Albemarle County Planning Commission

The Albemarle County Planning Commission held a worksession on Tuesday, February 11, 2003 at 4:00 p.m., at the County Office Building, Room 235, 401 McIntire Road, Charlottesville, Virginia. Members attending were William Rieley, Chairman; Rodney Thomas; and Bill Edgerton. Absent from the meeting were William Finley, Jared Loewenstein, Pete Craddock and Tracey Hopper, Vice-Chairman.

Other officials present were Wayne Cilimberg, Director of Planning & Community Development; David Benish, Chief of Planning & Community Development; Greg Kamptner, Assistant County Attorney; Juandiego Wade, Transportation Planner; Glenn Brooks, Senior Engineer and Michael Barnes, Senior Planner.

Mr. Rieley called the meeting to order at 4:00 p.m. He pointed out that it did not matter that a quorum was not present since the Commission would not take an action during the worksession He stated that they would begin with the worksession on the Hollymead Town Center.

4:00 P.M. MEETING ROOM # 235:

4:00 – 5:30 Hollymead Town Center – This worksession will focus on the traffic impacts to existing public roads and the potential mitigation options for those impacts. (Michael Barnes)

The Planning Commission held a worksession on the Hollymead Town Center that focused on the traffic impacts to the existing public roads and the potential mitigation options. Staff presented the Hollymead Town Center Traffic Impact Analysis (TIA), which recommends a significant amount of additional through-lanes, turning lanes and new traffic signals in order to accommodate the proposed development. Staff asked the Commission to review the proposed improvements to determine whether they are in keeping with the County's long-term goals. Staff also asked the Commission to review several approaches for funding the proposed improvements and/or reducing the traffic generated by the Town Center. Discussion was held concerning the merits of the traffic study and if it would hold up the applicants going forward with their individual projects. The Commission asked that the applicants articulate their concerns and present them to staff in order that staff and VDOT would have something to respond to. The Commission took no formal action. Another worksession will be scheduled.

The meeting adjourned at 5:20 p.m. for a dinner break.

The meeting reconvened at 6:00 p.m. for the regular meeting in the auditorium.

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, February 11, 2003 at 6:00 p.m., at the County Office Building Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia. Members attending were William Rieley, Chairman; Rodney Thomas; Bill Edgerton; and William Finley. Absent from the meeting were Jared Loewenstein, Pete Craddock and Tracey Hopper, Vice-Chairman.

Other officials present were Wayne Cilimberg, Director of Planning & Community Development; Susan Thomas, Senior Planner; Michael Barnes, Senior Planner; Stephen Waller, Planner; Margaret Doherty, Senior Planner; and Greg Kamptner, Assistant County Attorney.

Call to Order and Establish Quorum:

Mr. Rieley called the regular meeting to order at 6:00 p.m. He noted that a quorum was now present with the arrival of Mr. Finley.

Other Matters Not Listed on the Agenda from the Public:

Mr. Rieley invited comment from the public on other matters not listed on the agenda. There being none, the meeting proceeded.

Review of Board of Supervisors Meeting – February 5, 2003.

Mr. Cilimberg summarized the actions of the Board of Supervisors on February 5, 2003.

- The Board held a brief discussion on the zoning text amendment for the Neighborhood Model Zoning District, which is under review with DISC II now. That review is not completed yet. The Board will not hold its public hearing on this district until sometime in March. DISC II meets tomorrow night. Mr. Rieley and Mr. Edgerton have been participating. Once they are complete with their work, the public hearing can be scheduled and advertised for the Board of Supervisors.
- The Board held a public hearing on the Parking Ordinance. The Board passed the ordinance with the exception of one item that the Commission recommended, which was for relegated parking. They received a lot of input from the public regarding that matter. The result of that was after some consideration of language and intent, the decision reached then was that it was best to leave that part out and have that further developed and discussed with some additional input from the Planning Commission. That matter will be coming back to the Commission to consider language that might be a little more complete for the Board to feel comfortable in taking an action on that.

Mr. Rieley stated concerning the issue of relegated parking that he presumed that was relevant to the County wide parking ordinance and that does not affect the issue of relegated parking relevant to the Neighborhood Model. He asked if that was correct.

Mr. Cilimberg stated that it does not impact what you might be looking at on a rezoning. It is simply about the application of the requirements through ordinance provision when you would have, for example, a site plan in front of you that resulted from a development proposal. It still is retained in the policies that the Neighborhood Model recommends. They are trying to get that language worked out.

- The Board decided to up the percentage over the maximum that they would consider to be allowable for parking. Staff initially recommended 20 percent over the maximum. The Commission at one point actually considered 10 percent, but then recommended 15 percent. As it turned out, the Board went back to 20 percent. There are new parking provisions now in place.
- The Townwood Mobile Home Park Amendment was approved as the Commission recommended.
- Free Union Country School was approved as recommended by the Commission.
- The Spring Hill Stream Crossing and Spring Hill Subdivision Amendment also were approved. They did remove the condition on the subdivision that required a building site location an area for building site of 200 feet. Staff did provide for them some other acreage coverage if you expanded and went to 400 or 500 feet. In the end the Board decided to drop that issue altogether.

Consent Agenda:

Approval of Planning Commission Minutes – December 17, 2002.

Montgomery Ridge – Request for a finding that proposed Open Space is appropriate per Section 4.7.1 of the Zoning Ordinance and request of a waiver of Section 4.2.3.2 of the Zoning Ordinance which prohibits disturbance of critical slopes to allow for the creation of 53 lots on 52.372 acres. (Yadire Amarante)

SDP-2002-137 ACAC @ Four Seasons Major Amendment Critical Slope Waiver – Request pursuant to Section 4.2.5.2 to allow for the disturbance of critical slope. (Francis MacCall)

SDP-03-03 Greenbrier Square Cooperative Parking Agreement – Request to provide required parking cooperatively among two or more uses in the Greenbrier Square development. (Margaret Doherty).

Mr. Rieley stated that there were four items on the consent agenda. He asked if any Commissioners would like to pull any of the items for discussion.

Montgomery Ridge – Request for a finding that proposed Open Space is appropriate per Section 4.7.1 of the Zoning Ordinance and request of a waiver of Section 4.2.3.2 of the Zoning Ordinance which prohibits disturbance of critical slopes to allow for the creation of 53 lots on 52.372 acres. (Yadire Amarante)

Mr. Edgerton asked to have some discussion on Montgomery Ridge Open Space/Critical Slopes Waiver Request.

Mr. Rieley stated that they would bring the Montgomery Ridge application before the Commission. He asked if staff has anything to add.

Mr. Cilimberg stated that staff was unaware that there was an issue and the staff person was not present. He pointed out that he would answer any questions that he could.

Mr. Edgerton stated that in reviewing it, it looked like the access could not have been selected with more determination to impact critical slopes than it was in the access to the property. In the smaller scaled map it showed the possibility of Powell Ridge Road. He asked if that road comes in on the eastern side of the property. He stated that access would avoid cutting more critical slope. He stated that it looked like there would be a possibility of access along that existing road as opposed to cutting a whole new subdivision road across this area of critical slopes.

Mr. Cilimberg stated that he did not know what discussion had taken place regarding that. He pointed out that Powell Ridge was a private road and served a couple of properties, one of which the County now owns. That is not a road built to any standard at this point in time. It would require some upgrading and he did not know if its geometrics would actually work for access into subdivision. Having been on the road before, he noted that it was somewhat steep.

Mr. Edgerton stated that the other concern that he had was on Attachment B, which actually shows the critical slopes. The reason this application was before the Commission was because of the critical slopes. There is a diagonal line that goes through that whole map that shows the proposed Meadow Creek Parkway. That gave him some cause as to whether they would be acting responsibly to permit subdivision on the northern end of the Meadow Creek Parkway. If in fact that is something that has a community value, he personally had a problem with it.

Mr. Cilimberg stated that this concern has come up before at Dunlora. At that time they had a subdivision that was a by-right division. Staff indicated that it would be necessary to have reservation of land that would allow for the parkway to continue through that area or put a note on the plat that indicated the possibility of the Meadow Creek Parkway. The note needs to be on the plat so it can be known by all who would look at that subdivision. He believed that it is shown in the Comprehensive Plan as a potential feature. He asked if Mr. Kamptner agreed.

Mr. Kamptner stated that it was not a basis to deny the plat, particularly since the fact that it is shown on the Comp Plan as a potential feature alone.

Mr. Edgerton stated that they would buy a lot and then a couple of years later it will be condemned. He asked if that was the way that it would work. They have been informed of the alignment and the condition is met by showing it.

Mr. Cilimberg stated that by having the note saying that it could be a future location of Meadow Creek Parkway.

Mr. Edgerton asked if that would actually be on the legal plat.

Mr. Cilimberg stated that is required to be part of the plat.

Mr. Rieley asked if there were other questions for staff. He stated that the applicant might be able to answer some of these questions as well. He asked if the applicant would like to address the Commission.

