Albemarle County Planning Commission
September 14, 2004

The Albemarle County Planning Commission held a meeting and public hearing on Tuesday, September 14, 2004 at 6:00 p.m., at the County Office Building, Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia. Members attending were William Rieley; Rodney Thomas, Chairman; Bill Edgerton; Cal Morris; Marcia Joseph; Joe Higgins; David J. Neuman, Architect for University of Virginia (non-voting) and Pete Craddock, Vice-Chairman.

Other officials present were Wayne Cilimberg, Director of Planning & Community Development; Yadira Amarante, Senior Planner; Bill Fritz, Chief of Current Development; Stephen Waller; 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. There being none, the meeting proceeded to the review of the Board of Supervisors meetings.

Review of the Board of Supervisors Meeting – September 1 and September 8, 2004

Mr. Cilimberg reviewed the actions taken on September 1 and September 8 by the Board of Supervisors.

Consent Agenda:

Approval of Planning Commission Minutes – June 29, 2004

Mr. Thomas asked if there was any item on the consent agenda that any Commissioner would like to pull for discussion.

Ms. Joseph moved to defer approval of the minutes for June 29, 2004 to next week.

Ms. Higgins seconded the motion.

The motion carried by a vote of (7:0).

Mr. Thomas stated that the motion carried to defer the approval of the minutes to June 29.

Items Requesting Deferral:

ZMA-2004-010 UVA Research Park Amendment (Sign #96): Request to amend existing proffers for 5.9 acres in Fontaine Research Park, zoned CO, Commercial Office, and EC, Entrance Corridor, to allow an increase of 40,000 square feet, for a maximum of 535,000 square feet of research and laboratory space. The property, described as Tax Map 76 Parcels 17B, 17B(1), 17B(2), 17B(3), 17B(5), 17B(6), 17B(7), 17B(8), 17B(X), and 17B(W), is located in the Samuel Miller Magisterial District, in Fontaine Research Park, on the south side of Fontaine Avenue (Route 29 Business) immediately east of the 29/250 By-Pass. The Comprehensive Plan designates this property as Office Service in the southern portion of Neighborhood Six. (Susan Thomas). ***(STAFF REQUESTING DEFERRAL TO SEPTEMBER 28, 2004 DUE TO ADVERTISING ERROR)***

Mr. Thomas stated that staff has requested deferral of ZMA-2004-010 to September 28 due to an advertising error. He asked if the public hearing needs to be opened.

Mr. Kamptner stated that since the request was not properly advertised the first time that the public hearing did not need to be opened.

Mr. Thomas asked if there was any discussion or a motion on this application.

Mr. Morris moved to accept the staff's request for deferral of ZMA-2004-010, UVA Research Park Amendment, to September 28, 2004.

Mr. Craddock seconded the motion.

The motion carried by a vote of (7:0).

Mr. Thomas stated that the motion carried for ZMA-2004-010 to be deferred until September 28, 2004.

SP-2004-00031 Gold's Gym (Sign #14 & 15) - Request for special use permit to allow establishment of an indoor gym in accordance with Section 27.2.2(15) of the Zoning Ordinance which allows for indoor athletic facilities in an LI, Light Industrial district. The property, described as Tax Map 61W Section 3 Parcel 18 contains 25.4 acres, and is zoned LI, Light Industrial and EC, Entrance Corridor. The proposal is located on the south side of Rt. 866 (Greenbrier Drive) in the former Comdial building, on the west side of Rt. 29N (Seminole Trail), in the Rio Magisterial District. The Comprehensive Plan designates this property as Industrial Service in Neighborhood One. (Susan Thomas) ***(APPLICANT REQUESTING DEFERRAL TO JANUARY 18, 2005.)***

Mr. Thomas stated that the applicant requested deferral of SP-2004-00031, Gold's Gym to January 18. He opened the public hearing and asked if anyone was present to speak regarding this application. There being no one, he closed the public hearing to bring the matter before the Commission for discussion and a possible action.

Ms. Higgins moved to accept the applicant's request for deferral of SP-2004-00031, Gold's Gym, to January 18, 2005.

Mr. Morris seconded the motion.

The motion carried by a vote of (7:0).

Mr. Thomas stated that the motion carried for SP-2004-00031 to be deferred until January 18, 2005.

Regular Items:

SP-2004-00039 ALLTEL/Keswick II (Sign #43 & 55) - Request for special use permit to allow three flush-mounted antennas to be mounted to an existing self-supporting tower and three equipment shelters in accordance with Section [10.2.2.6] of the Zoning Ordinance which allows for microwave and radio-wave transmission and relay towers in the R-A Zoning District. The property, described as Tax Map 94, Parcel 41A1, is zoned RA, Rural Area and EC, Entrance Corridor and is located on Rt. 250E (4460 Richmond Road), near Boyd Tavern, just west of where Richmond Road and Rt. 794 (Three Chopt Road) intersect, in the Scottsville Magisterial District. The Comprehensive Plan designates this property as Rural Area in Rural Area 4. (Stephen Waller)

