Albemarle County Planning Commission
July 13, 2004

The Albemarle County Planning Commission held a meeting and public hearing on Tuesday, July 13, 2004 at 6:00 p.m., at the County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia. Members attending were William Rieley; Rodney Thomas, Chairman; Bill Edgerton; Jo Higgins; Marcia Joseph and Pete Craddock, Vice-Chairman. Absent was Cal Morris.

Other officials present were Wayne Cilimberg, Director of Planning & Community Development; Rebecca Ragsdale, Planner; Stephen Waller, Senior Planner; Bill Fritz, Development Process Manager; Margaret Doherty, Senior Planner; Amelia McCulley, Zoning Administrator; Francis MacCall; Senior Planner and Greg Kamptner, Assistant County Attorney.

Call to Order and Establish Quorum:

Mr. Thomas called the regular meeting to order at 6:00 p.m. and established a quorum.

Other Matters Not Listed on the Agenda from the Public:

Mr. Thomas invited comment from the public on other matters not listed on the agenda.

Neil Williamson, representative for Free Enterprise Forum, stated that he was a fan of Bill Murray's. He pointed out that "Groundhog Day", which was his favorite Bill Murray movie, popped up in his mind when he received Bill Edgerton's memo regarding Rural Areas. In "Groundhog Day" you may recall that Bill Murray gets to relive the same day over and over and over until he quote, "gets it right." He stated that he felt that this memo is entirely consistent with the positions Mr. Edgerton has held throughout the Rural Areas discussion. But, the memo fails to recognize the significant public and Planning Commission input that has gone into the document as it exists today. It is like he is starting the entire process all over again just like "Groundhog Day". As an organization, The Free Enterprise Forum, and its predecessor CALAC, as well as the Farm Bureau, PEC, the Forestry Department, Citizens for Albemarle, The League of Women Voters and others have been involved with the public process for over forty months. Personally, he has been involved for over 24 months. The Planning Commission has already held two public input sessions and several work sessions. The Planning Commissioners, including Mr. Edgerton, participated in sometimes mind numbing details regarding the proper Comprehensive Plan language for this chapter. But, Mr. Edgerton's memo indicated that all issues, including the word "consider", are wide open. While the issues have been discussed and debated, Mr. Edgerton is not happy with the results because he asked for the debate to occur again. This is just like "Groundhog Day". The volume and high level of detailed discussion by the public and Planning Commission should not be ignored. He strongly encouraged the Planning Commissioners to continue their forward momentum and not go back and rehash the same issues that have been debated in previous work sessions. You, like Bill Murray, can choose to do the right thing and move the current proposal forward and end this cycle.

Mr. Thomas asked if there was anyone else who wanted to speak on matters not listed on the agenda. There being none, the meeting moved on to the next item on the agenda.

Review of Board of Supervisors Meeting – July 7, 2004

Mr. Cilimberg reviewed the actions taken on July 7 by the Board of Supervisors.

Consent Agenda:

SUB 2004-00118 Ivy Creek Final Plat Private Road Request – Request for authorization of private roads, pursuant to Section 14-232 (A, 4) of the Subdivision Ordinance. (Tax Map 57, Parcels 37B, 37C, 37E and 37 F) (Francis MacCall)
SDP-2004-027 Flow Automotive Minor Amendment Critical Slopes Waiver – Request for disturbance of critical slope, pursuant to Section 4.2.5.2 of the Zoning Ordinance. (Tax Map 78, Parcel 14D) (Francis MacCall)
Approval of Planning Commission Minutes – May 11, 2004

Mr. Rieley recused himself from the consent agenda because he had done consulting work on one of the projects on the list. Therefore, he noted that he would abstain.

Mr. Thomas asked Mr. Kamptner if the Commission could separate that one application from the others so that Mr. Rieley could vote on the other two items.

Mr. Kamptner stated that would fine.

Mr. Thomas asked for a motion on SUB-2004-00118, Ivy Creek Final Plat Private Road Request.

Mr. Craddock made a motion for approval of SUB-2004-00118, Ivy Creek Final Plat Private Road Request as presented.

Ms. Higgins seconded the motion, which carried by a vote of (5:0).
(Morris – Absent) (Rieley - Abstain)

Mr. Thomas asked for a motion on SDP-2004-027, Flow Automotive Minor Amendment Critical Slope Waiver, and the minutes of May 11, 2004.

Ms. Higgins made a motion for approval of SUB-2004-027. Flow Automotive Minor Amendment Critical Slope Waiver, and the minutes of May 11, 2004.

Mr. Rieley seconded the motion, which carried by a vote of (6:0).
(Morris – Absent)

Mr. Thomas stated that the consent agenda was passed.

Public Hearing Items:

SP-2004-13 Old Trail Golf Club Amendment (Sign #36, 40, 44, 87) - Request to amend SP-02-16 to remove condition #2, regarding the alignment of the road serving the golf course being in conformity with the Crozet Master Plan, once adopted. The property, described as Tax Map 55, Parcels 71, 103F and 105 and Tax Map 56, Parcel 17B is zoned RA, Rural Areas in the White Hall Magisterial District. The property is designated Rural Area on the Comprehensive Plan in the Crozet Community. (Margaret Doherty)

Ms. Doherty stated that the applicant requests that the existing special use permit for the Old Trail Golf Club use be amended to remove condition 2, which states that the applicant shall construct a road to serve the golf course built to public road standards running from Route 250 to the property line at the northern edge of Tax Map 56, parcel 14. The road shall follow an alignment consistent with the Crozet Master Plan once adopted. Although the Zoning Administrator, in her review of the pending final site plan for the golf course, has found that the proposed road alignment is consistent with the Master Plan, the applicant would like to remove the condition to avoid future questions of compliance prior to the adoption of the Crozet Master Plan. The Master Plan identifies the golf course and the road. The Planning Commission and the Board of Supervisors, in their review of the Master Plan, have stated that the roads shown on the plan are for informational purposes and that actual alignments may vary. Therefore, staff found the alignment of the road was in compliance with this condition. The applicant provided reduced

copies of the following maps: 1. the Ballard Field Preliminary Plat by the Timmons Group, 2. the entrance to the golf course and 3. the Crozet Master Plan Built Infrastructure Map dated July 9, 2003. (See Attachment). Over the past several days, there have been discussions about deleting the second sentence of condition 2. Since this road is a done deal and will be addressed in the future planning process, both staff and the applicant have no problem with the deletion. The applicant is here to respond to any questions.

Mr. Thomas asked if there were any questions for Ms. Doherty.

Ms. Higgins asked staff to point out the northern edge of tax map 56, parcel 14 on the drawing.

Ms. Doherty pointed out the location of tax map 56, parcel 14. She noted that the parcel was located adjacent to the golf course parcel and was owned by the applicant. When that condition was crafted for the golf course, staff wanted to make sure that a road got all the way to that Lickinghole crossing, which was why they ended the condition there. Staff knew that the rest of the road to Jarmans Gap Road was getting built, which was why staff wanted to include that particular language. Again, the road plans are being reviewed and may be bonded. She noted that the roads were currently under construction.

Ms. Higgins stated that she was supportive of deleting the last sentence because she felt that the issue had to do with Crozet Master Plan's issues and not with the road being built or not. It seems in retrospect that to go back and delete the requirement to build the road would be beyond what they were trying to accomplish. If the applicant was agreeable with it, then she felt much better doing it that way. If tax map 56, parcel 14 was in the path of this and to the northern edge, then she did not have any issues with it.

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

Gaylon Beights, applicant, stated the reason that they were doing this was to clean up all matters before they were on the verge of opening the golf course, which they hope to do in September or October. They do not want to have anything looming over them that might prevent them from getting a Certificate of Occupancy. The simple issue was that this approval is subject to a road consistent with the Master Plan that has not been approved. They were just trying to do a little house cleaning in advance. If there were any questions, he would be happy to answer them.

Ms. Joseph asked if the entire road had been designed and approved.

