses shown on the Concept Plan, and if there was a commitment to establish and maintain a permanent undisturbed riparian buffer along Moore’s Creek which has a minimum width of 100’ (as measured from top of stream bank) or which extends to the Floodway boundary (as identified by FEMA on the applicable FIRM), whichever is greater.			

STAFF PERSON:
PLANNING COMMISSION:
BOARD OF SUPERVISORS:

Tim Padalino, AICP
May 1, 2018
To Be Determined

ZMA 201700007 Hogwaller Farm

PETITION

PROJECT: ZMA 201700007 Hogwaller Farm

MAGISTERIAL DISTRICT: Scottsville

TAX MAP/PARCEL(S): 07700000002000

LOCATION: East side of Nassau Street near intersection with Florence Road; west side of Moore's Creek across from Moore's Creek Treatment Plant. Adjacent to properties within the City of Charlottesville.

PROPOSAL: Rezone property from Light Industrial (LI) to Rural Areas (RA).

PETITION: Rezone the 7.52-acre parcel from Light Industrial (LI) which allows industrial, office, and limited commercial uses (no residential uses), to Rural Areas (RA) which allows agricultural, forestal, and fishery uses as well as residential uses (maximum density of 0.5 unit/acre in development lots). The proposed uses are agriculture, forestry, and fishery uses except as otherwise expressly provided. No residential units are proposed.

OVERLAY DISTRICT(S): Entrance Corridor; Flood Hazard; Steep Slopes - Preserved

PROFFERS: Yes

COMPREHENSIVE PLAN: Parks and Green Systems – parks, playgrounds, play fields, greenways, trails, paths, recreational facilities and equipment, plazas, outdoor sitting areas, natural areas, preservation of stream buffers, floodplains and steep slopes adjacent to rivers and streams.

POTENTIALLY IN MONTICELLO VIEWSHED: Yes

CHARACTER OF THE AREA

The subject property is an undeveloped parcel with riparian forest land cover. The western property boundary is the jurisdictional boundary between the County of Albemarle and the City of Charlottesville. Moore's Creek – which is designated as an impaired stream by VA DEQ for both recreation and aquatic life – runs along the eastern property boundary, with steep slopes (preserved) along the stream bank. The entire subject property is within the 100-year floodplain of Moore's Creek; and the regulatory floodway extends across a portion of the property, with a width varying from ~80' to ~180' (as measured from top of stream bank). The Moore's Creek Wastewater Treatment Plant, which is operated by the Rivanna Water & Sewer Authority (RWSA), is located adjacent to the subject property across Moore's Creek. (Attachments A, B)

The project narrative (Attachment C) states that the subject property "currently includes a predominantly lightly wooded area, which includes invasive species ... with open runoff outflows from culverts catching runoff from developments up to Monticello Rd. [in the City]."

SPECIFICS OF THE PROPOSAL

The applicant is proposing to rezone the 7.52-acre subject property from LI Light Industrial to RA Rural Areas to "allow the parcel to be used for agricultural production as part of an urban farm residential development, where residential development will occur [only] on an adjacent parcel within the City of Charlottesville." (Attachment C) The applicant has also (separately) requested a rezoning and special use permit from the City, to develop multi-family dwelling units on several parcels in the City that would incorporate the proposed Hogwaller Farm as an operational component of an agriculture-based live-work development. The proposal in the City is deferred until action is taken on ZMA201700007 by the County, as described in the correspondence from the City of Charlottesville Planning Commission dated April 18. (Attachment F)

The applicant has shown a concept plan with his application (Attachment D); however, there are no proffered commitments to this concept plan. The applicant has requested RA Rural Areas zoning with no property-wide limitations on uses. The only limitations proffered by the applicant, as articulated in the Preliminary Proffer Statement (Attachment E), are a commitment to “maintain a 35’ undisturbed riparian buffer along Moore’s Creek from top of bank” and a commitment to limit uses on a portion of the property, such that “only horticultural practices (tree nursery) will occur between 35’ from top of bank and 100’ from top of bank or the floodway, whichever is greater.” (Note: The Water Protection Ordinance does not require undisturbed stream buffers for ag uses.)

