

**Albemarle County Planning Commission  
October 18, 2016**

The Albemarle County Planning Commission held a regular meeting on Tuesday, October 18, 2016, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Mac Lafferty, Jennie More, Pam Riley, Bruce Dotson, Daphne Spain, Tim Keller, Chair; Karen Firehock, Vice Chair and Bill Palmer, UVA representative.

Other officials present were Rachael Falkenstein, Senior Planner; Margaret Maliszewski, Principal Planner; Elaine Echols, Acting Chief of Planning; Sharon Taylor, Clerk to Planning Commission; Andrew Gast-Bray, Assistant Director CDD & Director of Planning and John Blair, Senior Assistant County Attorney.

**Call to Order and Establish Quorum:**

Mr. Keller, Chair, called the meeting to order at 6:00 p.m. and established a quorum. He welcomed the students that are here to watch this process.

**ZMA-2016-00009 Wood Von Storch**

MAGISTERIAL DISTRICT: Rio

TAX MAP/PARCEL: 04500000011200, 045000000112E0

LOCATION: 3400 Berkmar Drive

PROPOSAL: Request to rezone parcels from R-6 Residential to HC Highway Commercial

PETITION: Rezone 4.428 acres from R-6 Residential zoning district which allows residential uses at a density of 6 units per acre, to HC Highway Commercial which allows commercial and service, residential by special use permit (15 units/ acre)

OVERLAY DISTRICT: Airport Impact Area; Managed Steep Slopes

PROFFERS: Yes

COMPREHENSIVE PLAN: Office/R&D/Flex/Light Industrial – commercial, professional office; research and development, design, testing of prototypes; manufacturing, assembly, packaging in the Places29 development area.

(Rachel Falkenstein)

Ms. Falkenstein summarized the staff report for ZMA-2016-00009 Wood Von Storch in a PowerPoint presentation. The purpose of this public hearing tonight is a rezoning request to rezone about 4.4 acres from R-6 Residential to HC Highway Commercial. The property is located on Berkmar Drive. It is actually two parcels about 4.4 acres. There is an existing house on the property. The property is mostly wooded right now with an existing house on the property, which looks a little bit dilapidated and she does not think it is occupied currently. The adjacent parcels are mostly zoned commercial. As you can see by the zoning map the bright red is Highway Commercial property; the pink is C-1, Commercial and then the orange is R-6, Residential. There are a few properties across the street zoned for R-6; one is for daycare and the other one is vacant currently.

The proposed concept plan as shown in the slide is a little bit bare bones. They are not committing at this time to any uses or the form of the development. There are a few commitments that they are making with this concept plan. One is for reservation of area along Berkmar Drive for a potential future widening. The Places29 Master Plan actually recommends this section of Berkmar be widened to four lanes. We are hoping to have a little bit more detailed plan with the small area plan currently under review for this

streetscape here. However, what they are reserving is 44' measured from the center line, and that would be sufficient space for an additional travel lane, bike lane and sidewalk. They are also making a commitment to what they are calling their frontage zone, a 35% minimum building at frontage; and, this will help reduce the amount of parking that could be along the frontage of the site. They are showing a potential entrance location on the center of the site. As you probably read in the staff report this has not been approved yet by VDOT. VDOT is actually requesting a shared entrance with the property to the north that is being redeveloped by Berkmar/Better Living for their building supply site. So that is yet to be determined whether or not this entrance will be approved by VDOT. There is also a cemetery on site that they are proposing to reserve.

In terms of uses, they are not proposing any specific uses; but, they are proffering out some uses and restricting some of the uses on site. They are proffering out uses such as beauty shops, laundromats, hospitals, drive-thru restaurants and then some restrictions to uses such as storage. They are limiting storage to either upper floors of multi-story buildings or the secondary development zone. Going back to the concept plan the secondary development zone is the back half of the parcel. They limiting retail to no more than 25,000 square feet, which based on the size of the parcel they estimate to be about 25% of the developable building area of the site. Eating establishments shall be no more than 1,500 square feet; and, then residential uses should they be permitted in the future would be limited to upper floors. They are reserving the area along Berkmar Drive for the future widening. There is also a proffer about relegated parking. Parking will not be allowed any closer to the street than the proposed buildings. The concept plan is also proffered.

The changes that staff would like to see are:

1. A commitment to keep an area measured 40 feet from the northern property line free from impediments for a potential future roadway. It is currently classified as a driveway. To access the site through the graveled drive is a private access easement right now. However, staff thinks it might make sense for a future interconnection between Berkmar and Route 29 because of where it connects to 29 there is a signalized crossing. The Places29 Master Plan does not provide a detailed transportation plan for the interconnectivity in this area. There is a connection shown in this general vicinity; but, the exact alignment is not shown in that plan. We hope that the small area plan will have a more detailed transportation plan and we will know whether or not a connection here will be recommended. In the mean time we would like to see the area along the northern property line be kept free from any buildings or structures to prohibit a future connection here. The applicant has said he will be willing to do so in the narrative that he submitted; but, it has not been proffered or shown on the concept plan.
2. A commitment to providing pedestrian entrances on buildings fronting along Berkmar Drive and pedestrian access. It is difficult to analysis the site for some of our Neighborhood Model principles without uses or forms. But, at the very least we would like some commitment to pedestrian accessibility to the site.
3. In terms of the entrance, we would either like written approval from VDOT for the proposed entrance before it moves forward or at the very least a note on the concept plan stating that this entrance is not guaranteed.
4. A commitment to major elements of the concept plan in a written proffer as described in the staff report.
5. Technical revisions to the proffers and concept plan as described in staff report.

