Albemarle County Planning Commission
September 23, 2003

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, September 23, 2003 at 6:00 p.m. in the auditorium, Second Floor, County Office Building, 401 McIntire Road, Charlottesville, Virginia. Members attending were Rodney Thomas; Bill Edgerton; William Rieley, Chairman; Pete Craddock and Tracey Hopper, Vice-Chairman. Absent were Jared Loewenstein and William Finley.

Other officials present were Wayne Cilimberg, Director of Planning & Community Development; David Benish, Chief of Community Development; Scott Clark, Senior Planner; Yadira Amarante, Planner; Joan McDowell, Principal Planner; and Greg Kamptner, Assistant County Attorney.

Call to Order And Establish Quorum

Mr. Rieley called the meeting to order at 6:13 p.m.

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.

Consent Agenda

Approval of Planning Commission Minutes - August 5, 2003 and August 19, 2003.

SDP-03-67 – Brown Auto Park – Preliminary Site Plan and Critical Slope – (Tax Map 45, Parcels 68D4 and 68D6)

Mr. Rieley asked if any Commissioner would like to pull any of the items off of the consent agenda for discussion. There being none, he asked for a motion on the consent agenda.

Ms. Hopper moved to approve the consent agenda as presented.

Mr. Thomas seconded the motion.

The motion carried unanimously (5:0). (Loewenstein, Finley – Absent)

Mr. Kamptner asked to clarify for the record that the Brown Auto Park site plan was actually a final site plan.

Mr. Rieley pointed out that SDP-03-67, Brown Auto Park site plan was noted incorrectly as preliminary on the agenda.

Deferred Item:

SP-02-080 James E. Shifflett Bridge Replacement (Sign #46) - Request for special use permit to allow replacement of a low-water crossing with a bridge in accordance with Section 30.3.05.2.1.2 of the Zoning Ordinance, which allows for water-related uses (such as boat docks, canoe liveries, bridges, ferries, culverts, and river crossings or transmission lines of all types) in the floodway. The property, described as Tax Map 7, Parcel 57, contains 15.137 acres, and is located in the White Hall Magisterial District on Rt. 628 (Simmons Gap Road) approximately 0.2 miles from the point where Rt. 628 crosses the Greene County line. The property is zoned RA Rural Areas and FH Flood Hazard Overlay. The Comprehensive Plan designates this property as

Rural Area. (Scott Clark) ***DEFERRED FROM THE AUGUST 5, 2003 PLANNING COMMISSION MEETING.***

Mr. Clark summarized the staff report.

- This request for a special use permit is for activity in the floodplain. The applicant is replacing a low water crossing in the Lynch River with a bridge in order to have safer access to his property. The applicant has had safety problems in the past with high water floods and dangerous winter conditions. This project was originally recorded as a violation as the work was begun without a permit. Approving this permit would address the violation. The main concern with the crossing is flood safety and the effects on the stream. In this case the bridge abutments, which are the only obstruction of the floodway, account for less than 5 percent of the cross section area of the floodplain, which was the cut-off. Anything below that was considered a minimal impact and was not expected to cause any flood impacts on the neighboring properties. As part of the application, the applicant offered to remove the existing low water crossing, which is a concrete structure with pipes through it. The stream above that crossing has become widened and shallow due to obstruction of the floodway and has been under cut below the crossing. There is a pole there and it has become an obstruction to the habitat in the Lynch River. The Engineering Department, as part of this permit approval, requires a mitigation plan for repair of the stream buffer. Staff has discussed this with the Water Resources Manager and he feels that removal of that crossing would constitute a very good mitigation plan for this use. Given that this would actually create an improvement to the instream habitat and would make safer access to the property possible, staff recommends approval with the two conditions listed in the staff report.

Mr. Rieley asked if there were any questions for Mr. Clark. Since there were none, he opened the public hearing and asked if the applicant would like to address the Commission. Since no one was present to speak regarding the request, Mr. Rieley closed the public hearing to bring the matter back to the Commission for discussion and possible action.

Ms. Hopper stated that the special use permit was proposing an improvement to what already exists. Therefore, she moved for approval of SP-02-080, James E. Shifflett Bridge Replacement, with the conditions recommended by staff:

1. Engineering Department approval of mitigation plan for repair and enhancement of the stream buffer. This plan shall include removal of the existing low-water crossing.
2. The applicant shall complete construction of the bridge as described in the report prepared by John Davis, PE and dated August 4, 2003, and implement the mitigation plan within four months of the date of approval of the permit.

Mr. Craddock seconded the motion.

The motion carried unanimously (5:0).

Mr. Rieley stated that SP-02-080 would go to the Board with a recommendation for approval on October 8th.

Public Hearing Items:

SP-03-57 Kevin Quick (Sign #93) – Request for special use permit to allow a home office in a garage in accordance with Section 10.2.2 (31) of the Zoning Ordinance which allows for a Home Occupation, Class B. The property, described as Tax Map 130, Parcel 71, Lot 17, contains 2.127 acres, and is zoned RA, Rural Areas. The proposal is located on Fieldcrest Drive, approximately 0.25 miles south of the Fieldcrest Drive/Rt. 20 (Scottsville Road) intersection, in the Scottsville Magisterial District. The Comprehensive Plan designates this property as Rural Areas in Rural Area 4. (Joan McDowell)

Ms. McDowell summarized the staff report:

- The applicant is requesting approval of a special use permit for a Home Occupation, Class B to allow for a home office in an accessory structure (garage). The mortgage appraisal business would be operated on the second floor of a two-story detached garage that would be constructed if this request were approved. The footprint of the proposed garage/office would be 900 square feet (30' x 30'). The office on the second floor would consist of 620 square feet. The first floor of the proposed structure would be used as a garage for vehicle parking. The applicant would employ one employee (his wife). Hours of operation would be Monday through Friday, 7:30 a.m. to 6:00 p.m. There would be no customer visits to the home office.

- This proposal would not result in any significant increase in vehicular traffic beyond that which would be considered normal traffic for the residence. The applicant would not have customers visiting the site; therefore, there would be no more than seven trips per week to the site that would be associated with the mortgage appraisal business, which is considered the standard for a Home Occupation – Class A.

- Based on the findings contained in this staff report, staff recommends approval of SP 2003-057

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

Mr. Quick stated that he had nothing to add and was happy to let the staff report stand.

Mr. Rieley asked if there were any questions for the applicant. He asked if anyone else would like to address this application. There being none, he closed the public hearing to bring the matter back before the Commission for discussion and possible action.

Mr. Thomas moved to recommend approval of SP-03-57, Kevin Quick.

Mr. Edgerton seconded the motion.

The motion carried unanimously (5:0). (Loewenstein, Finley – Absent)

Mr. Rieley stated that SP-03-57 would go to the Board with a recommendation for approval and will be heard on October 8th.

SP-03-60 Greenwood Country Store, Gift, Craft & Antique (Sign #48) – Request for special use permit to allow a gift, craft, and antique store in an existing structure, in accordance with Section 10.2.2(36) of the Zoning Ordinance that allows for gift, craft, and antique shops. The property, described as Tax Map 54, Parcel 55, contains .537 acres, and is zoned RA, Rural Areas. The proposal is located on Rt. 690 (at 7572 Greenwood Station Road), approximately 200 feet east of the Route 690/Route 691 intersection, in the White Hall Magisterial District. The Comprehensive Plan designates this property as Rural Areas in Rural Area 3. (Joan McDowell)

Ms. McDowell summarized the staff report.

- The applicant is requesting approval of a special use permit to allow for a gift, craft, and antique store to operate in the existing historic Greenwood Store (Attachment A). The building is currently occupied with an artist studio and has been previously approved for a country store. Of the building's approximate 3,675 total square footage, the art studio uses 960 square feet and the country store would use 484 square feet. The gift, craft, and antique store use would be combined with the artist studio for a total of 2,442 square feet. There is also a second floor, 3-bedroom apartment that is currently occupied.

- Hours of operation would be 7:00 a.m. to 7:00 p.m., seven days a week. There would be one employee that would run the country store and the gift, craft, and antique store use. The artist would work in the studio no more than a couple days a week.

- A zoning variance was approved in 1983 (VA 1983-074) to allow relief from Section 10.4 of the Zoning Ordinance to allow a lot to have .537 of an acre to establish two uses, a variance of 3.463 acres.

- A special use permit was approved in 1983 (SP 1983-064) to allow for a country store with conditions. Any appropriate conditions would be carried over to this request if approved.

- There is currently a violation on this site. A portion of the 1-story block building to the rear of the property is being used as a warehouse and not permitted in the RA zoning district. If this special use permit is approved, the applicant could use the storage building for any use in the store building, such as storage or an artist studio. A Zoning Clearance was issued on August 22, 2003 to allow the country store use to restart in a portion of the store building, allowing the site to be partially brought into compliance. Enforcement proceedings are currently underway, and will continue, until compliance is gained. The Zoning Department has confirmed that the violation is not within the building subject to this special use permit (SP-03-60). Section 31.2.3.2 of the Zoning Ordinance allows a Zoning Compliance Clearance for separate premises or structures. Therefore, the SP 03-60 may be allowed to continue processing, as the building with the violation is not the building subject to the special use permit.

Mr. Rieley asked if by granting this special use permit if it would allow the building to be used as storage as an ancillary use.

Ms. McDowell stated that the block building to the rear could be used for storage of the uses in the main building subject to this special use permit. There could be storage for the artist studio, the antique store or the craft store.

Mr. Rieley stated that the building could not be used for a commercial warehouse, and Ms. McDowell stated that was correct.

Ms. McDowell continued the staff report.

- This proposal would not be a substantial detriment to adjacent properties. The residential dwelling to the west was built in 1925, well after the country store was built. Staff believes this residence and other residential dwellings in the immediate area of the store as well as the elementary school are part of the history of the immediate surrounding area and would not be adversely affected by this proposal. The Greenwood Store contributes to the defining character of the Greenwood community.

- The Greenwood area was among the first permanently settled area in Albemarle County. The country store is one of the oldest business establishments in western Albemarle dating back to the 1880s. It was gutted by fire in 1955 and rebuilt in the same year. The store was originally known as Young Brothers Country Store.

- Staff's opinion is that the proposed uses would not result in any increased level of activity on the site that would be inconsistent with the character of the area and other historic pattern in the use of this property.