Mr. Beights stated that the road has been designed, approved and under construction. The access road to the golf course is actually built and they should start curbs next week.

Mr. Thomas asked if there was any one else present who would like to speak regarding this application. There being none, he closed the public hearing to bring the request back to the Commission for discussion and a possible action.

Ms. Higgins moved for approval of SP-2004-13, Old Trail Golf Club Amendment, subject to the conditions as recommended in the staff report deleting the second sentence of condition 2, which states, "The road shall follow an alignment consistent with the Crozet Master Plan once adopted." The deletion shall be limited to that sentence so that it resolves the issues but still leaves the construction of the road on this special use permit.

1) The facility shall be in general accord with the plan titled "Old Trails Golf Club", prepared by Roudabush, Gale & Associates, Inc., dated October 21, 2002, and revised December 16, 2002, subject to these conditions.
2) The applicant shall construct a road to serve the golf course, built to public road standards and running from Route 250 to the property line at the northern edge of Tax

Map 56 Parcel 14. ~~The road shall follow an alignment consistent with the Crozet Master Plan once adopted.~~

3) Private club memberships shall not be required for access to or play on the course.
4) There shall be no outdoor lighting of the course or of the practice area/driving range.
5) No new residential development shall be permitted within the "Limits of Golf Course indicated on the plan titled "Old Trails Golf Club", prepared by Roudabush, Gale & Associates, Inc., and dated October 21, 2002, and revised December 16, 2002.
6) The existing house known as Mountain View shall not be demolished.
7) The club house, restroom building, and maintenance facility shall be located within the Albemarle County Service Authority jurisdictional area.
8) No portion of any structure, excluding signs, shall be located closer than 50 feet to any residential or rural district. No parking area or loading space shall be located closer than 20 feet to any residential or rural district.
9) All landscaping around the clubhouse, restroom building, maintenance facility, parking area and other facilities shall include only native plants identified in the brochure "Native Plants for Conservation, Restoration, and Landscaping: Piedmont Plateau," published by the Virginia Department of Conservation & Recreation.
10) Vegetated areas of the facility outside the tees, greens, fairways, roughs, cart paths, and access road shall remain in their current states (if wooded) or be revegetated and maintained in native plant species. These species shall be selected from the brochure "Native Plants for Conservation, Restoration, and Landscaping: Piedmont Plateau" and/or "Native Plants for Conservation, Restoration, and Landscaping: Riparian Forest Buffers," published by the Virginia Department of Conservation & Recreation. Species identified in the "Riparian Forest Buffers" brochure as being native only to the Coastal Plain region shall not be used. Management of these areas shall maintain them in native plant species. Non-native plant species shall be diligently removed from these areas. The applicant shall submit a letter from the Thomas Jefferson Soil & Water Conservation District stating that these plantings required in have been established to the District's satisfaction.
11) The applicant, upon the request of the County, shall provide verification to the satisfaction of the Director of Planning and Community Development that the site is in compliance with the specifications contained in Conditions 9 and 10 regarding the landscaping plan.
12) Stream buffers in pasture at the date of this approval shall be revegetated in accordance with the schematic titled "Minimum Standard for Hole Crossings in Existing Pasture Areas", dated January 15, 2003, and prepared by Jerry Kamis. The design of the stream crossing on hole 12 shall be deemed to be in general accord with the plan titled "Old Trails Golf Club", prepared by Roudabush, Gale & Associates, Inc., dated October 21, 2002 and revised December 16, 2002, and shall use a minimal sight line subject to a mitigation plan to be approved by the Department of Engineering and Public Works.
13) Irrigation water for the golf course shall come only from surface water impounded on existing ponds on the site.
14) The dams and outlet structures on the two ponds on the site shall be repaired and upgraded to the satisfaction of the Department of Engineering and Public Works.
15) The course shall secure Department of Engineering and Public Works approval of a natural resources management plan. This plan shall address wildlife conservation and habitat enhancement, waste reduction and management (including hazardous material storage and spill containment), energy efficiency, water conservation (including water-use reporting and efforts to protect streamflow in Slabtown Branch), water quality management (including runoff management for the clubhouse area, monitoring, and reporting), and integrated pest management. The applicant, upon the request of the County, shall provide verification to the satisfaction of the Director of Engineering and Public Works that the site is in compliance with the specifications contained in the plan.

16) Grading shall be carried out in general accord with the conceptual grading plan titled "Preliminary Grading Plan," prepared by Gene Bates Golf Design, and dated January 9, 2003.
17) Cart-path stream crossings shall be built in general accord with the drawings titled "Wooden Cartway Crossing Plan" and "Wooden Cartway Crossing Elevation."
18) Neither the green for hole 14 nor the tee boxes for hole 15 shall be located less than 25 feet from the property line.

Mr. Rieley seconded the motion.

The motion carried by a vote of (6:0). (Morris – Absent)

Mr. Thomas stated that SP-2004-13 would be heard by the Board of Supervisors on August 4.

SP-2004-16 Forest Lakes North Swim and Tennis Club (Sign #23, 94) - Request for special use permit to allow all Forest Lakes Associates developments within the Forest Lakes North and Forest Lakes South neighborhoods to use the swim and tennis club amenities of either neighborhood in accordance with Sections 15.2.2.4 and 5.1.16 of the Zoning Ordinance which allow for swim, golf, tennis and similar facilities. The property, described as Tax Map 46B3, Parcel B contains 8.559 acres, and is zoned R-4 (Residential). The proposal is located on Rt. 1721 (1824 Timberwood Boulevard) in the Forest Lakes North development, within the Rivanna Magisterial District. The Comprehensive Plan designates this property as Neighborhood Density in the Community of Hollymead. (Margaret Doherty)

AND

SP-2004-17 Forest Lakes South Swim and Tennis Club (Sign # 18) - Request for special use permit to allow all Forest Lakes Associates developments within the Forest Lakes North and Forest Lakes South neighborhoods to use the swim and tennis club amenities of either neighborhood in accordance with Sections 20.4.2.1, 22.2.2.6, 18.2.2.4 and 5.1.2 of the Zoning Ordinance which allow for swim, golf, tennis and similar facilities. The property, described as Tax Map 46B5, Parcel 1B contains 6.552 acres, and is zoned PUD, Planned Unit Development. The proposal is located on Rt. 1670 (1650 Ashwood Boulevard) in the Forest Lakes South development, within the Rivanna Magisterial District. The Comprehensive Plan designates this property as Neighborhood Density in the Community of Hollymead. (Margaret Doherty)

Ms. Doherty stated that the applicant, Forest Lakes Associates, requests that the existing swim and tennis club for Forest Lakes North and Forest Lakes South be allowed to be used by all Forest Lakes Associates developments. The Zoning Department made a finding that the existing clubs do not qualify as non-commercial because both facilities are open only to the residents of the neighborhoods. So as they are filling in some development within Forest Lakes North and South if they want to allow those residents to use these facilities they would have to go through the special use permit process. This is really just a technical zoning special use permit issue. Staff believes that the extended use of recreational amenities is a good idea in a neighborhood so that people can use the existing facilities in their neighborhoods. Staff does not see any impacts. Staff has been working with the applicant and the Homeowner's Association because these clubs are soon to be turned over to the Homeowner's Associations. Up until the last minute they have been working on a condition of approval which was going to limit the use of these facilities to the existing developments and then contiguous developments owned by Forest Lakes Associates and then to be only up to a certain number of units. Staff crafted some language for Mr. Kamptner and the Commissioners to review, but she would like the applicant to speak because they might actually like to work on this condition a little bit more before they go to the Board. She pointed out that they might not even need a condition because they may be able to just approve the special use permits and move forward. She noted that both attorney groups may want a condition that is more specific. The end result is that the clubs are going to be allowed to be used by all of the residents within Forest Lakes North and South.

Mr. Thomas asked if this was before them for the special use permits.

Ms. Doherty pointed out that one-half of the property was zoned PRD and the other half is zoned R-4. In those different zoning districts swim and tennis clubs are permitted as non-commercial. She pointed out that since it was very confusing that she did not think that the Commission would want to go into it.

