The Planning Commission held a regular meeting on Monday, April 16, 2012 in the Bedford County Administration Building Boardroom. Commissioners Noell, Wilkerson, Craig, Fralick, Huff and Scott were present. Commissioner Barnes was absent. County staff present was Mr. Carl Boggess, County Attorney, Mr. Tim Wilson, Director of Community Development, Mrs. Mary Zirkle, Chief of Planning, Mr. Brad Robinson and Mr. Jordan Mitchell, Planners and Mrs. Patricia Robinson, Planning/Zoning Technician.

Chairman Noell called the meeting to order at 7:00 p.m. and determined a quorum was present to conduct business and asked if there were any changes to the agenda. Mr. Fralick requested to add items under Old Business and one item under New Business.

Mr. Wilkerson made a motion to approve the agenda as amended. Mr. Craig seconded the motion.

Voting yes: Mr. Craig, Mr. Fralick, Mr. Huff, Mr. Scott, Mr. Wilkerson and Mr. Noell

Voting no: None

Motion passed 6-0

Mr. Noell asked if there were any changes to the minutes of February 21, 2012. Mr. Fralick requested the word “day” be added after “90” on page 4 line 175. He also requested the word “as” be changed to “ask” and to add the word “does” after the word “how” on page 7 line 315.

Mr. Wilkerson made a motion to approve the minutes as amended. Mr. Huff seconded the motion.

Voting yes: Mr. Craig, Mr. Fralick, Mr. Huff, Mr. Scott, Mr. Wilkerson and Mr. Noell

Voting no: None

Motion passed 6-0

Mr. Noell asked if there were any changes to the minutes of March 5, 2012.

Mr. Craig made a motion to approve the minutes as presented. Mr. Wilkerson seconded the motion.
Voting yes: Mr. Craig, Mr. Fralick, Mr. Huff, Mr. Scott, Mr. Wilkerson and Mr. Noell

Voting no: None

Motion passed 6-0

Mr. Noell asked if there were any citizens to speak during the Citizen’s Comment Period. There being no speakers the Citizen’s Comment Period was closed.

Mr. Noell opened the public hearing for Special Use Permit SU120004 and asked for the staff presentation. Mr. Robinson noted James and Sandra Ramaker are requesting a special use permit to establish a “Winery” on their property. The Ramakers had to first seek a rezoning of the property (RZ120001) from R-2 (Medium Density Residential District) to AV (Agricultural Village Center District) prior to review of a special use permit. The rezoning was approved by the Board of Supervisors on March 12, 2012. The subject parcel is located along Hendricks Store Road (Route 655) near the intersection with Hickory Cove Lane (Route 654). A private road (Stump Circle) adjoins the property to the west. The applicant requests approval of a special use permit and does not propose to change the zoning of any parcels. The applicant proposes to establish a winery to be known as “Ramulose Ridge Vineyards”. The vineyard is already established as an agricultural use (viticulture) which is allowed by right in the AV district. Associated winery activities will take place within the existing dwelling. The owners anticipate gatherings of a small scale (wine tastings) to occur occasionally as part of the winery operation. Mr. Robinson provided the Commissioners a copy of a petition of support that neighbors obtained at the onset of this process.

There were no questions from the Planning Commission for Mr. Robinson.

The Chairman asked for the applicant’s presentation. Maryellen F. Goodlatte, Attorney with the law firm of Glenn, Feldman, Darby and Goodlatte 37 Campbell Avenue, SW Roanoke, Va spoke on behalf of the applicants. Mrs. Goodlatte noted the request to rezone the property to AV (Agricultural Village District) was approved by the Board of Supervisors on March 12, 2012. The winery would be developed in the existing structure on the property. The only disturbances to the site will be for three parking spaces, landscaping and new pavement at the entrance required by Virginia Department of Transportation (VDOT). No existing vegetation will be disturbed. The Ramakers held a neighborhood meeting earlier this year to review and discuss the plans for the winery with the neighbors. The neighbors are in support of the project. The applicants are pleased with the conditions recommended by staff.

There were no questions from the Planning Commission for Mrs. Goodlatte.

Mr. Noell asked if there were any citizens to speak for or against this application. Being none Mr. Noell closed the public hearing and asked for discussion among the Commission. Mr. Fralick stated this is a good project.
Mr. Fralick made a motion to recommend to the Board of Supervisors approval of SU120004. Mr. Wilkerson seconded the motion. A roll call was taken.