- The Department of Engineering has recommended that the applicant redesign the parking area and travel ways on the site to separate the parking spaces from Route 690 with a curbed, grassed, island, per Section 18-4.12.15.h., f. of the Zoning Ordinance, and a standard commercial entrance. When SP 1983-064 was approved in 1983, the Virginia Department of Transportation reviewed the existing entrance. VDOT did not offer any comments on the proposed application. While staff shares the Engineering Department's concern regarding the safety of the parking area, the scale of the building and the proposed uses lessen the need to apply strict standards. A separation between the parking stalls and the street could be accomplished through the use of barrels topped with landscape materials located every few feet across the frontage similar to those used by the Lange store in Afton (SP 97-38), as a solution to the Engineering recommendation for a separation. Staff has discussed this with the Engineering Department and they have agreed to not have a requirement for a landscaped island and would agree to the barrels. That would create a physical barrier between the isle and these parking spaces and Route 691. Again, the limited uses on the property and the exiting site constraints may not lend themselves to strict engineering standards for a commercial driveway. As the exiting driveway was approved by VDOT, a commercial driveway may not be determined to be a vital necessity by the Commission. However, a condition of approval could be offered by the Commission to address both the separation and the commercial driveway issues.

- Based on the findings contained in this staff report, staff recommends approval of SP 2003-060 with the following conditions:

    1. Parking shall be configured as shown on the concept plan in Attachment A, labeled Greenwood Country Store Concept Plan Revised SP-03-60, and dated September 2003.
    2. Hours of operation shall not exceed Sunday through Saturday, 7:00 a.m. to 8:00 p.m.

Mr. Thomas asked staff for justification for having a barrier between the road and the parking lot.

Ms. McDowell stated that that the barrier would be for safety purposes so that people don't back out of their parking space directly into traffic.

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

Jim Gates stated that he currently owns and operates the county store. He noted that he was available for any questions.

Mr. Rieley asked if he heard the proposal about the barrier and if had any feelings about that.

Mr. Gates stated that his feeling was that he was going to do whatever they tell him to do. He pointed out that he had not discussed the specifics of what he needed to do with the Engineering Department.

Mr. Rieley asked if there had been a problem there in the past.

Mr. Gates stated that he had not witnessed or heard of any accidents at the site. VDOT had not asked for any changes to that entrance.

Mr. Rieley stated that there was a concrete island shown.

Mr. Gates stated that the last time that the country store was opened was in 1983 and VDOT required that they put that island in and it has been there ever since.

Mr. Rieley asked if there were any other questions for the applicant. There being none, he closed the public hearing to bring the request back to the Commission for discussion and possible action.

Mr. Thomas stated that he still had a problem with using a barrel as a barrier. He noted that it was a safety factor, but that there is a curb there now. He stated that he would like to see the barrier removed from the condition.

Mr. Rieley stated that it was not currently a condition.

Ms. McDowell stated that was correct.

Mr. Thomas moved for approval of SP-03-60, Greenwood Country Store, Gift, Craft & Antique, with the conditions recommended by staff not including the condition concerning the barrels.

1. Parking shall be configured as shown on the concept plan in Attachment A, labeled Greenwood Country Store Concept Plan Revised SP-03-60, and dated September 2003.
2. Hours of operation shall not exceed Sunday through Saturday, 7:00 a.m. to 8:00 p.m.

Mr. Edgerton seconded the motion.

The motion carried unanimously (5:0). (Loewenstein, Finley – Absent)

Mr. Rieley stated that SP-03-60 would go to the Board with a recommendation for approval and would be heard on October 8th.

Regular Item:

SDP-02-128 Faulconer Construction Office & Shop Preliminary - Request for preliminary site plan and critical slopes waiver approval for a construction office, shop, and storage buildings, 35,044 square feet, on 27.37 acres zoned LI, Light Industrial. The property, described as Tax Map 58, Parcel 37 is located in the Samuel Miller Magisterial District on Rt. 738 (Morgantown Road), approximately 1-1/8 miles west from the intersection of Morgantown Road and Route 250 at Ivy. The Comprehensive Plan designates this property as Rural Areas in Rural Area 3. (Yadira Amarante)

Ms. Amarante passed out some handouts from the applicant.

Mr. Rieley stated that Mr. Cilimberg was going to provide some background information on this application. He asked Mr. Benish if he provide that information.

Mr. Benish stated that he did not have that information, but that Mr. Cilimberg was on his way.

Mr. Rieley stated that there were a couple of issues of a legal nature that came up last time. He pointed out that one was involving the status of the zoning on the property itself and another on the surrounding 200-foot buffer. He asked Mr. Kamptner to give the Commission some background information on those issues.

Mr. Kamptner stated that he would be happy to provide that information. He distributed excerpts from the County Zoning Ordinance on critical slopes and waivers, which were the provisions that the Commission would be considering tonight. There are three general topics that he was asked to cover. The first is to define the parameters of what is in front of the Planning Commission, which is the consideration of a site plan and a critical slope waiver. The site plan is typically a ministerial function. The Planning Commission will look to determine whether or not the requirements of the Zoning Ordinance have been satisfied. If the requirements have been satisfied, then the Commission is under an obligation to approve the site plan. The site plan

tonight has a critical slopes waiver request that requires the Commission to exercise some discretion in reviewing the regulations that he just handed out. The Commission is required to review the standards in deciding whether a waiver should be granted. If the waiver is approved or denied, the Commission needs to articulate the reasons under Section 4.2.5. If the waiver is denied under State Law and the County Code, the Commission will need to state the basis for the denial, cite the applicable section of the Zoning Ordinance and instruct the applicant what they need to do to satisfy the County's regulations. If the waiver is approved with conditions, the conditions need to have a rational connection to the critical slope regulations. At the Planning Commission meeting in February there were a number of people who referred to excerpts from the County's site plan regulations in Section 32.1. The statement of intent in that section states: "The purpose of this section is to encourage innovative and creative design and facilitate use of the most advantageous techniques and highest standards in the development of land; and to ensure that land is used in a manner which is efficient, harmonious with neighboring property and in accordance with the comprehensive plan and with the provisions of this chapter." The next paragraph states, "Nothing herein shall require the approval of any development, use or plan, or any feature thereof, which shall be found by the commission or the agent to constitute a danger to the public health, safety or general welfare, or shall be determined by the Commission or the agent to be a departure from a violation of sound engineering design or standards." These two sections, if applied as being substantive regulations, would greatly expand the discretion of the Planning Commission. But, because they are in the statement of intent for the regulations, they don't have that same effect and are not independent sources for the Planning Commission to consider in a critical slopes waiver. Those criteria are set forth in another part of the Zoning Ordinance. The Virginia Supreme Court has said that these types of statements cannot be applied in a way that would effectively allow a decision-making body to rezone the property. When the Commission reviews the site plan, the existing regulations need to be applied to deal with the health, safety and general welfare issues.

The second topic that he was asked to cover was where the matter ended on February 4, 2003. A question came up whether or not the Planning Commission's motion to defer the site plan was made conditional upon the site plan coming back tonight without having the need for any critical slopes waivers. In reviewing the minutes of the February 4th meeting, Ms. Hopper made a motion to deny which Mr. Edgerton seconded. Then there was a discussion by Planning Commissioners. Commissioner Rieley stated that it seemed, "only fair to allow the applicant to address the site plan and bring it back to us in a form that does not require the waivers." Ms. Hopper and Mr. Edgerton agreed to a friendly amendment, but Ms. Hopper's amended motion was, "for the purpose of giving the Commission a chance to look at this again if it was a different application for an amended site plan." What the Commission has before it tonight is an amended site plan. The staff report has an error in that it indicates that the Commission's motion was conditional upon the site plan only coming back if it does not need a critical slope waiver. Even if that had been the motion, the Planning Commission would still need to address the site plan that is in front of it tonight.

The final area that he was asked to address tonight is the underlying zoning of the property, the 200-foot buffer, which existed at one time, and generally the use of the property. The property is zoned Light Industry and a contractor's office and an equipment storage yard is a by-right use. The light industry zone covers the entire parcel. That was not always the case. Back before the County was comprehensively rezoned on December 10, 1980 this piece of property had multiple zoning designations on it. One was a strip of A-1 zoning on the portion of the western side of the property, which was 200 feet wide. When the property was zoned Light Industry, though, all of that former zoning disappeared. The A-1 zoning that provided a de facto buffer on the western portion disappeared as well. There was also a conditional use permit that was issued by the Board of Supervisors in 1970 that established a 200-foot buffer on the western part of this parcel. That condition existed all the way until 1987 even though the property was rezoned in 1980. Under the new zoning regulations for Light Industry that took effect in 1980, the conditional use permit that allowed the warehousing use continued in effect because under the new zoning that use still required a conditional use permit. But in 1987 the Board of Supervisors amended the LI

zoning regulations and the warehouse use became a by-right use. At that point, the conditional use permit and all the conditions that went with it became a nullity. The conditions no longer had any force or effect. Even if this conditional use permit were still valid today, it would not apply in this case because what is before the County today is a completely different use. The current use is a contractor's office and equipment storage yard. He stated that concluded his opening remarks.

Mr. Rieley stated that he would like to ask one question related to these two changes. In 1980 when the countywide zoning changes were made, the zoning was changed on these two parcels when the Light Industrial zoning came into effect. He asked if there was specific notification to any of the adjacent landowners that this was going to happen and what the implications of that was going to be. He asked if they were told that by changing that zoning and making it all light industrial use that essentially that 200-buffer zone would disappear.

Mr. Kamptner stated that he did not know because there was a comprehensive rezoning and the entire County was rezoned at that point with new designations and new district regulations. The Board of Supervisors approved the original zoning map on December 10, 1980. County staff prepared the map in November of 1980 and it would have gone through a public hearing process. Whether or not the neighbors received notification at that time, he did not know. He stated that he had not gone back to that time to see what the notification requirements were back then. We are 23 years after the fact now and legislative decisions were presumed to be correct. The General Assembly has repeatedly validated zoning decisions that were made in prior years as the notice requirements have evolved over the years.

Mr. Rieley stated that he had several other questions that were not pertinent to their decisions tonight. He noted that he was asking for the historical record. In 1987, the conditional use permit became null and void because the warehouse use became a by-right use. He asked if there was any specific notification to the neighbors of that change that would have effectively eliminated this 200-foot buffer.

Mr. Kamptner stated that he has not gone back to look at that.