Mr. Cilimberg stated that it was a housekeeping issue. The special use permits accomplish what has been underway in Forest Lakes since the clubs opened with residents in all areas being able to use each club as members. The Zoning Administrator determined that the residents could not use each club under the zoning allowances. This approval will clear that up.

Mr. Edgerton asked if all of the developments listed currently have access to the club.

Ms. Doherty pointed out that it was her understanding that they did. She stated that all of the residents that she had spoken to are all allowed to use these club facilities.

Mr. Edgerton stated that his only concern was if by approving this that they might end up in the middle of a political fight between one neighborhood and the next when new neighborhoods were added on to it.

Mr. Cilimberg stated that having resided there previously that he could tell the Commission that both of the clubs were open to all of the residents. In fact, over the years activities within Forest Lakes, including the swim meets, have been held at both facilities. He pointed out that the Commission was not getting into the middle of anything.

Ms. Doherty stated that they are concerned about future contiguous Forest Lake Associates properties because theoretically Forest Lake Associates could keep purchasing contiguous property and then the membership could go up to some higher number. Therefore, the Homeowner's Association is interested in limiting it to 100 to 125 units, which was the number that they were working on for the actual number of units that would be allowed to use these facilities.

Mr. Thomas opened the public hearing and invited the applicant to come forward and speak regarding the application.

Laurie Meistrell, representative for Forest Lakes Associates, stated that she would answer any questions about the conditions. The language in the final sentence of the condition is something that was developed today with the Homeowner's Association. She stated that the original wording of the condition was future contiguous development by Forest Lakes Associates. The condition has now been changed to contiguous developments not exceeding 125 dwelling units. It is our intention that we are willing to make that condition adding a further condition that any future contiguous development beyond 125 units would have to go through an approval vote by the Homeowner's Association.

Ms. Joseph stated that she was referencing the one condition that calls out all of the road names and then they would be adding to that.

Ms. Meistrell stated that the condition calls out all of the names. Forest Lakes South is a PRD, which was the south neighborhood and included all of its residents. For Forest Lakes North they had to list all of the neighborhoods within to make sure that they included all of the residents because it was developed by right. That is why there is a long list of neighborhoods included in the condition. The contiguous development would be the small pieces of property within Forest Lakes that have a potential for development. That would add up to the 125 units which are actually contained within those areas. Therefore, they would have access to those clubs and it would be logical in the Neighborhood Model.

Ms. Joseph asked if they are part of Forest Lakes already.

Ms. Meistrell stated that they were not currently part of Forest Lakes.

Ms. Joseph asked if the property would have to be rezoned.

Ms. Meistrell stated that the answer was yes and no because there are three different parcels.

Ms. Joseph asked if the three parcels were not part of the original rezoning for Forest Lakes.

Ms. Meistrell stated that they were not. She pointed out that the language of the final sentence still needed some refining.

Mr. Thomas asked if there was any one in the audience who would like to speak regarding this application. There being none, he closed the public hearing to bring the matter back to the Commission for discussion and a possible action.

Mr. Rieley asked staff if they had seen and read the language that was just read and if they were supportive of that.

Ms. Doherty stated yes, but that she wanted the Homeowner's Association, who was going to have the burden of this condition very soon, to be happy with it. She opposed setting up a situation that the Homeowner's Associations might be uncomfortable with. She suggested that the condition be worked out by Mr. Kamptner and the attorneys for the owner and the Homeowner's Association before the Board meeting.

Mr. Rieley pointed out that it was hard to know how to put that in the form of a motion.

Ms. Higgins stated that if there was a significant concern that she felt that their attorney would have been here to mention that. She stated that it seems to be a very cooperative situation since the staff feels that they could potentially look at it as the last sentence being modified to limit in some way in the spirit of cooperation between the entities handing the club houses over to the Homeowner's Association.

Mr. Rieley suggested that it be worked out prior to being heard by the Board.

Ms. Higgins stated that it would be worked out prior to the Board hearing.

Mr. Cilimberg suggested that the Commission just acknowledge the substance of the condition as it was provided with the additional work on the language of limiting the additional membership, which would be taken care of before the Board meeting.

Mr. Edgerton stated that the number should have been worked out before it came to the Commission. He pointed out that he was uncomfortable approving something that he did not know what they were approving.

Mr. Cilimberg stated that the question for the Planning Commission was whether that number would make a material difference to their recommendation. It is going to be 125 and potentially modified in some slight way to make sure that the Homeowner's Association is comfortable with it.

Ms. Higgins stated that number covers all of the contiguous developments on both sides that have different names. She pointed out that they are also already doing this.

Mr. Rieley stated that the Commission has in the past clearly sent things on to the Board with a request that they work out a detail. He pointed out that he could not imagine this coming back to

the Commission in a form that would be substantially different than what it is now. Therefore, he was comfortable with passing this along.

Ms. Joseph stated that she was comfortable as long as there was a limit on the number of units because there were a lot of parcels that could be added on to Forest Lakes. She pointed out that she did not want a situation to come up where the applicant says that they already have recreational facilities and they don't need any more.

Ms. Higgins moved to recommend approval of SP-2004-16, Forest Lakes North Swim and Tennis Club and SP-2004-17, Forest Lakes North Swim and Tennis Club, subject to the following conditions for each as recommended in the staff report with the understanding that there will be a modification to the future portion of the condition that will be worked out cooperatively with the Homeowner's Association and Forest Lakes Associates, and that staff will have that resolved before it goes to the Board of Supervisors.

> The use, as approved, shall be limited to the residents and guests of the following developments: Forest Lakes South, Springridge, Lanford Hills, Steeplechase, Amberfield, Cove Pointe, Edgewater, Gateway, Worthcrossing, Chelsea, Arbor Lake, Waterford, Watercrest, Copperknoll, Echo Ridge, Ridgefield, Poplar Ridge, Heather Glen, Whispering Woods, Timberwood, Timber Pointe and Autumn Woods and any future contiguous developments not exceeding approximately 125 dwelling units whose use of the facilities is permitted by the owner.

Mr. Craddock seconded the motion.

Mr. Rieley asked if he missed hearing the specific number of 125.

Ms. Higgins stated that she did not specify a number because that had to be worked out. She pointed out that if it said 110 or 160 that it would not substantially change their perspective. She pointed out that she made the motion that way so that number could be worked out before it goes to the Board.

Ms. Doherty pointed out that staff knows that number will not go over 150.

Mr. Rieley suggested adding some language to the motion that says approximately 125 because that was essentially what was presented to the Commission.

Ms. Higgins asked where the 150 came from.

Ms. Doherty pointed out that when Forest Lakes Associates added up the number of units that they thought they would have with the contiguous development that they are planning, it was 119. Therefore, staff suggested using 125, but then it was suggested that it go up to 150. She noted that it may be that the Homeowner's Association will want to leave it at 100 units. Staff feels that number will become lower and not higher.

Ms. Higgins amended the motion to say that it shall be in the approximate range of 125 units.

Mr. Craddock seconded the amended motion to accept the change.

The motion carried by a vote of (6:0). (Morris – Absent)

Mr. Thomas stated that SP-2004-16 and SP-2004-17 would go to the Board on August 4.

Mr. Cilimberg pointed out that this was Margaret Doherty's last meeting tonight. He acknowledged all of her good work, thanked her and wished her the best of luck.

The Planning Commission congratulated Ms. Doherty and wished her well.