Voting yes: Mr. Fralick, Mr. Craig, Mr. Wilkerson, Mr. Huff, Mr. Scott and Mr. Noell

Voting no: None

Motion passed 6-0

Mr. Noell opened the public hearing for Special Use Permit SU120006 and asked for the staff presentation. Mrs. Zirkle noted Roger N. Beale is requesting a special use permit to install a 100-foot tall “Small Wind Energy System” (wind turbine) on his property on Bethel Church Road. The subject parcel is located along Bethel Church Road (Route 711) near the intersection with Evington Road (Route 811). An unimproved but platted public road stub (“Harkaway Lane” on 1989 plat) adjoins the property to the south.

The applicant requests approval of a special use permit and does not propose to change the zoning of the parcel. The applicant proposes to install a custom-built “Small Wind Energy System” (wind turbine) in the rear yard. Ordinarily, wind turbines can be built by right with a standard zoning permit issued for an Accessory Structure without requiring a special use permit. However, if any of the application criteria for issuing the zoning permit cannot be met, or if a taller height is needed, the applicant may then request a special use permit. The applicant is not able to meet the minimum side and rear setback requirements necessary for tower placement so he must seek a special use permit.

In addition, the applicant would like to exceed the 85-foot height limit. Rather than issue two special use permits, both conditions may be requested within one application. The property is zoned Agriculture / Rural Preserve (AP) and Airport Overlay (AO) districts. All adjoining parcels are also zoned AP with AO. Small subdivisions of approximately 1.5 acre lots are in the immediate area, mostly along Bethel Church Road, as well as larger open tracts that reflect the agricultural zoning of the area. The New London Airport is located to the west over one-half mile away, thus the AO zoning district applies.

The property has been used for residential purposes prior to the adoption of zoning. The subdivision plat for “Steeplechase Estates” was approved in May 1989; the subject lot is lot 4 in Steeplechase Estates. The parcel is less than the 3-acre minimum required by the Zoning Ordinance as adopted in 1998. Tax records show the house was constructed in 1989. According to the applicant, the wind turbine was constructed several years ago as a hobby. He has since taken it down for zoning compliance. The applicant is not able to meet the minimum side and rear setback requirements necessary for tower placement so he must seek a special use permit. Mrs. Zirkle noted the property owner was present and has brought a letter from the adjoining property owner in support of the application.

Questions/comments from the Planning Commission covered the following:
• Is the 100’ height at the tip of the blade?
• Does the fall zone hit any structures?
• Could this have been a variance instead of a Special Use Permit?

Mrs. Zirkle noted the 100’ height is at the tip of the blade and no structures would be hit in the fall zone. She noted it would be a variance request because they are varying from standards set out in the ordinance, however, there is a mechanism built in the Article IV section of the ordinance that allows someone who can’t meets the requirements to use the Special Use Process versus the Board of Zoning Appeals process.

Mr. Noell asked for the applicant’s presentation. Debra M. Beale of 116 Moultire Place, Lynchburg, Va. spoke on behalf of Mr. and Mrs. Beale. Ms. Beale provided the Commissioners a copy of the Powerpoint presentation she would present. Mr. Beale built the tower in 2009 as a hobby and has taken in down for zoning compliance. The wind turbine is a 3kw system. The presentation provided photos of the wind turbine erected at 84’. Photos in the presentation represented:

• Distances from the tower to the neighboring lots and residences
• Docking station, electric winch and cables used to raise and lower the tower.
• Generator, inverter which converts battery DC energy into household AC energy and guy wires used in support the tower.

The 100’ tower is needed to allow the tower to be above the tree lines. Many of the trees in the area exceeded the existing 84’ tower. The tower has been painted to be in compliance with the ordinance. Mr. Beale showed the Commissioners a video of the wind turbine in action. The video demonstrated the 84’ turbine with minimal winds to wind gusts up to 50 miles per hour. As winds pick up the “furling” process begins, the blades fold up to prevent blade damage. Mr. Beale indicated he has a dedicated breaker panel with most items powered in the event of a storm such as lights, refrigerator, freezer, water pump and television.

Questions/comments from the Planning Commission covered the following:

• Do you have a fence to keep children out?
• What is the noise level?
• What type of maintenance is conducted and how often?

Mr. Beale and Ms. Beale addressed the questions from the Commissioners. A fence is around the area with a “no trespassing” sign and a “danger high voltage” on the tower. The noise level is very minimal and they have not received complaints from the neighbors. Maintenance is conducted once a year to check the blades, bearings and to see if any touch up painting is needed.