Katurah Roel, representative for the applicant of Montgomery Ridge Subdivision, stated that they have talked about the entrance into that site. That was literally after a dozen iterations and running around with Engineering, staff and VDOT. The only way to access up in there and get site distance would be by improving 1400 feet of Polos Grounds Road for turn lanes, safety, improving critical curves and horizontal alignment. VDOT gave them a waiver on the curvatures since they were coming to a stop in order to

minimize the impact. Before that they had a larger radius that swung even more into the hill and created a bigger cut. He noted that he was able to persuade them to reduce that incoming radius to 130 feet from 180 feet. They minimized their grade and were able by doing that to drop from a 10 percent grade to an 8 percent grade with a 2 percent entrance. They do realize that there are a lot of critical slopes and they have proffered to put most of those in conservation areas and impact the rest of them as minimally as possible and still access the property. They did try other approaches through other adjoining properties and along the front, and this scenario turned out to be the best one that Engineering and VDOT was the happiest with. They propose to conserve the rest of the critical slope in wood conservation area. There are some 35 percent of the land that is in conservation. They do not ask for any additional units that the plan would permit. He noted that there was not a whole lot more that they can do about it. If they rezoned it to R-4 as opposed to a by-right plan to make higher density because it is in the growth district, then they would end up grading 100 percent. This way they were able to preserve over 35 percent of the existing woods.

Mr. Rieley asked if there were any questions for the applicant. There being none, he opened the public hearing and asked if anyone else would like to address the Commission. There being none, he closed the public hearing to bring the two matters back to the Commission for discussion and action. He noted that the two issues were the open space appropriateness determination and the critical slope waiver request. He pointed out that he had a similar concern to Mr. Edgerton's, particularly since last week's long discussion about critical slopes. In looking at this very carefully, he came to the conclusion that the applicant was doing a skillful job of avoiding the critical slopes. The ones that were impacted, aside from the driveway, which you rightfully point out, is impacted but is not within our jurisdiction, are extremely incidental. He supported the critical slope waiver.

Mr. Thomas stated that he could support the critical slope waiver, but with Meadow Creek Parkway running through the middle of the subdivision it just really concerns him. He wondered why they would approve something that in the future would be used for a highway.

Mr. Rieley stated that the short answer was that they don't have any choice. They don't have the legal grounds on the basis of a preliminary line like this to deny a by-right subdivision

Mr. Thomas stated that it was a backward way to do things.

Mr. Rieley stated that this line was just a line on a map and judging from the topography it was not going to fall right there. He closed the public hearing to bring the matter back to the Commission for possible action.

Mr. Thomas moved for approval of the critical slope waivers with the two conditions recommended in the staff report as follows:

1. [13.4.1] A conservation plan as specified in section 32.7.9 must be approved by the Planning Department and a copy of the original conservation plan and all subsequent revisions must be submitted to the Zoning Department.
2. [14-313, 18-4.7] Submittal of covenants or other such instrument, which evidences the establishment of a homeowner's association and provides for ownership and maintenance of proposed Open Space and maintenance of the Critical Slopes and Tree Conservation Easements. Such document shall be subject to County Attorney review and approval and shall be in accordance with Section 14-313 of the Subdivision Ordinance - Instrument evidencing maintenance of certain improvements.

Mr. Finley seconded the motion.

The motion carried (3:1). (Edgerton – No) (Loewenstein, Craddock, Hopper – absent)

Mr. Thomas moved for approval of the open space appropriateness determination.

Mr. Finley seconded the motion.

The motion carried (3:1). (Edgerton – No) (Loewenstein, Craddock, Hopper - Absent)

Mr. Rieley stated that takes care of SUB-02-230. He asked for a motion on the remainder of the consent agenda.

Mr. Edgerton moved for approval of the rest of the consent agenda.

Mr. Finley seconded the motion.

The motion carried unanimously (4:0). (Loewenstein, Craddock, Hopper – Absent)

Mr. Rieley stated that the consent agenda has passed. He stated that they would move to their first deferred item, which was White Gables.

SP-02-023 White Gables (Sign #56, 57) – Request for special use permit to allow development of 74 condominium dwelling units in accordance with Section 23.2.2.9 of the Zoning Ordinance which allows for R-15, Residential use in a CO, Commercial Office district. The property, described as Tax Map 60, Parcel 26 and 26A, contains 7.097 acres, and is located in the Samuel Miller Magisterial District on the north side of Rt. 250W (Ivy Road), approximately ¼ mile west of the intersection of Ivy Road and the 29/250 By-pass. The property is zoned CO, Commercial Office, and EC, Entrance Corridor. The Comprehensive Plan designates this property as Office Service in Neighborhood Seven. (Susan Thomas)

Ms. Thomas asked to take a few minutes to point out several items on the exhibits on the bulletin board. The original plan is pinned up behind Ms. Taylor. This is the one that you saw at your worksession on September 10th. She pointed out that they were currently on plan # 5. She pointed out the current plan that involves 6 pavilions and several illustrations. She stated that the Commission discussed this request at a worksession on September 10th. There were three primary areas of concern discussed at that time. Those were the residential use on the site, the scale, massing and arrangement of structures on the site, and the access issues. The project has been through at least four revisions since then. Some of those were fine tuning and others were more substantial. It has been back to the ARB twice and it will go again on February 18th hopefully for its final visit. She noted that today she emailed the Commission of copy of the ARB report. It is rather long. Those conditions would be separate from the Commission's. She noted that it had gotten a very careful scrutiny by the ARB. The number of independent condominium units is about the same as the original proposal. It now calls for a maximum of 76 units. Two pavilions have been eliminated. It brings down to six the total number of structures rather than eight. The front most structures have been moved back out of the front lawn. She added that the closest building to the road or to the wall is just about the same as Legal Research. The applicant reflected that setback in his front most pavilion. The pavilions on the northeast corner or the back two pavilions on the east side are now four-stories high. That is how the applicant has recaptured some of the density lost by eliminating the front two pavilions. Staff has been kept informed as the applicant has tried to make progress on consolidating the entrances on the Kappa Sigma property, possibly opposite Birdwood Golf Course or even on a location on Kappa Sigma closer to the White Gables property line. There are a number of choices for the entrance. The golf course entrance has been mentioned more frequently, but it might not be the best location for the signal. The applicant has not been successful in consolidating talks on the entrance location because Kappa Sigma continues to be involved in internal legal disputes. They expect to hear something in the very near future on whether or not their case will be heard. In allowing a new signal, the local Resident Engineer did not feel that there was enough traffic from the adjoining properties and he said he would not allow it. The applicant has offered to escrow the funding for installation of the signal and under the proposed conditions they have ten years to use the money. That would allow some time to continue working on this portion of the corridor. She stated that PACT was suppose to discuss access easements along this stretch at its upcoming meeting. It has been an interesting concern to more than one jurisdiction and more than one property owner. PACT is going to discuss access along this corridor. She asked to clarify several things in the conditions of approval. In condition #2, that minimum distance should be 215 feet and not 220 feet. She noted that had been confirmed with the applicant's engineer. She asked to add the following housekeeping condition, "The applicant shall provide bicycle facilities and walkways in conjunction with road improvements to Ivy Road as required by VDOT and the Department of Engineering and Public Works. That is just in case there was some confusion about what would be entailed with those road improvements, which the applicant has agreed to do. She called attention to the email from Ms. Tillic. She stated that they wanted to preserve the front lawn, but yet they

wanted to consolidate the traffic. With this current design, the existing entrance is used so that road alignment can be used. There is a road that is extended to Legal Research who has agreed to use the Kappa Sigma entrance. There is still some confusion about the road to Kappa Sigma due to the pending legal issues. She felt that the residential use was appropriate and the arrangement of the buildings on the site seemed to be in keeping with the corridor. Staff recommends approval of the request with a number of conditions.

Mr. Rieley asked if there were any questions for staff.

Mr. Thomas asked if Legal Research would close the existing entrance onto Route 250.

Ms. Thomas stated that staff has certainly conveyed to them that we want them to. She stated that it could possibly be used for deliveries, but ideally they would like to consolidate and eliminate. She pointed out that with no signal in the offering, they don't have a final word from VDOT on that and they don't have a requirement. But certainly that would be staff's preference.

Mr. Rieley stated that the conditions are written such, as the site plan shall be in general accord with the conceptual plan. He assumed that condition would not be read in such a way that would preclude the applicant from working out an arrangement to bring the road in from a different location where a signal could be put in.

Ms. Thomas stated that was not the intent of the wording of that condition.

Mr. Rieley asked staff to go over what would be permitted by right on this property.
Ms. Thomas stated that it was zoned for Commercial Office and was actually two parcels. The parcels divide approximately in the vicinity of the existing house. The house is on the point of the back parcel. Both of the parcels could accommodate separate office buildings. In the traffic analysis they used the maximum. Engineering estimated that there would be 20,000 developable feet per acre or about one-half of an acre for a commercial building. There are 7 acres here. You could certainly see that they were talking about 420,000 square feet of office building.

Mr. Rieley asked if they considered what traffic would be generated by right as opposed to this special use permit.