SP-2004-14 Gary T. Dalton (Sign # 89) - Request for a special use permit to allow a Home Occupation Class B for Furniture Making in accordance with Section 10.2.2.31 of the Zoning Ordinance, which allows for Home Occupations Class B. The property is described as Tax Map 94, Parcel 90, contains 2.1 acres, and is zoned RA, Rural Area. The proposal is located on Rt. 828 (3830 Whitetail Lane), approximately .25 miles from the intersection of Whitetail Lane and Rt. 808 (Running Deer Road), in the Scottsville Magisterial District. The Comprehensive Plan designates this property Rural Area. (Rebecca Ragsdale)

Ms. Ragsdale summarized the staff report. This request is for a Home Occupation, Class B to allow a professional furniture work shop on the applicant's property. The applicant is requesting to operate this furniture business in a detached work shop building on the property. He is not requesting any employees and does not anticipate any customer visits to his property. The applicant will be making only custom commissions usually for one or a few pieces of furniture at a time. Therefore, there will not be a substantial amount of storage of materials associated with this business as there would not be a mass production of furniture. The property is a 2-acre site in the Running Deer Subdivision, which consists of mostly 2 and 3 acre lots. The area around the applicant's lot is mostly wooded that provides some screening of the proposed building for the business. The Comprehensive Plan identifies this area as being in the Rural Areas. The level of the intensity of the proposed use would not be incompatible with the character of the Rural Area. Staff would consider it consistent with the Comprehensive Plan. The applicant is not proposing any deliveries or intending to use any heavy trucks for the shipping of the finished furniture products. Therefore, staff does not anticipate any heavy truck traffic or increased traffic to the residential area with this request. As part of the request, the applicant is seeking a waiver of Section 5.2.2.1(a) of the Zoning Ordinance. This modification is to allow a work shop building greater than 25 percent of the floor area of the dwelling to be devoted to the home occupation. The square footage of the dwelling is about 2,016 and that would permit an area of 504 square feet to be devoted to the home occupation. The applicant would like to have a total square footage of 635 square feet for the home occupation. The applicant has an existing accessory building on the property that he wants to add on to for the business. This expansion would allow for all of the operations associated with the furniture making, storage and machinery to be enclosed. This would reduce the noise impacts. Also, there would not be any outdoor storage associated with it. The proposed modification would be about 30 percent of the total dwelling floor area, which is not a significant increase beyond the 25 percent. Therefore, staff feels that this request is reasonable and recommends approval. Staff has identified the following factors as being favorable to this application.

1. There would be no additional traffic generated from this proposal than what would be considered normal residential traffic.
2. There would be no noise or lighting impacts on surrounding neighbors.

Staff recommends approval of SP-2004-014, subject to the conditions listed in the staff report. Staff recommends approval of the request for the waiver to Section 5.2.2.1(a) to allow the modification to allow a building greater than 25 percent of the dwelling to be devoted to the home occupation. If there are any questions, she would be happy to answer them.

Mr. Rieley stated that he noticed that the applicant had contacted all of his neighbors and got favorable response from everybody but one. He asked if staff had received any communication of opposition.

Ms. Ragsdale stated that she did not hear from any of the neighbors.

Mr. Thomas opened the public hearing and invited the applicant to come forward and address the Commission.

Gary T. Dalton, applicant, stated that he had just returned to Albemarle County after a year of extensive training in fine furniture making in North California. He pointed out that he hoped to begin building beautiful useful objects out of his home shop. He stated that he needed to expand the shop and to get his home occupation permit in order to begin his furniture making work. Staff has done a very good job in presenting the application. Therefore, he would be happy to answer any questions that they might have.

Mr. Thomas asked if there were any questions for Mr. Dalton. There being none, he opened the public hearing and asked if there was any one else present who would like to speak regarding this application. There being none, he closed the public hearing to bring the matter back before the Commission for discussion and a possible action.

Mr. Rieley stated that the applicant has done a very thorough job of documenting exactly the number of square feet and so forth in the plan. The Commission has often given a little bit of latitude, particularly since the upper limit on this is 1,500 square feet. Therefore, if you have a big house you can get up to 1,500 square feet. Since the applicant's house is a couple thousand square feet, he suggested that the Commission consider giving the applicant a little extra square footage in his plan to give him a little latitude.

Ms. Higgins supported Mr. Rieley's idea because if the applicant's storage needs increased there would be a tendency to move things outside. Whereas, if there is some flexibility in what he is allowed to do structurally, then they would hope that it would be more accommodating than having to come back here saying he needs another 100 feet or something.

Mr. Craddock agreed with Mr. Rieley's proposal.

Mr. Rieley asked if 800 square feet sounds reasonable instead of the 650, and the Commissioners agreed.

Mr. Rieley moved for approval of SP-2004-14, Gary T. Dalton, subject to the recommended conditions with a modification to condition 3 to increase the square footage to 800 square feet.

1. The number of vehicle trips per week associated with this home occupation shall not exceed 10.
2. The use shall be conducted in general accord with the concept plan identified as Attachment B in the staff report.
3. The total square footage of the shop building, including the study, shall not exceed 800 square feet in size.
4. No business sign shall be permitted.

Ms. Higgins seconded the motion.

The motion carried by a vote of (6:0). (Morris – Absent)

Action on Waiver Request:

Ms. Higgins moved for approval of the waiver to Section 5.2.2.1(a) to allow an area greater than 25 percent of the dwelling to be devoted to the home occupation that the Commission just approved.

Mr. Craddock seconded the motion.

The motion carried by a vote of (6:0). (Morris – Absent)

Mr. Thomas stated that the waiver carries and that SP-04-14 will go the Board of Supervisors on August 4.

SP-02-32 Dan's Automart (Sign #42) -Request for approval of a special use permit in accordance with Section 30.6.3.2b of the Zoning Ordinance, which allows for outdoor storage and display in the Entrance Corridor Overlay Districts. The properties, described as Tax Map 45B(1), Section 5, Block A, Parcel 9 and Block C, Parcel 4, contains 2.095 acre zoned HC, Highway Commercial and EC, Entrance Corridor. This site is located in the Rio Magisterial District on the eastern side of Route 29 North, approximately 1/3 mile from the intersection with Rt. 854 (Carrsbrook Drive). The Comprehensive Plan designates this property as Community Service in Development Area Neighborhood 1. (Stephen Waller)

Mr. Waller summarized the staff report. The applicant proposes the expansion of the display area of an existing automobile dealership onto an adjacent vacant parcel, which is located south of the existing establishment. The applicant, Dan's Automart, is petitioning for the approval of a special use permit that would allow this expansion. It would also establish a special use permit on the existing portion of the site, which predates the Zoning Ordinance regulations requiring special use permits for outdoor storage and display. The current area where the site would be expanded to is a vacant lot with a grassed field and a vegetative slope, which moves away from the proposed site of the display area towards the east. Staff has reviewed this request and determined that the site plan for this expansion could be approved administratively with the approval of the proposed special use permit. The Architectural Review Board has also reviewed this request and the proposed landscaping for conformance with the County's adopted Design Guidelines for the Entrance Corridors and has recommended approval with conditions that would be subject to the Design Planner's administrative approval. Staff notes that the satisfaction of most of these conditions would not be required until the time of the issuance of the Certificate of Appropriateness prior to approval of the final site plan. The current plan that staff has reviewed has addressed many of those conditions that the ARB placed on the request. Staff also notes that the owner of this property has been cited in violation for the expansion of the nonconforming area on to the area that is currently grassed on several occasions. Also, they have been cited for parking in the right-of-way of Seminole Lane, which is the frontage road that is currently not a part of the State system. The frontage road is currently in consideration for adoption into the State system. Also, a third violation has occurred on the site for the removal of some of the vegetation that was approved on the original site plan. If this special use permit were approved, the conditions the special use permit would require conditions that would be reflected in the site plan and in the field that would allow the abatement of those violations. Staff also notes that this special use permit for the outdoor storage and display is actually considered to be an accessory use or a use that would go along with the by-right use of auto sales, which is permitted in the Highway Commercial zoning district. Staff recommends approval of this request with conditions that would pertain to the proposed expansion with several conditions that would pertain to both the proposed expansion and the existing portion of the site. Staff from the Zoning Enforcement Division is also here if there are any questions regarding the status of the violations. He stated that he would be happy to answer any questions regarding the special use permit itself.