### **Factors Favorable**

1. The uses allowed within the proposed HC zoning are consistent with uses recommended within Places29 for Office/R&D/Flex/Light Industrial.

2. The applicant has proffered restrictions of the allowable uses to bring the HC zoning into closer compliance with the Office/R&D/Flex Light Industrial Land Use designation, including limiting the square footage of allowable retail use on the site.
3. The applicant is proffering reservation of right-of-way for a future expansion of Berkmar Drive.

#### **Factors Unfavorable**

1. The applicant has made minimal commitments regarding the use of the site and the form of the development making it difficult to assess for potential impacts and compatibility with the Neighborhood Model.
2. No commitment has been made to reserve an area for a future connector road between Berkmar and Route 29.
3. It is still unknown if VDOT will allow an entrance location for this site or if a shared entrance will be required.
4. No commitment is being made to pedestrian orientation.

#### **Staff Recommendation**

Staff recommends approval of ZMA-2016-00009 Wood Von Storch, provided that the applicant make the following commitments and changes to the proffers and concept plan prior to the Board of Supervisors meeting:

1. A commitment to keep an area measured 40 feet from the northern property line free from impediments for a potential future roadway.
2. A commitment to providing pedestrian entrances and access from Berkmar Drive.
3. Either written approval from VDOT for the proposed entrance or a note on the concept plan stating that the entrance location is subject VDOT approval and a shared entrance with adjacent properties may be required.
4. A commitment to major elements of the concept plan in a written proffer as described in the proffers section above.
5. Technical revisions to the proffers and concept plan as described above.

Mr. Keller invited questions for staff.

Mr. Lafferty asked will the 44' allow for the sidewalk and bike lane, and Ms. Falkenstein replied yes, it will be enough right-of-way for additional travel lane, sidewalk, street trees and bike lane.

Mr. Lafferty asked if we put a connector road on the north side will that go into the cemetery part of the plan.

Ms. Falkenstein replied that she did not know if we have a boundary yet established exactly from where that cemetery is. She said it looks like there would be enough space; however, without a survey of the cemetery we don't know that for sure.

Mr. Lafferty said it seems to me there are a lot of questions about what the use is going to be and what is going on with this property. He noted it sort of reminds me of when they wanted to rezone the Yancey Mills property and did not know what was going to go there, where the roads were going to go and things like that. He thinks quite frankly it is premature.

There being no further questions for staff, Mr. Keller opened the public hearing and invited the applicant to come forward.

Frank Stoner, with Milestone Partners representing owners Robin Wood, Steve Von Storch and his partner Brian McMann, said he appreciates your consideration of our application this evening and really

just wanted to touch on a couple of points that came up in Rachel's presentation and perhaps address Mr. Lafferty's concern. With respect to the unfavorable factors that were mentioned he wanted to speak first to the VDOT connector road on the north side of the property. The north side of the property abuts the Better Living property which you just reviewed. He has worked in and around this property since 1987 when we built the Kegler's Bowling Facility. We have been trying to get a connector road through literally since 1987. There is actually an access point from Kegler's to a joint access road. Mr. Nunnally has been very clear about the fact that he will not support a connector road in that location because if he did he would likely lose his service road that runs in front of the Better Living Furniture Store. Right now that is his only access to the Better Living Building Supply Facility and the Furniture Store. He can't tell you how many times we have met on site; we have looked at different schemes for signalizing the intersections and in Mr. Nunnally's latest site plan he thinks he has made it clear by providing his entrance on the north end of his property. That is a by right use and a by right entrance which has now been approved by VDOT. There is no way that we are going to get this connector road built. He wished there was; however, VDOT now no longer supports the connector road. So we have in our plan left that area void of any buildings; but, we have not proffered a connection because we don't believe it is ever going to happen. Certainly if VDOT does not support it, then it is not going to happen. That is the connector road issue.

Mr. Stoner said with regard to the pedestrian commitment, absolutely we are committed to pedestrian access from Berkmar Drive so he does not see that as being an issue. He wanted to talk to you about the use. We have collectively marketed this property for about eight years trying to find a buyer who could use the two parcels together and the two fit nicely together and it is a nice site so there are not topographic issues and there are not access issues. The single greatest obstacle to development in this property is the fact that it takes a year and a half to get through a rezoning process and another 9 to 12 months to get through a site plan process. He pointed out that everybody who has had an interest in this property as a commercial property is not willing to wait that long. He said that Robin Wood is the daughter of Bobby Wood who died less than 6 months ago. He and I worked together for many years with a sole goal of trying to sell this property so that he could clean up his estate for his kids. That did not happen and he is here before you tonight to ask that you proactively rezone this property so that it can be utilized as it was intended because the alternative for these owners is to build townhouses, which he did not think you want or anybody else wants. So he would encourage you please to give us serious consideration. He said he was here to answer any questions if you have any.