Mr. Rieley thanked Mr. Kamptner for the very helpful information. He asked staff to provide the staff report.

Ms. Amarante summarized the staff report. To begin she would explain what the differences are between the site plan that they first saw in February and today's site plan. The site plan of February had two additional waivers besides the critical slope waiver. The two waiver requests were for curvilinear parking and one-way circulation. Since that meeting the Zoning Ordinance has been amended so that the waivers for those two things that still appear on this site plan are not necessary. The site plan has been amended and the applicant is requesting a critical slope waiver again today. Another thing that has changed is that an anthropologist by the name of Lynn Wingfield has located some gravestones on the property, and the site plan currently shows the gravestones. The gravestones are located on the western portion of the property as shown on the site plan. Another change was that the last plan had shown 13 percent more grading in the buffer on the northern part of the property and that has been reduced significantly. Before the Commission today is a request for a critical slope waiver and a request to approve this site plan. The Site Review Committee has reviewed the site plan and the critical slope request and is recommending approval of both. Staff recommends approval of the critical slope waiver with no conditions and the site plan recommendation has several conditions attached to it.

Mr. Rieley asked if there were any questions for Ms. Amarante.

Ms. Hopper stated that she had one question for staff. She stated that she had spoke to a citizen this evening and they mentioned that they thought that there was a discrepancy between the total

acreage of critical slopes in this staff report versus the last one. She asked what that discrepancy might be and what it was about.

Ms. Amarante stated that through the meeting she would work on that question and get back with her.

Mr. Rieley asked if there were other questions for Ms. Amarante. He stated that he had one question that would probably be best addressed by Mr. Graham regarding the engineering assessment of the critical slope impact. The staff report says that the crossings were because of the critical slopes associated with the stream necessary to gain access, and therefore they were not looked at further and the analysis was of the other critical slopes on the property. He asked if he was stating that accurately

Mr. Graham stated that was correct. He pointed out that they do look at those as access to being necessary and they would not specifically make an extension because that would not be considered as part of the critical slopes that are calculated.

Mr. Rieley stated that the reason that he raised the issue was that it appeared to him that the grading of the primary roadway that comes into the property and across the critical slopes is much wider than necessary to gain access. Also, the slopes were tightened up on other parts of the property, but they were not tightened up at either of those two stream crossings. He stated that those two stream crossings contain most of the critical slopes, and in fact that there are more critical slopes in that area. He asked if the fact that there was an access issue related to that critical slope, from engineering's perspective, take them out of any critical determination as to how extensive that disturbance would be.

Mr. Graham stated that it does not take them out from their determination. He pointed out that where their input on this lies is whether within the critical slope waiver they will have to come in with a stream buffer mitigation plan. At that time they would look for them to show that they have minimized the impact to the stream buffer and that is where they will work with the applicant on resolving that.

Mr. Rieley stated that he wanted to make sure that he was correct in his perspective of where engineering was coming from. He pointed out that from his quick scaling of the access; the grading where it crosses the main stream is three times as wide as it needs to be. It is 60 feet wide and the road is only a little over 20 feet wide. He asked if Mr. Graham was saying that because it was an access that it was not something that engineering is concerned about

Mr. Graham stated that he would not say that it was something that they were not concerned about, but they do look at the access and try to determine if they think the disturbance is in proportion to what is required for that access. He pointed out that what the applicant has shown here is what he felt would be the maximum that would be required for making this crossing. As he said earlier, he thought that was something that they could still address and try to get it reduced when they submit their stream buffer mitigation plan.

Mr. Rieley stated that the reason that he was concerned about it now is that underneath that 60-foot wide disturbance that there was 40 feet of additional unnecessary grading of critical slopes under the road. He pointed out that they don't have any critique of that from engineering since it was discounted because there was an association with the access way.

Mr. Graham stated that was correct.

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

Ms. Amarante stated that she had an answer for Tracy's question. She stated that after the meeting in February the applicant's engineer had pointed out that she had been using the

numbers from the staff's engineer in totally those 4.4 acres of critical slopes. Then it was pointed out that the number was wrong, and it was actually the 3.78 acres.

Mr. Rieley asked if there were other questions.

Mr. Thomas asked staff if all of the conditions that are listed here are part of the compliance that the applicant has to do anyway.

Ms. Amarante stated yes, that the conditions are things that either staff is looking forward to getting with the final site plan or just like # 1 that was a warning that they have to get approval from the DEQ and things like that

Mr. Thomas asked if there is a way to have zero contamination on the property.

Ms. Amarante stated that she could not answer that question. She suggested that Mr. Graham might be able to answer that.

Mr. Graham asked Mr. Thomas if he understood his question that he was asking how you could get the risk to zero for contamination. He stated that the only way to get the risk to zero is to have nothing that could contaminate the property on the site. There is always a theoretical possibility that you would have some contamination.

Mr. Thomas asked if there was a mechanism that could be created to be able to get closer to zero.

Mr. Graham stated that he thought that they have done that pretty well in this case through the storm water management and the capturing of the run off. They have their first line of defense on the site and then whatever escapes then washes off or gets caught in the storm water basins and can easily be captured there. Actually, it is almost ideal in having it go into those spaces because it becomes very easy to control at that point.

Mr. Rieley stated that before he opened the public hearing, he would ask that everyone speaking would have a thoughtful exchange of ideas and try to speak to the matters before the Commission. He pointed out that each speaker would be allowed three minutes to use any way that they wanted to. The same would go for the applicant and that he could use his ten minutes at the beginning and the five minutes at the end for rebuttal. He stated that he wanted to make it clear from the beginning that the only thing that was before the Commission and the only thing over which they have any authority were the critical slope waivers and the preliminary site plan. He encouraged everyone to speak to the matters before the Commission. He asked if the applicant would like to address the Commission.

Mr. Richard Carter, attorney, stated that he represented the applicant. He stated that they were back tonight on the amended site plan. When they were here before one of the concerns that they heard from the Planning Commission was that there was too much disturbance of the critical slopes. He asked Ms. Amarante if she had the site plan with the red on it.

Ms. Amarante stated that she did.

Mr. Carter stated that the first page of the site plan showed in red what was on the first site plan as the critical slopes that would have been disturbed that no longer will be disturbed. What they have done is reduce the disturbance of the critical slopes by 13 percent. They have done that by narrowing the road and by tinkering some with the site that the office is on. They heard that and are not longer doing the critical slope disturbance in the stream buffer near the office. There were concerns about the visibility of the project. He asked that the Commission look at pages 9 and 10 of Attachment 1 and you can see the colored rendering that shows the screening that is already there. If you look at page 2 of the executive summary, it says that the applicant has

provided three section views, which was on page 9 and 10 of Attachment 1. The sections show how the existing tree cover will reduce the visual impact of the development. Most of the existing tree cover is deciduous during final site review and he noted that staff would make sure that the landscape and tree conservation plans adequately screen this development from view. They have amended the site plan based on hearing at least those things from you. He stated that last time it was asked how many acres of land they were talking about. He stated that they put the amount of land on the site plan, which was done in a three-part break down. There are 3.78 acres of total site that is in critical slopes, which was different from what was said before because before it was an approximation by the County staff. He pointed out that they have gone back and done it by the numbers of exactly what is there. Of those 3.78 acres there is 0.33 acres that is man-made, which is all on the shop area. When they disturb the man-made critical slope, that disturbance will make them closer at the end to the natural slope than it is now. Then .5 of an acre is disturbed for access. Since that is needed for reasonable access, it is exempted from the ordinance as the Engineer said. The representatives from Roudabush told him that the wide stream crossings are a result of the Engineering Department's preference for 3:1 slopes versus 2:1 slopes. He stated that the Engineer had previously stated what he was going to do when this comes up again. He asked that the Commission take a look at the executive's summary on page 2 for reference to that. That gets us down to 0.16 acres of natural critical slopes to be disturbed. The amended site plan has reduced the amount of the disturbance and has taken them out of the stream buffer near the office building. When they finish that entire math, then what they were talking about was .16 of an acre. He pointed out that .11 of an acre was on the shop side and .05 of an acre of it was on the office side, which was what had been significantly lowered by this amended site plan. He passed out handout # 1, which was the justification that stated that the Zoning Ordinance says that the Planning Commission may grant a waiver on a finding of any one of these. Then handout # 2 had the standards. He pointed out that they meet all three of them and # 1 was such a small amount of disturbance that a strict application does not forward any purposes of the Chapter. Number two, our plan preserves steep hillsides as much as possible and places buildings on the most suitable terrain. The buildings are located on the only places that they could be on that terrain. Because of the location of the streams, Section 4.2 would be unreasonably restrictive in using the property. As you know, the stream runs along the front of the property so you have to cross it to get in and then to get to the rest you have to cross another stream. It is an unusual piece of property in that respect and meets the requirements of number 3. He stated what he felt that this was really about was the use, which he had heard from the opponents last time. The use and those objections should be and are being made in another form. Just as the Chairman said, "he felt that this Commission should focus on the critical slope waivers." He stated that this plan meets or exceeds the critical slope waivers that have come before this Commission mostly on the consent agenda. There was even one tonight on the consent agenda. He stated that if the Commission looks at the revised site plan they would find that they have done the best that they could do. It is a site that is .16 of an acre that is going to be disturbed and they will meet all of the requirements of the site plan. He pointed out that he had representatives from Roudabush and Gale and Falconer Construction here tonight. He stated that he would not ask them to speak, but they were available for questions. He stated that he appreciated the Commission's attention.

Mr. Rieley asked if there were any questions for Mr. Carter. He stated that each person listed on the sign-up sheet would have three minutes. He noted that they would begin with Brian Wheeler.

