Albemarle County Planning Commission
October 26, 2004

The Albemarle County Planning Commission held a meeting and public hearing on Tuesday, October 26, 2004 at 6:00 p.m., at the County Office Building, Room 241, Second Floor, 401McIntire Road, Charlottesville, Virginia. Members attending were William Rieley; Rodney Thomas, Chairman; Bill Edgerton; Cal Morris; Marcia Joseph; Jo Higgins and Pete Craddock, Vice-Chairman. Absent was David J. Neuman, FAIA, Architect for University of Virginia (non-voting).

Other officials present were Wayne Cilimberg, Director of Planning & Community Development; David Benish, Chief of Planning & Community Development; Bill Fritz, Chief of Current Development; Tarpley Gillespie, Senior Planner; Sean Dougherty, Senior Planner; Mark Graham, Director of Community Development; Yadira Amarante, 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.

Shawn Evans, member of the Ivy Community Association, stated that he was here this evening to point out what he thought was an omission in the denial letter regarding SDP-04-023, Faulconer Construction Final Site Plan. Item number 8 in the letter says, "8. Vehicles coming to the site shall be verified to be of a scale that may be safely accommodated by Morgantown Road." The point that is omitted in this section is that the section as provided by or pursuant to Section 26.12.1. This part of the statement appears clearly in the minutes of the Commission meeting held on September 7, 2004, which are the last two pages of his remarks. It appears in both Mr. Rieley's formation of the point and in the minutes of the motion that was approved. He pointed out that he also had a copy of the County recording of the meeting if the Commission would like for him to play back the relevant passages. He asked that the Commission ask County staff to correct the denial letter and property inform the applicant and the Board of Supervisors who hear the applicant's appeal of this decision tomorrow night. He thanked the Commission for their time and attention to this matter. He stated that this process has been positive and democratic and he valued being given the opportunity to be part of an open and fair process. (Attachment 1 - Submitted by Shawn Evans)

Mr. Rieley asked if it was the omission of the Code section that he was referring to.

Mr. Evans stated that it was the reference to what was actually said at the meeting. He noted that in his first statement Mr. Rieley says pursuant to Section 26.12.1 and then when they actually list the things on page 2, in number 8 it says as provided by Section 26.12.1. The denial letter, which he has attached, is the first two pages after his notes and does not include that. Therefore, he thought that it had been omitted and needs to be corrected so that it properly matches what was actually voted on and approved.

Mr. Rieley thanked Mr. Evans for pointing that out. He stated that as the Commissioners know, that he did raise the general issue of that a couple of weeks ago.

Mr. Thomas asked Mr. Kamptner to explain the legalities of pursuant to compared to what was put in the letter.

Mr. Kamptner stated that adding that language would direct the applicant, Faulconer in this case, to the actual section upon which that comment is based. Staff looked at the tape and concluded that the number 8 that was included in the action letter was consistent with the language in the motion. The minutes are clear. The other thing to say is that with the appeal now pending in front of the Board of Supervisors that he thought everybody would be well aware of Section 26.12.1.

Mr. Thomas asked if there was anyone else in the audience who would like to speak on matters not listed on the agenda. There being no one, the Commission moved to the next item on the agenda.

Consent Agenda:

Approval of Planning Commission Minutes – August 24, 2004 and September 14, 2004

Mr. Thomas asked if any Commissioner would like to pull this one item for discussion.

Ms. Joseph stated that there were a few corrections that need to be made to the minutes.

Mr. Rieley suggested that she submit her changes as they normally do, and then the Commission could act on the minutes at the next meeting.

Mr. Thomas asked if a motion is needed on this.

Mr. Kamptner stated that a motion was not necessary since the Commission could just carry it over to the next meeting.

Mr. Thomas stated that since there was no meeting next week that the minutes would be carried over to the November 9 meeting.

Item Being Withdrawn:

SP-2004-00043 Arrowhead N-Telos(CV652) (Sign #49 & 51) -Request for special use permit approval to allow the construction of a personal wireless service facility to replace an existing facility that was approved as SP 98-09. The applicant proposes to construct a monopole that would be approximately 107 feet tall (10 feet ASL above the height of the tallest tree within 25 feet), with ground equipment in cabinets placed on a 160 square foot concrete pad. This application is being made 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 Rural Areas. The property, described as Tax Map 88, Parcel 26, contains approximately 71.34 acres zoned Rural Areas and Entrance Corridor. This site is located on Rt. 745 (Arrowhead Valley Road), just east of U.S. Route. 29 South, in the Samuel Miller Magisterial District. The Comprehensive Plan designation for this property is Rural Areas 4. (Stephen Waller) ***DUE TO ORDINANCE CHANGES ADOPTED BY THE BOARD OF SUPERVISORS ON OCTOBER 13, A SPECIAL USE PERMIT FOR THIS APPLICATION IS NO LONGER REQUIRED.***

Mr. Thomas asked Mr. Kamptner if he needed to open up the public hearing on SP-2004-00043, Arrowhead N. Telos.

Mr. Kamptner stated that since the item had been withdrawn that the meeting could simply move on. There is no action needed because that item is no longer in front of the Commission.

Public Hearing Items:

SP-2004-00044 Albemarle Ballet Theatre (Sign #52 & 63) - Request for special use permit to allow a private ballet school in accordance with Section 22.2.2.6 of the Zoning Ordinance which allows for private schools in the C-1 Commercial Zoning District. The property, described as Tax Map 56A1-1 Parcel 65, contains 1.208 acres and is zoned C-1 Commercial. The proposal is located on Rt. 240 (Three Notched Road), at the intersection of Three Notched Road and Rt. 810 (Crozet Avenue), in the White Hall Magisterial District. The Comprehensive Plan designates this property as a part of the Community of Crozet. (Tarpley Gillespie)

Ms. Gillespie summarized the staff report. The applicants are Gary S. Hart and Sally Hart. The owner of the property is Unicorn Holdings, L.L.C. The applicant proposes a ballet school to be located within an existing structure at 5798 Three Notched Road in downtown Crozet. The proposal would use the entire second floor of the building, occupying 3,400 square feet, which can be seen on the concept plan. The

applicant requests the use of two studio spaces with classes beginning and ending in staggered 15 minutes intervals, with a total of 12 students per class. This would result in some periods of time with up to 24 students on the premises. At the moment one studio space is a finished space in the building and the other studio is an unfinished storage area.