Mr. Keller invited questions for the applicant.

Mr. Dotson said he was a little confused on the road linking at Berkmar and 29. He thought he heard that the applicant was willing to keep buildings out of that area and keep it open, which is what the staff is looking for. He thinks he also heard that you are reluctant to proffer it.

Mr. Stoner agreed that was correct.

Mr. Dotson said the staff indicates possibly a note on the concept plan would achieve the same objective. He asked do you object to that.

Mr. Stoner replied as long as there is not a permanent prohibition against buildings in that area; we just don't want to hold out for a road that we don't think is ever going to happen.

Mr. Dotson suggested perhaps the staff could comment on what we just heard.

Ms. Falkenstein said we actually had a similar situation with Colonial Auto Center; and, some of you may

remember that in the extension Meyers Drive. The way we handled that was he made it a temporary commitment until the small area plan was complete and could make a recommendation whether or not the roadway would be recommended. So we could work out some language to accomplish that.

Ms. Spain asked if there is a list of uses that you would not allow, and Mr. Stoner replied yes.

Ms. Spain asked about the height of the buildings since we talked about the height of the Malloy Buildings being limited to 2 even though that building was on the Entrance Corridor and this parcel is not. She asked if he had given any thought to that.

Mr. Stoner replied that he thinks the current code is 48' maximum.

Ms. Falkenstein noted the height was 45' and you would have to step it back at 45'.

Mr. Stoner said he did not envision any more than 3 stories on that site just because he thinks most of the people who are interested on the properties on Berkmar are not looking at high rise office buildings. He said that tends to be a more service district for whatever reason so.

Ms. Spain thanked him and asked if he could say something about how you plan to preserve this cemetery. What is going to happen exactly.

Mr. Stoner replied that the cemetery is very small and it is up in the upper right hand corner of Mr. Von Storch's property. He pointed out Mr. Von Storch is here this evening and would be happy to answer questions. As near as we can tell there are two to three grave sites in that cemetery. He thinks that the expectation is that the cemetery would be preserved in its current location as part of a front setback to whatever use is on that portion of the property. It is outside of the potential Berkmar right-of-way expansion, but not far because the expansion would take the sidewalk very close to the existing site. However, we are confident that we can work around it.

Mr. Lafferty asked would you be fencing in the cemetery.

Mr. Stoner replied that it has a grove of bamboo around it now; and, he thinks a fence is probably a more appropriate solution long term. Actually there is only one grave and it is not a grave marker in the sense that it is not a headstone; but, it is kind of a stone in the ground there. So it is not visible unless you are looking for it. However, he would think a fence is an appropriate treatment.

Ms. Riley said she would like to ask another couple of questions about that. She was trying to get clear on what you are actually proffering. She thought the proffer was that there would not be an expansion of the cemetery; but, can you specify again what you would be proffering for that.

Mr. Stone replied there is no an expansion of the cemetery. We would preserve the graves that are there; but, there would be no ability to bury more people in that location.

Ms. Riley said her question was what survey or research has been done to establish what are the actual perimeters of the cemetery and how many graves are there.

Mr. Stoner asked Steve if he wanted to speak to that or have any more detail. We have done some detailed research with regard to the family members that are buried there and who their descendants are. As of 2007 when we last tried to plan and rezone this property there was only one surviving heir to the folks who are buried in this location. At that point we were actually considering moving the graves. Since

then he did not know if that single heir has passed away or not. But, Steve Von Storch can speak more to the specific boundaries because they have been identified.

Steve Von Storch, one of the property owners, said our lines essentially have just been traced from the plat when we purchased the land over 30 years ago from the other owner, the Wood family. So when that plat was created there must have been some indication that there is a cemetery appropriately there. The shape on that plat seems a bit of an odd fit for what you actually see there, which there use to be a very large Oak Tree with the grave stone at the base of it. The antidotal stories were there was an adult and maybe a few children buried there. In talking to Rivanna Historical Resources in the interim when they were looking into these grave sites, essentially as points of discussion for the bypass conversation, this grave was on the list that survey produced. They suspect that there are no human remains left there. But, certainly at this point having sort of lost track of family legacy that would be required for a move and the expense and the complications with, it just seemed easier to do our site planning around that site. It is quite a bit of a knoll about 6' to 8' tall above Berkmar. So if the connector road does not go through, which would be another sort of pulling down of the grade, we can leave that knoll completely intact and if there is a survey that is required to verify what those actual boundaries may or may not be now our expectation in the way we are marketing it is there is a cemetery there and it will remain.

Mr. Keller invited public comment.