Brian Wheeler, parent of a second grader at Murray Elementary, asked that the Commission retain the authority for final review of the site plan should it go forward. The concerns of the Ivy community about this project are very well documented. Our attorney, Frank Buck, has written you with his concerns, and these arguments are still valid today. Tonight, he would ask that the Planning Commission reject this request for a critical slope waiver on several grounds. First and foremost is that approximately 14 percent of the critical slopes have vanished from Faulconer's plans entirely. He stated that he was not referring to their proposed reduction in the critical slopes that they will disturb, but he was referring to their calculation as to the amount of critical slopes existing on the site. Staff's answer that they forgot to explain this change to the Commission is

not acceptable. At the February 2003 meeting they were told that the site had 4.4 acres of critical slopes and no where did the material say that this was an estimate. He pointed out that Attachment F, which was a letter from Roudabush, did not say anything about the critical slope estimate. In the materials at that meeting, Ms. Amarante stated 4.4 acres. However, tonight they are being told that the slopes are only 3.78 acres. That is an impressive 14 percent reduction in critical slope and nobody had to do anything! This is a very important issue under review this evening and this information has to be accurate. Attached to my comments are two slides that illustrate my point. He urged the Commission to reject the waiver request until this can be cleared up. He pointed out that they could not make a decision with inaccurate data. He stated that the clear-cutting for the storage yard would be a massive loss of aesthetic resources. This is a judgement call for the Planning Commission. Should you allow an applicant to maximum the development of this site by allowing disturbances at two stream crossings? The second stream crossing allows the creation of the heavy industrial center that this community fears and that is where the man-made critical slope will be leveled. After 16 years, doesn't the slope become critical again no matter who made it? He stated that he wanted to respond to a comment from the February 2003 hearing. It was observed by Faulconer that Agnor-Hurt Elementary was built near their site on Woodburn Road at approximately the same distance as Murray Elementary is from the Ivy Business Park. Let's be clear. Faulconer and Agnor-Hurt do not share the same road. Agnor-Hurt does not have a well near the Faulconer property, nor is it anywhere near the same elevation as the Faulconer site or Woodburn Road. Further, between Murray and the proposed Faulconer site is another school altogether, Millstone Preschool. (Mr. Wheeler's letter is attached for review.)

Tom Hutchinson, a resident of Ivy, spoke against the approval of the request. He stated that Mr. Thomas remarked on the question of whether or not the Faulconer area could be certified as being something that would not have a spill. If it does have a spill it would go directly into the headwaters of the Ivy Creek, which was a protected area. He presented a slide presentation in order to point out to the Commission the Ivy community and the area where Faulconer would clear-cut the property. He stated that the people of Ivy were here in mass tonight with great concern. He pointed out that in place of the beautiful forest and the old growth of trees they would have lots of heavy equipment. He showed a slide of the type of engine that would be taken out of a large earth moving system, which could collect up to three dump truck loads of material. He stated that Faulconer would service and store these large vehicles on this site. He stated that the County Zoning Administrator had ruled that this type of use was light industrial, which he felt was definitely a heavy industrial use. He stated that there would be a total loss of aesthetic value. He asked how much of this site was the Planning Commission willing to sacrifice to allow Faulconer to clean-cut and erect a corporate office building, an equipment machine shop, and a storage yard for earth moving equipment.

Ben Evans stated that he was in Miss Tolonen's second grade class at Virginia L. Murray School. He stated that he walks home from school most days. He presented a model of what he sees now as he walks home. He stated that it is pretty and he sees trees, flowers and a creek. If you let Faulconer cut down the trees and the hills, then this is what he would see on his way home from school. He presented the model. He stated that there would be no more beauty, but instead he would see trucks and buildings. He thanked the Commission for their help. He asked that the Commission think of him and his friends when they vote. (Ben Evans letter is attached.)

William Crowder, resident of 2980 Morgantown Road that is one-half mile from the proposed site, stated that he based his comments on the executive's summary. He stated that he found out from Mr. Kamptner tonight that this summary has errors in it. He stated that his comments were based on whether this plan could be resubmitted tonight with waivers, and he asked that they be mindful of that as he speaks. He felt that it was incumbent on the Planning Commission staff to submit documents that are correct so that the public could respond to them appropriately. He stated that he had two children that attend Murray Elementary School, which is essentially next door to this site. He stated that he had several concerns about Faulconer's proposed plan. He stated that if it was the intent of the Planning Commission that this amended site plan as

submitted request no waivers, then why are we here tonight reviewing a plan that requests waivers? Why are we here tonight at taxpayer expense reviewing a plan that goes against the Planning Commission's directive? On page two of the Executive Summary, the reviewer excuses the disturbance of the critical slopes by commenting, "the critical slopes on this part of the site comprise the sides of a dirt borrow area utilized during 1987 construction." The reviewer seems not to take in to account that in sixteen years this area has had more than ample opportunity to become a natural area with healthy growth and fauna. Thus, he disagrees strongly with the reviewer's later assertion that, "the natural areas of critical slopes being disturbed are only a small amount of total slopes on the site." On page three of the Executive Summary, the reviewer asserts that stream buffers will not be compromised as a result of the critical slope waiver. Yet in following paragraphs, the reviewer comments that erosion control measures and proposed vegetation on the slopes will need to be carefully considered and conditions as set forth for stream buffer mitigation, storm water management and environmental hazard control. Why are these conditions set forth if concern for stream buffers is nominal? It is a major concern of this community that this site plan is a threat to the safety of our very fragile water systems. Finally, the reviewer seems to dismiss concerns for loss of aesthetic resource by deferring to the Comprehensive Plan and to the Open Space Plan. Nowhere does the reviewer respond to the specific concerns of the community and this Planning Commission in rejecting this plan other than noting that Faulconer Construction asserts that the existing tree cover will reduce the visual impact of the development. He stated that his children's lives were much more important than guesses beliefs and appearances. He asked that the Planning Commission reject this plan as submitted. (Mr. Crowder's letter is attached.)

Dru Battista, of 687 Tilman Road, stated that although he wished Faulconer Construction Company continued success in Albemarle County, he did not believe that was justification for speedy approval of the site plan before you. He asked that the Commission deny the critical slope waiver until they were reassured how much acreage they were waiving. He stated that his greatest concern deals with the aesthetic and safety of the influx of heavy equipment into their neighborhood. He pointed out that his wife was a victim of a collision between a school bus and a cement mixer. Several persons were sent to the emergency room that day, which included his wife when she was nine years old. Her small nose was crushed. Several surgeries and many months of healing are still her memories here 22 years later. She bears the physical and emotional scars of that trauma. He stated that now they have a five-month old daughter and they plan to send her to Murray Elementary. When he considers that she could face a tragedy on Morgantown Road similar to her mother it sickens him. He asked the Planning Commission to take this opportunity to do what is right for the citizens of Albemarle County and vote for denial.

Pam Evans stated that she wanted to take the Commission on a tour of the visual impact that the approval of this critical slope waiver would have. She presented several slides. This is the heart of our community- where our schools are, where we hold our 5K race and our community picnic (except when hurricanes hit) and our route to the post office. If the critical slope waiver is allowed then all they will be able to see along Morgantown Road is buildings and trucks. The community members and Murray Elementary students who use the Murray nature trail now see trees, but would look out on the storage yard as well. The homes behind the site will have a full view of the storage, trucks, and buildings. This is not a site out in the middle of nowhere. It is completely surrounded by a community. As members of staff and this Commission have said, critical slope waivers can be turned down if they have a negative impact on the aesthetics of the community. There is no question that is the case here. She believed that the applicant was attempting to maximize the use of the site and force an inappropriate and dangerous facility into a small school community. She pointed out that there had been no fundamental change in the plans from the February meeting. She asked that the Commission deny the request for the safety, way of life and view of hundreds of families in Albemarle County. (Ms. Evans' letter is attached.)

Carolyn O'Neal, Manager of Peacock Hill Service Company, stated that she lived just a few miles from this site and her children attend Murray Elementary School. She pointed out that she would not be here except for her experience with the Ivy Landfill that was located just on the other side

of I-64 from Peacock Hill. For instance, just this year she had worked with the managers of the Ivy Landfill and they them come out to the nearest wells to the landfill and moved them into their well testing for contaminants from the landfill. The idea was that it would be an annual event, and now due to turnover at the landfill she has to renegotiate again. She voiced her concern that there would not be adequate monitoring of the water quality at the preschool and Murray Elementary. She pointed out that these tests were very expensive and was why she had gone to the landfill for the testing. Their annual testing use to be paid for by the State, but due to budget cuts the money was not available anymore for this testing. They have to pay for some of the tests which was why she had gone to the County to pay for the tests. Peacock Hill has the landfill on one side and Faulconer Construction on the other. They have been told by the County that they will not get County water in this area. She asked who was going to protect their water. She asked what the County was going to do if the Faulconer use contaminated their water. and who was going to pay for the testing and cleanup. The lawsuit with the landfill went on for years and they did not want to go through that again. She asked that the County prevent this future disaster by making the correct decision now.

Charlie Trachtra stated that this Board was the one Board that listened to him and he appreciated it. He voiced concern over the fact that there was no School Board members present when they were discussing a County school. He stated that he was not here to complain about Faulconer. He stated that that his complaint was about the County government and the way they have handled this from the beginning in their interpretation of Light Industrial, having proffers disappear,
looking for stream tributaries during a three-year drought, and so on. But most of all the way the County has acted towards their residents which has caused some severe open wounds. They are not treated as residents, but as subjects. He thanked the County for allowing us to enjoy the beauties of Albemarle so far. He thanked them for the safe drinking water that was not contaminated with oil and gasoline, so far. He thanked them for allowing our children to travel to school on roads where they will be safe and to have the schools located in areas where they will be safe, and again so far. He stated that he did not live in Ivy, but pointed out that he and other residents of Rio were in opposition to this request. He asked that the Commission deny this project tonight for the citizens. The applicant stated that the property was hard to work with. He suggested that the applicant look for another piece of property.

Claudia Marlene, resident of Peacock Hill, stated that her child was in the first grade at Murray Elementary School. She thanked everyone for speaking on the technical issues on why this use should not be located on this property. She pointed out that she attended the February meeting of the Commission. She pointed out that at the February meeting, she turned to her neighbor at the meeting and asked how she or anybody could have missed the hearing on the technical issues involving the use. She stated that her neighbor told her that the meeting was held on September 11, 2002 and then she knew why she had missed it. She pointed out that most people on September 11th would not have attended the meeting because they were looking up at the sky being thankful they were not in New York, Pennsylvania or the Pentagon. She asked that the Commission deny the waiver.