Ms. Thomas stated that the commercial traffic generated was far greater. She stated that traffic would really complicate the corridor because it would be so responsive to peak hour problems. She noted that there already was a peak hour problem coming east in the morning and going west in the afternoon. Legal Research suffers from that right now. Certainly the offices in Ednam and Boar's Head contribute to it. Aside from the numbers about residential traffic, the traffic is much more likely to be staggered throughout the day. She pointed out that in this development it would target older people who might have a more flexible schedule and might be more able to avoid peak hours. She noted that the increase in traffic for residential use to commercial use would be more than a ten-fold increase.

Mr. Rieley asked if there were other questions for Ms. Thomas. There being none, he opened the public hearing and asked if the applicant would like to address the Commission.

Vito Cetta, of Weatherhill Homes, stated that in general the revisions have been made to address their comments of last time and the ARB comments as well. The major issue was that they pushed the building back to preserve the front lawn. In fact, Legal Research was going to continue on with that same concept. They have a lot of land that they can still develop and they have committed to preserve the front lawn. When Kappa Sigma gets on board they are going to approach them to see if the same issue can be continued. He noted that they were doing everything they could to preserve the trees and minimize disruption up front. He stated that it was an infill project that was consistent with the Comprehensive Plan. McKee Carson has been involved with this project from day one as the landscape architects and engineers. They have done a real careful job of preserving trees and minimizing disturbance of the soil. There is not a lot of grading in this project due to the large number of trees. It is very much an adult market for Ednam and Farmington. He noted that there would be no impact on the schools. The buildings are small so that they can phase and adjust as they go along as opposed to having one big

building. He noted that they were going to restore the existing house. He stated that they would agree to all of the conditions recommended in the staff report.

Mr. Rieley asked if there were questions for Mr. Cetta.

Mr. Edgerton stated that the new plan was a definite improvement. He stated that he had two concerns that he wished to voice. First was the scale and mass that the staff actually mentioned in their review of the project. He felt that the mass of the pavilions were inappropriately large, particularly due to the impact to the Legal Research building. That becomes a bigger decision than what they can deal with on this level. The second one came in the information that Ms. Thomas emailed today about the preliminary review of staff of the ARB. He stated that he was shocked to see that under the new plan where you pulled the project back that you were forced to take out more trees than the first plan. He asked why that was happening. He questioned whether it was accurate.

Mr. Cetta stated that he was not sure if that was accurate. He stated that they have identified every single tree on the site. They had Van Yahres review every tree to see how healthy each one was and which ones could be preserved. Quite frankly they have to remove some of the trees that the building is in, but they have tried to preserve what they can. He stated that he did not think that was correct.
Mr. Edgerton stated that it was 44 trees versus 33 trees. This plan is actually cutting down an extra 11 trees.

Mr. Cetta asked Mr. Keeler to address that issue.

Mark Keller, with McKee Carson, stated that he would tend to agree with Mr. Cetta that came out of the study. One of our associates did that study and his inclination was that the first study was inaccurate. In between the two tree studies, the entrance has been shifting back and forth. It seems that when they had the entrance farther north on Kappa Sigma property, they were actually taking out a number of trees on their property. He pointed out that there was not way that they would be able to save any of the trees that were in between any one of the buildings. He stated that he did not thing that they have actually done any shifting that would be noticeable in the proposed study. He stated that he was sorry that he could not answer the question definitively. He stated that there were a good number of trees on the property that were either ill or dead. The greenery on several of the trees is Ivy and there are not branches on several of the trees. He stated that he actually thought with the new plan that they were going to preserve more trees.

Mr. Rieley asked if there were other questions for the applicant. He stated that the public hearing was opened and asked if there was anyone who wished to speak on this project.

Keith Frazey, resident of Albemarle County, stated that he was a proponent to the project. He stated that both his wife and himself had been looking for a project of this type in Charlottesville for a couple of years. They have found that the Charlottesville environment, while it was extremely desirable, it lacks certain types of housing. The notion of an upscale condominium is from their viewpoint is very desirable to the single-family that was predominant to the area. They are a perspective purchaser of one of the units in this project. He asked that the Planning Commission see fit to approve this.

Mr. Rieley asked if there was anyone else who wished to speak.

Thomas Romer, representative for the Legal Research Group, stated that they were advocating the new design for the preservation of the front lawn. That has been the prime concern of the adjoining property owner. The owners want to have a continuation of that front lawn from the Legal Research Group through ITT. This would be a very important first step to have White Gables continue the preservation of this lawn that they think is significant.

Mr. Rieley asked Mr. Cetta if he would like time to rebut.

Mr. Cetta stated that he did not have a rebuttal.

Mr. Rieley closed the public hearing to bring the matter back to the Commission for discussion and possible action.

Mr. Thomas commended Mr. Cetta for preserving the front lawn along Route 250. He made a motion to approve SP-2002-023 with the recommended conditions.

Mr. asked if Mr. Thomas was including conditions 9, 10 and 11 in his motion.

Mr. Thomas stated that he did not have the new conditions in writing, but that they have a copy of what you have.

Mr. Rieley asked if it includes all the conditions including the one that Ms. Thomas read.

Mr. Thomas agreed with Mr. Rieley.

Mr. Kamptner suggested one minor correction to condition # 5--that it begins “upon the request by the County” instead of “the process.”

Mr. Thomas agreed to amend condition # 5 as Mr. Kamptner suggested.

Mr. Rieley noted that his version says by the County.

Mr. Finley seconded the motion.

Mr. Rieley commended the applicant on really making substantial changes. This is a 25 percent decrease in the scale of the project. The Commission was the most concerned about the overall scale of the buildings. He agreed with Mr. Edgerton that they were still pretty big buildings. He suggested that they consider measuring the proposal against the scale of the potential by-right development for the property. He noted that the proposal would allow 6 handsome residential buildings, preserve the lawn in front and keep open the opportunity for a better transportation connection than would otherwise be the case.

The motion carried (4:0) unanimously for approval with the following conditions. (Loewenstein, Craddock, Hopper – Absent)

1. The approved final site plan shall be in general accord with the Conceptual Plan (January 10, 2003 revision) (the "Conceptual Plan") and special permit justification dated April 22, 2002:
2. As shown on the Conceptual Plan), no new structures shall be located in the front (southern) portion of the property. There shall be a minimum distance of two hundred twenty (215) feet between the southern-most structure and the front (southern) property line.
3. The entrance road shown on the Conceptual Plan shall be constructed by the applicant to an urban road standard from its junction with Route 250 West to the interior loop, and shall include a sidewalk or other appropriate pedestrian path, constructed to a standard acceptable to the Departments of Planning and Engineering and Public Works, along one side connecting the interior loop to the public sidewalk at Ivy Road;
4. All roads on the property connecting to adjacent properties as shown on the Conceptual Plan shall be constructed by the applicant to an urban section standard and shall include a sidewalk or other appropriate pedestrian path along one side, constructed to a standard acceptable to the Departments of Planning and Engineering and Public Works, providing a connection to the public sidewalk at Ivy Road;
5. Upon request by the County, an access easement shall be provided on the property for traffic from Kappa Sigma across White Gables to its entrance at Ivy Road; this access shall be constructed by the applicant to the same standard as that serving the Legal Research property to the east; the access easement shall be reserved on the final subdivision plat/site plan;
6. Should a consolidated entrance be located at a point west of the White Gables property in the future, an access easement shall be provided on the property for traffic from the Legal Research parcel (Parcel 25) across White Gables, and White Gables may be required to close its present entrance, convert it to a right in/right out only, or make other modifications as determined by VDOT and the County's Director of Engineering; this access shall be reserved on the final subdivision plat/site plan;

7. Residential condominium unit types (size, configuration, pricing, etc.) shall be mixed within and among each of the pavilions constructed on the site;

8. The applicant shall comply with all requirements of the Virginia Department of Transportation related to design and construction of the entrance to the property, as outlined in its letter of January 28, 2003 (Attachment H);

9. The applicant shall be responsible for the cost of a traffic signal and its installation (the "signal") at the intersection of Route 250 West and an access point serving the property approved by VDOT and the County's Director of Engineering, as provided in this condition. Unless the signal already has been installed, the applicant shall pay to the County the cost of the signal as follows:

   (a) Prior to the issuance of a building permit for the fourth pavilion, the applicant shall place funds in escrow or provide other security acceptable to the County in an amount equal to the cost of the signal (currently estimated to be $140,000), which amount shall be calculated in the year in which the security is provided. The security or escrow shall continue so that it is available to pay for the cost of the signal until ten (10) years after the date of approval of this special use permit; security provided that is not in an interest-bearing account shall be annually renewed, and the amount of the security shall be adjusted each year according to the consumer price index;
   (b) If, at any time until ten (10) years after the date of approval of this special use permit, VDOT authorizes in writing the installation of the signal, and VDOT and the County's Director of Engineering approve the signal's installation before the applicant has obtained a building permit for the fourth pavilion, the County may demand payment of the cost of the traffic signal, and the applicant shall pay the cost to the County within thirty (30) days; or
   (c) The County may apply the applicant's security to construction of the access road or other elements of the future transportation improvement project other than the traffic signal.