Jeff Werner, with Piedmont Environmental Council, said he knows Mr. Stoner and Mr. Von Storch very well so he does not want to impugn them in any way here; but, he would guess he needs to say what needs to be said. He has talked with the Commission, staff and the Board of Supervisors a lot and we certainly have talked a lot about the burial sites in this area over the last several years so first and foremost he has to express he is really disappointed in how poorly that issue is represented in the staff report. He pointed out it is barely mentioned. It does not matter when folks were buried or what race; it is someone's family and we should respect that. The applicant has stated that this is a speculative rezoning and so really this is the county's opportunity to have some oversight of the future treatment of that cemetery. He trusts the individuals when they say they are going to do the right thing; but, this is your opportunity to make sure that is codified. This parcel will be sold and someone is going to take what they have put on that plat and use that to say that is where the cemetery is. Now he knows because this cemetery was discussed at length during the bypass they don't know how many people are buried there. There are human remains; and he believed there is one marked grave of Mr. Jackson. He does not have time to get into the facts and figures and all of that; and, my understanding is that there has not been a delineation of the extent of the burial site. So what he would like to see, and he was a builder for over a decade and can tell you that orange tape does not stop anything, so to say protect the site or keep people from going to it he understands the bamboo is there; but, once that site work is done or someone else gets in there, there should be a fence or something to at least keep folks out of the area that has been identified. But, he thinks also what needs to be made clear on drawings or the site plan is that this is the presumed location of the cemetery, this is not an official delineation. Like he said it is all about doing the right thing. He is concerned a little bit with the sidewalk and the buffer; we don't know whether the burial site extends out into what has been offered. He thinks it needs to be said what is going to be done. That needs to be codified and recorded so that whoever the next owner is does the right thing and that there is more that needs to be done to understand the full extent of that burial site. Thank you very much.

Morgan Butler, with the Southern Environmental Law Center, thanked the Commission for the chance to speak tonight. The zoning request before you tonight strike us as premature for a number of reasons. First, the application provides very little information about what uses would be built here and what form the development would take. As the applicant acknowledges it is a request for a speculative rezoning to make the parcel more attractive for commercial users. As a result, the application leaves things extremely

vague. The problem this presents is evident in the section of the staff report that tries to analyze how well the proposal meets the Neighborhood Model principles. It is full of phrases like no information was provided; staff is unable to ascertain and not enough detail. Staff is ultimately able to recommend approval subject to a number of recommended changes; but, the problem is that even with those changes we have only the vaguest outline of what is being proposed. The second reason it is premature is that this parcel falls within the boundary of the Rio Small Area Plan. As the staff report notes the small area plan will provide a detailed land use plan and make recommendations about urban form. We think it makes sense to try to avoid approving rezoning, especially speculative ones, before the land use component of the small area plan is complete. The plan should shape rezoning's rather than rezoning's shaping the plan. Third, it is premature because the county is in the middle of figuring out how best to address concerns about a shortage of developable industrial land. They say if you find yourself in a hole the first thing you should do is stop digging. Here we have a 4.4-acre parcel designated as Office/R&D/Flex/Light Industrial in the comprehensive plan and clearly it is developable yet this request would convert it over to Highway Commercial zoning. The applicant has suggested a Highway Commercial zoning district when combined with the combined proffers would be consistent with the comp plan designation for this parcel. However, the Place29 Master Plan makes clear that on parcels like this one that are designated as Office/R&D/Flex/Light Industrial retail and commercial uses are meant to be secondary. As the name would suggest the primary uses in this designation are Office/R&D/Flex Businesses/Light Industrial. Unfortunately, the applicant's proposal for Highway Commercial zoning would turn those primary and secondary uses on their heads. In other words, under the Highway Commercial zoning, and even with the proposed proffers, the entire site could be developed with retail and commercial uses by right with no Office, R&D or Light Industrial component being built at all. That result would clearly be inconsistent with the comprehensive plan; Light Industrial zoning would make much more sense here. In sum, we urge you to recommend the Board deny this vague application in its present form or at least delay consideration until after the land use component of the Rio Small Area Plan is complete. Thank you for your attention.

Neil Williamson, with the Free Enterprise Forum, said as you know the Free Enterprise Forum does not take positions on projects; we focus on policy. He said he would appreciate an understanding from your legal counsel on what level of detail can be mandated at a rezoning level. We have seen plans go from what one time was bubble maps to now down right architectural renderings for a rezoning. He thinks that the simpler the better, especially in cases where you are trying to move economic development forward. But, if you could get that clarification, he would appreciate it.

Mr. Keller invited further public comment. There being none, he invited the applicant back up for rebuttal.

Mr. Stoner said he would address several things he heard. One, with regard to small area plan master plan, he would note that this proposal does have the support of the Economic Development Department, Faith McClinton. It is completely consistent with the adjoining land uses, and the alternative move for these property owners is to build townhouses by right. So if that is what you want, then leave it the way it is because the pain and agony of going through a rezoning and then a site plan in Albemarle County is more than most users can stomach. This property may be designated for Light Industrial in some form; but, Light Industrial on Berkmar Drive is not competitive with Light Industrial in most other areas that are nearby. So if you go to the valley or you go to Zoning Crossroads you can buy Light Industrial property at prices that make sense. Not a single user has come forward since 1987 and said they had an interest in this property as Light Industrial. That should tell you something. So we can't force plans to conform to things that don't make any sense in the market place, and prices in Albemarle County and particularly this corridor, will never justify Light Industrial. Flex, Office and some combination of retail all of which are supported under the Highway Commercial (HC) zone that we have requested are viable

options. One of the options that was declined by us during the last sort or purchase negotiation was an assisted living facility, which the county did not feel was an appropriate use for the site even though the potential user was absolutely committed to it as a viable site. So he thinks we recognize that commercial is what is needed here; but, to tie our hands and say we are going to force you to keep this property as R-6, Residential land until you have a specific use is really counterproductive to the county's comprehensive plan, and if we want to attract users, in the words of my friend at the Southern Environmental Law Center, we need property that is zoned properly and could be utilized in a way that the market sees fit, and that is exactly what we are asking for.