Mr. Rieley asked Ms. McCulley to give the Commission a status report. Presumably the landscape material that was part of a previous application was removed and has not been replaced. He asked if that was correct.

Ms. McCulley stated that was correct. She pointed out that John Jones, one of their Zoning Inspectors II, who has handled this case for several years is present tonight. He will be able to provide some information about the current status and what they have been doing in terms of the efforts to achieve compliance. She asked him to respond to Mr. Rieley's question.

John Jones, Zoning Inspector for Albemarle County, stated that the vegetation that was removed is four Passer Reuben Red Maple trees. The trees were there on 10/24/01, but are currently not there. He passed around photographs for the Commission's review.

Ms. Joseph asked if the big trees shown in the photograph were gone.

Mr. Jones replied that the big trees are gone. What precipitated a lot of the action was that vehicles have been parked in the right-of-way for sale. Vehicles were parked in the vacant lot in a sale's position for sale. He pointed out that they were dealing with two parcels here that included parcel 004, which is the dealership property, and parcel 009, which is the vacant lot next door. It has been quite an extensive case. Over nineteen civil penalty packets have been processed on parcel 004 alone. At this point they are not pursuing a lot of civil penalties because their objective is to obtain compliance. The administration wants to obtain compliance with the Ordinance, and movement has been made to bring the property into compliance. There has been a propensity to display vehicles in the median strip separating Seminole Lane from Route 29 with various attention getting devices, scooters, etc. The property owner has brought parcel 009 into compliance and there have been no vehicles parked in display position. On parcel 004 there are questions about parking because he has so many vehicles for sale that it limits his required customer parking and consequently at times customers have to park in the right-of-way to go to the dealership. Parcel 009 is in compliance. Parcel 004, which is the dealership property, is not in compliance by virtue of the four trees that have been removed.

Mr. Thomas pointed out that the little green men were out there in the median on Sunday.

Mr. Jones stated that he had seen the same thing. He pointed out that this case started on March 2, 2001. He stated that he had been working in the Zoning Department since February, 2001. This case has been ongoing since that time. Mr. Dickerson has addressed some of the issues.

Mr. Thomas asked if any Commissioner had any questions for Mr. Jones.

Ms. Higgins asked if the application before the Commission would solve all of the violations if the special use permit is eventually approved. She noted that the three trees have not been shown back on the plan.

Mr. Waller stated that since this application predates the Architectural Review Board for the original site, one of the conditions that staff has in the site is for a landscaping plan also on the existing portion of the site. Condition 2 is the approval of a landscaping plan that would basically bring both sites in to compliance with the Architectural Review Board. Architectural Review Board review would be required for both portions of the site. The original landscaping that would have been there under the approved plan probably would not have met the current ARB requirements.

Ms. Higgins stated that with respect to the landscaping that she had one more question. The ARB had not objections, but they had four items. One item says that another island shall be added dividing the display space into three areas. She pointed out that she saw the two islands in the display area that divides the area into three spaces with two islands, but it says that the islands are suppose to be large enough for trees to be planted. She pointed out that was not visible. If they took no objection to those conditions, are they now overlooking those or are they part of the staff's analysis.

Mr. Waller stated that part of what he spoke about was that several of the conditions have already been addressed in the plan, but they still don't have a Certificate of Appropriateness. One of the requirements of the special use permit conditions would be the final Certificate of Appropriateness.

Ms. Higgins asked if it was intended to leave that particular item out of his list of potential conditions. There are two islands there, but they don't appear to have trees. She pointed out that she was trying to be clear about what the ARB did not take exception to so that they were not totally disregarding anything if this should be considered favorably.

Mr. Waller stated that at this point the applicant does not have full ARB approval. Therefore, under condition 2 the applicant would need to have full compliance with the ARB Board before staff approves the final site plan. Therefore, the preliminary plan that they were looking at would change some during the final review.

Ms. McCulley stated that she wanted to answer very directly and clearly the question that Ms. Higgins asked about compliance with the violation because sometimes they move off the rest of the story for full zoning compliance. Approval of the special use permit is one very big and important step. That is necessary for the parking to be permitted on the adjacent property. To actually become in full compliance, the applicant has to have the final site plan approved and then the site built in accordance with the site plan, which includes landscaping installed and so forth and some grading. So even once the Board approves the special use permit, if that is to happen, then they would need to get a final site plan approved and do the construction that site plan calls for and the installation of improvements that site plan calls for to come into compliance.

Mr. Edgerton stated that in the meantime the applicant would be able to park cars on the site, which they are doing already.

Ms. McCulley stated no, because that is a continuing violation.

Mr. Edgerton stated that by giving them permission they would no longer be in violation. He asked if they would then have no leverage to encourage them to do what they were requiring them to do. He asked if that correct.

Ms. McCulley stated that she would take the position that even the approval of the special use permit absent the approval of the site plan and actually constructing the site plan does not give them approval to park their cars there.

Mr. Thomas stated that the applicant would still need a Certificate of Occupancy.

Ms. McCulley stated that the applicant would still have to have a site plan approval and zoning clearance for the actual construction of that site plan.

Ms. Higgins pointed out that this would not affect the cars that are parked on property that was dedicated to go into the State system. Although it was not accepted, it was still dedicated for State right-of-way. Those cars have not been removed and actually are facing the wrong way. When she turned right it was one thing seeing the cars from Route 29, but when you are traveling north you have cars coming at you this way and then you are also looking at the reflection of cars pointing south. She noted that she found that a little bit disconcerting.

Ms. McCulley stated that it certainly does not directly deal with that because indirectly once the site is built the hope is that those cars won't be parked there because they will be able to expand onto the adjoining lot. That is the whole purpose of the special use permit and the site plan. That will be an ongoing violation until the special use permit and site plan are approved and the site actually built. Staff will need to decide the most effective action to take if the violation continues in the interim.

Ms. Joseph asked if she was reading this application correctly that it was applied for in 5-28-02. She asked what prevented this request from coming forward.

Ms. McCulley stated that the site plan was not revised to be consistent with staff's comments and it was not ready until now from a staff point of view.

Ms. Joseph said that it has been in violation after violation for two years and no compliance and not submitting a site plan to comply.

Ms. McCulley pointed out that there have been seven or eight submittals of the site plan.

Mr. Waller pointed out that since the display area is considered to be part of the use and it changed, then the parking requirements would change. During that time the parking ordinance also changed. In order for the applicant to get approval of this preliminary site plan they would have to be in compliance with the current parking regulations. As the site plan was evolving to address staff's specific comments and conditions at some points in time when new information was shown on the site plan it would be so unclear that the plan could not be fully reviewed. There were other times when the information that was shown correctly on the previous submittal would be changed or would not show up clearly on the next submittal. A lot of what staff was dealing with was getting the site plan to a position where it was acceptable as a concept plan and as a preliminary site plan because the site plan itself relies on the approval of the special use permit. There were also several times that the plan had to be reviewed by the ARB or the Design Planner because of the acceptability of the landscape plan. Due to the outside display, staff at least needed to have the ARB recommend approval of it. That recommendation just came within the past few months.

Ms. Joseph pointed out that the letter attached was from 2002. She asked if the ARB had seen this plan with another island in here or with more vegetation. She pointed out that the current plan showed nothing in the islands.

Mr. Waller stated that when the ARB previously reviewed this, they gave their recommendation for approval. But, it took a lot of work to get something that the administrative staff could stand behind as well.

Mr. Thomas asked if the administration could stand behind the plan as it stands now.

Mr. Waller stated that staff has the administrative approval of the preliminary site plan from all staff at this point.

Mr. Thomas asked what would happen at this point as far as the monitoring of the applicant coming into compliance and staying in compliance while he is waiting for his approval to use that piece of property.