Additionally, if the subject property were rezoned and if bona fide agricultural operations were established, the “farm use may exercise by-right events or activities outlined in Chapter 18 Sec. 5.1.58. [“Supplemental regulations – Events and activities at agricultural operations”].”

APPLICANT’S JUSTIFICATION FOR THE REQUEST

The applicant has expressed that this proposed agricultural operation is an integral component of the overall “urban farm residential development” proposal, which includes a proposal to construct two (2) three-story apartment buildings containing thirty (30) dwelling units total on properties located within the City. (Attachments G and H) [Note: Unlike Albemarle County, the City of Charlottesville allows for residential construction within the floodway fringe provided the ground floors have a Finished Floor Elevation (FFE) least 1 foot above the designated Base Flood Elevation (BFE).] The project narrative states that the subject property is “an ideal location for an urban farm” and states that the subject property “provides the unique opportunity to serve as the site of agricultural production for this innovative residential development because of the parcel’s size and its immediate adjacent location to the City.” (Attachment C)

Additionally, the applicant has noted the limited potential uses of this parcel due to the presence of the Flood Hazard Overlay, and that the proposal would provide a private use for this property that “aligns with [the “Parks and Green Systems” Future Land Use] designation while maintaining private ownership of the parcel.” (Attachment C)

COMMUNITY MEETING

The Community Meeting for this project was held on September 11, 2018 at 7:00pm at Clark Elementary in the City of Charlottesville, in conjunction with the Belmont Neighborhood Association meeting. This was done in order to hold one consolidated community meeting that satisfied the County’s Community Meeting requirements as well as the City of Charlottesville’s Neighborhood Development Services community engagement requirements). Attendees representing Albemarle County included David Benish, Chief of Planning, County Supervisor Rick Randolph, and Planning Commissioner Pam Riley. Several members of the public were in attendance, and the issues discussed by attendees were primarily focused on issues related to the residential development components of the overall project (which are only proposed for properties within the City of Charlottesville).

PLANNING AND ZONING HISTORY

There are no prior Zoning Map Amendment applications or Special Use permits associated with this property.

COMPREHENSIVE PLAN

The Comprehensive Plan speaks to the importance of promoting urban agriculture. Objective 11 in Chapter 8 Development Areas says:

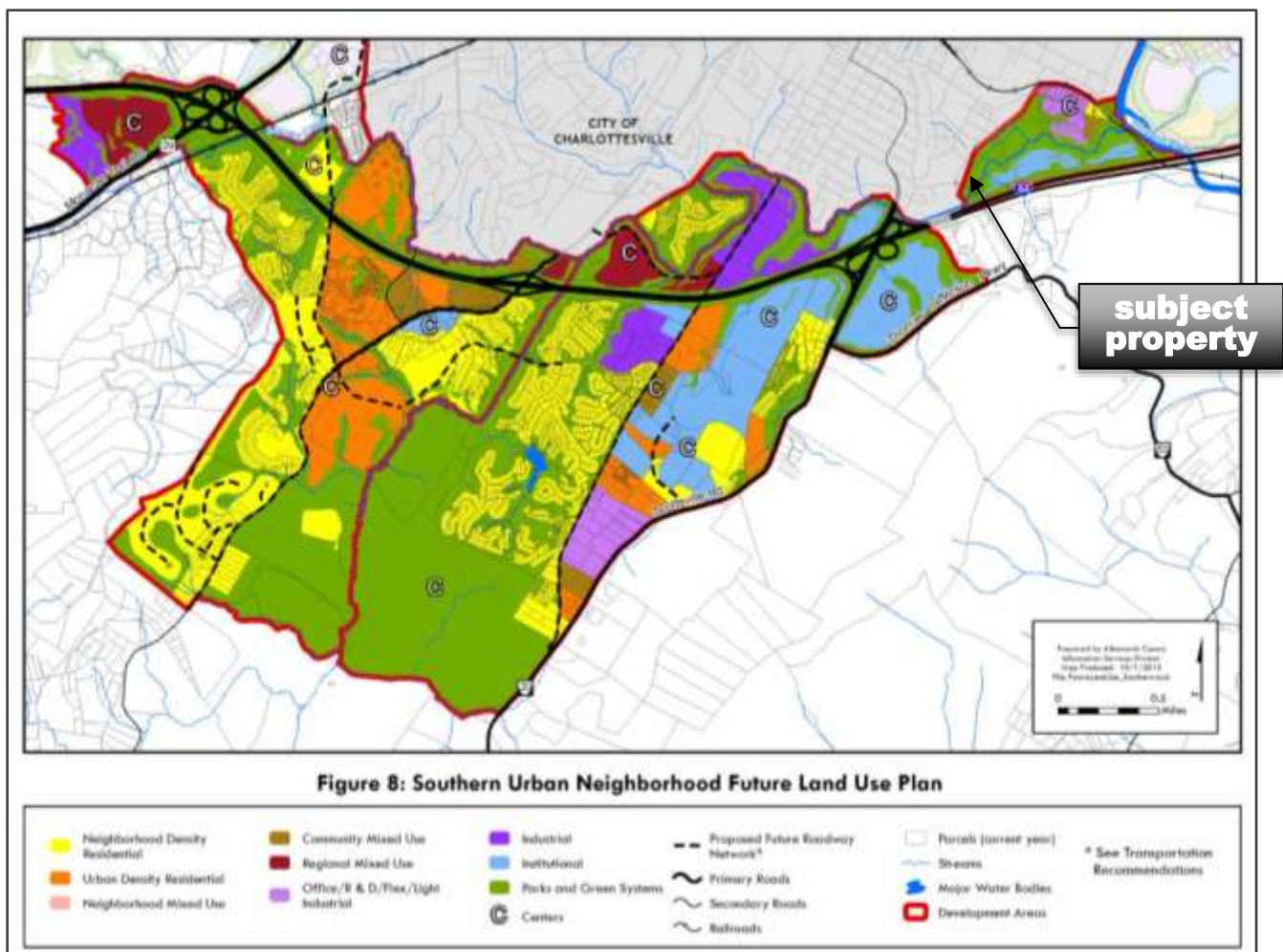
Consider allowing for urban agriculture practices to increase access to healthy, local, and affordable foods and encourage the productive use of vacant land.

This section of the Comprehensive Plan also contains the strategy to...

Amend the Zoning Ordinance to allow gardening as a standalone use in zoning districts in the Development Areas.

Albemarle County supports finding ways to allow gardening and healthy local food production in the Development Areas. If gardening were a standalone use in all zoning districts in the Development Areas, the WPO could be applied such that this ZMA would not be necessary.

The Southern and Western Urban Neighborhood Master Plan (S+W Master Plan) includes the following Future Land Use Plan designations for this area (see map inset below); the subject property is designated as Parks and Green Systems:



Purpose/ Intent	"This designation represents areas for parks, recreation, environmental preservation, and areas otherwise not intended for development. Land with this designation cannot be used to calculate available density for a parcel of land."
Primary Uses	"Parks, playgrounds, play fields, greenways, equipment, trails, paths, recreational equipment and facilities, plazas, outdoor sitting areas, and natural areas. Also, preservation of stream buffers, floodplains, known wetlands, and slopes of greater than 25% adjacent to rivers and streams. Property may be publicly or privately owned."

The intent of the Parks and Green Systems designation along Moore's Creek is to help keep critical environmental features intact. This is especially true with consideration of the health of the Moore's Creek watershed: Moore's Creek has been designated by Virginia DEQ as impaired for recreation (e.g., swimming, based on fecal coliform bacteria levels) and also impaired for aquatic life (based on benthic macroinvertebrate sampling) for many years, including the most recent statewide assessment in 2014. This means the stream does not meet state water quality standards for these two uses. ([VA DEQ Water Quality Assessments Homepage](#) / [VA DEQ 2014 Water Quality Assessments - Fact Sheets](#), see page 206)

Staff believes that the Parks and Green Systems designation could support agricultural uses, provided that critical riparian features are preserved on the property.