Vincent Day, owner of two environmental companies in Charlottesville, stated that he was a hydrogeologist with 17 years of experience in hydrogeology, soil science and environmental consulting. He stated the Ivy Community Association hired him to review the site plan and offer his impressions. He pointed out that there were three things that stood out to him. On sheet 1 of 1 of the site plan states under water and sewer that the maximum amount of water to be withdrawn per day would be 400 gallons of water, which would translate to approximately 9,200 gallons per day. He questioned how much water the applicant planned on using. This has implications on both the ground water usage and where the drain field waste will ultimately flow. If the Groundwater Ordinance gets adopted, if you use 4,500 gallons per day you would be required to do geological testing so that you would not affect your neighbors. He questioned why the applicant would use such a large amount of water. He asked where the other water would go or if this amount was actually an error. The proposed drain fields are very interesting. There is

one drain field located at the shop and another one at the office. He questioned if a septic disposal system realistic. He suggested that they prove that is the case prior to your approval. If a drain field could not be put in they would have to apply for a discharge permit. However if adequate sewer is not available, the applicant would have no other choice but to apply for a discharge permit in the Ivy Creek. He stated that in regards to the zero contamination, he would suggest that if someone was willing to guarantee it, then he would ask them to be personally responsible for it. It is not a question of if; it was a question of when because accidents just happen.

Deborah Stockton, resident of Ivy, stated that earlier this year Faulconer brought before the Planning Commission a site plan that needed three waivers. The Commission denied the waivers and granted the applicant a deferral to allow him to revise the site plan that would not require waivers. The current site plan is not substantially different from the site plan from February since it still requires the critical slope waiver. All the reasons for the Commission denying the original plan have not changed. She stated that the zoning history has not changed. The staff report inaccurately describes the zoning history. The property still has a 200-foot buffer. She refreshed the Commission's memory by going over the zoning history of the property. She pointed out that only partial rezonings over the years had been approved that left the 200-foot buffer. She pointed out that when an abutting landowner learned of this 200-foot buffer and they went to the County and found the records that proof it. When Faulconer first learned of the 200-foot buffer he emailed the County on July 24, 2000 and made an inquiry. Zoning staff responded to the inquiry stating that the 200-foot buffer had been designated as LI in 1980 under the general rezoning. In fact what happened was the Zoning staff just simply colored it LI to make it all LI. No authority under the law exists to allow staff to do this. Therefore, the fact that nobody caught this in 1980 is irrelevant and in fact the State Code stipulates that. On December 31, 2002 she submitted a written request to the Zoning Department requesting Board of Supervisors minutes, legal ads or any type of evidence that would support her ruling. The Zoning Administrator replied that the records sought in our December 31, 2002 request do not exist because the property therein was rezoned from RA to LI. It has been nine months since she requested that information and the County has not provided one shred of evidence of their position of any Board of Supervisors minutes, ads, etc. She pointed out that the truth was not going to go away, nor was the 200-foot buffer going to go away.

Shawn Paul Evans, stated that he was an abutting property owner and had a child in Murray Elementary School. He believed that denying this waiver and denying the plan is in the best interest of the County and the Ivy community. He stated that there would be a loss of aesthetic resource from the critical slope stream buffers and the stream crossings. He stated that he submitted an attachment to his letter of a copy of a site visit report done by the Army Corps of Engineers and the Virginia Department of Environmental Quality. According to the site visit report there is a stream adjacent to his property, part of which has been classified as an intermittent stream, and therefore requiring a stream buffer that is not correctly labeled on the preliminary site plan submitted by Faulconer. Faulconer as their mitigation plan for the site is defining part of this area and it is my understanding that areas with stream buffers may not be used as part of the mitigation plan. Again, due to Faulconer's attempt to maximize the use on this site they did not have adequate space for disturbance of critical slopes and an appropriate mitigation plan. Also stated in the site visit report is that Faulconer is required to get a permit from the COE and/or the DEQ for the stream crossings listed in their plan. He asked if that has done and if the Planning Commission should know that Faulconer has permission to cross the streams and disturb the critical slopes before they grant the waiver. He pointed out that the issue of explosive storage has not been clearly answered. Faulconer claims and with the County's permission, that they will temporarily store explosives for no more than four hours on any one day. However, in order to do this they must have the appropriate magazine and buffer distance for the quantity and type of explosives being stored regardless of the amount of time they are stored. According to Sabrina Steele, an inspector for the Federal Bureau of Alcohol, Tobacco and Firearms, the federal agency responsible for the storage and use of explosives, there is no time limit for storage. If the explosives are on the site for even one second they must meet all

federal guidelines. This magazine/bunker and its requisite buffer will have a severe impact on Faulconer's site. Shouldn't such an impact be part of the preliminary site plan? He asked that staff clarify Faulconer's intentions. If the plan is approved please put a contingency that no explosives will be stored on the site. (See the attached letter with attachments from Shawn Paul Evans.)

Gary Hatter stated that he was present to voice strong opposition to this proposal. He stated that his son and daughter attend Murray Elementary School. He asked that the Commission consider the safety of the children first and deny the request.

Andrey I. Nikiforov, Ph.D., Toxicologist, resident of Peacock Hill, stated that his son goes to Murray Elementary School. He pointed out that they moved to this area from California where there were not trees. He stated that the community could be destroyed one waiver at a time. He noted that Morgantown Road does not meet the site distance standards for access. Therefore, they would be setting us up for a tragedy on Morgantown Road to allow heavy equipment and big trucks on it. He asked that they consider the safety of the children from the dynamite storage, the diesel exhaust and the water quality issues and deny the request. He handed out information concerning the health effects of the diesel exhaust from the trucks and industrial equipment and asked the Commission to consider the serious consequences. To grant the request would be opening up the door to a lot of liability and a lot of risk. He asked that the Commission deny the request. (See the attached information submitted by Andrey I. Nikiforov.)

Jim Willis stated that he and his wife own the property to the east of the entrance of the subject property and his wife owns the preschool. He stated that there were about 100 children in the preschool that were 3 or 4 years old. They travel twice a day to school on Morgantown Road, which is not a wide road. He asked that the Commission please not to grant the waivers because of the air, water and aesthetics. He pointed out that due to the lack of electricity there were many people absent tonight. He stated that this was not an appropriate site for this type of use.

Reverend Baserville, resident of Ivy Road, voiced concern about the heavy traffic and the water pollution. She stated that feared for the safety of her grandchildren when the heavy equipment is driven down Morgantown Road. She stated that recently she had been run off Morgantown Road into the ditch. She stated that it would be tough and tragic if it had been one of her grandchildren. She asked the Commission to take into consideration if this was their own neighborhood and their own children if they would put them in the dangerous situation of having that heavy equipment on the road.

Lyle Solla-Yates, recent graduate of the Urban Planning Department pointed out that he spoke about planning ethics at the last meeting. He stated that the ethical guidelines would not allow this project to be approved. He pointed out that the long term effect of this project risks the children's lives and challenges what fundamentally makes Ivy such a great place to live. He asked why the County wanted an industrial use in the Rural Areas when it was not harmonious with the neighboring properties.

James Yates asked that the Commission do their job and put the people's interest ahead of the corporation and deny the request for the waiver and site plan.

Phil Marks asked that the Commission deny the request for the same waiver that the applicant had in February. He disagreed with Mr. Kamptner's earlier remarks since this was the same request and they should not be having this hearing. He asked that they throw the request in the garbage where it belongs.

Carry Coulson stated that she had two children with one at the preschool and the other at Murray Elementary. She stated that Faulconer's site would affect the aesthetics of the area and definitely affect the view from her house. She asked that the Commission deny the critical slope

waiver. In addition, she asked that the Commission take into consideration the safety of the children on Morgantown Road.

Emily Blinkgo, an undergraduate student, stated that this project would definitely affect the aesthetics of this area and negatively affect the habitat. The question was how they would keep track of the potential water problems, the waste and runoff risks and the safety issues involving large trucks on the road. She asked that the Commission take into consideration the children, the families and the schools and deny the request. She stated that in her opinion the overall damage greatly outweighs the need for a storage area for big trucks and equipment.

Tom Goodrich, resident of Ivy, stated that the Ivy Preliminary Site Plan before you tonight does not conform to the goals and objectives of the Comprehensive Plan due to the risk of the health and safety of the residents. He pointed out that part of the site plan involves trucks moving along Morgantown Road, which will cause some serious traffic considerations. He stated that he had experience as a rescue squad member, a nurse and a retired policeman. He pointed out that he had seen many instances of accidents when heavy vehicles were driven on small rural roads. He stated that he had seen several accidents on this road. Basically last time both of the vehicles just would not fit on the road. He asked the Commission to deny the request for these safety issues.

Kathy Butler, resident in this area, stated that she was curious how two of the waivers were eliminated by the County changing the ordinance. She voiced concerns about the burial stones and retaining walls and the discrepancy in the acreage. She asked that the Commission deny the request due to the loss of aesthetic resources and the excessive runoff. She questioned whether the purpose of the Zoning Ordinance was for the citizens or businesses. She asked that the Commission consider the safety on Morgantown Road.

Adrian Greer, a resident of Ivy for 24 years, asked the Commission to consider the major risks to the citizens of Ivy involving the groundwater, safety of driving on Morgantown Road and the impact of the runoff from the critical slopes. He voiced concern about the difference in light industrial uses versus heavy industrial uses since he felt that this was definitely a heavy use. He asked that the Commission deny the request.

Kathryn Russell stated that she was not a member of the Ivy area, but lived in the North Garden community where they have had gas contamination. She stated that there has been dome dumping in the streams, which had not been fixed. She pointed out that she was not happy about the mitigation plans particularly in how long it took to get someone to address the issue. She voiced concern over the possibility of Ivy's groundwater being contaminated since she had personally seen it in her community. She suggested that instead of Faulconer using the site as a corporate headquarters with maintenance of the heavy equipment that perhaps they could use it for offices as a light industrial use. She stated that this use was definitely heavy industrial.

Jeff Werner, Piedmont Environmental Council, stated that he was not opposing this application. He supported the Ivy community and asked the Commission to live up to their reputation and hold the application to the hilt.

Kim Houchins stated that she lived directly across the tracks where there are some sites that have difficulty with their sewage and septic due to the shallow rock. The sewage disposal appears to be limited. She voiced concern with the sewage disposal having a potential environmental impact on the surface and ground water. She stated that she was worried that if they go in and they have well water that they will have to start testing their water. She stated that she had a fourteen year old son, which made her worried about this. She stated that if they came that she would be really heart broken. She stated that Ivy was just not the place for Faulconer to be.