Ms. Higgins stated that she had one question about the display area. Recently they looked at a car dealership situation in another Entrance Corridor location for Dennis Enterprises. In the interest of consistency, she pointed out that the Commission was somewhat particular about the number of cars and the spaces were delineated. This plan shows cross hatching so it really does not show how many cars could be displayed in the area. It also shows an entrance, which is gated, onto the proposed State road in an entrance between that parcel and the existing dealership. She pointed out that was confusing. With the potential consistent issues about violations she asked what is the monitoring of that gate and if that is a VDOT approved entrance what is its relationship to the road. Since the road is not in the State system, VDOT does not issue entrance permits to construct that entrance. She asked if there is any limit as to the number of cars or is there any requirement to delineate parking spaces so that they were being consistent between applicants. She pointed out that the other applicant was looking at two rows and the Commission had a problem with that. She asked if that was an issue. She noted that it was kind of a substantive display issue other than the violations. She stated that they could not do anything about the violations at this point because the property has a history.

Mr. Waller stated that in reviewing the parking the determination was made that there were no size requirement for the display parking. He pointed out that he was not sure what happened with Dennis Enterprises and if they voluntarily showed each space that was dedicated to each car.

Ms. Higgins pointed out Dennis Enterprises did delineate each parking space with clean rows done very neatly.

Mr. Kamptner pointed out that another example was the old Pegasus site on Pantops. Every customer and display parking space was shown on its plan.

Ms. Higgins stated that it was still supporting the display request, but doing it in a more orderly way than just randomly.

Mr. Waller pointed out that could be a condition if the Commission wanted it. Those spaces were probably done voluntarily. What they were looking at now is basically if you were looking at the display area and using the parking calculations to come up with the specific area. The parking calculations are not based on the number of cars that are for sale. It is basically in the review of the parking it was looking at the square footage of the parking as if it were a building.

Ms. Joseph disagreed because this is a special use permit and the property is located on an Entrance Corridor. She felt that they really need to look at the spaces and where they go. She asked for the parking spaces to be shown and delineated in an orderly fashion so that hopefully staff will not have to do any enforcement on this.

Mr. Waller pointed out that could be taken care of with the conditions.

Ms. Joseph pointed out that it could not look like this.

Mr. Rieley asked Ms. McCulley if she disregarded the special use permit what would be required for this applicant to be in compliance with the current ordinances and what things would have to change.

Ms. McCulley stated that if they would need to eliminate any parking on Seminole Lane and any parking in the entrance of the existing site, keep the customer spaces free and available for customers and replace the trees that were eliminated.

Mr. Rieley pointed out that those trees were very big.

Ms. Joseph asked if that was a violation of the site plan.

Ms. McCulley stated that it was a violation of the site plan. There are actually three separate violations.

Mr. Thomas asked if there were any more questions of staff before he opened the public hearing. There being none, he opened the public hearing and invited the applicant to come forward and address the Commission.

Rosetta Dickerson stated that she was co-owner of Dan's Automart along with her husband. She pointed out that she would be happy to answer their questions. As far as their comment about how long this has taken, she agreed that they have been working on this for over two years. She pointed out that she had a list of the fourteen submittals made by her planner to different staff persons trying to get this worked out. She stated that they had gone through a lot of aggravation with this. She pointed out that the little green men were just to slow down the traffic because Seminole Lane is a private road and not in the State system.

Mr. Thomas asked if there were any questions for the applicant. There being none, he opened the public hearing and asked if there was anyone else present who would like to speak regarding this application.

Katie Hobbs, resident of Albemarle County, stated that she did not understand why the staff has recommended approval of this request and why one violation has been eliminated. Mr. Waller did not mention the fact that the cars are displayed repeatedly on raised platforms, which is also a violation. Mr. Waller states in the staff report, "The owner of this property was cited in violation of Zoning Ordinance Section 30 for expanding the outdoor storage and display area under the adjacent vacant parcel and the right-of-way for Seminole Lane in violation of Section 32 for establishing the use on that parcel without an approved site plan. Additionally, the applicant has removed several of the trees that were shown and approved on the original site plan for the existing building and display area. The Zoning Enforcement Division has filed several penalties against the owner of this site. If approval is granted for the special use permit and the site is constructed and maintained in accordance with all site plan and special use permit, then these violations can be abated." She suggested that no special use permit be granted until the owner can show a track record of following the existing ordinance, which they are not now doing as Mr. Rieley asked. Incidentally, she noted that on the day the ARB reviewed this site that she was absent.

Mr. Thomas asked if there was anyone else in the audience who would like to speak on this request. There being none, he closed the public hearing to bring the matter back to the Commission for discussion and a possible action.

Mr. Craddock pointed out that he had been down that road a number of times, but that last night the site looked clean as a whistle and the cars were parked where they were suppose to be.

Mr. Thomas pointed out that on Sunday the site also looked good and the street was also clean. He pointed out that the green men were in the median between Route 29 and Seminole Lane.

Mr. Rieley stated that from time to time the Commission has reviewed applications for special use permits in which there is a current violation. Sometimes they have granted the special use permit, but it has been based on the specific circumstance. The reason that he asked the question on what it would take to bring this into compliance was that it seems that it is a matter of simply obeying the existing law. This seems to be an ongoing set of violations and there was nothing which prevents the applicants from removing the cars from the places that they are not suppose to be. There is nothing that would prevent the applicant from planting the trees that they cut down in violation of the previous site plan. To grant a special use permit with the litany of ongoing easily correctable violations seems to be an unusual thing to do.

Mr. Edgerton agreed with Ms. Hobbs' and Mr. Rieley's comments. He stated that he could not support granting a special use permit for this applicant. If the applicant wants the County's cooperation, then they need to offer some cooperation on their own part first. He stated that he appalled that these violations have not been enforced for two years. These applicants are making a mockery of our planning process and he was unable to support the request for the special use permit until they are in compliance with the law that applies to the County.

Ms. Higgins stated that she was sympathetic to the violation perspective because she agreed that there has not been a good faith effort been really shown with respect to the applicant's activities. She stated that she was trying to move beyond that to look substantively at the application itself to see how it could be improved upon to get it to an acceptable range. That is why she brought up the delineation issue. If they were moving in the direction to not support this request she suggested that it not be a blanket denial, but something that gives the feedback that at least says if you want outdoor display that because of the track record that it should be in a more orderly way, maybe the landscaping be more evident per the ARB's suggestions and that it was just not a blanket field with an open parking area. She felt that theoretically the violations could be resolved in a week and the trees could be out there and the cars could orderly. Then the request could be brought back before the Commission.

Mr. Edgerton stated that he would agree with Ms. Higgins 100 percent if they were dealing with someone that he felt had demonstrated through their actions that they deserve to be treated as a law abiding citizen. But, they were breaking the law and there was no question about it. They have been cited and have not done anything about that. He stated that as far as he was concerned that they have no reason to make an effort to grant a special use permit for somebody who is already in violation of the law. He stated that he could not see any justification for that. Frankly, he did not think the applicant should be wasting their time until they were abiding with the law.

Ms. Joseph stated that it really worries her that they would be adding to the problem by opening up the special use permit and getting into that process. She pointed out that they saw that a couple of weeks ago with a special use permit that had been approved years ago and one of the conditions of approval was that they were suppose to come in within a month for the site plan, and then two years later they were looking at a site plan. She noted that it bothers her that they go through the whole process of having all of these conditions of approval for a special use permit to expand something that is already in violation and has been for years. She felt that there has been two years that those trees could have been replanted. There has been two years that they could have stayed in compliance. She pointed out that she had tried to come up with some conditions of approval that would not allow the applicant to use that site, but then she decided that it was not right. Actually the applicant should not be using that site period right now until everything has been brought into conformance and they receive approval for the special use permit. Therefore, she cannot support the request.

Mr. Craddock agreed with all four of the Commissioners that the site should be brought into conformance. In addition, he agreed with Ms. Higgins that if it does come under compliance on that end, then that parking lot should be marked as such for customer parking, vehicular display parking and so forth. He agreed that all of the violations need to be remedied before they move forward.

Mr. Rieley agreed that they need to get into some of the details of this in the way that it was organized and the pavement type. He noted that he would be more comfortable looking at this when they have an applicant before them who is in compliance and showing some willingness to be in compliance.