10. The applicant shall provide bicycle facilities and walkways in conjunction with road improvements to Ivy Road as required by VDOT and the Department of Engineering and Public Works.

Mr. Rieley stated that the next item was ZMA-02-01 Fontaine Avenue Condominiums. He stated that this item was deferred from the January 28th Planning Commission meeting.

ZMA-02-01 Fontaine Avenue Condominiums (Sign 77, 81) – Request to rezone 12,606

Mr. Barnes presented the staff report. (See the attached copy of the staff report.) He stated that the executive summary that was provided for the Commission tried to as best possible to corral the concerns that were brought forth from the Commission at the last meeting. It basically boils down to four issues being brought forth at the last public hearing:

- Building massing and size visual impacts.
- The potential for student housing.
- Environmental impacts and traffic.
- The applicant would meet with the neighbors to address their concerns.

The applicant met with the neighbors on December 30th. He advertised the meeting for December 30th. Unfortunately, he was unable to attend that meeting. He noted that Mr. Rieley attended the meeting. The applicant has provided for you in Attachment F a summary of that meeting which was also sent to the neighbors with a chance for them if they had any comments on that. The way that the applicant has tried to address some of the concerns is that there were two larger condominium buildings that were facing the pond and Buckingham Circle. Those two buildings have been converted to three smaller condominium buildings. They have taken off the upper most floor so that it is now three-stories facing the parking lot and four-stories facing towards the pond. Again, he has agreed to proffer to plant pine trees along Buckingham Circle to try to further mask any visual impacts to the residents of Buckingham Circle. Finally, he has proffered that the building elevations that the Commission is seeing will be applied to all sides of the building. As far as the potential for student housing, there has been a reduction in the number of units. It has dropped from 112 units to 86 units in this plan. He has also changed some of the units. Most of the units were 2-bedroom condominium units and now have gone to 3-bedroom units. This was an attempt by the applicant to meet the neighbor's concerns. He asked to make a correction to his staff report that he understood it to be no more than 2 persons who were unrelated by blood per unit, but he was offering to put that into a homeowner's agreement. The offer should stand that there will be no more than 2 persons who were unrelated and older than 18 in a single bedroom as opposed to the

unit. He hoped that was clear. As far as environmental impacts, there was a small encroachment into a 100-foot buffer on the previous plan. He has pulled that building out of the 100-foot water protection buffer. Finally, as far as traffic study goes, the previous one was VDOT's. The County Engineering Department's opinion that 125 units did not justify traffic studies. Of course, the reduction to 86 units makes the traffic impact even less. In addition, the applicant has proffered things such as a pedestrian bridge crossing Moorey Creek, side walk connection along the frontage that would continue all the way up to the Fontaine Research Park. Also, a possible greenway connection along Moorey Creek between essentially Fontaine Avenue and the University of Virginia property that is just north of his property. For these reasons, staff believes that the applicant's proposal has met the concerns raised by staff and demonstrates his effort to work to meet the concerns brought to the Commission by the neighbors. Therefore, staff recommends approval for ZMA-02-01 with the attached proffers that are in Attachment H.

Mr. Rieley asked if there were questions for Mr. Barnes. He stated that they were not obliged to hold a public hearing on this issue because they had already held a public hearing on it. He noted that the applicant was left with the issue of working with the neighbors to address the concerns expressed by the neighbors very explicitly at our last meeting. He opened the public hearing for general comment and asked if the applicant would like to address the Commission.

Larry Burnett, representative for the applicant, handed out some information before he began his presentation. He agreed with staff that there are only four issues here that have been left hanging. On December 20th he sent out 63 invitations to a formal meeting on December 30th with the neighbors which included a self-addressed envelope for people who could not come to that meeting and wanted to respond. He pointed out that included in the invitation was a drawing that showed four buildings along Fontaine Avenue. The buildings had been cut in half. Also the elevations had been cut. Also included in the information was a 3-bedroom design that was essentially developed in accordance with one neighbor's request. The suggested design had a master bedroom along with 2 smaller bedrooms that helped push the project to family usage that was very important to the neighbors. He met with the neighbors on December 30th. It was not his intent to sell this project. It was his intent to listen to what the neighbors had to say and give them his best thinking to date. At the end of that meeting he did his best to write down what happened at the meeting and what the comments were. He again mailed that out along with a self-addressed stamped envelope so that anyone that did not come to that meeting could respond based upon what they had seen and heard. He realized that anytime between about November 20th and January 15th is considered a holiday season and people are traveling. He noted that he did not want anybody to feel left out. He noted that he wanted to encourage people to give them their comments. The comments that came back are in the last two sheets. These were the only ones that were mailed in that were not part of the meeting. There is one that says I should consider a massage spa. Another one that essentially says R-2 to R-4 and Light Commercial. Another one that stated that anything that was built on the property just short of a dump would be an improvement to the neighborhood. He pointed out that the new site plan very dramatically reduced the density to 6.8 units per acre. If they were to take the Fontaine property and Buckingham Circle's property the overall plan would have 3.55 units per acres which was at the low end of what the Planning Department's overlay for what they would like to see in this area. While the 6.8 units is not the 4 units per acres that the neighborhood opponents wanted to see. It is very close, but when combined it is below that. They have tried to deal with the density. In terms of dealing with the terms of student infill, he wanted to say that his intent has been and has not changed that this would be a condominium owner occupied situation. There would be some limitations to the patients in the use of these in a non-owner nonoccupied. His calculations are and this just bears out from his experience in Colorado in the condominium that he lives in, that they needed to keep the number of non-occupied units down to 25 percent or less. If you don't do that the rest of the owners get upset because they feel that there is an encroachment on their ability to buy and sell the units. So the people who buy these units are going to want to see owner occupied. That is going to be part of the covenant that there has to be a limitation on non-owner occupancy. There will be a limitation on how people use the property on any rental policy so that it is not going to be the situation where someone will buy a unit and put 2 students per bedroom. There are several reasons that is not going to happen. There is not enough parking to let that happen. Also, the rest of the neighbors would not let it happen because it will not be part of the policy that you can't have two unrelated people living in a bedroom above the age of 18. When you have a condominium situation you will have people of all ages in there and they are going to want peaceable possession of their property. Therefore, there will be a policy that the Board would not allow a situation where there is loud music. While there could be students living here, it was not going to be the situation where there is going to be problems for Buckingham. He believed that the condominium

owners themselves would self-police the issue. He pointed out that he had encouraged direct feedback and he had received a fair amount. The situation has changed in terms of the kinds of units, the number of units and the orientation. So what you saw last time was mostly two-bedroom. Tonight's proposal was mostly three-bedroom. There are 22 two-bedroom, 52 three-bedroom and 12 townhouse. They have made a dramatic change in orientation as well as a drop in density. He stated that his first proposal could be considered dense, but again at 86 he did think it was dense. Ms. Hopper has talked about a mixture of housing types. They now have three housing types. They have two-bedroom, three-bedroom and townhomes. They decided not to have one-bedroom apartments because they don't lend themselves to a family orientated type of development. There is a need for moderate priced housing, which he felt this would be. Mr. Thomas stated that the highway commercial type of development would be more intense. This area has a seclusion and privacy that residential maintains much better.

Mr. Rieley stated that they would begin with the persons listed on the sign up sheets, but that everyone would be given an opportunity.

Bill Goldeen stated that the more things change the more they stay the same. He pointed out that he did not see a change in this because it was still four-story buildings. He stated that the Commission had the letter from his wife and himself so that he would try to be brief. Once again he has submitted a different plan but was substantially identical to his previous plan. He spread it out a little more. Instead of having two-bedrooms, he had three-bedrooms. He looked at the plans very closely and assuming that they are to scale, one of the bedrooms was much bigger than the others. All three of the bedrooms had bathrooms. He asked who would purchase a three-bedroom apartment with three bathrooms. He pointed out that mom and dad with small children do not need three bathrooms. He felt that he was still building student housing. As far as covenants against unmarried people living together, he felt that was unenforceable. Again, you are talking about a rezoning. Again talking about a rezoning. When you rezone a property it must be done according to what is best for the community. He felt that the land would ultimately have to be rezoned because it was not viable as HC. He noted that what Mr. Burnett wants to put there will not blend in with the surrounding areas. He suggested that he put another use that would be more compatible with the area such as a daycare center. He felt that the notes that he took during the community meeting made them look worse. He requested that they vote against the rezoning.

Martin Davis stated that his family has lived on Buckingham Circle since 1959. They have never considered the road outside the circle safe to walk particularly at night and/or with snow. He noted that many times when walking he had stepped into the ditch to allow the cars to go past. Traffic because of the church that is located further down Fontaine Avenue has made things worse for walking, driving and bicycling. He felt that the traffic from this development would further worsen the problem. Many years ago his son use to fish in what they called the duck pond. The pond as since degraded and he did not see how the run off from this project and its parking spaces would improve things. When these problems arise, who will they complain to? He felt that it would not be the developer because he would be long gone.