Mr. Keller invited questions for Mr. Stoner.

Ms. Riley asked that he explain the special exception request.

Mr. Stoner replied that the special exception request was really filed in response to the county's request if we allowed for that because the limit is currently 4,000 square feet. The likelihood is that we could need more than 4,000 square feet given that the site is 4½ acres. So Rachel Falkenstein actually suggested that we apply for the special exception because, again, it was consistent with the size of the parcel and the likely density that would end up on the parcel.

Ms. Riley asked if he could address 47, 48 and 49 the particular uses that you are suggesting the special exception would be in accord with.

Mr. Stoner replied those are, again, in the code.

Ms. Falkenstein pointed out those are on the screen right now.

Mr. Stoner replied it was laboratories, research, development, experimental testing, manufacturing, processing, assembly, fabrication, recycling, storage, warehousing, distribution, and transportation. So all of those uses would normally be restricted to 4,000 square feet. The special exception would allow more area, again, because the site would justify a larger facility than 4,000 square feet would support. Again, the special exception request was really at the county's suggestion that look if this property is going to be developed these are uses that are consistent with our comp plan and right now you would be restricted under those use categories to 4,000 square feet and that does not make any sense on a 4 ½ acre parcel.

Ms. Firehock said we also heard more comments about the cemetery whether we know exactly how big it is and exactly where it is. We have a shape that is shown; but, we don't have an archeological study; and, she was not suggesting something exhaustive. She asked would you be willing to do a more careful study of a proper examination of the ground to figure out what area might be fenced off and then you would be willing to install some sort of fence and make that a condition of sale that not be disturbed because obviously you can put a fence up and someone else could take it down.

Mr. Stoner said he understands and respects that concern, and thinks it is a valid concern. We have done a lot of research on this, and they will have to dig up the notebook. It is not like this issue has not been noted researched in detail. He thinks if we don't move those grades, which may not be a realistic solution at this point, he thinks it is absolute appropriate to preserve them and make sure that any subsequent buyer preserves them. So he does not have any issue with that.

Ms. More said she had a question going back to the special exception request. She said some of the uses that are listed here are LI uses but she thought she heard you say that this property may not be attractive for those uses. She asked if he could explain because she felt like she was getting a little bit of a mixed



message.

Mr. Von Stock pointed out that those are the uses the county wants; and, they are allowed within Highway Commercial. But, there is a limit put on what the square footage of those uses can be. If this user does show up, which so far they have not, and want to build a 10,000 square foot research facility on this site we would then have to come back to get a special use permit to allow that area to increase to over 4,000 square feet. So this was our nod to expand the definition of Highway Commercial to bring it as much in line with Light Industrial/research zoning category. But, that whole list of uses up there is not really. It is future. So as an owner, let me be clear, this is two property owners one of whom just passed around and has heirs who are interested in selling. He pointed out that he has a majority partner that lives out of state. He is interested in selling and I am interested in selling. This process has been a cooperative process with the county to try to bring both owners together in a way that can achieve zoning that exists today and accommodate the greatest number of uses the county is interested in having. But, if this all falls apart he can assure you that the various parties would break up and you will see townhouses. We have had this property under contract of various owners since 2006 or 2007 and it has just been one hurdle after the next. All of the owners are frustrated, and we need to find a way to move forward. To me imposing the zoning on this other than Highway Commercial feels like spot zoning because all of the properties around us are Highway Commercial so he thinks it is a bad precedent on just about every level to put that on us.

Mr. Stoner pointed out that there is no zoning code that corresponds to the comp plan designation for this property, which is why we are asking for HC, Highway Commercial zoning and these special exceptions. We have tried to get as close as we can to the comp plan designation that the county is asking for; but, there is no zoning code designation for what is in the comp plan.

Ms. Spain said since this is a mostly wooded site is there any plan or would this be under your preview to make plans to preserve any of that tree cover/

Mr. Stoner replied that he thinks it depends on the use. To the extent that you could preserve some of the woods particularly along the back border of the property that buffers up against the Kegler's site, he thinks that would ideal. But, he thinks in advance of having a use, it is hard to say, and we certainly would not want to proffer preservation of wood land in an otherwise commercial district.

Mr. Keller invited further questions. There being none, Mr. Keller closed the public hearing. He noted something that came up from the public was a question that he had this afternoon and he actually asked for a clarification from council, Mr. Blair, and he was going to read a response and then ask him to respond to that. He would encourage you all to think about this. My question was regarding requiring specific site planning. He thinks from the course that we have all taken we all know what the answer to this is. A planning commission may not require a specific site plan or plan of development before acting on a rezoning unless the proposed rezoning has an application requirement for such a plan, such as a planned unit development or neighborhood model. There is no mandatory middle ground in a rezoning application; however, the commission may ask the applicant for a more detailed site plan or plan of development. If the commission recommends denial of the rezoning the commission may suggest that a more detailed concept/site plan might assist the Board of Supervisors in evaluating the applicant's request.