The building was constructed in 1902 as a manufacturing plant for the Crozet Cider Company. It has been referred to as the *Crozet Cooperage Company.* It was an apple barrel and flour barrel manufacturing plant that operated until 1930. The original development predates the County's site plan requirements. No site plan has ever been required for this site. The proposed special use permit will not precipitate a site plan. The Comprehensive Plan designates this property as part of the Crozet Development Area. This property was, until recently, part of the Rural Area in the Comprehensive Plan. With CPA-2003-4 this property along with other properties along Route 240 and the neighborhood next to the north were added to the Crozet Development Area. At this time there are no specific future land use designations for this area of the Crozet Development Area. It is zoned C-1, Commercial, which allows for private schools by special use permit.

Staff analyzed the proposal against the Comprehensive Plan, the Neighborhood Model and our Zoning Ordinance. Staff found that the proposal meets six of the twelve Neighborhood Model principles including the mixture of uses, neighborhood centers, redevelopment, building and spaces of human scale, relegated parking, interconnected streets and transportation networks. But, staff was concerned that it really did not meet the principle of pedestrian orientation. The entrance to the ballet school is located at the rear of the building. Upon visiting the site, one would realize that it was a site that really does not meet our current engineering standards or current site plan standards. The applicant will be reconstructing the physical entrance to the building as part of this project. However, it is a mix match of shared parking back there with an access alley. It is not an ideal pedestrian access area.

In late spring of 2004, the applicant approached the County Zoning staff and requested a parking determination for the proposed ballet school. The applicant provided the Zoning staff with a parking study which stipulated that one class would be conducted at a time, with a maximum of 12 students per class. Based on this information, the Zoning Administrator determined that 8 parking spaces would be required for this use. Currently, the required 8 parking spaces are available and can be accommodated on this site. There is a shared parking arrangement on this site. Therefore, none of the parking is to be marked as reserved for specific users. The parking requirement is to be tied to the zoning clearance for this and all uses on the site. Zoning staff has recommended that a minimum number of parking spaces not be included in the conditions of this Special Use Permit, but rather be tied to the zoning clearance for the ballet school. This allows staff more flexibility as the uses come and go. The pick-up and drop-off area behind the building can accommodate no more than 10 stacked cars at a time. It is an area of about 180 feet in length before you get to the entrance of the ballet school. The idea is to pull in from the flower shop off of Route 240 and go behind the building. There are several uses that are shown with parking behind the building. For this reason, staff finds a maximum of 12 students to be a reasonable limitation to place on this use.

Staff finds that the proposed use is an appropriate reuse of this building and would provide a benefit to the community of Crozet. However, staff is concerned that, considering the existing infrastructure on the site, 24 students attending classes on this site at one time would be a detriment to the surrounding uses. Staff finds that a total of up to 12 students attending classes at any given time on this site would have no detrimental impacts.

The applicant has asked for two classes of 12 students to occur simultaneously in two distinct studio spaces. The applicant has offered to stagger the classes at 15 minute intervals to address concerns about student drop off and pick up. However, staff finds, given the current level of infrastructure on this site that up to 24 students on site at any given time would be a substantial detriment to the general public health, safety and general welfare because the proposed ingress and drop off system would only allow for a maximum of 10 cars to stack in the rear of the building at any given time. Given the limitations of the existing infrastructure, staff cannot support the proposal without a limitation of students on the site at any given time.

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

1. The proposal will be an adaptive reuse of an existing historic building;
2. There is adequate parking available on site to address this use with the recommended conditions;
3. This proposal reflects several principles of the Neighborhood Model, among them Mixture of Uses, Redevelopment, and Neighborhood Centers.
4. The ballet school will provide a neighborhood service to surrounding community of Crozet.

Staff finds the following factor unfavorable to this request.

1. The proposed use increases the level of activity on a site which does not have the supporting infrastructure which would normally be required to support such a mixture of uses, leading to staff concerns about vehicular circulation and pedestrian safety.
2. As proposed by the applicant, a total of 24 students could be attending classes on site at a given time. Staff finds that this number of students could not be supported by the existing infrastructure and would create a negative impact on the site.

Staff has reviewed this request for compliance with the provisions set forth in Section 31.2.4.1 of the Zoning Ordinance and recommends approval with the following four conditions as listed in the staff report.

1. Total number of students attending class on site shall not exceed 12. Breaks of a minimum of 15 minutes shall be scheduled between classes.
2. Normal hours of operation for the school shall be from 9:00 a.m. to 9:00 p.m. provided that occasional school-related events may occur after 9:00 p.m.
3. The parking spaces required for this use shall not be reserved.
4. On site recitals shall be held on Sundays only.

Mr. Thomas asked if the Commissioners had any questions for staff.

Ms. Joseph asked what infrastructure staff was referring to.

Ms. Gillespie stated that in this case staff was referring to the site design itself. Therefore, staff was referring to the parking, the travel ways on the site, and the paved parking area at the rear of the building where no parking spaces are marked. These things are not to the same dimensional standards as they would be for a newly developed site that went through their site plan process. Therefore, staff was really talking about parking lot configuration, travel ways, access within the site and sidewalks.

