Albemarle County Planning Commission
March 7, 2000

The Albemarle County Planning Commission held a meeting and public hearing on Tuesday, March 7, 2000 in the County Office Building. Members attending were: Mr. William Finley, Chairman; Mr. William Rieley; Mr. Jared Loewenstein; Mr. Rodney Thomas; Ms. Tracey Hopper; Mr. Pete Craddock. Other officials present were: Mr. Wayne Cilimberg, Director of Planning and Community Development; Ms. Elaine Echols, Senior Planner; Ms. Yadira Amante, Planner; Mr. Steven Waller, Planner; Mr. Eric Morrisette, Senior Planner; Mr. Greg Kamptner, Assistant County Attorney; Mr. Glenn Brooks, County Engineering; Mr. Steve Snell, County Engineering. Absent: Mr. Dennis Rooker, Vice-Chairman.

Approval of Minutes – February 15, 2000
The Commission moved, seconded, and unanimously approved the minutes as amended.

Review of Board of Supervisors Meeting – March 1, 2000
Mr. Cilimberg stated that the Board discussed the Meadowcreek Parkway planning from Rio Road into the City; the Board considered how the road should fit in the land, but in consideration for a linear park along the road, and how that road relates to future urban development at its northern end. The Board decided to issue an RFP for a consultant to assist the county and ultimately work with VDOT and the Meadowcreek Parkway Design Committee in establishing the road center line and establishing the linear park associated with the road so that the character of the road in the City continues into the County up to Rio Road. Mr. Cilimberg said the RFP has been issued, and the Engineering Department is handling that. Mr. Cilimberg said the Board also held a presentation on long-range capital needs; many of the needs discussed were the result of decisions that have been made in planning documents over the last several years, amounting to $80 million of the $140 million identified for the next ten years. He noted that it was mostly informational for the Board, which will be looking at how to fund the long-term needs beyond this year.

Other Matters Not Listed on the Agenda from the Public
None were offered, and the meeting proceeded.

Consent Agenda

SDP-2000-006 UREF: North Fork Research Park Town Center Office – Building #1 - Request for waiver to allow the grading of critical slopes and curvilinear parking.

The Commission moved, seconded and unanimously approved the Consent Agenda with conditions as presented.

Items Requesting Deferral:

SP 99-74 Townwood Mobile Home Park (Sign #75 & 76) – [17.2.2.17] Request to amend the existing special use permit to allow for 19 additional mobile home sites on approximately 12.6 acres zoned R-10, Residential. The property, described as Tax Map 61, Parcel 8 is located on the eastern side of Rio Road East, just north of the Rock Store. This property is located in the Jack Jouett Magisterial District and is recommended for Urban Density in Neighborhood 1 of the Comprehensive Plan. *STAFF REQUESTS DEFERRAL TO MARCH 21, 2000.*

Public comment was invited. None was offered, and the matter was placed before the Commission.

MOTION: Mr. Loewenstein moved, Mr. Rieley seconded approval of deferral of SP 99-74 to March 21, 2000 at staff's request. The motion passed unanimously.

ZMA-99-18 Charlottesville First Assembly of God (Sign #79) - Request to rezone 1.496 acres from CO to R4 to allow for a church expansion to be in a residential rather than commercial zone. The property, described as Tax Map 61 Parcel 153a is located in the Rivanna Magisterial District on East Rio Road (Route # 631), between CATEC and the railroad bridge on East Rio Road. The Comprehensive Plan designates this property as Institutional in Urban Neighborhood 2. *APPLICANT REQUESTS DEFERRAL TO APRIL 4, 2000.*

SP-99-75 Charlottesville First Assembly of God (Sign #78) - Request for special use permit to allow church expansion in accordance with Section 15.2.2.12 of the Zoning Ordinance which allows for churches in R-4 residential zoning districts. The property, described as Tax Map 61 Parcels 153A and 153A1 contains 4.496 acres, and is located in the Rivanna Magisterial District on East Rio Road (Route # 631) between CATEC and the railroad bridge on East Rio Road. The property is zoned CO and R-4. A concurrent rezoning is requested to rezone the CO portion to R-4 The Comprehensive Plan designates this property as Institutional in Urban Neighborhood 2. *APPLICANT REQUESTS DEFERRAL TO APRIL 4, 2000.*

Public comment was invited. None was offered, and the matter was placed before the Commission.

MOTION: Mr. Rieley moved, Mr. Loewenstein seconded approval of deferral of ZMA 99-18 and SP 99-75 to April 4, 2000. The motion passed unanimously.