In addition to the Future Land Use Plan (Figure 8, S+W Master Plan p. 29) and Future Land Use Categories and Guidelines Chart (S+W Master Plan p. 34), the S+W Master Plan also identifies several pertinent recommendations for the areas along Moore's Creek, as follows:

Future Land Use / Centers – 16. Woolen Mills (S+W Master Plan p. 43):

- "Secure continuous greenways along Moore's Creek ... as well as along streams shown on the Greenway Plan which lead to these larger streams;"

Plan for Future Parks and Green Systems / Natural Resource Protection Recommendations (S+W Master Plan p. 53):

- "Preserve environmental features include streams, stream buffers, floodplains, wetlands, and systems of steep slopes. Special attention is needed for the following:"
 - "The stream buffers, systems of steep slopes, floodplain and wetlands adjacent to the Rivanna River, Moore's Creek, and Biscuit Run should be preserved."
 - "Minimize stream impacts and improve the health/quality of Moore's Creek..."

Plan for Future Parks and Green Systems / Trail Recommendations (S+W Master Plan p. 54):

- "Secure continuous greenways along Moore's Creek ... as well as along streams shown on the Greenway Plan which lead to these larger streams;"

The Parks and Green Systems Plan shows a greenway and trail along Moore's Creek at this location; however the applicant has not addressed this recommendation.

The Neighborhood Model: Staff's analysis below addresses only the applicable principles of the Neighborhood Model.

Pedestrian Orientation	The applicant recognizes that the proposed <i>"riparian buffer on the property adjacent to Moore's Creek provides the opportunity to establish a trail and possible connections to the Rivanna Trail Network, furthering the recreational potential of the property."</i> However, there is no greenway or trail offered by the applicant. <u><i>This principle is not met.</i></u>
Mixture of Uses	The area in which the use is proposed is largely a mixed use area. In addition, the proposed use of this property could be part of a larger, multi-jurisdictional "urban farm residential development" comprised of agricultural operations (in the County) and residential uses (in the City) if residential use is approved by the City. <u><i>This principle is met.</i></u>
Parks, Recreational	The proposed use of this subject property for agriculture could partially be interpreted as providing recreational amenities and open space for the associated

Amenities, and Open Space	dwelling units in the City, should that use be approved. The Preliminary Proffer Statement would commit the property owner to “maintain a 35’ undisturbed riparian buffer along Moore’s Creek from top of bank” and would also establish the commitment that “only horticultural practices (tree nursery) will occur between 35’ from top of bank and 100’ from top of bank or the floodway, whichever is greater.” <u><i>This principle is met.</i></u>
Clear Boundaries with the Rural Area	<u><i>This principle is difficult to apply to this proposal for this subject property, as the proposal is unusual in that it seeks to establish Rural Areas zoning within the Development Area.</i></u>

Relationship between the application and the intent and purposes of the requested zoning district:

As indicated earlier in this report, the existing LI zoning district and FH overlay district provide for very limited use of the parcel of land – and agricultural uses are not permissible in the LI zoning district.

The intent and purposes of the RA Rural Areas zoning district are as follows, per County Code §18-10.1:

- Preservation of agricultural and forestal lands and activities;
- Water supply protection;
- Limited service delivery to the rural areas; and
- Conservation of natural, scenic, and historic resources.

Though not explicit, the Zoning Ordinance section below (County Code §18-10.1 “[RA] Intent, where permitted”) implies that RA zoning is not intended for the Development Areas:

Residential development not related to bona fide agricultural/forestal use shall be encouraged to locate in the urban area, communities and villages as designated in the comprehensive plan where services and utilities are available and where such development will not conflict with the agricultural/forestal or other rural objective. Where development does occur, rural residents should expect to receive a lower level of service delivery than will be provided to residential developments in designated growth areas. In relation to residential development, agricultural/forestal activities shall be regulated only to the extent necessary to protect public health and safety.

In regard to agricultural preservation, this district is intended to preserve the county's active farms and best agricultural and forestal lands by providing lot areas designed to insure the continued availability of such lands for preferential land use tax assessment in order to enhance the economy, and maintain employment and lifestyle opportunities. In addition, the continuation and establishment of agriculture and agriculturally-related uses will be encouraged, and landowners will be encouraged to employ Virginia State Water Control Board best management practices.