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

Gary Hart stated that the was the advisor and consultant for Ms. Sally Hart, who was the founder of the future Albemarle Ballet Theatre at the corner of Route 240 and Route 810 in Crozet. He made a power point presentation that showed the configuration of the site. Sally Hart is truly an excellent ballet instructor. She has been an active member of this community for twelve years. Ms. Hart has submitted an application for a special use permit to open up a professional ballet school at the historical site of the Fruit Grower's complex in downtown Crozet. He pointed out that they were not professional site planners or civil engineers. He stated that he was not begging ignorance, however, there were a couple of meetings regarding parking and they believed that it was clear in their floor plan where they showed two studios both labeled A and B. It was later re-clarified in our responses that the attendance needed to be 24 in order to sustain the school. He stated that he would take the responsibility of not making that fact clear. But, their application did request an attendance of 24 students. There is some compelling information that they would like to share in going forward. Sally has had a very, very extraordinary career. At fifteen years old she performed with Kevin McKinsey, who is now the Director of the American Ballet Theatre in New York. She performed at the opening of the Kennedy Center in Washington, DC. She also performed for five years with the Jeffrey Ballet Company and spent ten years as a ballet

instructor locally here in the Albemarle County area. From the community standpoint, she worked under the trade name Afton Ballet at the North Branch School. She also taught at the Crozet Baptist Church, and the after school enrichment program at Brownsville Elementary School. She gave grandiose performances at Brownsville Elementary School and Branchland's Retirement Community in Charlottesville. She is mentor to the community's children and our house was always a safe haven for the children to come to. She constantly is instilling positive values everywhere she goes. Sally is loved by her students and friends, the student's parents, her peers, employers and everybody who meets her. He introduced Ms. Sally Hart.

Ms. Sally Hart thanked the Planning Commission for looking over their plan for the ballet school. She stated that they have also invested six months of time into this project as well as a lot of money. She stated that she would like to review the conditions and comments that were provided. The positive feedback is very much appreciated. The ballet school would be a benefit to the neighborhood and larger area by providing a neighborhood service use to the area residents. The first concern mentioned was additional unoccupied space in the building. She pointed out that there is no other unoccupied space. Therefore, there would be no additional burden of traffic. The second and most important concern is the arts are not a heavily funded business or big money maker. The requirement for enrollment to make or break in this issue is how many students we have. Gary Hart will further address this matter in more detail later. She stated that her vision and mission is to bring the arts to the Crozet area and to Albemarle County and to provide a safe and healthy environment for our community children to thrive in. The art of ballet teaches grace and beauty, gives strength, structure, endurance and discipline. Students of ballet gain a strong understanding of music, theater, and history. These students tend to have better grades. They have increased focus. They have fewer behavior problems and are higher achievers. The environment needs to be safe, healthy and nurturing for the community's children. In all professional ballet schools there is structure. There is a dress code, no chewing gum and no jewelry. Another big one is no loitering or parents observing. This is time honored tradition in the ballet world. As in any school there can be no distractions if the children are really to be taught. This historic building was chosen because she simply loved it because it was so beautiful and suited their purposes. It has space for two 30' X 50' studios, a center bay for offices, and dressing rooms and powder rooms. As a family, they have ties to the community. Besides teaching ballet to the area children, our son and daughters played in the Peachtree League and swam for the Crozet Gators. They have volunteered at meets and ran concession stands. Both of their daughters have danced professionally with the Charleston Ballet Company in South Carolina and have plans to eventually teach at the school. There is community support for the ballet school. Ms. Anderson, of Anderson Funeral Home, and Jerry from Sal's Pizza and other anonymous benefactors have pledged a need based scholarship fund, which demonstrates strong public support for the school. The County's Architectural Review Board and the community of Crozet would like for this historic site to be used and she would like the Albemarle Ballet to be located there. To make this a financially viable venture, they would require the use of both studios with twelve students in each class for a total of 24 students in attendance. Jay Schlothauer, Building Official, approved the site for fifty person occupancy. This is not just about a school, traffic or cars, but actually about the children and the community and what she can give them. She pointed out that this was a personal mission.

Gary Hart stated that they chose this site because they loved the area and particularly liked the post and beam construction of the building. The traffic stacking is actually the opportunity course. What you are weighing is the balance of the value of getting this amazing person. The issue is that ten cars do not show up at once. He presented a power point presentation to show that each car needs about a minute or a minute and a half to clear, which was how they came up with the 50 minute interval. How many times a day does the stacking of ten cars actually pose a problem? In other words, if they can do it four times then can they do it seven or eight time when they are talking about financial viability and the issue of having a maximum of 12 or 24? It would only be through good fortune that they would have that all of the time. He pointed out that there was only one in eleven instances during the scheduling of classes that would be a fifteen minute interval and the other intervals would be thirty minutes or longer. He presented power point pictures of the site and explained the traffic movement around the building. He asked the Commission to weigh in one hand a few more cars so that they could justify the expense to do this important project. He pointed out that he did have a compromise to propose.

Mr. Thomas invited public comment. There being none, he closed the public hearing to bring the matter back before the Commission for discussion and possible action.

Mr. Rieley asked Mr. Hart to finish his sentence about the proposed compromise.

Mr. Hart stated that he did a financial analysis of the school. The bottom line is that there are two things that are impacting the situation. One is the traffic. There is a bell curve in the age of their students. The bulk tends to be from 10 to 16 and on the outside ends they have the smaller classes. If you match those up, you would have less traffic. The compromise is if they could get a 20 student maximum at a time that allows 15 students in only one class, which would mean 15 students plus 5 in another or 15 students and an empty studio. That would raise the one classroom limit to 15. They would only have a few classes that would hit that amount, and those classes would be very long. As the children get older, the classes get longer. Some children may spend as much as 3 hours a day, 3 times a week in class. He hoped that compromise as opposed to 24 students would be suitable in order to meet their needs to make this happen.

Mr. Thomas asked if any Commissioner had any questions.