Mr. Noell asked if there were any citizens to speak for or against the request. Being none, Mr. Noell closed the public hearing and asked for discussion among the Commission.

Mr. Wilkerson noted the project is just down the road from him and he has never noticed the tower while driving up and down the road. He noted an additional 15’ would not make any difference in that regard. There are no public safety issues, no adjacent
structure liability that is apparent and he is in support of the application. Mr. Fralick stated it is a good project. He complimented Mr. Beale for lowering the tower when he found the tower was not in compliance with the county ordinance.

Mr. Wilkerson made a motion to recommend to the Board of Supervisors approval of SU120006 with the staff conditions. Mr. Fralick seconded the motion. A roll call was taken.

Voting yes: Mr. Fralick, Mr. Craig, Mr. Wilkerson, Mr. Huff, Mr. Scott and Mr. Noell

Voting no: None

Motion passed 6-0

Mr. Noell opened the public hearing for Rezoning application RZ110004 and asked for the staff presentation. Mr. Jordan Mitchell noted KoKo, Inc. (c/o Robert A. Conner) requests to rezone 5.024 acres of a 9.424 acre parcel, currently zoned Planned Industrial Development (PID) District, to High Density Multi-Family Residential (R-4) District. The rezoning has been requested in order to develop the property with multi-family dwelling units. The subject parcel (Tax map # 116-A-16) is located on the south side of Forest Road (Route 221), on the east side of Ashwood Park Road approximately 0.19 mile south of the intersection with Forest Road (Route 221). The subject parcel is adjacent to the intersection of Ashwood Park Road and Blue Ridge View Circle with a portion of the parcel abutting the Norfolk Southern Railway.

The developer intends to construct 54 two- and three-bedroom multi-family dwelling units (apartment) in seven (7) proposed buildings on “Tract A” of the subject parcel, which requires a separate approval process. However, not all of the 5.024 acres will be developed with the proposed apartments. Approximately 0.615 acre of the 5.024 acres will be rezoned to R-4 for the purpose of providing road frontage (60 feet) for “Tract B” as shown on the concept plan.

A neighborhood informational meeting was held on Wednesday, May 25, 2011 in the cafeteria of Thomas Jefferson Elementary School with approximately 31 citizens in attendance. Citizens raised concerns over the safety of adjoining roads, buffering and how the apartments will affect the nearby Ashwood and Manor Court town home communities. The public also expressed concern about work some felt had not been completed by the developer on the Ashwood Town home project.

The subject property is primarily open along Ashwood Park Road and Blue Ridge View Circle. The remainder of the property is lightly wooded toward the rear along the railroad tracks. All of the adjacent properties are currently zoned PID with residential or industrial uses. Properties within 1,500 feet of the subject parcel are zoned PID, PCD (Planned Commercial Development), C-2 (General Commercial), R-2 (Medium Density Residential) and AR (Agricultural Residential). Properties within this area consist of mixed uses that include industrial, commercial, civic (Forest Middle School) and
residential development. The proposed rezoning represents an up-zoning of the 5.24 acre portion of Tax Map #116-A-16 to a high intensity residential district.

The rezoning request is compatible with adjoining property zoning and would serve as a buffer between the “less intensive” R-2 zoning district (across the railroad tracks to the rear) from industrial and commercial uses. The rezoning request is compatible with the proposed density of development (12.2 units per acre) meeting the intent language of the R-4 zoning district. Additionally, the proposed density is less than the maximum allowed for multi-family dwellings units (apartments) in the R-4 zoning district (24 units per acre).

There are two sections within the Comprehensive Plan that relate to this rezoning. The application generally meets the goals of Chapter 4 (Housing) and 9 (Land Use) of the Comprehensive Plan. Based on the “Mixed Use” Future Land Use designation description, the proposed development is not compatible with the Future Land Use component of the Comprehensive Plan. The PID district is generally “mixed use” in nature while R-4 is for high density residential development.

A change in zoning opens a property up to different uses that in this case could have the potential to increase the residential density allowed in R-4 if apartments are built as proposed. Recognizing that the proposed rezoning is related to the applicant’s proposed future use of apartments, the project impacts are assessed based on the proposed use of apartments. The applicant has proffered “the site will be developed in substantial compliance with the approved site plans”.

Questions/comments from the Planning Commission covered the following:

- In the proffer offered by the applicant what does “substantial compliance” mean?

Mr. Mitchell noted the applicant will be held to the proffer and will be required to be in compliance with the Zoning Ordinance.