Greg Faust stated that he lived about one-half a mile from the proposed Faulconer site. At the February meeting he tried to raise two issues before this body. The first issue was common sense and the other was how many of the Commissioners had been on the site and looked at it from Morgantown Road. In these meetings there are always very strict guidelines as to what the decisions are that are trying to be made and he understand that as a matter of law. However, he would ask that the County apply common sense in this process. He noted that two of the previous speakers have spoken about the unappealing role that the County has taken to date on this particular issue. Regrettably he felt obligated to largely agree with them with one notable exception which was the finding of this body at the February meeting. You might have justified what you did by saying o.k. there is some specific rule on some specific page of some specific book. But he would like to believe that many of you that voted against the proposal applied an amount of common sense to the process, and he would ask that you do that again this evening. As to the issue of how many of the Commissioners have visited the site on Morgantown Road, he would hope that the Commissioners would know first hand what happens when big trucks like that try to pull out onto Route 250. He felt that anyone that has visited the site would not vote in favor of this request.

Robin Ceiley stated that she has lived in this area for a year and had come from the Washington, D.C. area. She pointed out that she knew of several people who were against this that could not be here. She stated that she had a child in Millstone Preschool and another at Murray Elementary School and therefore drove her minivan on Morgantown Road two or three times a day. When she drives her minivan on the road there are many times that she has to completely pull over on the side of the road when passing a school bus. Therefore if she has trouble passing a school bus, then she would hate to think what anything larger was going to do on that road. She asked that the Commission consider the issues of safety of the environment, the water and the explosives. She asked that they use their common sense because common sense says that this is just not going to work.

Bessie Maupin Jackson, resident of 940 Drybridge Road, stated that she grew up in this area. She stated that it seems kind of funny that there was an article in the newspaper last week that says Ivy a magic moment in real estate. There is a certain mystic about Ivy. People have always wanted to live there. It says much of the natural beauty remains in Ivy because of the very restrictive growth philosophy of the Albemarle County School Board and Supervisors. She pointed out that her uncle has been living in Ivy for 88 years. He gets calls every week from realtors asking whether or not they can buy his property. His property is not for sale, but what is going to happen when Faulconer comes to town. Who is going to be interested in living in Ivy then? She stated that the only people who will want to live there would be the ones who know the history of Ivy and have roots there.

Mr. Rieley asked if there were any other speakers. There being none, he asked Mr. Carter if he would like to speak.

Richard Carter stated that there were two things that were said that need to be cleared up. In regards to the acreage, his understand was that when the staff report was done last time the then engineer called Roudabush and asked if they had the calculations on the acreage of the critical slopes. Roudabush's people said no. That engineer determined that it was 4.4 or whatever was in there. After the hearing in February he instructed Roudabush's people to find out exactly how much acreage there was because that was one of the questions that were asked. How much of the land was in critical slopes and how much of it was man-made and how much of it was crossing the stream. He noted that was what he knew about the differences in the acreage. As far as the comment on the zoning notice, he commented that he had a client that was in a similar situation when he was rezoned in the 1980 zoning and did not know about it. They tried to get it tossed out and they were told and convinced that on a comprehensive rezoning each landowner does not get a personal notice. There is some type of notice through the newspaper or something like that when it is that type of zoning that they can do that. He stated that he could not refute all of the what ifs, but all he could say is that they were given conditions to go by. The site

plan listed 13 conditions and they were required to obtain DEQ and stream buffer permits and so on and so forth, and that was what they were going to do. It was hard to sit here and be called dishonest and things like that, but he truly believed that people can disagree without being disagreeable. He stated that they were not disagreeable specifically with these people. He stated that they were good people and he understood where they were coming from. He stated that they were coming from that they had a piece of property that was zoned Light Industrial. They did not rezone it or zone it, but they bought it and they want to use it. They are asking for critical slope waivers on .16 of an acre, which what it all boils down to. He felt that if they look at the developments and the things that have been done in the County and look at our plan that it fits within the scope of what this Commission and Board of Supervisors have done. He asked the Commission to decide in their favor.

Ms. Hopper stated that regarding the dynamite storage, there was a citizen who testified and spoke about that. He asked if he was familiar about the regulations regarding dynamite storage.

Mr. Carter stated that they comply with every State and Federal regulation as far as dynamite storage. He pointed out that they should notice on the site plan that there is a note that there would be no explosive storage in this area for any longer than four hours at one time. That is where that it might be delivered, get it on the truck and get it out of there. They comply with all of those rules and regulations. He asked to reply to the gentleman who quoted Mr. Sanford regarding the truck with explosives being parked at the restaurant. Those trucks are such that when they are at a restaurant they are in compliance. He stated that they abide by all of that. Quite frankly they got out of the explosive business. They don't want them, but sometimes they have to have them for a few hours, but that is it.

Mr. Thomas asked what other parts of Albemarle County have Light Industrial zoning at this time.

Mr. Carter stated that there were some Light Industrial pockets throughout the County. Since the last meeting they have looked for other land. He noted that they could not find anything that they would not have to request a rezoning on. He stated that if they went in and said that they needed some Light Industrial zoning because they could not do what they wanted in Ivy, then the price immediately doubles. It is not materially acceptable to do that. They thought when they bought this property that it was in a business park and Dettor, Edwards and Morris had trucks that went in and out all day. As you come in on the left and go up the hill, there is a company up there that had trucks. There are deliveries of UPS everyday. They thought that this was a good site and it was in the Ivy Business Park and it was zoned what they needed. Therefore, they bought the property in good faith. They knew that they were going to have to get the critical slope waivers. He stated that he had been doing this for 32 years and he could not count the number of critical slope waivers that he had gotten, which were all consent agenda items. He stated that this site was not that bad of a site, which was what they were here on tonight. Regarding the use, they have been to Court and are still in Court. These people have been telling me that this is always going to always be in court. He noted that was all right, but that there was no other property that they could find that was reasonable that they could get.

Mr. Rieley stated that there were other questions raised that he thought that Mr. Graham could answer. He pointed out that Mr. Evans raised the issue of the Army Corps permits for stream crossings, and asked if he could fill them in on how extensive that is.

Mr. Graham stated that they have had their staff out there and they looked at it last year, which was a very dry year, and they have been out again. They have heard that the Corps has been out there, but staff has not been out with them. Staff has no knowledge of what their interpretation is on this. If there is a permit required staff will make sure that they get it before approving the stream buffer mitigation plan. He noted that his understanding was if there was a permit needed that it would fall under a category, which is known as a nation-wide permit, which was essentially a permit for that class of activity. It is not an individual permit to look at the individual's circumstances. A crossing of a stream is considered a use provided that you meet

certain pre-determined conditions that are set for those nation-wide permits, and that is what he understands would apply in this case.

Mr. Rieley stated that there was another question about the extent of the perennial stream and Mr. Hirschman talked to this issue in February when they were here. He asked if he was satisfied that the limitations of the perennial stream are correctly determined.

Mr. Graham stated that he was satisfied because he trusts Mr. Hirschman's judgement on these types of issues better than just about anybody in the state.

Mr. Thomas stated that to get back to the contamination, he asked if there was any mechanism for the monitoring. He noted that one of the speakers asked about monitoring the water afterwards.

Mr. Graham stated that he was hesitating for a second because he did not know if there was a provision in the Water Protection Ordinance for us to require that. He stated that there was one point that he would like to add which was that there is something called a VPDS permit or a Virginia Pollutant Discharge Elimination System Permit. In an industrial activity such as this, it is typically required to have this permit. That is a DEQ permit for that type of activity. Once again, that is a general permit sort of like the nation-wide permit with the Corps of Engineers. For this type of use they have pre-established permit conditions, which would include such things as having a steady pollution prevention plan.

Mr. Thomas stated that the subject came up regarding the infrastructure of water and sewer. He asked if there was water in that area.

Mr. Graham stated that there was no municipal water supply immediately adjacent or near this property. There is water in Ivy as you already know, but it is at some distance from this site. There is no sanitary sewage in this area.

Mr. Rieley closed the public comment to bring the matter back before the Commission for action. He stated that he would raise a couple of issues. First of all, he wanted to thank everyone for a positive discourse in conversation that one hopes for in these meetings. He stated that the most recent plan has made some adjustments in the impact on the critical slopes and the area of aesthetic resources. He commended the applicant's efforts in that regard. There are two areas in which he had some concern about staff's analysis of the impact of critical slope disturbance on the aesthetic resource. The first is the emphasis in the staff report on the open space and the composite maps in the Comprehensive Plan in making their judgements. He understands that, but thinks that there was nothing in the ordinance that limits aesthetic resources to those so designated on those Comprehensive Plan maps. He felt that they should be consulted, but that they should not be used to dismiss the aesthetic resources that are not mapped. He stated that he did not think that was done in this case, but there certainly was a lot of emphasis placed on the mapping of those resources and whether or not they were included in the Comprehensive Plan. It is far too general a document to be utilized in this way. In fact they admonish often not to utilize the Comprehensive Plan in any more of a general guideline way. Secondly, of the critical slopes that are associated with both the entrance drive and the drive that connects the two pieces of this parcel that he asked Mr. Graham about earlier. He felt that this was a good argument when minimum grading is demonstrated to be access to the site. But the grading here is really much more extensive than necessary for our simple access. It appears to be at least 2 ½ times wider than it needs to be to provide access. This is in the part of the site that is the most visible and has the most impact on the neighborhood. There has been an awful lot of talk about the amount of acreage. He frankly believes the figures that the applicant has given us. He noted that they were a reputable group of people and he knew the individuals as well as the firm. He stated that he believed their figures. He also thought that .16 of an acre can also be referred to as 7,000 square feet and it sounds like a lot more. Seven thousand square feet is not insignificant. He did not think that ultimately that the total number of square feet or hundreds of

an acre or the exact percentage between the last application and this one are at the heart of the issue. The heart of the issue is what is the impact on historic resources as a result of those critical slopes or disturbances. He stated that he could not support a critical slope plan.

Ms. Hopper agreed with Mr. Rieley's comments, but also wanted to comment on the stream buffers, which he had already commented on. She stated that definitely these critical slopes do impact the stream buffers and the stream zones aesthetic resource. She agreed with his comment about just because an aesthetic resource was not listed on the open resource map, that it does not mean that it is not an aesthetic resource just because it has not been catalogued yet. The ordinance does not require that. She pointed out that every Planning Commissioner sitting here tonight has been on the site. She stated that again everyone was to be commended for the most part for being able to discuss your different viewpoints clearly, eloquently and without being attaching to other people. Also, the applicant has worked diligently to find other sites. She pointed out that she had attended one meeting where that was discussed at length after the Commission's last public hearing meeting. Also, staff has done an excellent job and Mr. Kamptner has done a superior job analyzing this legally and kind of ferreting out the different technical issues. There are a couple of other issues. While sometimes it may seem that laws lack common sense at the same time one of the reasons that you have laws is because it is a pre-commitment to a certain type of common sense. A lot of times the majority's common sense ends up treating certain minorities unfairly or having other negative consequences. Therefore, she did not think that argument works. In this situation by following the law there are reasons to turn down these critical slope waivers and that was what she was going to vote to do tonight. She felt that there are aesthetic resources compromised.