Ms. Higgins stated that in looking at this in a very detailed manner about the scheduling and traffic, that it was very obvious that a family might have more than one child taking classes. Also there was probably some economy in one person picking up a group of children in a car pool. The Crozet Community Association has pushed on the Master Plan concept that they need to look at Crozet and the whole area where the church, school and library are located. There is a condition for that area that says the parking spaces required for this use shall not be reserved. This is going to be a very touchy thing. But, as the uses start to get some vitality in the downtown Crozet area there is going to be some people that don't want cars parked in front of their business or vice-versa. But, how much broader can they look at this is a question that needs to be considered. The Zoning Administrator has done a very careful job to decide how many parking spaces are needed for this use. But, at the same time they want the flexibility to not reserve or state in the special use permit how many parking spaces are required. There is a very good reason for that. They are expecting that people will be here and park down at the church or they might park across the road or at the library. She noted that she was hesitant to overrule the Zoning Administrator on her parking calculations. She felt that generally in Crozet something is going to have to give in order to gain occupancy in those buildings. She felt that was an important issue for the Planning Commission.

Mr. Rieley agreed. He stated that his first reaction in looking at and seeing the stacking requirements for 24 kids was that on two or three mornings a week he drops his son off at Monticello High School and he has never seen more than ten cars there at the same time dropping children off or picking them up. It seems that the scenario that Mr. Hart showed us was probably realistic. He noted that not everybody would arrive right on time and a couple of children might come a little early. He agreed with Ms. Higgins that if they are going to get these areas revitalized again that they are going to have to make some accommodation for that. But, he was unsure what that accommodation is. He suggested that there be some flexibility given in this matter.

Ms. Joseph agreed with Ms. Higgins and that it will be a little less stacking than it was showing at the same time. It is also something that they have been talking about for a long time in the adaptive reuse of some of these historic buildings in that they need provide a little more flexibility.

Ms. Higgins stated that this was not a very risky thing to think about that even at 24 students, if they are fortunately enough to have 24 students, it will be hard to monitor it anyway. The second part is that if they are that successful then they will outgrow this location. If the people have trouble dropping their children off, then they will complain and it all will come back to the business sense. There was a karate school there and she goes through that intersection numerous times during the day and she has never noticed any issues with that. But, about 5 pm when Crozet Pizza is opened and a few of the other businesses at dinner time that it is crowded and you can't find a parking place. She noted that people might drop their children off in front of the building rather than behind it at those times. She supported allowing the

applicant to be as successful as economically as possible and let the governing of that go to the business. Then if they outgrow that, then their business might outgrow the location altogether. That would be her recommendation.

Mr. Thomas agreed.

Mr. Craddock concurred with everyone's comments about the revitalization of downtown Crozet. This business is just another peg to keep that historic center alive and viable. He supported allowing the 2 dance studios and the maximum of 24 students.

Mr. Rieley stated that he wanted to make sure that he understands the situation clearly. He asked Ms. Gillespie if the key issue is the stacking and not the parking.

Ms. Gillespie stated that the key issue for the special use permit is the stacking. However, if there is a time here where there are 24 students that may affect their parking requirement. Staff is not tying the parking requirement to the special use permit. That may be an issue that they might have to deal with down the road in order to get their zoning clearance. The parking will create an issue for their zoning clearance if they have to come up with more parking spaces than the 8 that they have on site now. She stated that one of staff's concerns with the stacking relates to the fact that there is shared parking back there for all of the businesses that are a part of this parcel. Staff is imagining a scenario where there are ten cars stacked and then somebody might not be able to get in and out of their space. Staff is just trying to keep some level of control on that site.

Mr. Benish stated that it was the cumulative effect on that area.

Mr. Morris stated that the classes will be staggered and there will be a half an hour in between so that there is only going to be the dropping off of 12 students at any one time. Then another half an hour goes by and then there will be another 12. Then the parents will pick up the other 12. Therefore, there is not going to be a total of 24 at any one given time.

Mr. Hart stated that 24 students would never be dropped off at the same time. That would not happen.

Ms. Gillespie stated that Zoning staff's experience, which they have shared with her, has been that parents in a small private school setting tend to get there early and sit and wait for their children, and some get there late. Therefore, zoning staff was concerned about the cumulative effect of having 24 students on the site at one time with only 10 stacking lanes available.

Mr. Rieley asked if Mr. Hart's suggestion for a compromise of 20 allowing 15 in one class appeal to anyone else.

Mr. Edgerton asked if staff could clarify the statement made by Ms. Hart that the building had been determined for occupancy of 50. That is not issue regarding the 24 or 15. It is a fairly large space. If the space is safe for up to 50 people, then he was not sure why they would need to go with the compromise on it. The staggering of classes would solve everybody's problem as Mr. Morris mentioned.

Mr. Thomas asked if the door at the rear that they would be coming around to at the end of the stack the only entrance and exit to the building.

Ms. Gillespie stated that was the entrance and exit to the second floor. The entrance to the first floor is located on Route 240.

Mr. Thomas asked if the children could be picked up in another place.

Ms. Gillespie stated that if a child was dropped off at the front of Route 240, they could walk down Route 810 across the street from the Dairy Queen and then enter the site. That would be a fairly long walk on a road without a sidewalk.

Mr. Rieley pointed out that if the Crozet Master Plan fleshes out that one of its components was the fact that one could walk to the area businesses in downtown Crozet.

Mr. Thomas asked if there was further discussion or a motion.

Mr. Rieley moved for approval of SP-2004-00044, Albemarle Ballet Theatre, subject to the limitation of 24 students and the conditions recommended in the staff report. He asked if Mr. Kamptner had other suggestions for the conditions.

Ms. Higgins seconded the motion.

Mr. Kamptner proposed that condition 1 be changed to the total number of students attending classes on site shall not exceed 24 at any given time. Another condition could state that the classes shall be staggered so that no class begins or ends within 15 minutes of the beginning or ending of another class. He stated that if the Commission wants to put a limit on the size of a single class the condition could say no class shall have more than 15 students. He questioned whether that was a consideration.

Mr. Rieley stated that he was persuaded by Mr. Edgerton's observation that really the capacity of the building is not an issue with these kinds of numbers. He amended the motion for approval to include Mr. Kamptner's suggested language for the rewording of the conditions excluding the reference to the limitation on the size of the class as follows.