Ms. Higgins asked what the Commission's latitude would be in this case. She asked if they were talking about denying a special use permit with the reason being the violations. She asked if they were being punitive in anyway. On the other side of the coin, she noted that this was a very small business that was thriving on car sales. In order to support the expansion of their business and do the facility improvement that building a display area will cost they need to thrive. She pointed out that she hoped this would not affect jobs at the dealership. She asked for Mr. Kamptner's advice on what is their latitude and justification in this case.

Mr. Thomas agreed that the applicant needs to come into compliance. He noted that he also agrees with Ms. Higgins that it was a thriving business that was growing and he needs some help to get to that point in using the piece of property next door. He suggested a deferment until the property could be brought in to compliance. Staff has faith in what the applicant is currently doing.

Ms. Higgins asked if the applicant has to ask for the deferment.

Mr. Kamptner stated that the first question was what latitude they have as a Commission to make a recommendation. He stated that their history has been to focus on the land use related issues with respect to applications. But, he thought that Ms. Joseph in her comments really hit the nail on the head when she said that the use as it currently exists has adverse impacts. Some of the Commissioners gave their own examples of driving on that road and having faced head-on the vehicles parked in the opposite direction. The applicants have expanded that use with a very

poor track record. They have adverse impacts resulting from the use now and they propose an expansion of that use. That might give you the thread that connects you to a sound zoning principle, and that is a special use with impacts that might not be adequately addressed at this point. Then, the Commission can decide whether it wants to recommend approval because it has concerns that these issues might not be adequately addressed, or defer so that the applicants can show that they can operate in compliance and that some adequate conditions can be put into place. He asked Mr. Jones to come up to answer one question with respect to the present zoning condition of this property. He pointed out that the County has been to Court numerous times on both of these properties. The last time they were in Court they had deferred their next date while this application was going through the process. One of the assurances from the applicants was that the property would be in compliance. One of the violations that the County has not sought civil principles for yet was the removal of those four trees. Regarding the other violations, he asked Mr. Jones how the property has been over the last two months.

John Jones, Zoning Inspector, stated that the applicant has not been storing vehicles on the vacant or new lot for quite some time. As far as the vehicles parked in the right-of-way, he pointed out that when he goes to the property to look at those vehicles and if they have license plates on them and he can look at them and cannot determine that it is for sale, then he has very little jurisdiction. He pointed out that he could not say that he has cars parked on that lot for sale because the cars are licensed with inspection stickers. He pointed out that he had been doing h is best to keep an eye on it. At one point he parked across the road and saw customers park there and go into the dealership. The dealership has a lot of cars and sometimes customers park in the right-of-way and go in there. He stated that he had not for quite some time seen vehicles that he could verify that were his for sale parked in the right-of-way. In the entrances to his dealership yes he had seen customers parked there. Does he have parking for customers on his dealership? He noted no, the applicant does not have it because he has vehicles for sale in those spaces.

Mr. Rieley asked if that was a stipulation on the site plan.

Mr. Jones stated that was part of the site plan violation for required customer parking.

Mr. Kamptner stated that Ms. Hobbs spoke about the vehicles for display being elevated on the site.

Mr. Jones stated that was not contrary to the ordinance.

Ms. McCulley pointed out that this predates the Entrance Corridor regulations. Therefore, there is not current condition which prohibits that. As they could see with the proposed conditions proposed that staff would want to impose that on this site.

Ms. Higgins pointed out that there was an elevated site on the property that when the hood of the car was up that it seemed elevated, but it was really on the ground.

Mr. Jones stated that Mr. and Mrs. Dickerson have been making an effort to keep the properties in compliance. Are they there yet? No. But they have been making an effort since April of last year. At least as far as the vacant lot, no vehicles have appeared there. He pointed out that he shops on 29 North on the weekend and he always looks over there, and no, he has not done that. Also, he could not verify that the cars parked in the right-of-way were his cars for sale. However, the site plan violations on this small required customer parking and the required plantings that were removed do exist. The County has processed over nineteen sets of civil penalties on each property over the past three years.

Ms. McCulley pointed out that staff has also worked with the DMV Board in Richmond and have attended two hearings because of the noncompliance with local zoning, which is a State regulation.

Ms. Joseph asked when that was done.

Mr. Kamptner stated that he believed it was last fall. He pointed out that they just sent it back to the County to enforce the regulations.

Ms. McCulley stated that DMV did not take any enforcement action.

Mr. Thomas stated that there were three opportunities for the Commission to make something happen. He asked what the preference would be for the Commission on the action. He asked if whether they wanted to defer or deny the request.

Mr. Rieley stated that this has been in the process for a couple of years.

Mr. Edgerton asked if they could defer the request.

Mr. Cilimberg stated that the deferral option is based on technically where this is under the ordinance requirements or State requirements for your action within a certain period of time. He pointed out that he could not answer that question at all. They would probably have to go back and reconstruct the submittal and all of the events since to determine that if they have gotten beyond that point in time. They would not be able to take that action unless the applicant agreed to the deferral.

Mr. Kamptner stated that the application date was May 28, 2002 and then they had the May 14 revisions to the site plan, which held up the special use permit from moving forward. The last revision was April 4, 2004.

Mr. Edgerton stated that the Commission did not have the option to recommend deferral on this unless the applicant requests it.

Mr. Kamptner stated that he would much prefer that to be certain that they complied with the time frame.

Mr. Thomas asked if it was the consensus of the Commission to defer the request.

Ms. Joseph asked what their expectations would be for a deferment.

Mr. Thomas stated that the applicant would have to come into compliance.

Ms. Higgins pointed out that the four trees would have to be planted and the removal of all of the other items.

Mr. Edgerton pointed out that they would have to provide the customer parking.

Ms. Higgins noted that it would require the applicant to remove some of the cars to allow customer parking.

Mr. Edgerton stated that the applicant would have to use the lot that they have been approved to use. He stated that he would be comfortable with giving a deferral until the applicant comes in to compliance. Short of that, he noted that denial was all that he could vote for.

Ms. Higgins suggested that the Commission invite the applicant to come up to ask him what their preference would be on whether they want to request a deferral based on their discussion.

Mr. Thomas invited the applicant to come back up to talk with the Commission. He asked Ms. Dickerson if she would like to defer to have a chance to come into compliance before the

Commission makes a decision on whether to recommend the request or not. He stated that it puts it off and gives the applicant some time.

Ms. Dickerson asked what date it would be deferred to.

Mr. Kamptner stated that they could make it to a date specific or if they were agreeable to an indefinite deferral and it would come back once they determined that they were in compliance.

Mr. Thomas asked staff how long they thought it would take for the applicant to come into compliance.

Mr. Rieley stated that there needs to be compliance for an ongoing period of time to establish a pattern. The Commission looks to staff to see what they feel would be necessary to establish that pattern.

Ms. McCulley stated that thirty days would be a minimum time period that they would look for to begin a pattern. Therefore, staff would recommend thirty days of compliance.

Ms. Joseph asked what about the trees.

Ms. McCulley stated that this was a difficult time of year to plant trees.

Mr. Edgerton asked if the applicant could bond the trees.

Ms. McCulley stated that the applicants could bond the trees.

Mr. Rieley asked that the scale of those trees be taken into account. He pointed out that the plan called for Red Maples, which should be planted back there.

Ms. Dickerson pointed out that the trees were planted before they brought the property and they were Bradford Pears.

Mr. Rieley stated that what goes in should be what is shown on the site plan.

Ms. Joseph pointed out that the ARB requires 3 inch caliper trees.

Mr. Rieley stated that the trees were a lot bigger than 3 inch caliper that were cut.

Mr. Thomas stated that the applicant would need thirty days of compliance before the application comes back to the Commission. He asked if the deferral needs to be to a specific date.

Ms. Dickerson asked for the specific items that need to be done.

Mr. Thomas asked Ms. McCulley to explain exactly what the applicant needs to have done.