Donal Day, resident at 151 Buckingham Circle, stated that he sent an email in which he tried to express himself as clearly as possible. This proposal is essentially an isolated apartment complex clearly designed for the student market. Just compare the floor plans with Sterling University Place off of Fifth Street. The plans are nearly identical. Every bedroom has a bathroom something that every University student demands these days. He felt that the proposed complex would not fit together and blend with their neighborhood. The proposed complex was out of scale due the number of units and the density. There are no common points of reference between their neighborhood and the one proposed by the applicant. This proposal lacks adherence to the Neighborhood Model. At their meeting with Mr. Burnett, they employed him to incorporate these elements into the application, but he continues to reject them apparently because they do not coincide with his single objective which as noted in the staff report following the worksession and that was to "gain as much high density housing on this site as possible within the physical restraints." One thing they must say about Mr. Burnett is not easily persuaded even when a greater good would be done if he was more flexible. A rezoning allows the chance to allow the Neighborhood Model to take a foot hold to demonstrate what good planning can produce. This is a golden opportunity for the Neighborhood Model. If not now, when? If not here, where? It is my view that a change in zoning should only be granted when the benefits to the local neighborhood and to the community in general are so significant so that they cannot be overlooked or disregarded. There are not such benefits surrounding this proposal. The only motivation for this rezoning is to do what the market

has not yet done and that is to make this property commerically viable. No harm will be done to the property owner by denying this application. The current zoning provides many opportunities for development. Perhaps the time is not right. That is true for hundreds of parcels around the County. The market is changing everyday and the demands for property such as this one cannot be anticipated. As you compare the cooperation between Mr. Cedda and his neighbors and the fact that he had 100 percent of the public speakers supporting the project, he would doubt that Mr. Burnett would achieve the same percentage tonight.

Vincent Day, resident of 118 Buckingham Circle, stated that he agreed with all of the points brought up by Donald Day. He felt that it would be a better investment for the applicant if the property were rezoned to R-16. He noted that the property was currently zoned commercial and that the applicant knew the zoning when he bought the property. He felt that this was a unique opportunity to allow the marketplace to keep it as open land. If the marketplace demonstrates that the time has come to develop this site, then allow it to happen. He asked that the Neighborhood Model principles be satisfied to some degree. He questioned why they would want to create more residential housing when it will be quite a stress on our water supply. He pointed out that they don't know where their water would come from. He suggested that they should act cautiously before they rezone any property to residential.

Daniel Goldeen stated that he was eleven years old and has lived on Buckingham Circle his whole life. He has friends come over and they go fishing at the little pond. He stated that he had several of his friends comment on the scenery and how beautiful it is because where they live it is covered with houses and things. He stated that he was afraid of losing that. Also, he has a frog and a toad that he caught that have been living in the local waterways. If lots of people live at this project as you are predicting, it could endanger them. Also, people litter so much, which could endanger the others.

Elena Day, resident of 151 Buckingham Circle, spoke in opposition to the proposal. She pointed out that she had tried to send an email to all of the Commissioners today, but it kept bouncing back. She passed out copies to the Commissioner. Although the apartments have been reduced from 86 to 112 units, the number of bedrooms are essentially stayed the same. The parking spaces have been reduced from 233 to 230. This still contributes to the same congestion on the Fontaine Avenue Corridor. Also, please keep this in mind that there are 86 units with 230 parking spaces, which were over 2.5 cars per unit. She emphasized again that the project was very close to a stream. This is Moorey Creek and then it flows into the Rivanna. These are our water resources that we are talking about. So there is nothing that they can legally do to stop this, but you would think that the developer would be more sensitive to the problem of our water resources. She stated that she sent Mr. Burnett a comment by email and she did not think that he included that in his report to you of the comments that he received. She noted that this was like trying to stuff an oversized foot into a very small shoe. She hoped that the Commissioners would be kind enough to see how they needed to be treated with the same respect and would have the same cooperation that the White Gables treated their neighbors or concerned citizens. She asked that the Commission take their concerns into consideration.

Tom Loach, resident of Crozet, stated that Crozet was a place where they actually do have neighborhoods that meet the Neighborhood Model. After three years of being a member of the DISC I Committee and now a member on the DISC II Committee, in working with the developers in Crozet with developments that meet the model Neighborhood, he felt that he could recognize exactly what it is and this is not it. With regard to the Neighborhood, he would think after all the misery that these poor people go through and all the battles and all the late nights, they would be glad to have a neighborhood to even whisper the word Model Neighborhood, let alone that they put it into writing that those are the principles that they want you to judge this development on. He asked if there was a standard that they could judge it against. There are several. It is very interesting to note that they have been pointing at Mr. Cedda's development. Well Mr. Cedda is the major development for Waylands Grant. The same kind of design that went to Waylands Grant can be seen in this and should be expected on that. You can also look at another site that you most recently did which was Kathy Galvin the architect, which was Bargamin Park that was on nine acres. Again, a mixed use came out. He pointed out that mixed use was not the number of bedrooms. There is another definition for it and they should know that. Bargamin Park should stand as a goal standard. He noted that this does not meet the goal standard. This actually makes Clover Lawn look good. It is actually Clover Lawn on steroids. Finally on closing, our growth area neighborhoods are not to be developed on the lowest common denominator and the pattern of development should not be one of pile them higher and pile them deeper. He urged the Commissioners

to hold to the principles of the Model Neighborhood the DISC Committee has asked you to use and apply a very high standard against the proposal.

Paul Rood, resident of 103 Buckingham Circle, stated that his home looks directly on to the pond are. If you stand at the lowest part of the road the elevation of the top of the proposed building will be 80 feet above his elevation. He pointed out that they would be looking at the back of the building that would be 4 stories tall. There are going to be 3 to 4 buildings just like that that they will be seeing. He pointed out that the trees were not going to cover that for the next 50 years. He asked that they consider what their community will be looking at. He noted that the developers needed to get the message that this community has elected and appointed our officers to work for the citizens of this community and by developing and maintaining our community standards that we have set. He certainly hoped that the Neighborhood Model concept would be applied to this site and not ignored. This land borders the gateway to our city. If we allow the model to be ignored in this location, then the next builder will surely ask for the same treatment. Please consider the model and consider the fact that just as the landowner, Mr. Burnett said, if there is no way they can get all of the people that live there in a parking space. Parking will not be a problem, but there will not be enough spaces for everybody to park. Where will they park? They will park out in the street or in the Lafayette school parking lot. Everything is being crunched down on this piece of property. You need to consider that. They are building really close to a flood zone and it does not blend in at all with our neighborhood. There is not one person owning this property. A Neighborhood Association owns this. He asked how you would approach a problem. It would take months to deal with a Neighborhood Association. There is no place for the children to play. There are so many other uses for this property. He stated that this was not the time or the place for this use.

Barry McLerran, resident of 157 Buckingham Circle stated that his house was the one house on the circle that is in full view of this property and the lake. They have great concerns about this development. From the beginning, he noted that he has had concerns about Mr. Burnett's posture regarding Buckingham Circle residents and developing the project in concert with the environment and the Neighborhood Model. Mr. Burnett initially made to real effort to make contact with residents of Buckingham Circle. He attempted making contact by dropping off letters a few days to the last Planning Commission meeting. He did so by calling a meeting with very short notice just a few days prior to December 30th. He noted that most families had already made plans or actually gone for holiday plans. He noted that in his summary of that meeting, he took bits and pieces of what was said by the residents and characterized them rabble who don't seem to know what they want. Obviously, the Commission has seen tonight that they actually know what they want. Regarding student housing, he stated that no one could be fooled that a buyer would not look at this as a potential for student housing. He questioned how covenants could be supported and enforced on the number of unrelated persons.

Mary McLerran stated that she lived across the street from the proposed site. She thanked the Commission for hearing them again. She stated that there was a fragile eco-system on the 6 acres that the buildings would be built. She noted that they needed to be very careful. Mr. Rieley has stated that the site being so close to a sloping piece of property next to the stream corridor creates some concern. Mr. Edgerton recognized this when he said that about percent of property was very sensitive and should be respected. She pointed out that she sent the Commission an email of which she hoped they received. Once again she stated that they were in support of Neighborhood Model and that it sets a standard to follow when builders approach with design ideas. When this property is used in a responsible and respectful way, then when somebody in the next generation like Danile Doldene comes and says please watch over this land, we can feel safe that the standards are there to protect those things for people who cannot speak for themselves. She stated that they were concerned that the density is too still too high. She stated that even though he has created what we've asked in regards to the number of bedrooms, they feel that when you put one bathroom with each bedroom it is still student housing. She pointed out that the parking was going to be an issue. Each of those students would need transportaiton since there was no bus line coming in there. There would be no place for a bus to turn around. There are no plans for a bus to come in there. All of those extra cars are going to end up on Fontaine and parked up and down that street which would be a problem. There is no place for the children to play. Where will the children play? She stated that there was no mixed use in this development. Therefore, she asked that the Planning Commission deny this request.

Tom Wilson, resident of 132 Buckingham Circle, stated that this proposal is still keeping with the student housing. He noted that his family was against this proposal. He urged the Planning Commission to deny this request.