1. The total number of students attending classes on site shall not exceed 24 at any given time.
2. Classes shall be staggered so that no class begins or ends within 15 minutes of the beginning or ending of another class.
3. Normal hours of operation for the school shall be from 9:00 a.m. to 9:00 p.m. provided that occasional school-related events may occur after 9:00 p.m.
4. The parking spaces required for this use shall not be reserved.
5. On site recitals shall be held on Sundays only.

Ms. Higgins seconded the amended motion to include Mr. Kamptner's reworded conditions.

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

Mr. Thomas stated SP-2004-00044 will go forward with a recommendation for approval, and would be heard by the Board of Supervisors on November 10.

SP- 2004-00045 Charlottesville First Assembly (Sign #65) - Request to amend the existing special use permit to allow an expansion of the church use in accordance with Section 15.2.2.12 of the zoning ordinance. The property described as Tax Map 61 Parcel 153A1 is zoned R-4 and contains 4.71 acres. It is located in the Rio Magisterial District on Rt. 631 (East Rio Road) between CATEC and the railroad bridge. The Comprehensive Plan designates this area as Institutional. (Sean Dougherty)

Mr. Doherty summarized the staff report. The applicant's proposal is for a special use permit to construct additional parking to serve church activities for Charlottesville First Assembly. It is located on Rio Road between the intersection of Rio Road and the Southern Railway Bridge and CATEC. The amendment of the existing special use permit will add 56 parking spaces. Currently the church has a shared parking agreement with CATEC, but desires its own additional parking. The applicant and owner is Charlottesville First Assembly represented by Elliott Fendig and Ellie Carter of Terra Partners, LLC. The proposed parking lot sits on a slope below grade of Rio Road between 9 and 16 feet. The Southern Railway line borders the property to the northwest and Rio Road to the southeast. CATEC is located along the southern edge of this pie shaped parcel. Across from the church is the Covenant Church of God, which as a larger congregation. The development along the Rio Road across the railroad tracks is mixed including convenience and service oriented businesses. The remaining of the surrounding

neighborhoods is comprised of low to moderate density residential. Staff has reviewed the request for compliance with the provisions of Section 13.2.2 of the Zoning Ordinance and recommends approval.

In 1999, the Charlottesville First Assembly congregation rezoned what was known as Tax Map 61 Parcel 153A (the parcel on which the proposed parking lot is proposed) from CO to R-4 (ZMA 99 – 18). That allowed the church to have the same zoning (R-4) on both parcels. In addition, the church acquired a special use permit (SP 99 – 75) for both parcels, bringing the church into conformity.

The Comprehensive Plan designates this area as Institutional in Neighborhood One. Uses allowed within this designation include public and private schools, universities and colleges and their ancillary facilities, such as stadiums and golf courses.

As this is a review for an additional parking lot, only the following neighborhood model principles apply:

Pedestrian Orientation - The location of the parking lot, adjacent to the church, provides visual orientation. Rio Road is proposed for widening, but is currently lacking a sidewalk on either side of the road.

Neighborhood Centers – The church will continue to serve as a neighborhood center.

Relegated Parking - The applicant and staff thoroughly investigated options for screening this parking lot from Rio Road. The parking lot lies well below the grade of Rio Road. It is barely visible to northbound traffic on Rio Road and is screened from adjacent southbound travel by the thick tract of trees lining the railroad tracks. It was determined there was little the applicant could do, in addition to the required street trees and parking lot trees, to mitigate visual impact. In addition, when widening Rio Road, VDOT plans to gain access to the property along the road and the railroad bridge to facilitate construction. It is likely that the widening process will harm or require the removal of any additional screening trees or shrubs. In support of the Neighborhood Model, the existing and proposed parking is to the side of the building. This allows a view, unobstructed by parking, from the road.

Zoning staff has reviewed the proposal for conformity with parking regulations. The Zoning Ordinance requires that one space per three fixed space for church use. In addition, the Zoning Ordinance allows for a 20 percent increase in the number of spaces allowed for the church. Including a 20 percent increase is 138 spaces, and the church is proposing 138. Although the applicant has a shared parking agreement with CATEC, the church desires to provide all required and extra spaces on its own property. There is one outstanding issue with this which is that the VDOT right-of-way is not shown on the plan, but the plan was designed to accommodate the right-of-way. A fairly simple solution to fix this is to show the right-of-way on the plan. Staff can discuss this issue further with the Commission.

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

1. The proposed parking lot is logically sited
2. Applicant thoroughly investigated options for additional screening along Rio Road.
3. The church will continue to provide a neighborhood service to surrounding residential areas.

No unfavorable factors have been identified.

RECOMMENDED ACTION:

Staff has reviewed this request for compliance with the provisions set forth in Section 31.2.4.1 of the Zoning Ordinance and recommends approval with the conditions as stated in the staff report.

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

Mr. Edgerton stated that if the shaded area on the attachment was the new parking area, then it looked like there would be some reconfiguration of some of the existing parking.

Mr. Doherty stated that some of the existing parking is going away.

Mr. Edgerton asked if the parking spaces that were perpendicular to the existing church were going away.

Mr. Doherty stated no that the double loaded ones directly beside the church are staying. Those parking spaces are just being modified.

Mr. Edgerton asked if the applicant has a plan that works.

Mr. Doherty stated yes that there were parking spaces superimposed generally in the location of the existing parking spaces.

Mr. Edgerton pointed out that he was having problems with the drawing.

Ms. Higgins asked if staff had a full sized drawing.

Mr. Doherty provided the full sized drawing.

Ms. Joseph asked if staff has the originally approved plan so that the Commission could see the difference between what was approved last time and what the new proposal is.

Mr. Doherty stated that he had the information on the previous special use permit review.

Ms. Joseph asked if the red line on the plan was where the new right-of-way is located.

Mr. Doherty stated that this is where the new VDOT right-of-way needs to be.

Ms. Joseph asked if that line was ten feet away from the parking.

Mr. Doherty stated that he was not sure, but it appeared to be located just within that.

Mr. Rieley stated that it actually does not look like it is quite within that area.