Mr. Waller summarized the staff report. The applicant's proposal is for the co-location of one new array consisting of three (3) new antennas at approximately 93 feet in height on an existing 150-foot tall lattice tower with additional supporting ground equipment. The proposed flush-mounted panel antennas are approximately 6 feet in length and11.2 inches in width. Ground equipment would be installed in three (3) cabinets, within the existing fenced compound. The proposed array of Alltel antennas would be mounted at approximately 93 feet above ground level at their centerline on a tower owned by Crown Communications Company. The tower proposed for this facility was constructed in 1997 and currently has four (4) existing arrays of panel antennas and one microwave dish that are all attached at heights

ranging between 100 feet and 148 feet. The three highest arrays of existing panel antennas are all attached with mounting brackets that separate them from the tower, while the lowest set is flush-mounted to the tower structure. In addition to the tower, there are two (2) existing buildings and three cabinets housing ground equipment for the other service providers with facilities at this site. The tower itself and all of the related ground equipment is located within a compound surrounded by a 6-foot tall chain-link fence in a relatively level field that is adjacent to Interstate Route 64. Although there are two wooded areas located to the north and south of the lease area, the tower itself is much taller than those trees and can be seen from I-64.

This site is accessed from an existing gravel road that extends past the dwelling on the subject property and is approximately 1750 feet north of the westbound lane of Route 250 approximately. With the exception of the adjacent parcel identified as Tax Map 94 - Parcel 39, which has a split zoning of C-1, Commercial and Rural areas, all of the properties surrounding this site are zoned Rural Areas. The tower proposed for this co-location is located approximately 180 feet from the boundary line to the north, which is shared with the right-of-way for I-64.

During the review of this request one of the adjacent property owners to the east approached staff with concerns regarding the ground equipment in the facility. Staff has included a condition in the recommendations that the equipment be screened from the adjacent property with evergreen screening. The applicant has provided a letter to the adjacent property owner regarding the negations with that adjacent property owner for removal of that condition for the landscaping and replacing that landscaping with screening for fencing around the outside of that compound. (See Attachment A – Letter dated September 13, 2004 to Mr. Butch Wilburger, Jr. from M.E. (Dick) Gibson, Jr.) Staff has not received any correspondence from that adjoining property owner. Staff requested that the adjacent property owner provide a letter about the screening, but he was reluctant to do so. The condition staff crafted about the screening is consistent with other attempts that they have made to address screening concerns from adjoining property owners. At this point staff has nothing from that adjoining property owner as far as a request for the screening and nothing in response to the applicant's letter.

Staff has reviewed this request for compliance with the Comprehensive Plan and Section 5.1.40 of the Zoning Ordinance, which addresses Personal Wireless Service Facilities, and recommends approval.

Staff has identified the following factors, which are favorable to this request:

1. This proposal represents a co-location opportunity for flush-mounted panel antennas that are anticipated to have minimal visual impacts.
2. The proposed antennas would be located at a lower height than all of the existing arrays on the tower.
3. The new ground equipment cabinets do not require an expansion of the lease area.
4. No clearing or other disturbance is necessary for the placement of the antennas or ground equipment.

The following factors are relevant to this consideration:

1. There are several existing and reasonable uses on this site.
2. The existing tower is visible from various roads and properties located near this property.
3. The Architectural Review Board has granted the Design Planner with the authority to administratively approve this proposal.

That administrative approval has been granted with one condition that requires that that the equipment that is going to be mounted to the tower match the color of the tower. Staff distributed the ARB action letter dated September 8 regarding this condition. (Attachment B – See letter dated September 8 letter to Peter Caramanis from Margaret Maliszewski, Design Planner) If the Commission has any questions, he stated that he would be happy to answer them.

Mr. Thomas asked if there were any questions for Mr. Waller.

Ms. Joseph asked why the condition is worded that the tower can be extended to 199 feet.

Mr. Fritz stated that at the time that this tower was built staff was reviewing wireless facilities under a completely different philosophy than they are using now. At the time, staff wanted to try to ensure that any site that was built would be able to accommodate the maximum amount of additional users. Therefore, they actually required that basically the applicant built every tower as a 200 foot tower, but actually only build the first 150 feet of it. Then if someone came along and asked to be able to go on the existing tower, then they could tack on more height to the tower and the footings and base would be strong enough to support the additional height. That was the philosophy at the time. If the applicant wanted to go higher, then they had to come back for further review.

Mr. Craddock stated that condition 5 about safety lighting was really moot because the tower would not be going any taller.

Mr. Waller stated that was exactly correct. That condition was really applied to the taller towers just in case the FAA regulations were changed in the future or if someone were to build a helicopter landing pad in the area and if it was close enough that there was a new requirement for lighting that they would like to have that condition in there to catch that.

Mr. Rieley stated that condition 6 says that no existing trees within 200 feet of the facility shall be removed for the purpose of installing the proposed antennas or any supporting ground equipment. He asked what about removing the trees because they don't like them. He asked why they should not just put a period after removed and just leave the rest of that sentence out.

Mr. Fritz stated that would be fine.

Ms. Joseph stated that condition nine talks about the facility shall be designed, installed and maintained in accordance with any additional conditions and requirements established by the Design Planner through the issuance of a Certificate of Appropriateness. She asked if they could change the word Design Planner to Architectural Review Board. She pointed out that the Design Planner works in conjunction with the ARB, but the change in the wording provides an option for an appeal. If the applicant does not like what the Design Planner says, then they can appeal to the ARB. She asked that in condition 10 that building be changed to tower in both the first and second sentences.