Doren Wills, resident of Buckingham Circle since 1958, stated that the two things that have jumped out at her from this was. She asked if he was going to be an absentee landlord. She asked if they really needed 220 bathrooms. She stated that was going to be a lot of showers and a lot of flushing. She asked where this water was going to go? There was no public sewer system on Buckingham Circle. Each property had a septic system. She asked what plans are in works for this development?

Judy Rood, resident of 103 Buckingham Circle, stated that she lived in the first house directly across from the development. She stated that she loved living on the Circle for the last 20 years. She asked that they refer to the many emails they received as well as the many comments mad tonight. These offer substantial reasons for denial of this rezoning request.

Mr. Rieley stated that was the end of the sign-up list. He asked if anyone else would like to speak on this issue.

Sharon Forziati, resident of 114 Buckingham Circle for 8 years, stated that she was not anti-development. She stated that there were a lot of things that could go on this land that would add to both the land and their neighborhood. She stated that this use was not it. As a former graduate student of the University, this looks like student housing. She noted that after living in an apartment on Jefferson Park Avenue, she pointed out that this was the way her apartment looked like. They had three bedrooms with one bedroom being larger. She noted that convenants were useless and meant nothing. She stated that this street could not support this. When the church gets out on Sunday, it is a mad house there. They were right beside the entrances to I-64. The traffic was horrendous at rush hours. People use the circle as a turn around point to avoid making a left turn off of Route 250 already. She noted that she could see that added to with a constant flow of cars coming out of there. It is dangerous for people who walk, run and bike that section. There are no sidewalks and only ditches. It is not set up for high density like this. Finally, she stated that any neighborhood is going to have a few upkept houses, but she felt that the majority of the residents were very proud of where they lived. They are proud of their houses and it was a beautiful neighborhood overall. She noted that mixed use could be seen down the street at the facility housing project. She stated that this proposal was not designed for families.

Katie Hobbs, resident of Albemarle County, stated that she was speaking for herself. She stated that when they started talking about these bedrooms for all these units, she was reminded the Albemarle County Service Authority during the drought. There were a lot of large apartment buildings that only had one general meter outside. So the contracts had been done for each apartment or each building and they could not go back and get additional money. She suggested that they ask to have separate meters for each unit. She suggested that they have individual meters so that an owner would have a way to keep up with the money.

Henry Kaelber, resident of 124 Buckingham Circle, stated that he was one of the new residents in the area. He noted that he was here tonight to ask the Commission to deny the rezoning request. He understood that this property was zoned highway commercial because it was along side of the highway. This piece of property no longer serves as a though fare since it feeds into a dead end road. The current rezoning is not as appropriate as the current zoning. The current zoning is more in keeping with their neighborhood. After watching the Creosote Community masterplanning and Ivy's struggle with Morgantown Road, he was more aware of the Commission's duty to consider more than the applicant's desires but to guide and protect the community. He asked that they require the applicant to meet the Neighborhood Model's principles, and therefore deny the request.

Mr. Rieley asked if there was anyone else present to speak concerning this issue. There being no one, he asked Mr. Burnett if he would like to finish his comments or add new ones. He asked Mr. Burnett that he limit his discussion to five minutes.

Mr. Burnett presented the current plan for the development. He pointed out that they have several play areas throughout the development. Each unit has a balcony or porch. There are plenty of places for children to play. He pointed out that the buildings were as far apart as Mr. Cetta's. He noted that his

buildings were twice as far apart as Mr. Cetta's and that the density is less. He stated that tonight he sat out there to see what the traffic was like from 3:30 p.m. to 5:45 p.m. He noted that there is a problem with people coming down from the University and turning around in the entryway of the Buckingham Circle and going back. He stated that he had no idea what that was all about. About one-half of those 22 turnarounds came from people who came off the off-ramp and were for some reason headed back into Fontaine. The longest wait for a car was 30 seconds until there was a break in the traffic so they could go on up. As a matter of principle or ritual they just turned around and went on. He did not know why people would come out of Fontaine under the overpass and do a U-turn and go directly back in. He pointed out that he looked for U-turn signs and there were none. During that time he counted the number of residents that were leaving Buckingham Circle. There was one car that had to wait 5 seconds. There was a total of 3 cars the first one-half hour and 5 cars the second, 4 the last and 2 the second one-half hour. There were not that many cars. If that occurs for 53 units and we have 80 units, then he would submit that VDOT was right that there was not enough traffic along there that would be developed from their proposal to impact the neighbors coming out of Buckingham Circle. He agreed that it would be an ignorance to have people doing a U-turn in your entrance. He did not assume that they would be coming up to the entrance to Fontaine Arbors, but that could happen. As a conclusion, he stated that tonight there really was not a traffic issue as far as he could tell. He noted that he would not say that there wasn't one at some time. He agreed with the County and VDOT that it does not even warrant a traffic study. He submitted that the density issues that have been brought up might not be as dramatic as proposed. He noted that their proffers were for 84 units. He pointed out that in today's market, most people including students want a bathroom for every bedroom. He stated that he has been honest and open in what he proposes to do. He stated that these were not apartments, but condominiums. That means that each unit will be individually owned and metered. As far as he could tell, there was 35 percent of the neighbors opposed to this. He stated that he would be happy to answer any questions.

Mr. Finley asked who would maintain the pond?

Mr. Burnett stated that the entire property was going to be owned by an association with the individuals owning their unit. That would mean that the association through dues would maintain the pond. It will be professionally managed. They have not picked out who would do that, but he was sure they would find adequate management to do a good job.

Mr. Rieley asked if there were other questions. There being none, he closed the public hearing and brought the matter back before the Commission for discussion and action.

Mr. Thomas asked staff if there were any utilities on the property.

Mr. Barnes stated that there was a sewer line, which runs in front of buildings, 5, 4 and 3 which feeds down through Birdwood Golf Course. The site has public sewer already available.

Mr. Finley stated that several by-right uses allowed by the present zoning include hotels, car sales, groceries stores, gas stations, by right car sales, and then it says also allows uses in R-15. He asked what that meant?

Mr. Barnes stated that he believed that White Gables was zoned HC and they are going for a special use permit for R-15 uses which is this condo complex. This property is zoned HC. They are going the rezoning route to allow residential uses under CO zoning which is a similar type of mechanism

Mr. Rieley noted that this request could come to us as a special use permit under the current zoning.

Mr. Barnes pointed out that a special use permit is similar in the intensity of the review to a rezoning application.

Mr. Finley stated that more than one-half of the sites would remain undeveloped.

Mr. Barnes stated that it was slightly more than one-half, but he did not have the exact acreage.

Mr. Burnett stated that it was 12.6 acres total with 6.7 acres undeveloped.

Mr. Edgerton pointed out to Mr. Finley that it was undeveloped, but it should never be developed. He stated that in fact it couldn't be developed because it is too sensitive. He did not feel that was a favor.

Mr. Barnes stated that you could get encroachment into the 100-foot buffer with mitigation strategies. The water over 50 feet from the stream could not be disturbed.

Mr. Thomas stated that the applicant has to move the other building away from that, and Mr. Barnes agreed.

Mr. Edgerton stated that Mr. Rieley attended the neighborhood meeting of which they had heard several different variations of how that went. He asked Mr. Rieley what he thought about that meeting because that was a big concern of the Commission.

Mr. Rieley stated that he thought that it was a good dialogue. There was a limited turn out from community, partially because of the date. Mr. Burnett presented very close to what you see as revised plans. There was an open dialogue back and for the between all of the parties. He felt it was a useful and interesting discussion. He thought it was worthwhile as those things always are. He stated that he did not think that the changes that have been brought back to us are reflective of all the concerns that people raised, and in fact they were hearing tonight some of the larger ones.

Mr. Thomas stated that the biggest concerns that he heard was that it is student housing and numbers of cars coming in and out. There were other concerns with the pond and the creeks, but student housing seemed to be the biggest problem. He stated that he could not see it classified as student housing per say.

Mr. Rieley stated that he has listened to these concerns a number of times and expressed some of them himself. He noted that he brought back the notes from the first meeting that they had because he felt it would be interesting to see how of these things have been addressed. The first concern that he heard was the scale of the project in relationship to the scale of the adjacent neighborhoods. That concern has changed a little bit in the total number of units, but the number of bedrooms and parking spaces is essentially the same. The buildings are still four stories. He noted that his biggest concern was the scale of these buildings relative to the rest of the neighborhood. While taking his children to school he drives by the new development next to Monticello High School. And it was not because he voted against them, but most of the building that is seen is four-stories and is huge. He pointed out that that building looks a lot like these buildings. The specter of that in this neighborhood across from that little pond and an older established residential neighborhood remains troublesome. Some of the other things mentioned that they have heard a number of times include following the Neighborhood Model. He hoped that they hear more about that in the future. As Mr. Loach said, it was a sweet relief to some of us to hear people advocating the Neighborhood Model because there has been a lot of blood, sweat and tears to get it to this point. He felt that some progress had been made on the view from Buckingham Circle. Other concern included the night activity. One person wanted the buildings to face Buckingham Circle and the pond rather than away from it. There were a number of uses that people discussed relative to mixed use. These uses could have been pulled out of the Neighborhood Model itself. These uses include small office building, restaurant, childcare and those kinds of uses. The potential for this property is so terrific. If the property was developed under the HC zoning he did not feel that would be a good fit either. He did not think that HC zoning was appropriate for this property and felt that a rezoning was probably in order. There are rezoning designations that would be a better fit with this neighborhood. He hoped that within a couple of weeks that they would have the other Neighborhood Model Ordinance passed and then that would be available to this site. He felt that it would fit like a glove. He stated that he was persuaded by the arguments. When you have most of the people affected by a project saying that they would rather have the existing Highway Commercial and take our chances with that than have this large single use, he was persuaded by that. He agreed with Mr. Burnett about the traffic. He did not think that was an overriding issue. He pointed out that he believed what Mr. Burnett said about student housing, but pointed out that there really was no way to assure that. He noted that with absolute best intentions on everybody's part, in five years that could be 90 percent student housing.