Ms. Higgins stated that was not negotiable and the plan would have to be adjusted to meet that.

Ms. Joseph pointed out that one of the arguments was that they could not get plant materials within the area.

Ms. Higgins stated that it has to be a ten foot strip.

Mr. Edgerton stated that the transitional area was causing some confusion.

Mr. Doherty reviewed the proposed plan. He pointed out that some of the existing spaces are going away. There is a new drive isle and some new parking spaces. The level lines are old parking spaces.

Mr. Edgerton asked if staff was comfortable that the 138 spaces can fit in these spaces, and Mr. Doherty stated yes.

Ms. Higgins stated that there might be way to address those concerns when it talks about recommended conditions of approval. The Commission needs to make sure that they are implying that the parking lot meets all of the engineering standards that are applicable. It might be that they add something to that effect in the conditions. She asked if the plan agrees with all of the standards.

Mr. Benish stated that the plan has been reviewed by engineering.

Ms. Higgins stated that if the ten foot setback cannot be achieved, then something has to be worked out.

Mr. Rieley stated that it looks like it has been met.

Ms. Joseph stated that as of this afternoon the right-of-way was sort of a new finding. She pointed out that in a conversation this afternoon that Mr. Doherty had said that he had spoken with Jim Kesterson and that the right-of-way was acquired in 2000. She asked if that was correct.

Mr. Doherty apologized about that because that was what he had been told by Jim Kesterson, but when he checked with the church they said that was not the case.

Ms. Joseph asked if VDOT was telling him one thing and the owner another.

Mr. Doherty stated that was correct. He pointed out that he found that out about an hour ago and had not had a chance to get back with Jim Kesterson about it. The more important thing is that the plan is designed to accommodate the right-of-way, and they need to figure out this detail of whether it is going to fly or not. But, the church says that it has not been and VDOT says that it has.

Mr. Benish stated that they could work that out before Board hears this request to find out what the status is so that it can be shown on the plan. But, the design that the Commission is looking at contemplates that right-of-way.

Mr. Thomas asked if the entire parking lot would have to be moved south if the right-of-way was not there.

Mr. Doherty stated that if it didn't, but it does. He stated that he was told that there is a 100 foot right-of-way on center with Rio Road that was purchased by VDOT. However, the church says otherwise and he was not sure. But, he would tend to think that they would know better. Either way the right-of-way needs to be 50 feet from the center of Rio Road, which was what was shown there. As far as he can tell the edge of the pavement is at least 10 feet and a few inches beyond that. The plan is designed to accommodate the right-of-way. But, it is just not labeled on the plan showing that.

Mr. Benish stated that with the site plan process that when that adjustment is received with that detail that he believed that it would still be consistent with the concept in the matter if it was 9 feet 8 inches. He stated that since they were talking about a small amount that it could be adjusted at the site plan level.

Mr. Rieley stated that it looked like it was ten feet. He thanked staff for including the *The Religious Land Use and Institutional Act of 2000* as the Commission requested. He stated that he did not think in this case no matter what their action is tonight that he did not think it could be interpreted as imposing a substantial burden on the religious exercise of a person. He stated that it was a good thing to see it because it was a good reminder.

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

Peter Hartwig, Senior Pastor of Charlottesville First Assembly Church, stated that he was present to answer any questions that the Commission might have. VDOT did review this plan. The parking is setback 10 feet. During a meeting with the County, they had agreed that if VDOT widens the bridge in 2008 that they have given them an agreement that they can use this area to do the work on. Therefore, they have tried to realize that in the future in 2008 if everything goes smooth that the Meadow Creek Parkway will come in and it will be widened. He pointed out that they need some fill for this parking lot. Therefore, they would love it if the project was up and running. They have given verbal agreement for that. VDOT did review the 10 foot setback. The discrepancy was whether or not VDOT purchased anything from the church in 2000. He pointed out that VDOT has purchased nothing from the church and actually nobody from VDOT has contacted them. The church has the 50 foot from center line right-of-way factored into this parking lot plus 10 feet.

Mr. Rieley stated that quite often with subdivisions one would think that it would be the case for special use permits when a right-of-way is an issue typically VDOT requests that a dedication of right-of-way is a condition of approval. He asked if there has ever been an issue on this project.

Mr. Doherty stated that issue did not come up. What came up is the construction easement for the eventual widening of Rio Road.

Mr. Rieley stated that if it was a potential condition for the special use permit that the Commission should know about it before they act on it. He pointed out that he thought that they have to. A condition could be crafted that says that the dedication of right-of-way to public use is required if requested by VDOT up to 50 feet from the center line.

Mr. Benish stated that the Commission could advise staff that prior to Board deliberation that the issue be squared away so that a condition could be added.

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

Ms. Higgins questioned whether this condition would be placed on other special use permit applicants when they come before the Commission and Board. She felt that was not the case. It just seems that if a portion of the church's land is in the VDOT plan that eventually the church would be compensated for that dedication. If it was a condition of the special use permit would the applicants be compensated for that and how that would be tested against other special use permits.

Mr. Rieley stated that when he bought property on which his house sits the property line went to the middle of the road. It was a prescriptive easement. But, when that lot was subdivided off it the requirement of that subdivision was the dedication to public right-of-way. He questioned how this would be different from that.

Mr. Benish stated that the legislative act for special use permits and rezonings if there was a defined project in the Comprehensive Plan or public project in the 6-year plan that staff would normally try to seek that as a condition or part of the plan of development.

Ms. Higgins stated that was how they handled it for residential subdivisions, but not necessarily on a proposed right-of-way or an undefined right-of-way. But, it does affect the transaction.

Mr. Rieley stated that staff said that it was typically to try to acquire the right-of-way as a condition.
Mr. Benish stated that when there is a public project identified in the Comp Plan or other adopted document that they will pursue an amendment to reservation in that area.

Mr. Rieley asked how deep of a strip were they talking about.

Ms. Higgins pointed out that the plat that was attached dated January 16, 1968 shows the property line going to the center line of Rio Road, but she felt that it was probably wider than that now.