Mr. Waller agreed with Ms. Joseph's suggestion.

Ms. Higgins asked staff if the applicant has been submitting the report to the zoning administrator each year on July 1 as required in condition 10.

Mr. Fritz stated that the zoning administrator has developed a rigorous program to monitor these to ensure that notices are done.

Mr. Waller stated that if the report is not submitted that the applicant would be cited in violation.

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

Peter Caramanis, representative for Alltel, stated that this was a co-location on an existing tower. The reason that a special use permit is required is because it is the fifth carrier on the tower. He stated that he wanted to be careful in talking about the arrays of antennas because what will be attached here is actually not an array. But, it depends on how you define array because they are not all connected together. There will be three antennas that are each flush mounted to the existing structure. The reason that he points that out is because obviously a flush mounted antenna that is just connected to the support structure is going to be a lot less visible than having any sort of triangular mount of an array up there. He stated that he just wanted to make that clear. The co-location obviously is a better option than constructing a new tower. On this tower the fourth array is visible just above the one they are proposing, which is a lot less visible than everything else on the tower. The issue tonight is going to be condition 4,

which Mr. Waller mentioned. Staff added condition 4 after speaking with the neighboring property owner, Mr. Wilburger, who expressed some concern about the potential to see the ground equipment from his adjacent property. When it is the task of Alltel to plant some landscape buffer, they have always been willing to do so. He pointed out that he could not remember a single case where they said that they did not want to do that. In this case there are some unusual factors that make that not a viable option. The first is that the fenced area of the compound is actually the lease area. Therefore, Alltel and the other carriers actually have no rights outside that area to plant anything as their lease now exists. There is also no room to plant it inside the fence or to move the fence in and to plant the trees based on where the equipment is because there would be no room to do that either. In addition to that, this property is used for cattle grazing and if there were trees to be planted it would be subject to the cattle eating them or somehow otherwise destroying them. Basically, it would inhibit the purpose that the trees would be there for. He stated that they contacted Mr. Wilburger to talk about what his concerns were and to see what could be done to address them. In their letter they basically asked Mr. Wilburger what his concerns were and if it had to be trees or if there was another way that they could address it. He pointed out that he was willing to accept the proposal whereas the side of the compound that is between the equipment and his property could be replaced by a wooden fence for that section. That is what they would ask this condition to be changed to. That was something that they had discussed with Crown because obviously this is their tower and they hold the original lease. Alltel has gotten their approval to do that. It appears that everybody would be satisfied with that. The ARB gave approval and did not find any need to do any screening. Therefore, the only concern was from Mr. Wilburger's property and this would address that concern. Therefore, he would ask that condition 4 be amended to just basically say that the existing fence between the equipment and Mr. Wilburger's property would be replaced by a wooden fence. He asked that the Commission recommend approval of the application with that change in the condition.

Mr. Thomas asked if there were any questions.

Mr. Edgerton asked if the one side of the fence would be done, but the rest would stay wire.

Mr. Caramanis stated that the rest of the fence would remain chain link.

Ms. Joseph asked if they can't plant trees outside of this, then how could they guarantee that within 200 feet that the trees that are there will remain standing.

Mr. Caramanis stated that they could not guarantee that they will remain standing, but they could guarantee that they won't take them down. There are really no trees there because it is a pasture. There are isolated trees, but they are not going to be disturbed by anything that they will do. There is no trees right up against where any of this would be going on.

Ms. Joseph stated that there was no easement mechanism or anything that you have talked about with the owner to ensure that the trees within that 200 feet will remain.

Mr. Caramanis stated that the owner was part of this application and were bound by it as well.

Mr. Kamptner stated that the special use permit runs with the entire parcel. Therefore, that 200 foot radius will affect not only the leased area but also the owner's property.

Mr. Thomas asked if there were any other questions. He asked if there was anyone 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. He asked how the other Commissioners felt about the wooden fence.

Mr. Edgerton asked how many requests are too many. Co-location was what was asked for back in 1997 and Mr. Fritz explained that was the philosophy at that time. This tower is totally exposed. There is a condition which says that each request has to come back to the Commission for approval. He asked if they would just continue to approve each additional request. He asked at what point it would become an issue. He stated that he did not have the answer, but was curious how the other Commissioners felt

about it.

Mr. Rieley stated that he felt that the threshold had been passed sometime ago. This is the first opportunity the Commission has had to exercise some discretion. He stated that he never drives by this tower without thinking about their former colleague, Bill Nitchman, who voted for it on the basis of photo-simulations and staff's recommendation. Every time they discussed a tower issue, Mr. Nitchman would say that if he had known what the tower was going to look like in Keswick that it would not be there today. Every time that an additional antenna had been added to it, it has compounded a really big mistake. He stated that he was not in favor of continuing to compound it. The fair question that would be raised is would it be better and less of a disturbance to put a new monopole somewhere else because that is the alternative for this. That is a fair question. He stated that at some point they need to draw a line. This is the first opportunity that the Commission has had to do that.