SUB 99-309 Merriwether Lane Preliminary Plat – Private Road - Request for plat approval to create five (5) lots. One (1) lot is to access Tanglewood Drive, a 50' private right-of-way, and four (4) lots are to access a new internal private road. Property is located on approximately 27.784 acres zoned RA (Rural Area). It is described as Tax Map 58-Parcel 3J and is located on State Route 676 (Tilman Road) approximately 700' west of Loch Brae Lane. This property is located in the White Hall Magisterial District and is designated as Rural Area in Rural Area 3 as identified in the Comprehensive Plan. *APPLICANT REQUESTS INDEFINITE DEFERRAL.*

Ms. Hopper announced that her firm works with the applicant, and she would be abstaining from the vote.

MOTION: Mr. Thomas moved, Mr. Craddock seconded approval of indefinite deferral of SUB 99-309. The motion passed unanimously, with Ms. Hopper abstaining.

Public Hearing Items:

ZMA-99-17 Stonegate at Western Ridge (Sign # 85) – Request to amend proffers for Stonegate at Western Ridge PRD Planned Residential District to allow modification of the front setback. The property, described as a portion of Tax Map 56E, Section 1, Parcel A, and Tax Map 56E, Section 3, Parcels 1, 2, 3, 4, 6, 7, 8 is located in the White Hall Magisterial District on Stonegate Way at the intersection of Park Ridge Drive and Lake Tree Lane. The Comprehensive Plan designates this property as Neighborhood Density and is recommended for 3 – 6 units per acre in the Crozet Community.

Ms. Echols presented the staff report, noting that the application is a minor amendment for proffers to the Western Ridge development. She said that Western Ridge in Crozet is a mixed-use commercial

and residential development that was rezoned in 1995. It operates in some ways as a planned development, although it is not officially a planned development. Ms. Echols mentioned that in 1998, the developer wanted to do "zero lot line" development in a portion of the development, which required Planned Development zoning to reduce setbacks. She explained that there was a set of setbacks proffered as part of the development that effectively prohibits the developer from using a design he would like to do that relates to the front setbacks for attached garages. The requested change is to delete the reference to openings other than garage doors on attached garages that project forward from the front setback.

Ms. Echols said that in the context of DISC, a projecting garage would not be recommended for aesthetic reasons, but this proposal helps to diminish the projected garage appearance on the houses. She mentioned that existing conditions allow for a projected garage 10 feet in front of the front setback with a garage door; the applicant wants to change it to allow for windows and other openings besides garage doors to create a courtyard appearance. Ms. Echols said that all of the owners for the lots that have been sold in this portion have been involved in the rezoning, and have all signed the proffer sheet. She stated that the application plan presented shows what was approved in 1998 for the PRD section – small lots with larger houses.

Mr. Rieley asked if the application relates to the distance from the sidewalk, or just the nature of the openings. Ms. Echols confirmed this, adding that right now, it is permissible to project 10 feet from the sidewalk with the garage door, but the applicant wants to have more than a garage door from an aesthetic point of view.

Mr. Rieley asked if there was any discussion of language that prohibits garage doors in front.

Ms. Echols responded that they're "not there yet."

Public comment was invited. None was offered, and the matter was placed before the Commission.

MOTION: Mr. Loewenstein moved, Ms. Hopper seconded approval of ZMA 99-17 as presented. The motion passed unanimously.

Regular Item:

SUB 99-217 Tapscott Rural Division - Request for plat approval to create five (5) lots from two (2) existing lots in the flood plain of the James River. This request necessitates waivers of *Sections 14-504 – Lot location and frontage and 14-518 – Individual private wells and septic systems* of the Subdivision Ordinance and *Section 4.2.1 – Building site required* of the Zoning Ordinance. Property is located on approximately 50.836 acres zoned RA (Rural Area); is described as Tax Map 135-Parcel 16 and Tax Map 135-Parcel 9A; and is located approximately 3,450 feet off of State Route 627 (Warren Ferry Road). This property is located in the Scottsville Magisterial District and is designated as Rural Area in Rural Area 4 as identified in the Comprehensive Plan.

Ms. Amante presented the staff report, noting that the division is for five lots, completely in the floodplain of the James River in the Scottsville District. The applicant is proposing to create five separate lots from two existing lots, and has the division rights to be able to do that; however, several waivers from Subdivision and Zoning Ordinance provisions are needed. Ms. Amante said that the lots would not front either a public or private road, requiring a waiver of Section 14-504; the lots would not be able to get permit for a private well and septic system, as they are in the floodplain, thus facilitating a need for a waiver of Section 14-518; and a waiver of Section 4.2.1 of the Zoning Ordinance – requiring a building site – would also be needed. Ms. Amante emphasized that the lots are not

intended for human habitation, and there will be absolutely no building activity on any of the parcels; the plats will be noted as such.