Mr. Craddock stated that Rio Road was a narrow two lane road in 1968.

Ms. Higgins stated that since the property was on the outside of the curvature of the road it might be that it was an off-set right-of-way and not an additional 25 feet was coming off.

Mr. Thomas stated that Rio Road was actually in a different position. The road is further east from that point.

Ms. Higgins stated that Jim Kesterson could clearly look at that and provide that information. She stated that it might be that it is on the other side of the road along this strip.

Mr. Thomas stated that he thought that it is because the road was moved about 50 feet towards the church property when they put the new bridge and road in.

Ms. Higgins stated that when they widen the road they would probably go on the other side.

Mr. Thomas stated that the road would probably take land from both sides of the road. He asked if the Commission needs to craft another condition.

Mr. Rieley stated that he was sure there were other issues.

Ms. Joseph stated that she had some issues on the landscaping. She asked that the Commission talk about whether they consider this as relegated parking. She acknowledged that this was a church, but noted that this is twenty percent more parking spaces than normally given by the requirements of the Zoning Ordinance. The applicant is asking for something extra. There are no screening shrubs adjacent to Rio Road. She understands that it is below Rio Road, but they would also be looking at a sea of parking. Maybe it is not that visible, but it will be somewhat visible if they do some improvements along Rio Road. Since this is a special use permit she wondered if they could ask for some screening to be provided. The applicant does have about a 6 foot strip between the existing parking and the expanded parking where there could be one more line of trees. She felt that they would ask that of anyone else since there was a lot more parking than is required by the ordinance and it was a special use permit.

Mr. Rieley supported Ms. Joseph's suggestion.

Mr. Thomas agreed with Ms. Joseph. There is also a residential area across the tracks.

Ms. Joseph stated that they were relying on the vegetation in the railroad right-of-way.

Ms. Higgins agreed that some additional canopy or vegetation would be appropriate, but she disagreed that this was more than the ordinance provides for. The ordinance says that you can go up to 120 percent of the required number. That section was adopted in 2003. Therefore, the applicant can do that. She supported the comment that some green could be added into the site plan. But creating an island to do that might be fairly difficult because of the requirements of the layout. If they could craft something to put it into the conditions that she would be supportive.

Mr. Rieley asked Ms. Joseph if she was suggesting that essentially that the two banks of double loaded parking that are parallel to Rio Road might have a dog bone configuration with shade trees in that area. He felt that would help a lot. If the dog bones were 6 feet, which is what the tree lawn requirement is in the about to be current ordinance that would move the back line back 12 feet, which is just about the same distance between the red line and the parking. Within the scope of things it is inconsequential, but they would get a tremendous amount of value out of additional trees.

Mr. Thomas pointed out that there were some critical slopes in the rear.

Ms. Higgins stated that if there was a way that they could put trees in with other than doing that, it was going to affect the grading towards the rear. Also, by doing that they would be affecting the whole drainage structures. It would increase the drainage structures in the parking lot because the sheet flow across the parking lot was going to be interrupted. Then they would have to collect it at each point that they break it with curbing. For the values of the trees, it would add substantial expense to the drainage design that really is not necessary. Maybe there is already a way too since there is already a dog bone that parallels the church that does not show any plantings. She stated that there might be a way to crowd more trees across the front.

Ms. Joseph pointed out that she has seen on site plans before a diamond like structure that is placed in the pavement where they have put trees in so that the water can flow through. It is a possibility that they can put in different kinds of screening in without the Commission designing it for them.

Ms. Higgins stated that they would lose a couple of spaces when they put that 12 foot in. She stated that there might be a way that they could dedicate some center spaces in the middle to put some trees right in the center of it and clump them.

Mr. Rieley stated that to put this in some perspective relative to other requirements in the area are, the University design guidelines for parking lots requires one shade tree for every seven spaces for parking. For a lot of this size it would mean twenty additional trees in the parking lot. He stated that he was not suggesting that they have to meet University standards, but this configuration now has eight.

Ms. Higgins stated that was because they were only doing one for ten for the new spaces. The applicant was not going back to the existing spaces.

Mr. Doherty pointed out that there were 12 in the parking lots. He stated that they were getting rid of part of the parking lot.

Mr. Rieley asked if they were counting those spaces. He pointed out that the spaces were not shaded. He stated that staff was not counting these spaces, but they were counting these trees.

Mr. Doherty stated that there were 56 additional spaces. He pointed out that one-half of the spaces were shaded.

Mr. Rieley stated that the point was that there was a substantial short fall in the planting requirement a part of which is the result of not planting along the road as heavily as they normally would. He felt that Ms. Joseph's point that there was little reason to back off on that within the parking lot itself is very sensible.

Mr. Thomas asked if there was already a comment about the trees along Rio Road because of the right-of-way being taken.

Mr. Doherty stated that the right-of-way does not appear on the plan. But, the right-of-way affects their conversations about what they could do as far as screening is concerned. Also the fact that Rio Road would be expanded and the limits of grading would affect the areas where certain things could be planted up higher. What they got into discussion about were certain things like larger evergreens such as magnolias, pine trees or others could be planted. But the size of the tree that they could reasonably afford would not grow tall enough to screen the road for quite a while given the fact that the place where the trees would have to be planted is well below the grade of the road. It is anywhere from 14 to 6 feet.

Mr. Thomas stated that the line of sight is 14 to 15 feet below the level of Rio Road itself.

Mr. Doherty stated that was correct.

Mr. Craddock pointed out that information was under the relegated parking section.

Ms. Higgins suggested that the applicant look at the design and work out the required screening requirements with staff towards the front to screen the parking.

Mr. Edgerton stated that he would be in favor of more trees even if they were below the site line. If they could break up that new expanse, whether with the dog bone configuration or other method, it would be helpful. He stated that he would like to see some sensitivity.

Mr. Morris asked the applicant to come up and address his plans in this.