Ms. Higgins asked if the issue back in 1997 was that if you do taller poles that your coverage is increased. If you look at this as opposed to a monopole at another location, how many monopoles would it take eventually to cover the same area? Then, they also have to look at the part of the County that it is located. It is less mountainous in this part of the County and the topography lies a little differently. There is not as good an opportunity in some respects on that side of I-64 to make it work with the background. That is what she thought about this. She stated that the flush mounted antenna seems to do a better job than the previous antennas. She stated that those were the factors that she considered. She suggested that the applicant tell the Commission how many antennas would be needed to provide the same coverage. She stated that she did not know if more was better if this was existing.

Mr. Craddock stated that on the other side of that issue is that the way the towers go up now that for the most part one does not know that they are there. Therefore, if you are compounding an already bad situation and the alternative is a new monopole that the chances are that you would not be able to see that monopole wherever it goes even if a second one has to be put up.

Mr. Edgerton stated that was a good point. The Planning Commission would never approve any tower with this much exposure under the current policy. The alternative is to put up a new monopole tower, which would include all of the conditions regarding the visual impact. He agreed with Mr. Craddock because they would be hard pressed to have the same kind of impact that they will be having with the existing tower. He felt that Ms. Higgin's points were well taken regarding the flush mounted antennas. Since the technology has improved the antennas are not as outrageous looking. But, just the same when is the line drawn.

Mr. Thomas stated that the tower was ugly. He asked what the policy says about another tower on an existing structure since that was one of the suggestions in the policy. He asked if that would outweigh the visual effects or would the visual effects outweigh that.

Ms. Joseph asked if this tower would be considered nonconforming.

Mr. Kamptner stated that this tower was approved by a special use permit. Therefore, it was a legal tower. The fact that the Wireless Policy recommended a different type of structure does not make it nonconforming.

Ms. Joseph stated that usually the more a nonconforming structure is expanded the more the nonconforming aspect vests and the more difficult it would be to ever go away.

Ms. Higgins pointed out that it was very surprising that it had a condition that it could be extended since the policy at that time seemed to be fairly strong. She stated that seven years ago is not that long ago. She stated that monopoles were better.

Mr. Thomas asked how many monopoles it would take for the same amount of coverage. He asked if the applicant would like to answer that question.

Mr. Caramanis stated that he could not give them an exact number. He stated that it would take at least one because they need to put those antennas there. Alltel's antennas will be going in at 93 feet.

Mr. Rieley stated that there are a lot of tree top towers that are almost at that height.

Mr. Caramanis stated that there were a couple of problems. He noted that one could not do a tree top tower in a pasture. The location of the tower would have a huge impact on how many more would be needed. If they were forced to put it too far away from this location, it would not be covering the same area and it might require another one. There is also the visual aspect of it to consider. He stated that the answer to the question was that it would take at least one other and possibly more depending on where the available locations would be.

Ms. Higgins asked if an expectation could be added that if the Board decides to consider this favorably that if any other co-location was to be considered on this pole that the existing elements of it at higher levels be modified to the newer technology. She suggested that a condition be added that this would be the last co-location allowed under this special use permit without a modification or a reduction in height. She suggested that the condition be written so that it would bring this into closer compliance with the current standards. She suggested that it either come back flush mounted or possibly have a reduction in the height.

Mr. Rieley stated that it was an interesting idea, but asked why they should not make this the opportunity.

Ms. Higgins stated that it would be without warning and she did not know if this applicant has the control over the owner of this tower. She stated that they should make the statement now to the applicant that they will need to modify what exists to a newer type of antenna or be flush mounted, and bring it closer to meet our policy or not to bring it back to the Commission for co-location.

Mr. Rieley stated that was a real good thing to think about in terms of a general statement or general policy.

Mr. Edgerton stated that their predecessors actually did draw the line. On page 4, it is very clearly stated in the middle paragraph about what occurred in 1997. In the last sentence it says, "Under those regulations, the owner of an existing structure is allowed to support the co-location of a maximum of three (3) antenna arrays by right, provided that the final two arrays consist of a combination of flush-mounted panel and/or whip antennas. A special use permit is required in this particular case because there are already more than three arrays of antennas that were co-located on this structure prior to the adoption of Section 5.1.40. Therefore, it would not be before the Commission if it was still fitting with what had been intended with the 1997 special use permit.

Ms. Higgins pointed out that it just does not go that extra step that she was suggesting.

Mr. Rieley stated that aside from the overarching issue of whether or not this should be approved, he felt that they should make some suggestions relative to these conditions so that the Board will have that no matter which way they vote. He stated that the Board should have their concerns about these conditions either way.

Mr. Thomas stated that the Commission all agrees with condition 4.

Mr. Rieley asked if anybody was concerned that having fencing only on one side would look kind of funny.

Mr. Edgerton agreed with Mr. Rieley that it was going to look stupid.

Mr. Rieley stated that if solid fencing was going to be substituted for planting in a general way and if it was appropriate to box that in rather than screen it with plantings that it seems that it should be done on all sides and not just one side. He questioned whether the effect would be the same because a wooden box that would box something in a pasture was not the same as the effect that one gets from plantings.

Ms. Higgins stated that the fence was currently chain link, and they could get the same effect by using the panels that go in to the chain link. She stated that a cow abused wooden fence might look worse to somebody in a couple of years than a standing new fence. She stated that she does not prefer those over a wooden fence, but if a cow rubbed up against a wooden fence it could get in disrepair and not look as good as something that would screen it that way.

Mr. Rieley stated that the question was whether either one of those was an acceptable alternative to what was originally in the conditions.