Mr. Blair said the conceptual plan for zoning map amendments actually is found in the County Code in chapter 33 and it specifically is section 33.4c.7 and this would be conceptual plans for zoning map amendments for conventional districts special use permits. It is an applicable standard and it lists out 9 different aspects of a conceptual plan. So that is in the ordinance as to what would be required for a

conceptual plan; but, beyond that there is not. Those aspects are things such as streetscapes, bicycle facilities, building envelopes if applicable; but if there does not seem to be any building envelope proposed right now. That would be what would control as far as conceptual plans that are presented by the applicant.

Mr. Keller asked if there are any follow-up questions before we move on this.

Mr. Lafferty asked would you say this plan meets that requirement.

Mr. Blair replied that he would say it is as applicable as what is written into the ordinance. Right now there does not seem to be a building envelope obviously proposed. He would say that what is there seems to apply to the as applicable standard. Obviously, if they were proposing a factory or retail side or something of that nature the conceptual plan would at least need to show the building, parking envelopes and things of that nature. But, right he thinks they have the minimum criteria as spelled out in the ordinance.

Mr. Keller invited discussion.

Mr. Dotson said he had a few questions of staff. Right now he was looking at the staff recommendation and there is sort of 5 stipulations and he just wanted to walk through those and make sure we understood them. The first one is keeping the 40' on the northern property line free from impediments. He thinks from the conversation here at the podium the sort of some variation of the Carter Meyers approach that is not in perpetuity sounds like it would be acceptable both to the applicant and the staff. He asked is that correct.

Ms. Falkenstein replied that is correct.

Mr. Dotson said on points 2 and 3 would those be addressable during site plan review or not.

Ms. Falkenstein replied the pedestrian entrances and faces of building to Berkmar would not be a site plan requirement so we would want that either a note on the concept plan or a proffer. The sidewalk along Berkmar will be a requirement with the site plan.

Mr. Dotson said #3 pertains to VDOT and he thinks this is stating the obvious in a sense that VDOT will have to approve any access points. So he would assume that would be normally taken care of during site plan.

Ms. Falkenstein replied that is correct. Since this is a speculative rezoning we would just like any future purchaser to be on notice that this entrance location is not necessarily approved because they are showing an entrance location on the site plan and VDOT has asked for a shared entrance with the neighboring property and that issue has not been worked out yet. A neighboring property owner has applied for a special exception from VDOT from that requirement, and, it has not been approved yet. So it is yet to be determined where the entrance will be. But, yes that would be something we go through typically with site plan.

Mr. Dotson pointed out that Mr. Stoner had said that VDOT no longer supported a connector in this location between 29 and Berkmar. Do we have anything to corroborate his statement.

Ms. Falkenstein replied the conversation she has had with VDOT is that they are not opposed to a connection there, some site work would definitely need to be done. That frontage road in front of Better

Living would need to be closed. There is some grading that would need to be done towards 29. So some significant improvements would need to happen in order for them to be supportive of that; but, they did not say they were opposed to that in theory.

Mr. Dotson said point #4 is a little general, not just as stated, a commitment to major elements of the concept plan in a written proffer as described in the proffer section above. Is a key piece of that the cemetery given the conversations that have taken place here tonight that a little more specificity about identifying and protecting and possibly even fencing that cemetery? He asked is that part of what point #4 would cover.

Ms. Falkenstein replied yes, it could and she thinks we could even go into more detail than just preserving the cemetery. It sounds like there is some desire and the applicant is willing to do some additional survey work and potentially a treatment plan as to how that cemetery will be preserved, and, that can be done in a proffer.

Mr. Dotson said that #5 technical revisions is business as usual and that happens every time we get proffers.

Ms. More said she had just a follow up on the proffer about the cemetery. It seemed that there was an indication that there was a willingness to maybe do a little more survey to learn a little more about that property, and were we to expect that language would be added prior to this going to the Board if it were to move forward, and then will proffers be written in a way that if the property sales that the new owner would be required to still fulfill those proffers.

Ms. Falkenstein replied if that was a recommendation of the Planning Commission that could be a proffer that we have written. She knows we have done similar proffers with Brookhill recently so we could definitely work some language out so that the applicant would agree upon, and then the proffer runs with the property so if it changes hands it still would be required.

Ms. Riley asked Margaret in terms of this discussion on delineating the cemetery and preserving it; is there anything else that you think would be appropriate for us to be asking for at this point.

Ms. Maliszewski replied that a treatment plan would be appropriate. She said that could cover a number of things including to make sure that there is continued maintenance, which she thinks is important. She thinks the delineation is obviously important and certainly the fencing is totally appropriate to the site and cemetery. But, she thinks that a maintenance treatment plan would also be very important. She pointed out something we have done in some other situations is to install a historical marker to identify the site that might be something you would consider appropriate.

Mr. Keller said so if there is a more comprehensive interpretation of land that there would be a location allowed for that, and Ms. Maliszewski agreed.