However, the proposed zoning district could allow for urban agriculture, which helps achieve a Comprehensive Plan objective for the Development Areas. It could also help conserve natural resources and allow use of the parcel, if a commitment was made to establish and maintain a permanent undisturbed riparian buffer along Moore’s Creek which would have a minimum width of 100’ (as measured from top of stream bank) or which extends to the Floodway boundary, whichever is greater.

Anticipated impact on public facilities and services:

Streets:

This subject property within the County would be accessed from a short, private drive from Nassau Street, a public street in the City of Charlottesville. The proposed use of the property is not expected to create any discernible impacts to public streets in Albemarle County.

Schools:

The proposal includes no dwelling units and therefore would create no impacts to, and require no services from, Albemarle County Public Schools.

Fire & Rescue:

The proposed use is not expected to create any new demands on Fire & Rescue services. Fire & Rescue has not expressed any concerns with, or objections to, this proposal.

Utilities:

This project is in the ACSA water and sewer service jurisdictional area and both services are available. RWSA holds a right-of-way through this property along Moore's Creek for a sewer interceptor.

The proposed use is not expected to create any new demands on ACSA services, unless the applicant utilizes public water service for irrigation purposes. With regards to possible irrigation practices, the applicant has informally talked about the potential opportunities to: a.) create a micro-dam on one of the existing drainage swales to establish a source of irrigation water for non-food agricultural products; and/or b.) establish one or more private wells on-site.

Neither ACSA nor RWSA have expressed any concerns with, or objections to, this proposal.

Anticipated impact on environmental, cultural and historic resources:

There are no known cultural or historic resources on the site; however, staff believes that as proposed, the rezoning would impact Moore's Creek and its riparian zone through the proposed conversion of riparian forest land cover to agricultural operations. Even with the proffered commitments to (1A) establish an undisturbed riparian buffer for the areas within 35' of the top of stream bank, and to (1B) limit uses in the area between 35' and 100' from top of bank or outer limits of the floodway (whichever is greater) to horticultural practices (tree farm) only, Community Development staff have concluded that the proposal would create inappropriate impacts to natural resources with regards to the Future Land Use and Plan for Future Parks and Green systems as contained in the S+W Master Plan (and as described in more detail in the "Comprehensive Plan" section on pages 4-5 of this staff report). However, with greater commitments to establish and maintain a permanent undisturbed riparian buffer as described elsewhere in this staff report, the applicant could use the majority of the property for agriculture and also preserve the portion of the subject property that contains the most environmentally sensitive features.

Anticipated impact on nearby and surrounding properties:

Use of the property in the County for urban farming is not expected to create any notable negative impacts to nearby or surrounding properties.

Public need and justification for the change:

In reviewing the proposal relative to the S+W Master Plan, Staff have not identified any clear public needs or public justification for this requested rezoning (as proposed in the Project Narrative and Concept Plan). A case could be made, however, that use of a portion of the property in the floodplain for urban farming supports objectives to provide for healthier food alternatives. Such a case cannot

be made for tree farming and growing of landscape materials in close proximity to an impaired stream which presently has an intact stream buffer.

PROFFERS

Proffers are contained in the Preliminary Proffer Statement (Attachment E) and are summarized below. At multiple points during the ZMA application review process, staff have strongly recommended to the applicant that substantive changes be made regarding the issues addressed in these proffers, as described in the *staff comment* provided in *italics*.

- **Proffer 1. RIPARIAN BUFFER:** This proffer attempts to address the issues and concerns this proposal has generated among Community Development staff with regards to natural resource protection, by committing to (1A) maintain an undisturbed riparian buffer along Moore's Creek for the areas within 35' of the top of stream bank, and to (1B) limit uses in the area between 35' and 100' from top of bank or the outer limits of the Floodway (whichever is greater) to horticultural practices (tree farm) only.

Although it may potentially be appropriate in some circumstances to conduct agricultural operations in areas with a future land use designation of Parks and Green Systems, the location and extent of proposed land cover conversion (from riparian forest to agricultural operations) relative to the riparian zone of Moore's Creek is not appropriate.

The proposed "undisturbed riparian buffer" is not sufficient with regards to the S+W Master Plan's call for "special attention" to be given to natural resource protection and water quality issues in the (impaired) Moore's Creek riparian zone. Although the applicants have proffered a 35' wide "undisturbed riparian buffer along Moore's Creek from top of bank," County staff strongly recommend that the applicant commit, at minimum, to a 100' wide buffer from top of stream bank – as is required for virtually all other properties, uses, and improvements within the Development Area.