Mr. Thomas stated getting back to the Light Industrial zoning; he knew that the applicant has gone all over Albemarle County looking for the right piece of property to put his business. He pointed out that property has been zoned Light Industry for 23 years. He appreciated all of the speakers tonight, but did not know how many of them had even been there 23 years ago when it was zoned that way. He stated that he did not think that the applicant was a criminal and he thought that they have done a very good job at proposing this application to use this piece of property. He noted that he found himself in a middle of a quandary with the residents and the applicant because he wanted to respect everybody's property rights.

Mr. Craddock stated that he lived in Milton and they have a similar situation with Luck Stone. There are a lot of lowboy trucks, dump trucks and heavy equipment being moved. About ten to twelve years ago they were able to persuade Luck Stone not to bring their trucks across the Rivanna River to do overfill and dumping in our area. That would have taken place just past Stone Robin Elementary School. Luck Stone had been there for many years previous to the school so they had every right to do what they wanted to do. Our house had also been there about 100 years before Luck Stone was even thought of so they also thought that they had squatter's rights. Like Mr. Thomas, he has been reading and thinking about this on both sides of the issue. On a personal basis he would find it hard to want to live next door to a construction site. He pointed out that he has been out to Woodburn Road and he had seen and been to the one that pictures were used as an example out on Route 20. Again, personally he would not want to live next to it. But then they get the basis of the legal definitions and interpretations and their approval seems like it spins on the critical slopes. As Mr. Carter rightly pointed out, critical slopes are fairly routine approvals for this board. So that is where he stands right now.

Ms. Hopper stated that in regards to Mr. Thomas' comments, she wanted to make a comment. She stated that the zoning of Light Industrial in Ivy at this point is stale zoning because even though 23 years ago it was zoned that way, since that time our Comprehensive Plan has changed.

Mr. Thomas asked if Music Today moved out what could apply to go in there as Light Industrial zoning.

Mr. Rieley stated that the zoning runs with the land.

Mr. Thomas stated that stale zoning did not mean that much to him if it was already zoned Light Industry. He stated that he did not think that held much water to call it stale zoning. He stated that the zoning was correct because it was done 23 years ago, but he was not saying that he approved of the critical slopes because that was why he voted against them the first time.

Mr. Edgerton stated that he voted against all of the waivers in February. He stated that he sincerely welcomed the applicant's request for a deferral in February because there were a lot of issues presented very eloquently and some of it uncalled for. Those issues had not been presented in a staff report and he felt ill equipped at that time to make any rational judgement. After that meeting he took about 30 pages of notes and diligently tried to address each of the critical issues that had been brought up with the help of staff, other members of the Commission and some of the local residents who responded to his inquiries. He pointed out that he shared his questions with everybody. He stated that he voted against those waivers so that he could get that information because he felt that was the only responsible way to do it. He stated that he had been on the site several times and realized that the concerns are real here. He pointed out that he was also struggling with the real issue that the owner of this property bought it in good faith and he has a right that cannot be taken away by a judgement rendered by this group unless there was some legal justification for that. He stated that he did not believe that there was a legal justification for that. Therefore, in the end because of the legal issues he was going to have to support this application.

Mr. Rieley asked if there were any other thoughts on this.

Mr. Edgerton moved for approval of this application with the conditions as presented by staff.

Mr. Thomas seconded the motion.

Mr. Rieley stated that they have a motion for approval with a second. He asked if there was any discussion. He reminded the Commissioners that they also have the option to include conditions with waivers if they think they are relevant.

Mr. Craddock stated that one of those conditions that he would like to see is the final site plan come back if it was voted for approval.

Mr. Rieley stated that the Commission could certainly call it back.

Mr. Thomas asked if they could ask for more of an expansion for a buffer between the residents and the subject property.

Mr. Rieley suggested that they ask Mr. Kamptner because he felt that they would need to have a pretty strong nexus between the critical slope waivers.

Mr. Rieley stated that he believed Mr. Thomas was asking for the reinstatement of the 200-foot buffer.

Mr. Kamptner stated that they certainly could, but they need to make a nexus between the buffer requirements and the purpose of the critical slopes waiver. So if you look at the five criteria in Section 4.2 and you can draw a connection between the buffer and one of those criteria, then that would be appropriate. He stated that for clarification that the motion should pertain only to the critical slope waiver.

Mr. Rieley stated that was correct.

Mr. Cilimberg stated that just because last time things got so mixed up in the recording of the minutes, the motion he heard was for approval of the site plan and he thought that the first motion should be for the critical slope waiver itself.

Mr. Rieley stated that he misunderstood because they definitely needed to take care of the critical slope waiver first.

Mr. Edgerton stated that his motion was for the approval of the request for the waiver on the critical slopes.

Mr. Rieley stated that it was good to get technical, but that they were fine.

Mr. Thomas stated that he seconded that. He pointed out that the agenda says that it was for the preliminary site plan and critical slopes waiver.

Mr. Rieley stated that was correct and that the Commission would have to take two separate motions and actions.

Mr. Rieley asked if there was a resolution on the addition of a buffer.

Ms. Hopper agreed that the condition should be added.

Mr. Thomas asked if there was a way to add another condition that has nothing to do with neither the critical slopes nor the preliminary site plan.

Mr. Kamptner asked the Commissioners, with the help of staff and Engineering, to make a connection between the buffer and the waiver. The buffer is intended to address one of these factors. If it was to provide an adequate area to prevent excessive storm water runoff, to provide a barrier to allow additional protective measures to prevent siltation of natural or man-made bodies of water, or to protect a loss of the aesthetic resource associated with the disturbed area. He suggested that they rely on Engineering or the Planners to help them out on that.

Mr. Graham stated that he did not know how much he could add on that because he thought Mr. Rieley was joking when he was talking about the 200-foot buffer. He noted that he was unsure about what size buffer. If they talking about something on the minimal side of 25 feet, then in his opinion the only one that would really have any meaningful contribution would be the loss of aesthetic resource. They were not going to make a significant difference in the storm water or the siltation with a buffer of that size. If you were talking about a 200-foot buffer, then yes it would.

Mr. Thomas stated that he would just like to protect the residents a little bit more.

Mr. Graham stated that at that point the Commission was really limiting themselves, in his opinion, to the loss of aesthetic resource.

Mr. Rieley asked if he was suggesting instead of the 30-foot nondisturbed buffer and parking setback that you are suggesting a 55- or 60-foot buffer.

Mr. Graham stated that if they were not going to give a specific footage, then he would like to see some specificity in what the Commission was asking staff to try to accomplish when they review the final site plan.

Mr. Rieley stated that they need to be specific.

Mr. Thomas suggested using a 50-foot buffer.

Ms. Hopper asked Mr. Graham how significant would the buffer have to be in nexus with the other factors other than aesthetic resource.

Mr. Graham stated that this was a real tough one to say off the top of his head. He felt if they were talking about making a significant difference with erosion and sediment control or storm water, then you really are talking about a very significant buffer of 100 to 200 feet or something like that. There would be some incremental improvement as the buffer increases, but to really have some significance to that, you are talking about a fairly major buffer there.

Mr. Thomas asked to withdraw his suggestion and leave it like it was.

Mr. Rieley stated that he could, but he thought that he was moving in the right direction.

Mr. Thomas stated that he was not thinking about 200 feet.

Mr. Edgerton asked if the buffer would have to be tied to the critical slope that is being disturbed.

Mr. Graham deferred the question to Mr. Kamptner.

Mr. Kamptner stated that the condition you are imposing, as part of the critical slope waiver, needs to be tied to purposes that are intended to be addressed.

Mr. Rieley asked if the 50- to 60-foot buffer that Mr. Thomas was suggesting would be in compensation for the loss of critical resources due to the disturbance of critical slopes. He asked if that would be a sufficient nexus.

Mr. Kamptner stated that he thought that was sufficient.

Mr. Thomas made an amendment to his motion to add the condition that a 50-foot undisturbed buffer would be required for compensation for the loss of aesthetic resources due to the disturbance of critical slopes.

Mr. Rieley stated that in turn would have a major impact on the amount of critical slopes that are disturbed at the base of the road and the slopes. He asked Mr. Thomas if he would consider accepting that as a friendly amendment. He stated that he was not going to vote for this motion. He asked if the Commissioners would consider the point that he raised in the entrance road being graded as it crosses the stream, which seems to be at a 60 foot width even though the paved width is only about 20 feet. He asked for a condition that the grading be limited to only that which is necessary, with the advice of the County Engineer, to gain access to the site and only for the width of the road that is actually shown.

Mr. Graham stated that they could have those side slopes made steeper as you mentioned at 1 ½ to 1, which would be the absolute maximum. The applicant would also need a geo-technical engineer.

Mr. Rieley stated that he was not as concerned about the 3 to 1 slopes going to 2 to 1, but he was concerned about the flat area on top before it even starts to slope off.

Mr. Graham stated that they could move it down. He noted that considering that it is an access way that they could look at doing what they can.

Mr. Rieley stated it should have normal shoulders.

Mr. Graham stated that the other thing that they would look at doing then was to try to push the road down as far as they could.

Mr. Rieley stated that in turn would have a major impact on the amount of critical slopes that are disturbed at the base of the road and the slopes. He asked Mr. Thomas if he would consider accepting that as a friendly amendment.

Mr. Thomas stated that the elevation was higher at the entrance road off of Morgantown Road than where the road ends up on the project. He asked if that would eliminate not having to go so deep into the hill.

Mr. Rieley stated no, that his concern was that the road is 20 feet in width, but the flat area before it starts to drop off was 60 feet wide. That causes a great deal more disturbance of critical slopes than otherwise would be the case.

Mr. Thomas agreed that it was a good idea to add that condition.

Mr. Rieley stated that the same concern with the steepness for the side slopes is that it looks that the connector piece between the northern and southern portions of this have side slopes that are more like 5 to 1. He suggested that it be changed to 2 ½ or 3 to 1. He asked if there were other conditions that the Commissioners feel would improve this application.