Mr. Noell asked for the applicant’s presentation. Mr. Bill Berkley of Berkley Howell & Associates of 306 Enterprise Drive, Forest, VA spoke on behalf of the applicant. Mr. Berkley noted the request is to rezone a portion of the nine acre tract for 54 apartment dwelling units. The back five acres is not suitable for dwelling units; it currently contains access to a cell tower site, stormwater management pond and is not topographically suitable for development. The four acres in the front is already graded and is relatively flat with only minor grading needed.

The property has been marketed for the last fourteen years as a Planned Industrial Development. There is not a market for commercial or industrial use on this portion of the property. There have been some commercial uses on the portion of the property fronting on Route 221 Forest Road. The rezoning would provide the owner opportunity to produce income and requests the rezoning be recommended for approval. Mr. Berkley showed the Commissioners architectural renderings of the proposed structures.

There were no questions from the Planning Commission to Mr. Berkley.
Mr. Noell indicated there were citizens registered to speak. Carol Lee 1454 Valley Vista Lane, Forest, VA, Laura Cofer 1061 Blue Ridge View Circle, Forest, VA and Tim Pennick of Lighthouse Property Management Company spoke regarding the following:

- Many promises made by Mr. Conner which were not kept for the Ashwood Manor Court development. Roadway pavement has not been completed after 10 years. Cost to have the pavement completed is approximately $35,000. Continue to have problems with Mr. Conner not paying his Homeowner’s Association portion of the paving costs on the two lots in the development he still owns.
- Projects are not completed by the developer and money is running out. There will be a greater need for schools and traffic will increase. This is a bad deal. It took 10 years to build a small community and the paving is still not complete. We see no guarantees that the proposed project would ever be completed. There is no proposed buffer. Where are the children to play? Don’t want them to come over to our development to play on the playground we have paid for with our Association money. How compliant with the request will the developer be and to what standard will he be held.
- Ongoing maintenance issues in Ashwood still not resolved, particularly with the pavement.

Mr. Noell asked Mr. Berkley if he would like to offer any rebuttal. Mr. Berkley noted he was not aware of the problems in the other developments since he did not work on them and was not in a position to address them. The issue tonight is regarding land use and for the highest and best use of this property. They do not believe the highest and best use will be those uses allowed in a Planned Industrial Development (PID). A percentage of PID is allowed to be residential use; however, that percentage on this parcel has already been used.

Mr. Noell asked Mr. Berkley if he would like to offer any rebuttal. Mr. Berkley noted he was not aware of the problems in the other developments since he did not work on them and was not in a position to address them. The issue tonight is regarding land use and for the highest and best use of this property. They do not believe the highest and best use will be those uses allowed in a Planned Industrial Development (PID). A percentage of PID is allowed to be residential use; however, that percentage on this parcel has already been used.

Mr. Conner, the applicant, made a brief statement regarding the issues of unresolved work raised by the speakers.

There being no additional speakers Mr. Noell closed the public hearing and asked for discussion among the Commissioners. The discussion covered the following:

- Will the vehicle passages in the project be built to VDOT standards or to private standards?
- Is there a nonconformity resulting from the downsized PID acreage?
- What happens to the remaining acreage in PID?
- Land use decision to be made but have concerns regarding record of developer. Will these residents be left with open promises?
- In favor of the project since that it is infill development and uses existing Public Service Authority (PSA) infrastructure.
- Would ask applicant for a proffer that all pavement would be fixed immediately upon notification of potholes or crumbling within the new development. Additionally, have a separate play area be built in the development.
- Proposed development is in a growth area. Would it be in best interest of all parties to continue the discussion for another month and do more research?
- What would the purpose of the continuation serve?
Mr. Berkley, Mr. Mitchell, Mr. Wilson and Mr. Boggess addressed the questions from the Commissioners. Mr. Berkley noted the passage ways inside the apartment complex would be driveways and parking lots would not be built to VDOT standards nor turned over to VDOT for maintenance. They would be paved and designed in accordance with standards of the industry.

The 15% area of residential use allowed in a PID was maxed out in the Manor Court special use in 2000. Mr. Boggess noted he did not think there was a nonconformity. The area left in PID will be limited to PID uses. The property was rezoned in 1998 to PID without a master plan.

Mr. Boggess noted the decision should be made as a land use decision. If not comfortable to make as a land use decision, you may suggest having some proffers, but they must be voluntary. Mr. Berkley suggested the developer could provide a proffer regarding the paving standard.