Ms. Amante reported that staff recommends approval of the subdivision because of the limited use planned for the lots, and noted that Condition #2 in the staff report has been revised to read: "Because the property is in the Flood Hazard Overlay District, development of the property and the uses allowed thereon shall be restricted to those allowed in the Flood Hazard Overlay District of the Albemarle County Zoning Ordinance, and human habitation shall be prohibited. The final plat shall contain a note which states: 'property shown hereon is within the Flood Hazard Overlay District of the Albemarle County Zoning Ordinance, and the development of the property and the uses allowed thereon are restricted, and human habitation is prohibited.'"

Mr. Thomas asked what the land would be used for.

Ms. Amante responded that there is no use planned for the land except for recreational and farming. She mentioned that the public currently uses the land to access the James River.

Mr. Rieley asked if camping would be permitted.

Mr. Kamptner responded that "human habitation" would be applied in the context of the Flood Hazard Overlay District.

Public comment was invited.

The applicant, Stuart Tapscott, addressed the Commission. He explained that the property has been in his family for several hundred years, and said that there are five children living, and 50 extended family living. He said that right now, people freely use the land. "It's just getting completely out-of-hand, and it's getting plumb away from us." Mr. Tapscott said that the five children in the family want to use the land for pasture, hay, fishing and camping, etc. "We would like to have our part of it."

Ms. Edna Tapscott Anderson addressed the Commission. She said that she wants to have the situation settled in her lifetime, so that it resolved for the grandchildren and great-grandchildren.

Mr. Craddock commended the Tapscott family for working together to get the situation resolved before it moves to the next generation. "It's good to see good family relations and get this settled up now."

MOTION: Mr. Craddock moved, Mr. Loewenstein seconded approval of SUB 99-217 with Condition #2 amended to read, "Because the property is in the Flood Hazard Overlay District, development of the property and the uses allowed thereon shall be restricted to those allowed in the Flood Hazard Overlay District of the Albemarle County Zoning Ordinance, and human habitation shall be prohibited. The final plat shall contain a note which states: 'property shown hereon is within the Flood Hazard Overlay District of the Albemarle County Zoning Ordinance, and the development of the property and the uses allowed thereon are restricted, and human habitation is prohibited.'"

SDP 99-158 Westminster Canterbury of the Blue Ridge – Requests for a waiver to allow the grading of critical slopes, modifications to allow one-way circulation, curvilinear parking and modification to allow structure in areas designated as open space.

Mr. Waller presented the staff report, noting that this site plan for the addition to Westminster Canterbury will allow them to double the size of their facilities. In order to approve the site plan, the

applicant is required to have a waiver approved to disturb critical slopes on the property, a modification of curvilinear parking, a modification for one-way circulation, and approval of open space proposed in ZMA 99-09 and ZMA 97-03.

Mr. Morrisette noted that the rezoning showed an application plan, which was approved by the Board of Supervisors, that roughly was in alignment with the building applications being proposed now. He mentioned that the location of the buildings shown in the application plan weren't pinned down specifically.

Mr. Waller illustrated on a map presented the areas of critical slopes proposed for disturbance – a significant area behind the duplexes and in the rear of the site along a parking lot.

Mr. Morrisette said that once the applicant is finished grading, the slopes are proposed as 2 to 1; he mentioned that the slope in the rear of the site is 40 feet, with the one behind the duplexes at about 35 feet. He said that during the final review of the final site plan, the engineer was going to work with the applicant to achieve various measures to help reduce the potential of moving soil, such as certain types of vegetation on the slopes. Mr. Morrisette said that the curvilinear parking plan has met all the requirements for site distance backing up, so there is not a major issue with the curvilinear parking waiver. He added that staff has some concern with the one-way circulation as shown on the preliminary site plan, stating that the applicant has agreed to work with staff on a safer design, which would be brought back to the Commission in the final site plan process. Mr. Morrisette said that the Open Space uses in accord with Section 4.7.1 need to be approved; the application plan showed trail systems throughout the site, walking paths, gazebos, etc.

Mr. Morrisette staff is recommending approval of the curvilinear parking, open space, and grading for critical slopes, but is not recommending approval of the one-way circulation.

Mr. Loewenstein asked if the percentage of critical slope area on the parcel being disturbed is 98%.

Mr. Waller said that that figure is a mistake.

Mr. Morrisette said that there are about 3 ½ acres of critical slopes out on the site.

Mr. Cilimberg pointed out on the map where the critical slope areas are.

Ms. Hopper explained that she and Mr. Rieley had visited the site, and tried to clarify the location of the critical slopes: (1) at the parking lot; (2) behind the proposed cottages; and (3) where the dam is.