Ms. McCulley stated that it would probably be best at this point to bond the trees because staff would want to incorporate with the replacement trees any ARB recommendations. To come into compliance:

1. The applicant would need to bond the trees that were removed.
2. The applicant would need to remove any cars that are parked on Seminole Lane, parked in the entrance or display cars that are parked in customer parking spaces.
3. From that point, the applicant needs to maintain thirty days of compliance before the application comes back to the Planning Commission.

Ms. Joseph asked if that includes not parking in the median.

Ms. McCulley stated that there should be no parking other than designated on the existing approved site plan, which means not on the adjacent lot, not in the median, not in the entrance of the existing lot and not in the existing road right-of-way of Seminole Lane.

Mr. Rieley pointed out that they would see the request after thirty days of compliance has passed.

Ms. McCulley stated that one way to do it was to ask how much time they would need to come into compliance to move the cars. She suggested that they allow ten days to come up with the bond amount and post the bond for the trees. If the applicant could agree that within ten days that they could remove the cars, then that starts to give them the time period to come back before the Commission. She noted that the applicant could possibly need two to three weeks.

Ms. Higgins suggested using 45 days.

Ms. Dickerson asked what cars they would have to remove.

Ms. McCulley stated that they would need to remove the cars parked in the entrance of the existing site, display cars that are parked in any customer parking spaces and any cars that are parked in the median or in Seminole Lane.

Ms. Dickerson pointed out that they have no cars parked in Seminole Lane. If customers park there it is not their cars.

Ms. McCulley stated that if display cars are parked in the designated spaces on their existing site and it is limited to just those designated spaces, then that should free up the customer parking spaces so that they will not need to park on Seminole Lane.

Ms. Dickerson pointed out that a lot of people park there because they just want to run in and look quickly and go back out. She stated that they cannot control where they park.

Ms. Higgins suggested that there be no parking signs placed along that strip.

Ms. McCulley agreed with Ms. Higgins.

Ms. Dickerson stated that she would assume when the State took it over that they probably would, but right now it was a private road. She pointed out that they have to maintain it because currently it was a private road.

Mr. Rieley asked if an indefinite deferral with a target to get it back to the Commission as soon as possible after thirty days of compliance would be the sensible way to do this.

Mr. Cilimberg stated that technically what would happen would be that after the Zoning Administrator determines that it has been thirty days that the applicant would be made aware of that and the advertisement would take place, which would essentially mean that it would be three weeks after that.

Mr. Rieley stated that was fair enough.

Mr. Edgerton stated that it has to be made clear that the thirty days does not start until the compliance occurs on all violations.

Ms. McCulley noted that it would have to be compliance on consecutive days.

Ms. Dickerson asked if this was compliance with the existing site plan.

Ms. McCulley stated that was correct.

Mr. Rieley stated that because those trees were so big that he did not think it was practical or even fair to require the applicant to replace trees as big as they were since they were probably 8 to 10 inch caliper trees. He stated that he also did not think it was fair to put in what would currently be required under ARB requirements. He suggested that a 4 or 5 inch caliper tree at a minimum be used for determining that bond.

Ms. Higgins stated that her understanding is that it was not the time of year to plant any trees so they would have to be bonded. The applicant should bond what was under the original site plan and let that be the separate issue. Then under this special use permit it actually specifically addresses that a landscape plan will be submitted that covers the front of both parcels.

Mr. Rieley stated that would not address his concern, which was that those trees have been growing for ten years and were big trees. Therefore, the trees that were lost are not the same size trees that they would currently require as a replacement. He suggested an in between compromise. He asked when the bond was determined that it not be based on the minimum.

Ms. Dickerson pointed out that they did not want to add too many trees because one side of the frontage cannot have any trees on it. When they built the road they put cement underneath one half of that median strip there in front of their cars. She pointed out that they had killed the two trees that were there because of the cement.

Mr. Rieley pointed out that they would deal with that at the next level.

Ms. Dickerson stated that if they increased the trees that they would all have to be on one side, which would look very lopsided.

Mr. Rieley stated that when this does come back that Ms. Higgins had raised a couple of points that he would like to reiterate. It is important that this be tidy, paint able spaces. He noted that prime and double-seal would not be appropriate for painted spaces. He felt that it needs to be plant mix with proper designations for where the parking spaces are. Engineering Department needs to look at the radius on the curves.

Ms. Higgins stated that the entrance does not meet current VDOT standards for entrances or the DSM Manual radius. The delineation of how many cars and how orderly they are and the tree planting islands are the specific things that make a big difference in how this will appear from the Entrance Corridor.

Mr. Thomas stated that they would leave the vacant parcel along while they got the existing parcel in compliance first.

Mr. Rieley stated that he was absolutely correct.

Mr. Cilimberg pointed out that it was good for staff to understand what they were looking for.

Mr. Edgerton pointed out that he agreed with Ms. Higgins earlier comments that the level of detail should at least be what the Commission required for Dennis Enterprises, which would address all of these issues.

Mr. Thomas asked if the applicant understood the requirements for the deferment and if she wanted to request a deferment.

Ms. Dickerson stated that she still did not understand the time period because they had talked about so many things.

Mr. Thomas stated that it appeared to be up to 45 days right now.

Mr. Cilimberg stated that if there was an indefinite deferral there is not a time frame specifically. The best staff would be able to do would be to get it scheduled roughly three weeks after the consecutive thirty days of compliance occurred. That could start next week, next month or whenever, which was really up to the applicant. Putting a specific date on this or 45 days or whatever would not be practical. If the applicant understands that their best interest is served by getting into compliance as soon as possible and having the thirty consecutive day compliance so the Zoning Administrator could confirm and then they could get it advertised roughly three weeks after that would be the best time frame that staff could give.

Ms. Dickerson asked if he was talking about thirty days of compliance and then once that is done then they would have three weeks before they could come back before the Board again.

Mr. Cilimberg pointed out that staff has to meet two advertising requirements required by the law. After that point of time they could come back before the Planning Commission.

Ms. Dickerson stated that she was not trying to be difficult. She was just trying to say that this has been over a two year process for them. Therefore, she was just trying to get it down that they would not be going for another two years.

Mr. Cilimberg pointed out that the key was those thirty consecutive days.

Mr. Thomas stated that the time frame was completely up to the applicant as to how fast they could move to get into compliance.

Ms. Dickerson stated that it should not take over a month after the thirty days of compliance.

Ms. McCulley stated that was correct.

Mr. Rieley stated that with that expectation what she needed to request was an indefinite deferral from the Commission with that understanding.

Ms. Dickerson stated that she would request an indefinite deferral.

Mr. Rieley moved to accept the applicant's request for indefinite deferral of SP-02-32, Dan's Automart, with the understanding that the request will not be rescheduled until the site comes into full compliance for 30 days.

Ms. Higgins seconded the motion.

The motion carried by a vote of (6:0). (Morris – Absent)

Mr. Thomas stated that SP-02-32 was indefinitely deferred.

Old Business:

Mr. Thomas asked if there was any old business.

Ms. Joseph asked to say something in Mr. Edgerton's defense regarding the Rural Areas memo. She pointed out that part of it was that there were three new members on the Planning Commission and that they had received a lot of public comment about possibly reconsidering some of the things that have been taken out. She pointed out that Mr. Edgerton was just attempting to respond to some of the things they had been hearing.

Ms. Higgins and Ms. Joseph commended Stephen Waller on his staff report on SP-02-32, Dan's Automart.

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

New Business:

Mr. Thomas asked if there was any new business.

Ms. Joseph stated that she was working on a very large historic district in the southern part of Albemarle County. She acknowledged that there was a lot of concern and curiosity about it. She stated that she would like to work with staff and see if there was a time that the Commission could receive information from the persons working on the project.

Mr. Cilimberg reminded the Commission that next Tuesday the meeting begins at 4:00 p.m.

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

Adjournment:

With no further items, the meeting adjourned at 7:57 p.m. to the 4:00 p.m. work session on July 20, 2004.

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V. Wayne Cilimberg, Secretary

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