Mr. Edgerton asked Mr. Kamptner about his response about the trees outside of the leased area since the special use permit was being granted to the property owner. If it includes the entire property, then requiring planting outside of the leased area would not be a problem.

Ms. Higgins suggested that the Commission look at item 8 that was previously approved. She felt that they were going in a direction that was not exactly the same. Item 8 that was adopted in 1997 does not say the same thing as condition 4. It actually said that existing trees shall not be removed without amendment of this special use permit except as authorized by staff to permit construction of the tower and installation of access for vehicles and utilities. Therefore, the property owner is already bound by that. It is not a new condition. She suggested that they leave the condition as it is because it has been in existence since 1997. That would be item 8 on page 24, which was in the letter sent out at that time.

Mr. Rieley stated that they were talking about two different things.

Mr. Craddock stated that it was condition 6 in the current conditions.

Ms. Higgins stated that condition says that the applicant shall not remove trees except by authorization if they come back and amend the special use permit. She stated that Mr. Rieley suggested that they cut the condition off at the period, but this says they can't even remove trees at all unless authorized.

Mr. Rieley stated that he did not see any point in muddying the issue by leaving the second half of that sentence in there because it implies that anything other than that is okay. But, then you look back some place else and find that is not acceptable. He felt that it was much clearer if it says they don't remove any trees within 200 feet period. He stated that was a separate issue than what Mr. Edgerton was talking about.

Mr. Kamptner stated that to answer the question, the applicant must deal with the terms of their lease and that they probably are assuming their rights to do things such as install landscaping is probably limited to the leased area. Therefore, if the Board imposes a condition that requires landscaping as envisioned by condition 4 as it is right now, then the applicant will probably have to go back and negotiate the right to install the landscaping to comply with this condition. If that fails, then the applicant will not be able to satisfy all of the conditions and will not be able to exercise the special use permit. That is typical of any special use permit.

Mr. Rieley stated that the special use permit runs with the entire parcel and what the applicant is willing to negotiate with the person who owns that entire parcel is between them.

Mr. Kamptner stated yes, because if it was otherwise the terms of the lease could so restrict what could be done and the applicant could effectively negotiate lease terms so as to argue that they could not comply with any of the conditions because the lease area is so small.

Mr. Edgerton stated that with that explanation he was very enthusiastic about leaving condition 4 the way it is. He felt that over time it will do much more of a successful job of screening.

Ms. Higgins asked how they could protect the trees from the cows.

Mr. Edgerton stated that was their problem.

Ms. Higgins stated that they would need a fence.

Ms. Joseph stated that they could use a fence or something because in the rural areas people do it all the time.

Ms. Higgins stated that it would mean another fence outside of the tree area.

Mr. Morris pointed out that from attachment B there appears that there are trees located in that area already. He pointed out that there are trees in the pasture area, but there are trees there.

Mr. Kamptner pointed out that several years ago staff worked with an applicant to find the best facilities to use within a cow pasture. It has been studied at least once before.

Mr. Rieley stated that Mr. Morris was correct that there were definitely trees within 200 feet.

Mr. Morris stated that there were if this was a recent photograph.

Ms. Higgins stated that in the letter of September 11, 1997, there is no statement on how many antennas this particular special use permit is subject to. What they are reading on page 4 has to do with Section 5.1.40.c, which now addresses the limit. There is no condition from when this was approved that really draws a line.

Mr. Rieley stated that it was not drawn there, but it was drawn in the ordinance.

Ms. Higgins stated that this was geared towards co-location.

Mr. Kamptner stated that going back to Ms. Joseph's question about what is nonconforming; the number of arrays is nonconforming with the adoption of Section 5.1.40. Once they reach the threshold, then the regulation controls the limit on the three antenna arrays.

Mr. Waller stated that it would require a special use permit.

Ms. Higgins stated that does not supersede the ordinance.

Mr. Thomas asked if the Commission was satisfied with condition 4.

It was the consensus of the Commission that condition 4 remains as it was; condition 6 have a period inserted after removed; and condition 9 have Design Planner changed to ARB.

Ms. Higgins stated that under condition 10, tower would replace building in both places.

Mr. Thomas asked if there were any other changes or discussion.

Ms. Higgins moved for approval of SP-2004-00039, ALLTEL/Keswick II, based on the changes to conditions 6, 9 and 10.

The facility shall be designed, constructed and maintained as follows:

1. With the exception of any minor changes that would be required in order to comply with the conditions listed herein, all work shall be done in general accord with that described in the applicant's request and site construction plans, entitled "Alltel (Keswick II)", dated June 14, 2004 and provided in this staff report with Attachment A.

2. The tower shall not be increased in height.

3. The additional array of panel antennas may be attached only as follows:
   a. All equipment attached to the tower shall be painted to match the color of the tower. The cables extending from the ground equipment may remain black.
   b. The antennas shall be sized as shown on the construction plans.
   c. In no case shall the distance between the face of the tower structure and the faces of the antennas be more than 12 inches.

4. The applicant shall install a double staggered row of evergreen trees at a minimum height of five (5) feet at planting and spaced at fifteen (15) feet on center for the purpose of screening the ground equipment. Those trees shall be planted in a manner that adequately supplements the existing vegetation near the boundary line shared with the property located to the east of the site, identified as Tax Map 94 - Parcel 39.