More specifically, staff recommend that a permanent "undisturbed riparian buffer along Moore's Creek" be established and maintained with a minimum width of 100' (as measured from top of stream bank) or which extends to the Floodway boundary (as identified by FEMA on the applicable FIRM), whichever is greater.

- **Concept Plan:** The Preliminary Proffer Statement does not explicitly contain a proffered condition that the development and use of the subject property shall adhere to the Concept Plan; and the Concept Plan does not identify (either in graphic depiction or annotation) any limitation(s) on uses. However, for reference: the Concept Plan (Attachment D) identifies the location of the proposed "35 FT Riparian Buffer From Top of Bank" / "Limits of Land Clearing." The Concept Plan does not annotate or otherwise identify the area between 35' and 100' from top of bank or the outer limits of the floodway (whichever is greater) as being subject to proffered restrictions on uses (horticultural practices / tree farm only).

If it is the applicant's intent to limit uses to agriculture and in the form shown on the Concept Plan, then staff recommend that the Preliminary Proffer Statement be modified to include a commitment that the subject property shall be developed and used in general accord with the Concept Plan; and that the Concept Plan be modified to include graphic depiction and annotation of an "undisturbed riparian buffer along Moore's Creek" that has a minimum width of 100' (as measured from top of stream bank) or which extends to the Floodway boundary (as identified by FEMA on the applicable FIRM), whichever is greater.

SUMMARY

Staff has identified the following factors which are favorable to this request:

1. The proposal would provide an opportunity for low-intensity use of this subject property which presently has few permissible uses (by right) due to the base zoning (LI Light Industrial) and zoning overlay (Flood Hazard).
2. The proposed use would be expected to create relatively few impacts with regards to public infrastructure, and would require relatively few County services.

Staff has identified the following factors which are unfavorable to this request:

1. Few limitations are proposed for use of the property: there is no proffered plan, and no commitments to limit the by-right uses that would be permissible on the subject property if zoned to RA.
2. The applicant proposes to remove vegetation from a currently vegetated stream buffer and floodplain along an impaired stream.
3. A proposed "undisturbed riparian buffer" is insufficient in width. To be consistent with buffer requirements in the Development Areas the proposed buffer should (at minimum) be 100' in width rather than 35' in width.
4. The applicant is proposing to have farming activities within the regulatory Floodway which is not recommended for environmental and safety reasons.

RECOMMENDATION

Staff cannot recommend approval of ZMA201700007 Hogwaller Farm as proposed. However, Staff could recommend approval if the proposal were limited to uses and the arrangement of uses shown on the Concept Plan, and if there was a commitment to establish and maintain a permanent undisturbed riparian buffer along Moore's Creek which has a minimum width of 100' (as measured from top of stream bank) or which extends to the Floodway boundary (as identified by FEMA on the applicable FIRM), whichever is greater.

PLANNING COMMISSION MOTION:

- A. *If the ZMA is recommended for approval:* Move to recommend approval of ZMA201700007 Hogwaller Farm.
- B. *If the ZMA is recommended for denial:* Move to recommend denial of ZMA201700007 Hogwaller Farm with the reasons for denial.

ATTACHMENTS:

- A – [Location Map](#)
- B – [Critical Resources Map](#)
- C – [Project Narrative / "Resubmission Application Narrative" \(dated January 16, 2017 \[sic\]\)](#)
- D – [Concept Plan / "Conceptual Plan" \(dated January 16, 2018\)](#)
- E – [Preliminary Proffer Statement \(undated, received March 19, 2018\)](#)
- F – [Correspondence from City of Charlottesville Planning Commission \(dated April 18, 2018\)](#)

The following attachments are application materials submitted to City of Charlottesville Neighborhood Development Services (for informational purposes only – not for County review):

- G – [Rezoning & Special Use Permit Narrative / ZM18-00001 & SP18-00004 \(dated January 23, 2018\)](#)
- H – [Site Plan / Sheet C2 "Context Plan" \(dated January 23, 2018\)](#)