Mr. Thomas agreed, but noted that he could not see putting that on something that he was not building it for that purpose and would do his best to make it not be. He asked how they could let something get this far along and staff recommends it all the way through. Staff says that there has been a good dialogue

between the neighborhood people and the applicant. He felt that the project was good and was compatible with this piece of property. He stated that it compliments the pond. He stated that the project was not in the flood zone. He asked if the playground was in the flood area.

Mr. Barnes noted that there were questions regarding the floodzone and the 100-foot buffer, which extend further. He stated that it would not be.

Mr. Thomas stated that he did not know how they let someone get this far in the process and then cut their feet out from under them.

Mr. Rieley stated that he felt that they had been absolutely fair and open. They said several weeks ago from the majority of the Commission, many of whom are not here tonight, said very clearly that this scale is too big. It has come back to them in a very similar configuration that it came previously. He certainly did not have any feeling that here was any unfairness if they decide that is not the right rezoning.

Mr. Thomas stated that he felt that the scale was o.k.

Mr. Edgerton stated that he went out there this weekend. He noted that he use to live further out Fontaine Road back towards Fox Haven Farm. He noted that he was taken by fact that the only buildable developable area of site, that might represent 40 percent of site, is up on sort of a plateau. Whatever goes on that plateau will have a significant impact on this neighborhood. He stated that he was intrigued by the neighbor's willingness to take what will come with Highway Commercial zoning because he was not sure if it would look much better. He felt that the density would be less. He noted that he was terribly concerned about the number of parking spaces. He felt that the density had not reduced enough. He felt that there has been some shifting around, but that the buildings have gotten higher. As pointed out many times, the number of parking spaces has been kept high. He questioned that and therefore would have to vote against this primarily because of the impact on a very real existing neighborhood and the sensitivity of the area around the pond that he did not believe had been addressed. He pulled it out, but he felt that was a minimal effort to try to address the concern. He felt that it was too dense with too much parking and asphalt. He found the proposal very threatening due to the scale and impact to the whole area. He stated that he would have to vote against it due to those reasons.

Mr. Finley stated that reduced density according to these figures was 54 percent from the beginning.

Mr. Edgerton stated that was if you include all 12.7 acres as buildable.

Mr. Finley stated that the units were down to 90 from 112. He noted that the County policy calls for higher density in the development areas. As people move in they begin to oppose target of density and prevent infill.

Mr. Rieley stated that he did not quite understand. It was not as if they had something that was built and they were going around trying to find a home for it. The question is we have a piece of land in this neighborhood and is this an appropriate use to change the zoning to allow it.

Mr. Finley stated that urban density is a secondary use under the present zoning. He asked what percent was at the meeting that he attended.

Mr. Rieley stated that about 20 people attended the meeting on December 30th. He felt that they had all articulated their view on this. He asked if anyone would like to frame a motion.

Mr. Thomas moved for the approval of ZMA-02-01, Fontaine Avenue Condominiums with proffers.

Mr. Finley seconded the motion.

The motion failed on a tie vote (2:2). (Edgerton, Rieley – No) (Thomas, Finley – Aye) (Loewenstein, Craddock, Hopper – Absent)

Mr. Rieley stated that this item would go to the Board of Supervisors with no recommendations.

Mr. Kamptner asked if any of the Commissioners had any comments about any of the proffers.

Mr. Rieley stated that there were no comments. He asked when the Board would hear this.

Mr. Cilimberg stated that ZMA-02-01 was scheduled to be heard by the Board of Supervisors during their day meeting on March 5th.

The meeting adjourned at 8:20 p.m. for a brief break.

The meeting reconvened at 8:30 p.m.

Public Hearing Items:

SP-02-071 Crown Orchard Company Pinnacle/Carters Mountain (Signs 39 & 66) – Request for a special use permit to allow the co-location of two additional arrays of six (6) antennas at between 60 and 70 feet on an existing tower 205 foot tall tower. This request is being made in accordance with Section 10.2.2.6 of the Zoning Ordinance, which allows for radio-wave transmission and relay towers, and appurtenances. The property, described as Tax Map 91, Parcel 28, contains 234.165 acres, zoned RA, Rural Areas. This site is located in the Scottsville Magisterial District, on Carter's Mountain Trail, approximately 1 mile south of the intersection with Rt. 53 (Thomas Jefferson Parkway). The Comprehensive Plan designates this site as Rural Area 4. (Stephen Waller)

Mr. Waller presented the staff report. (See the attached copy of the staff report.) The applicant's proposal is for the co-location of six additional antennas and two arrays between 60 and 70 feet on an existing 200 foot tall guide tower on Carter's Mountain within the tower farm where several towers for telecommunications and personal wireless service facilities are currently installed. The request also includes the installation of ground equipment housing PCS, E911 and GPX hardware, which would be placed on an existing 12 foot by 20-foot concrete pad at the site. Staff has reviewed this request and has recommends approval with conditions that are stated at the end of the staff report. Staff would also add that the applicant has indicated that there are a few changes to the request that they will elaborate farther on. If you turn to attachment B, page 26 in the staff report where a third array or antenna is being shown called an MFR mount. It is in a display labeled 2C3. It is also shown on the elevation of the tower at approximately 25 feet. Staff has been informed that antenna no longer needs to be attached to the tower itself, but instead it could be placed on top of one of the ground equipment cabinets. Staff has also been informed that because of the existence of some equipment that is already installed on the tower but was not shown in the construction drawings, the two arrays of antennas would have to be slightly moved. The applicant has indicated that they could be lowered and still conform with the recommended condition that the top of the antennas be allowed at no more than 70 feet above ground or they could either be lowered to still meet that condition or the applicant may request that they be allowed to go an additional 5 feet up to 75 feet. Because they are so low on the tower, staff finds no objection to allow it to go 5 feet higher. Again, if needed the applicant has indicated that they could lower the antennas.

Mr. Rieley stated that condition 2a states that the highest portion of the panel antenna on the top array shall not exceed 70 feet above the ground. That being the case, how could they put them up to 75 feet.

Mr. Waller stated that he would let the applicant speak to that. He stated that one of the objections was to either ask for an increase up to 75 feet. Staff has no objection to the additional five feet. They have also indicated that it was likely that they could achieve their coverage objectives if they were required to drop even farther below the equipment that was existing on the antenna. If they did that, they would still be meeting the requirement that staff stated for the 70 feet. The reason for 70 foot was based on looking at the height of the antenna and the applicant's showing the midpoint between the two arrays at 60 feet and they are 6-foot antennas. If the antennas would ever be changed, the 70 feet would give them some leadway with the size of the antenna.

Mr. Rieley asked if there were any other questions for Mr. Waller.

Mr. Edgerton asked for some help in looking at sheet 26, the tower elevation C13. He asked how many antennas are in there.

Mr. Waller stated that there were 2 arrays with 3 antennas each

Mr. Edgerton stated that was 6, but directly above that you have one not identified.

Mr. Waller stated that everything else shown above the antenna shown at 60 feet is existing on the tower.

Mr. Edgerton asked if there was nothing new about those.

Mr. Waller stated that was correct.

Mr. Edgerton stated that there would 7, which would include the one that will go down on the ground.

There being no further questions for Mr. Waller, Mr. Rieley closed the public hearing and asked if the applicant would like to address the Commission.

Andrea Adler, representing Omni Point and Team Mobile Communications stated that as Mr. Waller suggested they are proposing two antennas arrays with three antennas per array. She made a video presentation to provide pictures to clear up their questions. She presented electronically blown up versions of the drawings included in their packets. The two antenna arrays are proposed at 60 feet. As mentioned, there isn't existing equipment there now. As you can see, there are two lights located at the 60-foot level approximately. That was not noted on the drawings. They would like to straddle those lights and try to work around them by placing the first array at 75 feet and bring the second array down to the bottom. That is where the request in the change in the conditions is coming from. She noted that the visual impact would be very minimal. This location would allow them to meet their coverage needs and coverage objectives while utilizing an existing structure and maintaining within the guidelines and regulations of the County. They would appreciate the Commission's recommendation for approval with the one additional change in the condition to allow the top most portions to be at 76 feet. She stated that the antennas are 6 feet high. If they were to mount at the center that was in the middle of the antenna at 73 feet, it would bring the bottom of their antenna to 70 feet that would meet those lights. The top most portion of antennas would be at 76 feet.