5. With the exception of any safety lighting required by Federal Aviation Administration regulations, no lighting shall be permitted for this the facility, except as herein provided. Outdoor lighting shall be limited to periods of maintenance only. Each outdoor luminaire shall be fully shielded such that all light emitted is projected below a horizontal plane running though the lowest part of the shield or shielding part of the luminaire. For the purposes of this condition, a luminaire is a complete lighting unit consisting of a lamp or lamps together with the parts designed to distribute the light, to position and protect the lamps, and to connect the lamps to the power supply.

6. No existing trees within 200 feet of the facility shall be removed.

Prior to the issuance of a building permit, the following requirements shall be met:

7. Revise the title on the construction plans to include the name of the owner of the subject property.

8. With the building permit application, the applicant shall submit the final revised set of site plans for construction of the facility. During the application review, Community Development staff shall review the revised plans to ensure that all appropriate conditions of the special use permit have been addressed.

9. This facility shall be designed, installed and maintained in accordance with any additional conditions and requirements established by the Architectural Review Board through the issuance of a Certificate of Appropriateness.

After the issuance of a Certificate of Occupancy, the following requirements shall be met:

10. The applicant, or any subsequent owners of the tower, shall submit a report to the Zoning Administrator by July 1 of each year. The report shall identify each personal wireless service provider that use the facilities attached to the tower, including a drawing indicating which antennas and equipment are associated with each provider.

11. All equipment and antennae from any individual personal wireless service provider shall be disassembled and removed from the site within ninety (90) days of the date its use is discontinued. The entire facility shall be disassembled and removed from the site within ninety (90) days of the date its use for personal wireless service purposes is discontinued. If the Zoning Administrator determines at any time that surety is required to guarantee that the facility will be removed as required, the permittee shall furnish to the Zoning Administrator a certified check, a bond with surety satisfactory to the County, or a letter of credit satisfactory to the County, in an amount sufficient for, and conditioned upon, the removal of the facility. The type of surety guarantee shall be to the satisfaction of the Zoning Administrator and the County Attorney.

12. This special use permit must be amended to allow any of the four existing arrays of panel antennas to be:

a. relocated on the structure;
b. modified to increase the number or size of panel antennas; or,
c. modified to increase the distance of the panel antennas from the structure.

Mr. Morris seconded the motion.

The motion was defeated by a vote of (3:4). (Morris, Thomas, Higgins – Aye)
(Joseph, Edgerton, Rieley, Craddock – Nay)

Mr. Thomas stated that the motion was defeated for SP-2004-00039, which would go to the Board of Supervisors on October 6.

Mr. Rieley asked if a motion was needed to deny the request. He asked that the record show that, should the Board not agree with the Planning Commission, that they would consider the conditions as modified.

Mr. Kamptner suggested that the Planning Commission make a motion to deny the request to make the action clear.

Mr. Rieley moved for denial of SP-2004-00039, ALLTEL/Keswick II.

Mr. Morris seconded the motion.

Ms. Higgins stated that the motion was for denial, but if the Board chose to vote against their recommendation that the Commission wanted the conditions to survive.

Mr. Edgerton suggested a friendly amendment be made to the motion to include that stipulation.

Mr. Rieley amended the motion for denial with the caveat that if the Board disagrees with the Planning Commission's recommendation that the modified conditions survive as previously discussed.

Mr. Craddock seconded the amended motion.

The motion for denial passed by a vote of (4:3) with the caveat as previously stated. (Edgerton, Morris, Thomas, Higgins – Aye) (Joseph, Rieley, Craddock – Nay)

Mr. Thomas stated that SP-2004-00039 would be heard by the Board on October 6.

SP-2004-00028 Snow's Rental Units (Sign #69) – The applicant proposes to establish contractor's outdoor storage on Tax Map 90, Parcel 35. This property consists of approximately 8.167 acres zoned LI, Light Industry and EC, Entrance Corridor Overlay District. Outdoor storage and display in the EC, Entrance Corridor Overlay District requires a special use permit in accord with the provisions of Section 30.6.3.2(b) of the Zoning Ordinance. The property is located on the east side of Route 742 (Avon Street) opposite Mill Creek South in the Scottsville Magisterial District. The Comprehensive Plan designates this area for Industrial Service in Neighborhood 4. (Yadira Amarante)

Ms. Amarante stated that the staff report listed the previous application number, SP-01-46. The correct application number is SP-04-028. The applicant is proposing to utilize this property for outdoor storage and display, which is basically what the special use permit request is for. This is on an 8-acre parcel, zoned Light Industrial located on Avon Street Extended. The applicant is proposing the primary use for a contractor's office and storage. The applicant has indicated to staff on several occasions that most likely all of the units will not be rented to contractors. Some of the units could be small offices. Therefore, not all of the units will utilize the outdoor storage special use permit and that is why the request is before the Commission. An identical petition, SP-01-046, was approved by the Board of Supervisors on September 11, 2002, but the use was never established. The preliminary site plan was approved, but it expired before the applicant was able to submit the final site plan. Once it was acknowledged that the site plan had expired, staff became aware that the special use permit also was about to expire. Therefore, staff

suggested that the applicant come in with a new application. It would have been an extension, but the timing would not have allowed it. The applicant was back before the Commission with basically the same request from 2002. The Site Review Committee has looked at this for conformance with the Comprehensive Plan. The ARB had reviewed the special use permit and their comments are provided in the attachments. Basically, the ARB has no objections to the special use permit. In light of that, staff recommends approval with a few changes to the conditions that existed in the 2001 application. The Zoning Administrator changed the wording of the conditions slightly to make the conditions clearer for enforcement purposes. But, the intent of all of the conditions is still the same. The Commission will notice in Attachment D of the staff report that the conditions are a little bit different.