Mr. Morrisette confirmed these locations, adding that engineering said the dam was approved with the previous phase to control stormwater for development that has occurred prior.

Mr. Rieley asked if the Commission granted a waiver for the critical slope at that time.

Mr. Morrisette replied that it probably just went through the ENS process.

Mr. Rieley commented, "It's clearly marked as critical slopes on [the map]; I'd like to know whether a waiver was granted or not."

Mr. Waller explained that the heavier lines on the map are the proposed grading for this phase.

Mr. Rieley said, "That area's included in this…it shows up not only on Attachment C, page 5, but on Attachment C, page 1."

Mr. Morrisette suggested that the applicant and the engineer clarify this. "It's shown outside the limits of grading that the applicant is showing. Maybe that's some remnants of his prior development plans."

Mr. Rieley stated, "Well, it's under construction right now, and if no waiver has been granted, we're in violation right now."

Mr. Morrisette said staff would look into that.

Mr. Loewenstein stated he wanted more detailed information about what kinds of procedures will be put in place to minimize the large-scale movement of soil and rock on the slopes, since the slopes are steep.

Mr. Brooks said that the constructed slopes as proposed are not coinciding with what the ordinance addresses – which is existing critical slopes and how they are impacted. "We can stretch it to that, but the applicant went to our management and expressed a desire to have the plan moved forward and take care of those things at the final stage, and we did it."

Mr. Loewenstein asked, "Do you foresee any unusual problems with that issue when the time comes?"

Mr. Brooks responded, "I don't know enough details really, I have ideas on how I might break up or provide added stability to the service of the constructed slope…I haven't really discussed or had any proposals from the applicant on exactly what to do."

Mr. Loewenstein commented that the final site plan could come back to the Commission, as it has to come back for one-way circulation anyhow.

Ms. Hopper suggested deferring the critical slope waiver. "I'm just wondering…if we don't defer the critical slope waiver, what we'll be able to do at that stage."

Mr. Loewenstein said it would make more sense to tie them together.

Ms. Hopper asked Mr. Brooks about the 40-foot slope where the back parking lot is.

Mr. Brooks explained that a lot of that slope is on an adjacent property, and the slope drains onto this adjacent property. He noted that the property line is about in the middle of the proposed slope, and the stormwater management facility is several hundred yards down in the stream valley. "I'd probably like to hear from that adjacent property owner and see if they have any concerns about it, and if they don't have concerns about the slope creeping further into that adjacent property, I would probably try to bench it out like that, try to make it more gradual."

Mr. Brooks noted that terracing takes more material, and the applicant may not have the fill. "I was kind of hoping for some really good ideas from the applicant."

Mr. Rieley presented several pictures taken of the site, including a view of the top of the slope where the cottages would be, including a long fill slope. He emphasized that the emergency spillway – which is shown in the application as needing a critical slope waiver – has already been built. "Maybe one exists that I don't know about, but I think we should have the answer to that question."

Mr. Rieley said that all of the slope is directly in Monticello's viewshed, which did not show up in the staff report at all.

Mr. Brooks mentioned that the critical slope language in the ordinance has an exemption for roads and utilities, and the stormwater management structure may have been considered a utility.

Mr. Morrisette said that the applicant went through ENS approval from erosion control officers to get the stormwater basin, but that did not come through planning at all.

Mr. Rieley stated, "This whole slope was noted on the plan as greater than 25%, and we have a very steep cut that's in it that looks to me like it's in excess of 50% slope. It's a big question that I'd like to have answered." He emphasized that the area was included in the packet as an area requiring a critical slope waiver.

Mr. Rieley asked who is making the request for the waiver.

Mr. Morrisette confirmed that the engineer for Westminster Canterbury is asking on their behalf.

Mr. Rieley noted that he did not see that the applicant had made a written statement addressing each of the items required under the ordinance, specifically including the loss of aesthetic resource.

Mr. Morrisette said that usually, that accompanies a request.

Mr. Rieley stated, "I'm not certain that we have the legal authority to grant a waiver request, because the ordinance is extremely specific…[in] Section 4.2, the introduction says, "where modification of regulation is sought pursuant to Section 4.2.5, such requests shall address each concern as specified in Section 4.2,' which includes the loss of aesthetic resource. [I think this is] particularly pertinent in this case because of its position in Monticello's viewshed."

Mr. Rieley continued that Section 4.2.5.1 states that "a developer requesting such modification shall file a written request in accordance with this ordinance, and shall in such request each concern set forth in Section 4.2." He added, "That couldn't be more clear, and it does not even give us the option to grant a waiver if that has not been done, and it hasn't been done, as far as I can tell."