Mr. Lafferty said given the notion of the ordinance he would certainly see that this complies with that by advise of council. He understands that in trying to market this to a specific firm in the future would be awfully hard to do if you did not know what the zoning would be, and the zoning around there certainly matches the request of the applicant. Although he finds it a little premature because of all of the questions about the entrance, the cemetery and what is going to go there, he thinks with the advice of council he would have to support it.

Ms. Firehock echoed those comments because that was about basically what she was going to say. She

generally does not like to see proposals like this with such vague information and she underlined all the places in the staff report where they say the information was inadequate to make a judgement. However, she is also sympathetic to the fact that the county has a number of properties that probably should be rezoned and because we have not undertaken a comprehensive rezoning for some time we force people to come forward and try to get the zoning that actually we probably want. She knows we get proffers and other conditions as a result of that; but, it puts people through a lot of extra pain that he referenced. Anyway it was the time, money and all of that. So that is one reason why she would be more in support of this proposal vague as it is. She thinks it actually advances what the county wants to see for that site. She would just leave it at that.

Mr. Dotson commented that what he sees here is some creative cobbling trying to make something work out of the pieces that are there with the Highway Commercial, the proffers, and so forth. He thinks that is a good practical approach. But, at the same time there are a number of loose ends that are here. He is looking at Mr. Roell in the audience who has had experience with the Board sending an item back to the Commission to get it a little bit tied up. So he was wondering if we could see this again at our meeting on November 1 since it does not sound like it requires any additional study. We are not sending it back for a traffic study. It does not sound like it requires more than having heard what the commissioners have said tonight maybe a meeting he was guessing with the applicant and the staff and we could bring it back November 1 and send it on to the Board of Supervisors with fewer loose ends. However, he obviously can't commit either applicant or staff to that date; but, that is my thought.

Ms. More asked for clarification for loose ends meaning something in the proffer language that you would like to have cleaned up and the issue with the cemetery. She asked are those the things you would see.

Mr. Dotson replied it was the things that we have talked about here that seem like they are agreements; but, they need to be memorialized in some way such as a note on a plan, a revised proffer, some additional language or some approach.

Mr. Keller added an explanation of the connector, yes or no and why.

Ms. Echols said the idea that this would come back that the Commission would either be tabling this or deferring this to provide the applicant to get some more information together with the staff and then bring it back is not problematic; the schedule might be because a number of staff members have to be able to comment on it and sit down with the applicant and work through these things. She did not know that the first meeting in November would give us sufficient time; but, maybe later in November but as soon as we can possibly get it back to you like within a month from now. We send our staff reports out a week in advance and so that would give us about 3 weeks basically to work it out and write a report and have them put together their proffers. So that is what she would ask if the Commission wants the applicant to do that to give us at least a month so that we can have the time we need.

Mr. Keller pointed out we would have to ask the applicant, Mr. Stoner, if they are willing to request a deferral.

Mr. Frank Stoner said he would guess he would ask this. If we understand we have 5 items on the Board and he thinks we have agreement on most of these items. These issues would be addressed before now and the time this goes to the Board. Staff would obviously be charged with the responsibility of making sure they are addressed to their and your satisfaction. If that is adequate he thinks that certainly would be our preference to keep this process moving if we could not because we disagree with anything you are saying but just because we are hoping to keep this process efficient if we can. So with that we would ask

you to consider approving it with conditions this evening and we will work hard to get those conditions addressed before we go to the Board.

Mr. Keller said we will have this discussion right now for you; but, where we have found ourselves is that we have passed items like this along and the supervisors have said that they want us to do more due diligence on it and it ends up making the process take even longer. He pointed out we have an example individual in the audience and that is really what Mr. Dotson is speaking to.

Mr. Von Storch apologized that he had to leave to go to a meeting in the city. He left the meeting at 7:35 p.m.

Mr. Stoner said he would ask staff, Rachel and Elaine, if we think that the issues we have are ones that the Board is likely to kick back.

Ms. Falkenstein replied that she did not feel comfortable saying one way or the other because it is really hard to judge that.

Mr. Lafferty said he would think as a minimum you would want VDOT to certify an entrance to this property before you go to the Board of Supervisors.

Mr. Stoner asked to give them an update on the VDOT situation that he did not think Rachael was aware of. He said John Nunnally has filed an exception request; and VDOT has agreed to Mr. Nunnally's request for an entrance on the north side of his property. That will be a joint entrance with Malloy Ford. Our entrance meets the VDOT spacing criteria as designed so we don't have to ask for any exception to VDOT. Our entrance is already in conformance. So the letter that was written to the county ten days ago he thinks is in the process of being retracted so he does not really see VDOT as an issue at this point. But, he also knows we have not gotten the retraction letter.

Mr. Lafferty asked Mr. Stone if he would not mind this being a condition, and Mr. Stoner replied that he would not mind this being a condition at all.

Ms. Falkenstein asked if she could clarify quickly about the last time she spoke to VDOT. She said the time she spoke to VDOT was last week so there could not be new updates; but, they said they will not be retracting their comment and an exception would be required for the joint entrance requirement with Better Living. She said you may meet the spacing requirements; but, there is still a joint entrance requirement that they are going to require an exception for.