Mr. Edgerton stated that staff's statement about the ARB being comfortable with this request is based on a letter that was written two years ago. He asked if the ARB has not seen this request again.

Ms. Amarante stated that the ARB was aware of the new application and the new request. In a conversation with the Design Planner, she indicated that since the Architectural Review Board's policies have not changed that she felt that the ARB did not need to see the application again.

Mr. Edgerton stated that staff was saying that the plan under review was identical to the previous one, but the Commission does not have a copy of the old plan.

Ms. Amarante stated that it was true that the Commission did not have a copy of the old one.

Mr. Edgerton stated that he was personally uncomfortable without the Commission being able to see the previous plan. He stated that there were people on the Commission who were very good at reading plans, and he would like for them to see the old plan before they accepted this as being identical to the one done two years ago. He asked if there was a reason why the Commission could not wait until the ARB has reviewed this before they were asked to act on it.

Ms. Amarante stated that the Design Planner has said that she believed that the ARB did not need to review it again.

Mr. Edgerton stated that in that case, then there would not be any requirements at all other than what happened two years ago.

Ms. Amarante stated that basically the Design Planner's instructions were to include the same conditions that the ARB provided previously. The Design Planner looked at the plan and saw that it was the same as was presented the first time, and her instructions were to keep the same conditions that the ARB had imposed the first time around.

Mr. Rieley asked if the Design Planner had seen the new plan in conjunction with the old plan.

Ms. Amarante stated that the Design Planner had looked at both plans.

Mr. Kamptner asked if that plan was the old site plan.

Ms. Amarante stated that it was the old preliminary site plan.

Mr. Kamptner asked if the preliminary site plan had expired.

Ms. Amarante stated that it may be that the ARB will need to reinstate the Certificate of Appropriateness for the site plan, but this review would be for the terms of their conditions for the special use permit.

Mr. Rieley stated that this request would still have to go before the ARB.

Mr. Edgerton stated that staff had previously said that it would not go back to the ARB. He noted that he was uncomfortable with that since it seemed too casual.

Ms. Amarante asked to clarify the issue because she was unsure if the ARB would have to look at it again for the Certificate of Appropriateness for the site plan review. The Design Planner was just specifically talking about the special use permit review part of this, which was what she was saying was the same and they did not want to change their conditions.

Mr. Rieley stated that would make sense to him. He asked Mr. Kamptner to comment on this.

Mr. Kamptner stated that the site plan has to go to the ARB for a Certificate of Appropriateness. Since there is no existing site plan, one will have to go back to them. It may be that if the site plan is very similar to the old one that it may be a shorter process, but the ARB would need to see the site plan.

Ms. Higgins stated that they would have to reinstate the special use permit for the site plan.

Mr. Cilimberg asked to note something for the procedure. Special use permits get reviewed initially by the ARB and then lead to recommendations to the Commission that all have to go back through the Certificate of Appropriateness process. There is nothing different here if this gets approved as a special use permit.

Mr. Edgerton stated that the difference is that only one person has looked at it instead of the ARB.

Mr. Cilimberg pointed out that was what staff was there to do. There is a professional staff that is responsible for making sure that these items are in line and appropriate for their status and for the review that has to take place. He felt that one element of this is trusting the staff that works with the ARB that this is the same plan and that it does not need that element of review by the ARB. He stated that he would not doubt that they would need to look at it for the Certificate of Appropriateness because that has always been the case.

Mr. Craddock asked if the request would then come back to the Commission.

Mr. Thomas stated that the request would not come back to the Commission. He stated that was a very good point.

Ms. Joseph suggested that condition 5 and 6 be changed to be subject to the ARB review and approval rather than the Design Planner because it provides the option for an appeal.

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

Dwayne Snow, owner of Snow's Rental Units, stated that he did not have anything to add.

Mr. Edgerton asked they were removing all of the pine trees along Avon Street.

Mr. Snow stated that the pines trees were too close to the existing road and that they had to put a whole new lane of paving in that location. Once that decel lane was put in it would encompass all of the existing pines. Therefore, they were taking out those pines and moving them to the back of the property. He stated that they had a lot of plants going in that area. Each time they came back to the ARB they asked them to add a few more plants.

Mr. Edgerton asked if there were any further questions for the applicant. There being no one, he asked if there was any one present to speak regarding this application. There being no one, he closed the public hearing to bring the matter before the Commission for discussion and a possible action.

Ms. Joseph stated that she actually remembers when this request came through the ARB. The request took on a couple of iterations. At one point there was a roadway in the front. The applicant made some excellent changes to this plan by putting the road in the back and having the access towards the rear so that they could have a lot of area out front to put vegetation to soften the view. The applicant was very

cooperative in addressing the ARB's concern about screening the outdoor storage from the Entrance Corridor by providing a lot of plantings.