Mr. Morrisette said that the letter dated January 31st requesting all waivers does not really break down Section 4.2.

Mr. Rieley said that the applicant may be able to break down the issue.

Ms. Hopper asked if the Commission could move forward despite that problem. "If there were a way to address all the concerns and answer all the questions, and maybe even have the applicant address each of those factors…I would support trying to go ahead and move this along."

Mr. Kamptner said, "If the Commission is inclined to find that the January 31st letter satisfies the requirements of 4.2, you could move ahead. But you also have the ability to determine that this letter doesn't satisfy the requirements."

Mr. Morrisette stated that the applicant submitted a letter dated December 2, 1999, which asked for the critical slope waiver, but did not break down Section 4.2.

Mr. Waller said that he asked the applicant for more information.

Mr. Finley asked if the applicant has gone ahead with grading on critical slopes.

Mr. Waller said he was not aware of that.

Mr. Morrisette stated, "I believe they went through the proper channels in the Engineering Department through the erosion control [officials] over there to get approval to build the basin. I'm not too confident that it actually came over to planning for a critical slope waiver."

Mr. Waller commented, "This is actually the first site plan from the ZMA which shows the open space."

Mr. Morrisette said, "There may be an exemption with these type of basins. I'm not sure, and I'd have to do some research for you."

Mr. Rieley stated, "There may be a perfectly good explanation for it. I only raise it because it was in our packet."

Mr. Finley asked if the Commission could proceed, legally.

Mr. Kamptner said that the Commission needs to decide whether the letter requesting the waiver satisfies the requirements of Section 4.2.

Ms. Hopper asked if the basin was exempt from the critical slope waiver.

Mr. Kamptner said he has not found an exemption, but noted that stormwater management facilities are exempt from building site requirements.

Public comment was invited.

Mr. Kurt Gloeckner of Gloeckner Engineering addressed the Commission.

Mr. Gloeckner explained that they requested a waiver to build on critical slopes, curvilinear parking, and one-way parking several times over the past few years for Westminster Canterbury because "it's all included in working on that site." He said that when they applied for the waiver under the assisted living construction, which is taking place right now, the waivers were granted. In the meantime, the Commission passed the stormwater management ordinance where stormwater has to be treated, so the applicant did a minor amendment – which is the basin – to take care of the stormwater management problems that need to be addressed with the overall project. "That's how the basin was presented to the county. The erosion control and all the other requirements by the county were presented and approved. It seems to me that the waiver request for the assisted living went with the amendment requiring stormwater management as presented by us. That's where the coverage for critical slopes came in."

Mr. Rieley asked, "The critical slopes waiver was granted; subsequent to that, an ordinance was passed that required the water quality, which necessitated building the dam, and the dam was designed after that. So how can you get a critical slopes waiver for something that [didn't exist]."

Mr. Gloeckner replied, "It already existed. The critical slopes waiver was way ahead of time."

Mr. Gloeckner expressed his confusion. "I'm asking for a waiver to build on critical slopes, not create them…[for] existing critical slopes, that's what the waiver request is…I don't get it."

Ms. Hopper asked, "When you had the Assisted Living site plan approved then you asked for a critical slope waiver of that mountainside?"

Mr. Gloeckner responded, "Everything on Westminster Canterbury, not that particular site."

Mr. Rieley emphasized, "We don't give a critical slopes waiver for anything on an entire piece of property."

Mr. Morrisette said he recalled the critical slopes waiver for the Assisted Living facility as being very limited, specifically close to the building." However, Mr. Morrisette noted that Mr. Gloeckner did come into planning with a minor amendment subsequent to the approval and actual construction of the Assisted Living facility for a temporary parking lot in the rear, and the basin may have been included in that. He suggested doing some additional research to clarify this.

Mr. Rieley agreed that clarifying this would be to everyone's benefit, adding, "It seems to me that if a critical slopes waiver was given for different grading, and then subsequently, because of changes in the ordinance, a new design had to be done that impacted other critical slopes, clearly that's not covered by the previous critical slopes waiver. That's the situation."

Mr. Finley said, "It's a smaller area – the critical slope for the Assisted Living center – was actually identified on the plat."

Mr. Morrisette said that it was a big issue relating to the cottages, but there was no discussion about a basin.

Mr. Rieley emphasized that there are two areas identified in Commissioners' packets that are very specifically pointed out as critical slopes that are disturbed. "My question is, is there a waiver that specifically applies to those two areas. If there's not, we've got a problem." He added, "Is the work that's being done out there in violation of the law?"
Mr. Waller replied, "The area on the far left is actually where the cottages are is in the limits of what they're saying they're going to clear right now."

Mr. Rieley said, "What's not on that drawing is that area and a little bit of the area on the other side that's being graded right now."