Mr. Stoner said yes, he thinks they will require an exception of Mr. Nunnally. He said what Joel DeNunzio has indicated to me is they have agreed to a joint entrance at the north end of Mr. Nunnally's property, which will serve Mr. Nunnally and Malloy Ford should Malloy Ford decide that they want an access point on Berkmar. We would have a joint entrance with potentially Kegler's to our east. He understands the exception has not been granted; but, he thinks there is agreement within VDOT over the approach that has been taken. So if we want the letter or the approved exception he guessed we will have to wait. He pointed out and the engineer for Mr. Nunnally is here, Justin Shimp.

Mr. Keller said he had a question for our council. He asked in a case like this is it appropriate or inappropriate to be able to take a straw vote so that the applicant know where they are standing for their decision to make a deferral or not.

Mr. John Blair requested a recess.

After a request for a recess by Mr. Blair, the Planning Commission recessed at 7:38 p.m. and the meeting reconvened at 7:46 p.m. for further discussion.

Mr. Keller called meeting back to order at 7:46 p.m.

Mr. Blair said the students do get to see something because he has never heard of this and it is a fairly novel request for a straw vote. He said a couple of things come to mind. Number one, as you know Virginia is a Dillon's rule state and he did not see any enabling authority for a straw vote by the planning commission in the Code of Virginia. The second thing is without such an enabling authority even if you termed it a straw vote he would be very circumspect in saying to go forward, and my advice would be without any enabling authority he did not think a straw vote would be appropriate at this time.

Mr. Keller said so what could be appropriate is for the chair to call on each individual to say how they feel about this.

Mr. Blair replied that was what he was going to suggest, perhaps not a straw vote, but you certainly ask each member to state how they feel just in general terms, not whether they would vote to recommend or not recommend but just if they have concerns or not about the applicant if they are ready to vote.

Mr. Keller asked Mr. Dotson his thoughts since they need to move forward.

Mr. Dotson said he did not sense a desire on the part of any commissioner, including myself, to hold this up. He would rather it be worked out enough that he felt confident with it going forward. He had described it before and he would say it again as creative cobbling, he is very concerned that the Board has once sent an application back to us and they might do that again if we leave the loose ends. On the other hand, if the applicant and staff really work diligently between now and the Board of Supervisors having heard the Commission then it could well be tidy when it gets to the board.

Ms. More said she was pretty sensitive to the issue of the time that it takes for the process and that the applicant and the owner losing interest in the property she is sensitive to the intent of what is trying to be accomplished here. She feels that there are a lot of loose ends and a lot of unknowns. She is trying to sort out in my head what are those things that we need to let go of and understand that we won't know at this stage and what are those things that staff are recommending that are proffers and changes that can be made prior to the Board. She feels that these changes in the proffers with the addition of the cemetery language are things that staff have made a commitment to have addressed prior to this moving forward to the Board if it were to do so this evening.

Ms. Riley said she did not feel like we would need to defer this. She thinks we have had enough discussion this evening hopefully have given enough guidance to the staff that the language would be able to be written up. Specifically, my concern is that we do get very clear language about what is being proffered for the delineation, the preservation, the treatment of the cemetery.

Ms. Firehock said she stands by her earlier comments and agree with what my fellow commissioners have just stated.

Ms. Spain agreed with the other commissioner's comments and she also think it is important that if all the surrounding property is zoned HC, then it makes sense for this property to fall into that general category as well.

Mr. Lafferty agreed with that and would like to make some recommendations however that before the request goes to the Board that the entrance be locked down as best as possible; the verbiage on the cemetery be more defined about how they are going to protect that, and how they are going to protect that if the road on the north side is in fact approved. He thinks this would be the minimum on the questions that he would hope that the Board of Supervisors would not bounce back to us. He noted that he would recommend that it be approved with those conditions.

Mr. Keller said it was time for the Commission to take an action since he assumed Mr. Stoner was standing by what he said he wanted to do after hearing where we are.

Ms. More moved to recommend of ZMA-2016-00009 with revisions as recommended by staff and adding a revision regarding proffers about the cemetery to include a treatment plan and a marker.

Mr. Lafferty asked about the entrance, and Ms. More replied that she thought that in #3 that was covered because the entrance location is subject to VDOT approval.

Mr. Dotson seconded the motion.

Mr. Keller invited discussion.

Ms. More said two of the points made was about the entrance and she had thought that had been addressed in staff's recommendation. Then the other was the possibility of the future connector road; and, she can't imagine that in a small area plan that is going to guide us as to whether or not that road is something in the future the small area plan would recommend to destroy an historic cemetery. So she thought the language in there about protecting the cemetery, the treatment plan and the marker would be in consideration of this project in any future road connections that would be sought on that property. However, if there is language that needs to be there to make that very clear she was happy to make it; but, she assumed that a small area plan would not recommend a road to be put over top of a cemetery.

Ms. Falkenstein said she thinks that is correct that would be taken into consideration. If a road were recommended there would be steps that would have to be taken to relocate the cemetery if that was the case.

Mr. Keller asked if the Commission was ready to take a vote on this. He asked for a roll call vote.

The motion passed by a vote of 7:0.

Mr. Keller thanked everyone and wished the applicant well in working this through quickly so that it can move on to the Board of Supervisors in a timely manner.

The meeting moved to the next agenda item.

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