Mr. Fralick made a motion to table the discussion phase until the Planning Commission meeting on May 7, 2012. Mr. Craig seconded the motion. A roll call was taken.

Voting yes: Mr. Fralick, Mr. Craig, Mr. Wilkerson, Mr. Huff, Mr. Scott and Mr. Noell

Voting no: None

Motion passed 6-0

Mr. Noell moved to item 6 – Old Business. Mr. Fralick asked if the information on the PD-1 district was now on the web site and if not was there a time table for the change. Mr. Boggess noted the information has been sent to Municode and he would follow up with them. Mr. Fralick asked if the GIS road inaccuracy regarding the Ramaker property had been corrected. Mr. Wilson indicated yes. Mr. Fralick asked for the status of a dinner to recognize the three former Commissioners. Mr. Wilson noted staff will contact the former Commissioners to determine their availability. The consensus of the Commission was to have a dinner with the former Commissioners. Mr. Fralick asked if the Commission’s bylaws had been changed per their vote in March. Mr. Wilson indicated yes and the Commissioners would be provided the revised bylaws at their next meeting.

A discussion was held regarding the bylaws of the Commission and their enforcement, specifically related to the requirement that members attend training related to their role as Commissioner. Commissioners expressed their views on this topic and others in the bylaws. Mr. Boggess stated he would address concerns raised and provide an opinion.

Mr. Noell moved to New Business. Mr. Fralick suggested to the Planning Commission that they request staff locate someone to give the Commission an update on the Commission’s duties, responsibilities, changes to the code and good zoning practices. A
three to four hour session was suggested. Mr. Wilson indicated staff would research and report back to the Commission in May.

Mr. Noell moved to the Subdivision Waiver request for the Harmony Development (RZ120002) and asked for the staff presentation. Mr. Mitchell noted B & A Investors has submitted a request to waive the Subdivision Ordinance requirement of Article 6, Division 2, 6.10 “Access to adjoining property.” This section of the Subdivision Ordinance requires streets to be “dedicated, but not required to be improved, at strategic locations to provide for future access to adjoining parcels which may be subdivided in the future.”

This waiver request has been submitted pursuant to Article 8 of the Subdivision Ordinance. The Planning Commission’s authority to grant waivers is contingent “upon assurance of the subdivider that each of the following conditions has been met:”

1. There exists an unusual situation or where strict adherence to the subdivision regulations would result in substantial injustice or hardship.

2. The minimum requirement, if applied to the proposed subdivision, would impose an unreasonable burden upon the subdivider.

3. The granting of such waiver will have no substantially adverse effect on the future residents of the proposed subdivision, nor upon any property adjoining such proposed subdivision.

Due to the small size of the adjoining parcel and the existing home on it (County Tax Parcel 128-A-36A), staff has determined the parcel will not be subject to future development or subdivision.

There were no questions from the Commission to Mr. Mitchell.

Mr. Noell asked for the developer’s presentation. Mr. Norm Walton of Perkins & Orrison, 27 Green Hill Dr Forest, VA, spoke on behalf of the developer. There are two issues which prevent a practical application of this ordinance - 1) a stream and 2) steep slopes. Mr. Walton provided maps which depicted profiles of the areas of concern as stipulated in his letter to the County dated March 16, 2012. The letter referenced is included in the Planning Commission packet.

Questions/comments from the Commission covered the following:
- Are the adjoining property owners agreeable with this request?
- You stated this is impractical but not impossible.
- Are there other access points to the project?
- Will the roundabout shown on one of the streets be able to handle a fire truck?

Mr. Walton noted Mrs. Persinger does not want any connection to her property. Mr. Woolfolk is indifferent. Mr. Walton said it is impossible in two of the three connections to adhere to VDOT guidelines. If we exceed VDOT guidelines the roads would have to be private. Mr. Walton noted there are 3 access points shown that need to be waived.
Mr. Walton noted he will run a turning template to ensure the roundabout meets requirements for emergency vehicles.

Mr. Scott made a motion to grant the subdivision waiver noting two items. The property owners can develop at a later date off other roads if they so choose and the hardship that the points of entry would cause. Mr. Craig seconded the motion. A roll call was taken.

Voting yes: Mr. Fralick, Mr. Craig, Mr. Wilkerson, Mr. Huff, Mr. Scott and Mr. Noell

Voting no: None

Motion passed 6-0

There being no other business the meeting was adjourned by consensus at 9:01 p.m.

Respectfully submitted,

Timothy L. Wilson, Secretary

Approved by:

Derrick Noell, Chairman