Mr. Cilimberg commented, "I don't think we're going to be able to answer the question [tonight], so that's something we're going to have to look into and get back to you on, and that may play a part in how you decide you want to deal with the critical slopes tonight."

Ms. Hopper asked if the critical slope waiver could be granted for some areas, and denied for others.

Mr. Kamptner said yes, if findings can be made for some areas, and not for other areas.

Mr. Gloeckner said he was notified today that the item was going to be moved from the Consent Agenda for discussion, and did not prepare a discussion on critical slopes. He said that most of Albemarle County is a 25% slope; to create critical slopes, the soils in Virginia are stable at a slope of 2 to 1. "If we need to have a discussion on why we're building on critical slopes, why we're creating critical slopes, we're probably going to have to bring in soils people, highway department and

everyone else that creates 2 to 1 slope. They are stable. To stabilize 2 to 1 slopes with grass, trees, landscaping, shelving – they're all options."

Mr. Gloeckner said he thought they were asking to work on existing critical slopes, not create critical slopes.

Mr. Finley asked him if the stormwater control area where work was being done was in 25% or more slope.

Mr. Gloeckner said that he has not studied that, and the issue was not raised.

Mr. Rieley said that the drawing – which shows slopes greater than 25% – has his stamp on it.

Mr. Waller mentioned that he actually circled the existing critical slopes on the map.

Mr. Gloeckner said he thought he had the waiver already, as this is just an amendment.

Mr. Cilimberg stated that it is not possible to resolve the issue right now. "There's several areas of critical slopes. I think there's an interest in trying to look at each one of those, get some kind of decision on where you want to go from here."

Ms. Hopper asked Mr. Gloeckner if he understood what the three areas of critical slopes in question are.

Mr. Gloeckner said that he was unclear on which three areas were in question.

Ms. Hopper explained that the basin area, the area where the cottages are planned, and the parking lot area are the locations where the critical slopes waiver is needed. She asked him to comment on the plans for the cottage and parking lot areas.

Mr. Gloeckner explained that Westminster Canterbury will hire a landscape architect, and the areas will be heavily landscaped. He noted that the plan for the Assisted Living Center, done by Peggy Van Yahres, contains shrubs, trees, bushes, etc. – something that he does not handle. Mr. Gloeckner emphasized that the 2 to 1 slopes will be stable, as they are clay. "I'm really confused by the whole issue of slopes."

Mr. Finley commented, "But you have requested a waiver because you know that you need a waiver for slopes of 25% or better."

Mr. Gloeckner said he felt the request was reasonable.

Ms. Hopper asked him how long he would need to present some options to the Commission.

Mr. Gloeckner replied that they can achieve stability with vegetation and with shelving. "I can't promise you any of that until I get to the final design, but I can't get passed the preliminary without all the red tape." He said that for 12 years, he has presented things for Westminster Canterbury with no problems, adding that the conceptual plan has been approved by the Board of Supervisors.

Ms. Hopper noted that the waivers were not approved at that time.

Mr. Finley asked if there is something for the Commission to act on.

Mr. Kamptner said that the letter may satisfy the requirements for application for the waivers because staff has processed it to this point.

Mr. Finley asked for further public comment.

Mr. Henry Hennett, CEO of Westminster Canterbury, addressed the Commission. He stated that the overall plan for Westminster Canterbury has been presented and approved over the last several years. Mr. Hennett said that the design's intent is to move behind the original building with the least impact to the Monticello viewshed. He mentioned that they have set aside 17 acres as a nature preserve to include a pond and nature trails, which would be in woodland and memorial or natural gardens. Mr. Hennett said he cannot speak to the details of waivers, but he is trying to hire professionals who can work out those details and achieve the desired plan. He noted that the architects cannot move forward to the final site plan without approval of the preliminary site plan and accompanying waivers.

Mr. Hennett said that they have involved Monticello, and the Westminster Canterbury architects meet with them on an ongoing basis. He added that Dr. Hurt, who owns the adjacent property, has given them written permission to use the adjacent land in terms of sediment runoff.

Ms. Kat Imhoff, the new CEO of Monticello, addressed the Commission. She thanked Mr. Rieley for mentioning that the site is in the Monticello viewshed. Ms. Imhoff said that she has given a landscape analysis to the County Executive, which is now in Planning. She said that Monticello will be trying to come to all the meetings involving projects in the viewshed. Ms. Imhoff said that she is hoping to get some larger landscaping elements on the Westminster site, as it is highly visible from Monticello. She noted that there is a "tension" between wanting to intensify development in Neighborhood Three, while working with the contours of landform in the area. Ms. Imhoff said that critical slopes do not just involve stability, but also how the development appears to the public and the community. She mentioned that there seems to be a desire to put a lot of development on sites that aren't big enough to accommodate the intensity. Ms. Imhoff invited Commissioners, staff, and applicants, to come to Monticello and look at the view when considering projects that will fall in the viewshed.