Ms. Higgins moved for approval of SP-2004-00028, Snow's Rental Units, with the conditions as modified.

1. The site shall be developed in general accord with the plans entitled "Snows Storage Yard" revision date of 7/23/04 by David Wyant, P.E.
2. The height of stored items shall be limited to 8' in the front row of storage areas (the row closest to Avon Street) and in the southernmost storage area in the back row as delineated on the plan.
3. Eight foot (8') high solid wood fencing of a design that meets ARB approval shall be used as delineated on the plan for the north and south perimeters of the front row of storage yards, the portions of fencing that connect storage yards in the front row, and the southern side of the southernmost storage yard in the back row.
4. Chain link fence shall not be visible from the EC. Chain link fence may only be used following Architectural Review Board confirmation that such fencing will not be visible from the Entrance Corridor.
5. The landscape plan shall be subject to Architectural Review Board review and approval.

Mr. Morris seconded the motion.

Ms. Joseph asked that a condition be added to make it very clear that the site plan for this request is to go before the ARB because there is no limitation on an approval for a Certificate of Appropriateness for a site plan. She pointed out that there is no five year limitation. Just because this request is coming back as a special use permit she questioned whether the Design Planner or other staff would figure that it would need to go through the review. Therefore, she asked that a condition be added that the expectations were that the site plan be reviewed by the Architectural Review Board.

Ms. Higgins amended the motion to change condition 6 as suggested by Ms. Joseph.

Mr. Fritz suggested that condition 6 state that the final site plan shall be reviewed and approved by the Architectural Review Board prior to approval.

Ms. Higgins asked if the landscape plan was part of the site plan.

Mr. Fritz stated that that the site plan did include the landscape plan, which was part of the ARB's review also.

Ms. Higgins asked that the amended condition replace condition 5 so that it would be all encompassed.

Mr. Kamptner pointed out that the ARB issues the Certificate of Appropriateness. Therefore, the condition should state that the ARB shall issue a Certificate of Appropriateness prior to final site plan approval. He pointed out that this would just be a reminder for everybody because of the unique history of this particular application.

Ms. Higgins stated that her motion was so amended.

Mr. Morris seconded the amendment to the motion.

1. The site shall be developed in general accord with the plans entitled "Snows Storage Yard" revision date of 7/23/04 by David Wyant, P.E.
2. The height of stored items shall be limited to 8' in the front row of storage areas (the row closest to Avon Street) and in the southernmost storage area in the back row as delineated on the plan.
3. Eight foot (8') high solid wood fencing of a design that meets ARB approval shall be used as delineated on the plan for the north and south perimeters of the front row of storage yards, the portions of fencing that connect storage yards in the front row, and the southern side of the southernmost storage yard in the back row.

4. Chain link fence shall not be visible from the EC. Chain link fence may only be used following Architectural Review Board confirmation that such fencing will not be visible from the Entrance Corridor.
5. The landscape plan shall be subject to Architectural Review Board review and approval.
6. The ARB shall issue a Certificate of Appropriateness prior to final site plan approval.

The motion carried by a vote of (7:0).

Old Business:

Mr. Thomas asked if there was any old business.

Mr. Edgerton distributed a memorandum dated 9/13/2004 regarding old business from the 9/14/2004 Planning Commission Meeting to be read and discussed. The two items included SDP-04-062, Clifton Inn Site Plan Waiver and SDP-04-023, Faulconer Construction Final Site Plan. (See Attached Memo dated 9/13/04 from Bill Edgerton)

The Planning Commission held a discussion about SDP-04-062, Clifton Inn Site Plan Waiver and questioned why staff had provided comments of the Historic Preservation Planner in the staff report when the Commission was unable to consider the judgment or comments in their decision to grant the waiver. Staff provided information regarding this matter. The Commission took no formal action.

Upon Mr. Kamptner's advice, the Planning Commission delayed discussion of SDP-04-023, Faulconer Construction Final Site Plan until the next meeting.

Ms. Joseph stated that a letter had been sent to the Department of Historic Resources from the Department of Homeland Security and FEMA with a request to look at a 250 foot tower going up on Peter's Mountain. She questioned if the request would require County approval.

Mr. Cilimberg thanked Ms. Joseph for providing several questions to staff in advance of tonight's meeting about some things that were on tonight's agenda that she wanted to get clarification on. He stated that staff appreciates the opportunity to get those things in advance since it helps them to prepare, and hopefully it helps the Commissioners as well. He encouraged all of the Commissioners to do that and to let staff know what they can do to help.

There being no further old business, the meeting proceeded.

New Business:

Mr. Thomas asked if there was any new business.

Mr. Morris stated that staff was starting an informal review of Pantops Master Plan.

Mr. Cilimberg pointed out that next Wednesday and Thursday evenings a meeting would be held as a kick off for public education and discussion on general planning policy and why they were looking at Pantops. Staff is seeking some dialogue from the public in order to obtain their input on some of the issues as related to your interest in seeing a real study of the transportation land use relationships. The agendas will be emailed to the Commissioners by Susan Thomas.

There being no further new business, the meeting proceeded.

Adjournment:

With no further items, the meeting adjourned at 7:47 p.m. to the September 21, 2004 meeting.

_____

V. Wayne Cilimberg, Secretary

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