Mr. Rieley pointed out that the illustration showed it below the lights.

Ms. Adler agreed. She pointed out that she did not have time to do that. She stated that the distance between the tower and the face of the antennas is only 12 inches by Ordinance.

Mr. Rieley stated that he supported the lowest mounting height.

Mr. Finley moved for approval of SP-02-071, Crown Orchard Company Pinnacle/Carters Mountain, with staff's recommended conditions including the proposed change in one of the conditions.

1. The tower shall not be increased in height.
2. The two (2) additional arrays of panel antennas may be attached only as follows:
    a. The highest portions of the panel antennas in the top array shall not exceed 76 feet above ground.
    b. The antennas shall not exceed seven (7) feet in height or two (2) feet in width, and shall be of a color that matches the tower. Only flush-mounted antennas shall be permitted; none of the antennas shall project from the structure beyond the minimum required by the mounting equipment, and in no case shall an antenna project more than twelve (12) inches from the existing structure.
    c. The antennas subject to this approval may be replaced administratively, provided that the sizing, mounting distances and heights of the replacement antennas are in compliance with these conditions of approval and in accordance with the regulations set forth in Section 5.1.40 of the Zoning Ordinance.

3. All work shall be done in general accord with that described in the applicant's request and site construction plans, entitled "Omnipoint Communications CAP Operations - Pinnacle Carter's Mountain", last revised on November 7, 2002.
4. With the exception of the safety lighting required by Federal Aviation Administration regulations, outdoor lighting shall be permitted only during maintenance periods; regardless of the lumens emitted, each outdoor luminaries that is not required for safety shall be fully shielded as required by Section 4.17 of the Zoning Ordinance;
5. The permittee shall submit a report to the Zoning administrator once per year, by not later than July 1 of that year. The report shall identify each user of the tower.
6. The tower and all supporting facilities shall be disassembled and removed from the site within ninety (90) days of the date its use for wireless communications purposes is discontinued.
7. No satellite or microwave dishes shall be permitted on the tower.

Mr. Edgerton seconded the motion.

The motion carried unanimously (4:0). (Loewenstein, Craddock, Hopper - Absent)

SP-02-073 Crossroads Store Phase 2 & 3 Bank Drive-In window (Sign #89, 90) – Request for special use permit to allow a drive-in window serving a proposed bank at the Crossroads Store in accordance with Section 22.2.2.10 of the Zoning Ordinance which allows for drive-in windows serving or associated with permitted uses. The property, described as Tax 99, Parcels 1, 1A and 5, contains 3.956 acres, and is located in the Samuel Miller Magisterial District on Plank Road (State Route 692) on the northeast corner of the intersection of US Route 29 and State Route 692. The property is zoned C-1 Commercial and Entrance Corridor. The Comprehensive Plan designates this property as Rural Area 3. (Margaret Doherty)

Ms. Doherty presented the staff report. (See the attached copy of the staff report.) The applicant proposes the final build out of the Crossroads Store Site Plan which includes two additions known as phases 2 and 3. One of the additions includes a drive-in window for a bank. The drive-in window is permitted in C-1, Commercial zoning district by special use permit. The Site Plan Review Committee has reviewed the site plan issues related to circulation, parking and setbacks. Recommendations for approval have been received from all agencies. It is located within the Entrance Corridor District and therefore the Planning Department is relying on the Architectural Review Board for most of the aesthetic issues related to the drive-in window. The ARB has reviewed this and expressed no objection to the special use permit request and offered conditions of approval, which have been incorporated into the staff report. She stated that she would be happy to answer any questions.

Mr. Rieley asked if there were any questions for staff. There being none, he opened the public hearing and asked if the applicant would like to address the Commission.

Brian Smith, Engineer representing the Crossroads Store, stated that he had nothing else to add to Ms. Doherty's staff report. He pointed out that he would be happy to answer any questions.

Mr. Rieley asked if there were any questions for Mr. Smith. Mr. Rieley stated that he supports this request with one additional condition of approval. He stated that all of the new lights would have to conform to the Lighting Ordinance. The original store was built a few months before the implementation of the Lighting Ordinance. Therefore, this project ended up with some very bright-unshielded fluorescent fixtures underneath the porch levels. He felt that this was the logical time to have this cleaned up. He suggested that those lighting fixtures be brought within the standards of the current Lighting Ordinance as a part of this intensification of use.

Ms. Doherty asked for clarification, on the upper balcony there are eight single fluorescent tubes and on the lower ceiling of the porch there are eight double rows of fluorescent tubes. She asked for clarification if they were talking about the upper and lower floors. She stated that Mr. Waller suggested that the language state that the lights be protected with a shield that can be retrofitted on the existing fixture. She noted that if they used language like that, then it would save the applicant from having to buy all new fixtures.

Mr. Rieley stated that he wanted to make sure that whatever was done complied with the current Lighting Ordinance. He felt that should be able to be done with the addition of a shield around the light, which would cut off the glare. He pointed out that the existing bulbs were visible from the highway.

Mr. Finley asked what happens upstairs.

Ms. Doherty stated that there were offices upstairs. She noted that there were no public entrances from the balcony.

Mr. Rieley stated that the entrances were located on the backside of the building.

Mr. Kamptner asked whether the condition to shield the glare should apply even if the 3,000 luminaires threshold is not met (as provided in the Lighting Ordinance) because this is a special use permit condition.

Mr. Rieley stated that it was not his intention to change the lighting level. It was just to shield the lighting and to bring it into conformance. He stated that he did not think there was anything else about those lights except the shielding that was not in conformance with the Lighting Ordinance. He noted that it was certainly far enough away from the property line so that the spill over was not an issue.

Mr. Cilimberg stated that it would be for both the lights on the upper and lower levels.

Mr. Rieley agreed with Mr. Cilimberg.

Mr. Rieley suggested one additional condition of approval. He asked that all of the new lights conform to the lighting ordinance as per the condition about the number of lumens emitted from each light. The original building was built a few months before our lighting ordinance and they ended up with some very bright-unshielded fluorescent fixtures underneath the porches. He felt that this was the logical time to suggest that those lighting fixtures be brought within the standards of the current lighting ordinance as a part of this intensification of use

Ms. Doherty asked for clarification. On the upper balcony there are 8 single fluorescent tubes and underneath the lower ceiling of the porch there are 8 double rows of fluorescent bulbs. She asked if they were talking about the upper and the lower. She noted that Stephen Waller, a veteran of the Zoning Department, suggested that the language include that the lights be protected with a shield which can be retrofitted on the existing fixtures. That language will save the applicant from having to buy all new fixtures.

Mr. Rieley asked that whatever was done that the lights should meet the lighting ordinance. He felt that it could be done with a shield around the bulb that would cut off the light. He pointed out that the existing bulbs are visible from the highway, which was the reason that he brought the matter up. He pointed out that it was not his intention to change the lighting level, but it was simply to shield the lighting and to bring it into conformance with the lighting ordinance. He noted that the building was set back from the road far enough that spill over lighting was not an issue.

Mr. Edgerton moved for approval of SP-02-73 with the conditions as recommended by staff including the additional condition concerning the shielding of the existing lights on the porches as follows:

1. The site improvements shall be developed in general accord with the attached Major Site Plan Amendment, entitled *Crossroads Store Phases 2 & 3 Site Plan Amendment*, dated January 8, 2003;
2. The design of the drive-through structure shall be coordinated in size, material, color, and detail with the existing building;
3. The new island south of the drive-through and the Route 692 frontage shall be planted with trees to help minimize the impact of the new structure;
4. Add 2 ½" caliper trees at 40' on center along the Route 692 frontage;
5. Add trees, shrubs, and ground cover in the new island south of the drive-through;
6. Building materials and colors shall match existing. Include notes on the elevations that confirm this;
7. Provide complete details on new wall and site lights and any lights to be relocated. Lights that emit 3000 lumens or more must be full cutoff fixtures; and
8. All new signs visible from the EC shall match the design previously approved for this site.

9. The florescent light bulbs on the ceilings of the upper and lower porches of the existing building shall be shielded so that the bulbs are not visible from Route 29 and Route 692. This condition may be satisfied by retrofitting the existing fixtures to achieve a full cut-off effect as per the lighting ordinance (Section 4.17).

Mr. Thomas seconded the motion.

The motion carried unanimously (4:0). (Loewenstein, Craddock, Hopper – Absent)

Old Business:

Mr. Rieley asked if there was any old business. There being none, the meeting proceeded.

New Business:

Mr. Rieley stated that there would be no Commission meeting next Tuesday, February 18th.

Adjournment:

With no further items, the meeting adjourned at 8:55 p.m.

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V. Wayne Cilimberg, Secretary

(Recorded and transcribed by Sharon Taylor, Recording Secretary.)