Mr. Steve Snell of County Engineering addressed the Commission. He said that while there is not usually a big problem with stability of 25% slopes, there is concern about erosion. Mr. Snell noted that as the slope becomes steeper, the velocity of the water increases, and so does the amount of erosion. He said that as the years go by, more and more erosion takes its toll.

Mr. Morrisette noted that Mr. Snell reviewed the plan.

Mr. Snell said that the difficulty with the plan is that it is being reviewed by the county in phases, and has amendments. He noted that the phase he reviewed did not have the ponds on it as part of the current development.

Mr. Finley asked if he was aware of a waiver granted for construction on the critical slope in the cottage area.

Mr. Snell said he did not review any of the previous plans, and for the critical slopes in the area he reviewed, 98% of the critical slopes would be disturbed.

Ms. Hopper asked how he thought the slopes should be stabilized.

Mr. Snell responded that he has several suggestions, but they are not addressed by the code. He said that putting shelves in, but the property owner loses some of the site that is buildable, and it costs him more to fill. Mr. Snell added that 2 to 1 slopes in our ordinance do not require shelving, but do require stabilization. "We try to work that out with different engineers on different projects." He added that there could be a compromise with Mr. Gloeckner.

Mr. Morrisette commented, "Usually our engineering department isn't in the market of designing."

Mr. Rieley asked if a waiver is granted, how much negotiating position staff has.

Mr. Morrisette responded that the conditions state that staff will work with the applicant to come up with measures to stabilize the slopes and reduce potential movement of soil. "It could impact the site – if they don't have enough fill material, it could move some of the development further back. It could impact some of the building sites."

Ms. Hopper commented that if the recommendations could be made more specific per critical slope site, it would be helpful.

Mr. Loewenstein said that there is not too much progress that can be made tonight. "I'm not comfortable approving part of this…I'd rather wait and see a unified plan brought back by the engineer for the applicant when they've had a chance to analyze it. I don't want to sit here and try to out-engineer the engineers when neither one of us has adequate information to make that kind of decision." He suggested asking the applicant to request deferral.

Mr. Rieley commented, "I'm not even certain…that we need that, because I'm not certain that we have a valid application in front of us." He added, "I don't see how we can read a letter that asks in a very general way for a waiver and say that what that means is we have addressed the loss of aesthetic resource, when there's not one word in the letter that addresses [that]."

Mr. Loewenstein stated that acting on the item now would require the Commission to operate outside of the existing law.

Ms. Hopper said that she has safety concerns about the critical slope related to the cottages.

Mr. Rieley said that none of his concerns have to do with stability of 2 to 1 slopes, adding that the issue of critical slopes coming right up to the back door of the cottage areas is important; it needs to be clarified whether the grading in the pond area is in violation of the ordinance; and above the pond and below the cottages will involve grading of an enormous area that is directly in Monticello's viewshed. He added that most of the time, he votes in favor of critical slopes waivers, but "these are huge areas" and in the case of the parking area in the back, in order to get in one parallel row of parking, it appears that 100 feet in extent of wooded critical slopes that are very steep woods.

Regarding the big slopes at the cottages, Mr. Rieley said that in addition to safety issues, the fact that they are predominantly forested slopes "plays a big role in how this should be designed at the next level." He added that the Commission should see a design. He mentioned that the ordinance defines wooded with a minimum of 60 trees per acre, adding that the trees on this site should number at least 60, and should be of good size as they are replacing a wooded slope with huge trees. "I think we need those details before we grant this waiver." Mr. Rieley stated that he thinks the application should come back with a letter from the applicant that clearly meets the ordinance, with these issues resolved. "I certainly wouldn't favor moving this ahead with all of these dangling uncertainties."

Mr. Thomas stated that he wonders where the applicant really stands with the waivers. "How long has the applicant been getting the amendments approved when there wasn't a critical slopes waiver already approved. If we approve anything tonight, are we approving previous critical slope waivers?"

Mr. Morrisette clarified that the development that has occurred to date with Westminster in relation to the expansion includes grading of manmade critical slopes which resulted from the original grading; the majority were mostly barren, not wooded. He added that staff's critical slopes analysis and site plan review considered limits of grading that the applicant's engineer has shown; a great deal of them are manmade as a result of flattening.

Mr. Finley said that he is still uncertain as to what has and hasn't already been approved.