Ms. Hopper stated that she had a question for Mr. Kamptner. She stated that Mr. Thomas talked earlier about zero contamination and Mr. Graham said that the only way to ensure zero contamination was for this use not to be happening at this site. She asked if it was possible to have a condition tied to septic effluent and excessive storm water runoff where the applicant would commit by bonding some kind of remediation or correction if there is contamination caused by a leak.

Mr. Kamptner stated that he would have to defer that question to Mr. Graham. He stated that in part there might be a connection with the excessive storm water runoff, but he was not sure about a zero contamination standard imposed as a condition here.

Ms. Hopper stated that she was not suggesting that since she was interested in the bonding issue.

Mr. Kamptner stated that with the septic effluent, his understanding was that the septic drainfield would be located in a place wheret there was no connection between the septic effluent and the disturbance of the critical slopes.

Mr. Graham stated that he was a little concerned if they tried to tie the contamination to the disturbance of the critical slope. The contamination was associated with the use, which is really independent of this disturbance.

Mr. Kamptner stated that to clarify contamination you are speaking about activities.

Mr. Graham pointed out that they were speaking about petroleum and things of that nature that are really not a direct result of the critical slope but of the activity itself.

Ms. Hopper asked if there was another way in the storm water management plan that could be addressed like some sort of bonding if there was damage.

Mr. Graham stated that he was really on thin ice here because this is going to be permitted as an industrial activity under the VPDS permit that he mentioned before. The State has the authority with DEQ for those types of things and not the County. To be honest, he was just not sure how much they could require or how much they would be stepping on the State's toes at that point.

Ms. Hopper asked if that was something that could be explored a little more to be reported to the Board about.

Mr. Rieley stated that they had a motion to approve the critical slope waiver with the following conditions:

1. The 30-foot buffer shall be increased to a 50-foot buffer.
2. The grading for the roadway to be adjusted up to the minimum amount necessary to gain access to the site for the actual road width shown within normal engineering standards.
3. The final site plan comes back to the Commission for review.

Mr. Cilimberg stated that condition would be more appropriate as a condition on the site plan action.

Mr. Rieley stated that was fine.

Mr. Cilimberg stated that would be their next action.

Mr. Kamptner stated that the motion maker and the seconder should make some friendly amendments to add those two additional conditions.

Mr. Edgerton stated that he would like to elaborate a little more on the buffer going from 30 to 50 feet to tie it to the aesthetic resources and to link it to the critical slopes.

Mr. Rieley stated that the increased amount of buffer would provide mitigation for the loss of aesthetic resources and to link it to the critical slopes.

Mr. Edgerton agreed to that.

Mr. Cilimberg stated that the Commission needed to be aware that the additional buffer would likely change the site plan that you have before you in the final version. It is going to constrict somewhat what the site development will be and they will change some things including pushing things towards the stream buffer or into the stream buffer potentially. They don't know that, but Ms. Amarante says that could be a result.

Mr. Kamptner stated that the other thing that would be helpful to articulate is what activities would be allowed in this additional 20 feet of buffer. He asked if the buffer would prohibit the same activities that would be prohibited in the in 30-foot buffer or would there be additional restrictions in the 20-foot strip.

Mr. Thomas stated that it should be the same as the 30-foot buffer.

Mr. Rieley agreed. He stated that he wanted to ask a question about the specificity of the critical slope waiver. It seems to me that this is getting a little bit of support because the critical slopes have been reduced somewhat. He asked if they should have language in here that does not leave the door open for a final site plan to come back to us that has more critical slope disturbance than this one does.

Ms. Hopper stated that it should not disturb any critical slopes other than these designated, and all of the Commissioners agreed.

Mr. Cilimberg stated that could be a condition of the critical slope waiver, and Mr. Kamptner agreed. He stated that in reality if they ask for anything more than you act on, then the waiver to permit that is a new waiver.

Mr. Rieley stated that there was no harm in stipulating that. He suggested that it be a simple statement that it was limited to the disturbance shown on this preliminary site plan.

Mr. Kamptner asked what the specific date was for this version of the site plan.

Ms. Amarante stated that it was the preliminary site plan from the September 2, 2003 site plan

Mr. Rieley stated that there would be three conditions for the critical slope waiver.
1. The 30-foot buffer to be increased to 50 feet.
2. The grading for the roadway to be limited to only that which is necessary to gain access to the site for the width of the road that is actually shown with the advice of the County Engineer.
3. This waiver is limited to critical slope disturbance shown on the September 3, 2003 Preliminary Site Plan.

Mr. Rieley asked if there were any other concerns to be addressed through conditions of the waiver.

Mr. Thomas pointed out that September 3, 2003 Site Plan was on the bottom of all of the pages.

Mr. Rieley asked for a role call vote.

Mr. Kamptner stated that before they voted that the Commission needed to make the findings and identify one of the findings in Section 4.2.5.b that justifies the granting of the critical slopes waiver.

Mr. Edgerton stated that Section 4.2.5.b justified his motion as follows: "Due to its unusual size, topography, shape of the property, location of the property or other unusual conditions excluding the proprietary interest of the developer, the requirements of Section 4.2 would effectively prohibit or unreasonably restrict the use of the property or would result in significant degradation of the site or adjacent properties. Such modification, waiver or variance shall not be detrimental to the public health, safety or welfare, to the orderly development of the area, or to adjacent properties, or to sound engineering practice."

Mr. Kamptner stated that it would be based upon the staff report, the written documents submitted and the testimony presented tonight.

Mr. Edgerton agreed with Mr. Kamptner.

Mr. Rieley asked for further discussion.

The role was called.

The motion carried (3:2). (Hopper, Rieley – No) (Loewenstein).

Mr. Rieley stated that the critical slope waiver was approved with conditions. The next matter was the approval of the preliminary site plan. He suggested that the corrections are significant enough so that this should be seen again as another preliminary site plan because he felt that Mr. Cilimberg was correct that there would be a significant redesign as a result of the increase in the buffer. He stated that this is a leap of faith and they could wait and see it as a final site plan.

Ms. Amarante stated that the final site plan would not be approved until the Commission gets a chance to see it. She pointed out that they would renotify again to let the public know when it has come in and give everybody an opportunity to look at it and review it against these new conditions.

Mr. Rieley stated that the thing that Mr. Cilimberg said that alarmed him somewhat was the prospect of this being moved around so that elements of this plan ends up in the stream buffer, which to him would be completely unacceptable and contrary to the purpose of increasing the buffer.

Mr. Edgerton asked what risk he was taking if it came back before us and if he would want it to come back twice. He stated that once would be enough for him to see the final site plan. He noted that there was no value in going back and doing the preliminary again. He pointed out that their conditions were very clear.

Mr. Rieley stated that they needed a motion for approval if that was the will of the Commission. He suggested that it contain language that it will not encroach on the stream buffers any more than the preliminary site plan does.

Mr. Edgerton moved for approval of SDP-02-128, Faulconer Construction Office & Shop Preliminary Site Plan, with the following amended conditions:

1. Provide the 50-foot buffer along the western nondisturbed buffer and the increase from a 30-foot buffer to a 50-foot buffer along the western side of the property.
2. The grading of the roadway access to be minimized as much as feasible with guidance from the Engineering staff.
3. The applicant to ensure that no additional critical slopes are disturbed by the reconfiguration of the site plan, which includes protecting the stream buffers.
4. The final site plan to be reviewed by the Planning Commission.

Mr. Rieley stated that as a point of clarification that the 30-foot buffer runs along the western/northern side of the property and then zigzags to be consistent with the waivers. He asked if that included protecting the stream buffers.

Mr. Edgerton stated that was correct.

Mr. Thomas seconded the motion.

The motion carried (3:2) to approve the Preliminary Site Plan with additional conditions.
(Hopper, Rieley – No) (Loewenstein, Finley – Absent)

Mr. Rieley stated that the preliminary site plan was approved with the conditions recommended by staff and the conditions added by the Planning Commission.

The Planning Department shall not accept submittal of the final site plan for signature until tentative approvals for the following conditions have been obtained. The final site plan shall not be signed until the following conditions are met:

1. The outfall from the proposed oil/water separator will require a permit through the Department of Environmental Quality (DEQ). An alternate would be a zero discharge system that would require period transport of wastewater to a treatment plant. The DEQ permit or a new zero discharge system will be required for final site plan approval.
2. [18-32.7.4.3, 17-203] An erosion control plan, narrative, computations, application and fee.
3. [17-203, 17-303] A storm water management plan, computations, application, fee, and maintenance agreement.
4. [17-322] A stream buffer mitigation plan.
5. [18-4.14] A certified engineers report.
6. [18-32.5.6(n)] Show the location of all outdoor lighting on the plan.
7. [18-32.6.6(j)] Provide a description and photograph or diagram and show the location of each type of outdoor luminaire that emits 3,000 or more initial lumens. Please be aware that installation of such luminaires in the future that are not shown on this plan shall require an amendment to this plan.
8. [18-32.6.6(j)] [4.17.4(b)] Include a photometric plan on the site plan demonstrating that parking area luminaires are in compliance with 4.17.4 b.
9. [18-4.15.13] Be aware that all signs will require separate permits under 4.15 of the zoning ordinance.

10. [18-32.6.6(i)] Submittal and approval of a Landscape Plan in conformance with Section 32.7.9 of the Zoning Ordinance. The Landscape Plan shall include a tree conservation plan.
11. [18-32.7.5.3] Health Department approval of all well and drainfield locations.
12. [18-32.7.3.3] Submittal and approval of a plat dedicating r-o-w of Morgantown Road.
13. [18-32.5.6(i) The proposed road servicing the development must have an approved road name labeled on the final site plan.
14. The 50-foot buffer along the western nondisturbed buffer and the increase from a 30-foot buffer to a 50-foot buffer along the western side of the property shall be provided.
15. The grading of the roadway access to be minimized as much as feasible with guidance from the Engineering staff.
16. The applicant to ensure that no additional critical slopes are disturbed by the reconfiguration of the site plan, which includes protecting the stream buffers.
17. The final site plan to be reviewed by the Planning Commission.

Old Business:

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

New Business:

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

Adjournment

With no further business, the meeting adjourned at 9:30 p.m. to the next meeting on September 30, 2003 at 4:00 p.m.

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V. Wayne Cilimberg, Secretary

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