Mr. Morrisette stated that what the applicant is requesting now has not been approved, but are new areas of critical slope.

Mr. Thomas asked if the applicant could defer until more information is obtained.

Mr. Loewenstein said that the applicant can probably not move too far forward without the necessary waivers, adding that he is troubled by approving something that lacks this much information, that may not meet requirements.

Mr. Cilimberg explained that of the four waivers being requested, the one-way circulation waiver could be handled at the final site plan review; the other three could be acted on tonight, and possibly the applicant could defer one or all of them. "The effect is going to be basically the same by your action…if he agrees to defer his critical slopes waiver, he's just going to go back and work on that and bring it to you at a later date. If you deny it, he's going to go back and work on it and bring it to you at a later date." He emphasized that what is within the limits of the development is definitely subject to a critical slopes waiver, as there have been none granted.

Mr. Finley asked if the pond is part of the stormwater control facility.

Mr. Morrisette said the pond is part of it, which he believes has been approved by the erosion control plan. He confirmed that there appear to be critical slopes in the pond area also.

Mr. Loewenstein indicated that it would make more sense to see something integrated, with all the details in one place, on one preliminary site plan.

Ms. Hopper asked if the activity taking place at the basin area would stop until the critical slope issue is addressed.

Mr. Kamptner said it depends on whether or not that disturbance has already been approved, but that is not subject to this application.

Mr. Cilimberg explained that if it has not been approved or been exempted, it is a zoning violation. He added that Mr. Bill Fritz of the Zoning Department could examine this to see if it is in violation. Mr. Cilimberg added that the applicant would need to concur for deferral, and if he doesn't the Commission needs to approve or deny the proposal.

Mr. Rieley again mentioned that the waiver application itself may not be valid.

Mr. Kamptner noted that the site plan clock is running irrespective of any waiver request. "If we don't have a valid request, you have a site plan that doesn't conform to the ordinance, and if it plans to disturb critical slopes it has to be denied on that basis."

Mr. Loewenstein commented that that seems to be the easiest route to take.

MOTION: Mr. Loewenstein moved for denial of SDP 99-158, with the reason for denial being insufficient evidence to act on the requested waiver of critical slopes, and from that, the other waivers cannot be approved because they include areas of critical slopes.

Mr. Rieley seconded the motion.

Ms. Hopper asked if the Commission wanted to deny or defer the application.

Mr. Loewenstein replied that his motion was for denial. "Procedurally, it's a lot easier, a lot cleaner for the applicant as well as the county. It's going to come back to us in either case. And the clock is going to continue to run regardless of the type of action we take."

Mr. Fritz addressed the Commission, noting that there is a procedural difference between deferral and denial. He explained that if it's denied, the applicant must resubmit a new plan with the fee, and go through the site plan review process. If he defers, it could be deferred to a specific or indefinite date, and the applicant would not have to resubmit the plan.

Mr. Loewenstein acknowledged that the confusion is not just on the applicant's part.

He asked the applicant if he was willing to accept deferral.

Mr. Hennett said that he would be amenable to a deferral. Mr. Gloeckner said it would take him a few weeks to get the information needed.

Mr. Cilimberg said that in the case of a site plan, an indefinite deferral would be better.

Mr. Loewenstein withdrew his original motion.

MOTION: Mr. Loewenstein moved, Mr. Craddock seconded approval of indefinite deferral of SDP 99-158 at the applicant's request.

Mr. Kamptner asked staff and applicant if they had enough direction from the Commission on what is needed.

Mr. Morrisette said that he feels he has adequate direction, and asked if the issues of the one-way circulation could be worked out at that time also.

The motion passed unanimously.

Old Business

Mr. Rieley presented a revised copy of the **"Planning Commission Request for Information to be Submitted with Rezoning Applications,"** stating that he has incorporated previous Commissioner comments into the new draft. Commissioners agreed to discuss the list at a future meeting, when Mr.

Rooker is in attendance and Mr. Craddock has had time to review it. After Commissioners agree on what should be included on the list, it will be presented to staff for their comments.

Mr. Cilimberg presented Commissioners with copies of a county map of the Entrance Corridor overlays, including road locations.

New Business

Mr. Craddock reported that he and Ms. Hopper went out with Mr. Fritz, Mr. Morrisette and Mr. Waller to look at cellular towers. Mr. Craddock thanked staff for their help, and indicated that the journey was very informative.

Mr. Morrisette indicated he has accepted a position building cell towers, but will continue to work with the county on a part-time basis over the next several months.

Mr. Thomas asked Commissioners to encourage neighborhood association representatives to attend the Albemarle County Neighborhood Association meetings, as the last one was poorly attended.

There being no further business, the meeting adjourned at 8:00 p.m.