Pastor Hartwig stated that they have 50 percent more trees than are required. That was done on purpose because they have a parking lot across the street from the church which was flat paved. Therefore, they made sure that they had a very architecturally intricate looking parking lot so that it would be attractive from the road. That was not required, but they did that because the church wants to be a positive asset to the community. The other problem that the church has with totally screening the parking lot is that they

have ladies who will be out there at night getting into their cars. It was a big concern for the church that if you could not see the parking lot that it would be a safety issue for the women in the church. He stated that the church gets robbed on a regular basis from the railroad tracks. Covenant Church and their church have both been broken into on a regular basis. Although he understands the concern about the trees, there is another issue that they are dealing with. On the plan they put in very attractive islands on purpose, which were a great expensive to the church. Also, the number of trees was increased by 50 percent because they wanted the area to be attractive. The biggest concern was if they start blocking the view from the road that it leaves the congregation feeling very unsafe. The parking lot at the church across the street that was built 18 months ago has no green at all planted. He stated that they took the steps to be as good as possible and still keep the costs within what they could afford. They tried to make it architecturally inviting for someone driving by. The church needs every last parking space that they can get, which was why they went to the maximum. The church has grown about 300 percent during the last five years. The church still uses the parking at CATEC. The dilemma with CATEC is that they only guarantee them 20 spaces and there is a church meeting in CATEC currently. As that church grows they cannot always be guaranteed more than 20 spaces. They have kept the number of spaces exactly within what is required. For their church to function property they need every single space that they can get. He stated that those were their concerns.

Mr. Thomas asked if the were any further questions for the applicant.

Ms. Joseph stated that he kept talking about screening trees like evergreens, but the Commission was talking about deciduous trees or hardwoods.

Mr. Thomas asked the applicant for his comments.

Pastor Hartwig stated that evergreens were what staff had mentioned. They were talking about hardwood trees that were indigenous to the site. That is what the church had requested. Again, their concern was if an evergreen tree is used that as it grows you have to chop up on the bottom so that cars can get up underneath it. He stated that if the Commission looks at the plan that they have hardwoods in the parking lot as well as along the road.

Ms. Higgins stated that 56 spaces would require ten trees, which was six more than was required.

Mr. Thomas asked if the Commission was satisfied with the plan.

Mr. Rieley stated that some additional trees were needed. If they add four on the first rank and two on the second one that could be done at a minimal amount of impact on the parking and a good deal of mitigation for screening along Rio Road. It seems that would be a reasonable trade off. The additional six trees was something that needs to be worked out with staff.

Ms. Higgins moved for approval of SP-2004-00045, Charlottesville First Assembly, subject to the two conditions as recommended in the staff report and a third condition that six additional shade trees be incorporated into the site and administratively reviewed by staff.

Mr. Rieley asked if she would accept a friendly refinement that those six trees be in the area shown in the trapezoidal part of the new parking lot area.

Ms. Higgins suggested that the six trees be placed in the front half of the new parking area.

Ms. Joseph asked if they need to say anything about the dedication of the right-of-way or is that just understood.

Ms. Higgins recommended that staff work that issue out before the request goes to the Board. She stated that was a simple condition and might not be necessary. She suggested that it be incorporated between now and the time that the request goes to the Board.

Mr. Rieley stated that the motion is that staff will require that the dedication of the right-of-way be included as a requirement if the plan has not already been acquired by VDOT as a condition. He asked Mr. Benish if that was what he was talking about when he said that normally it would be done that way by trying to get a dedication.

Mr. Benish stated that what they normally pursue is a dedication, but at a minimum they try to achieve a reservation. He stated that when they look at a full reservation that it depends on the complexity of the project. If they are willing to accept the reservation, then they will require the dedication. They always try to pursue a dedication. They are starting with this issue the day that they began reviewing it. He thought that their directive was to try to determine the status of the right-of-way.

Mr. Rieley stated that was not consistent with what he was saying. He stated that he just wanted to make sure that they were clear on this issue before they voted on this. He felt that this was a special use permit requirement for a huge additional amount of parking. It seems that would be a perfectly reasonable situation to require the dedication of right-of-way where they know there is a project and they have a line on a map. He noted that if that was in the motion that he would vote in favor of it. He felt that the condition should be that there is dedication of right-of-way if it has not been acquired and that staff will investigate where it stands between now and the Board meeting.

Ms. Higgins stated that the reason that she expressed hesitancy is that the difference between reservation and dedication is significant. At reservation when VDOT does the project if there is any acquisition they will move along the front and the reservation is called. Then VDOT provides a plat consistent with their design, which could affect the width of the right-of-way, and then they process it. If you require a dedication at the time this is done, it means that the applicant has to basically come up with a plat at the applicant's expense and dedicate it. She pointed out that it could be that VDOT comes along at a later date and it moves 2 feet. It has happened often because there isn't a design on the road. So reservation predicts all rights for VDOT to take it at no cost and they just come along and process it in line with other properties. She felt that it was a fair and reasonable thing to call it reservation versus dedication. If the Board wants to upgrade it to dedication she would not disagree with it, but that is why. They would get the right-of-way, but it would be obtained consistent with the time frame that it is needed and it is more exact.

Mr. Rieley asked if the reservation guarantees that the public gets the land that it needs at no cost without a line on the map.

Ms. Higgins stated that it says upon demand.

Mr. Benish stated that if they don't know the exact location they usually ask for a reservation with dedication on the demand of the County. He stated that there was a line that shows the reservation. He felt that the intent was to achieve dedication of the right-of-way.

Ms. Higgins amended her motion to include a condition that the applicants show on the plan the reservation of VDOT right-of-way as determined by staff for future dedication on demand by the County.

Mr. Rieley agreed with the condition.

Mr. Craddock seconded the amended motion.

The motion carried by a vote of (7:0) subject to the following conditions.

1. The church's improvements and the scale and location of the improvements shall be developed in general accord with the concept plan entitled "Charlottesville First Assembly Minor Amendment to Valid Special Use Permit" prepared by Terra Partners, LLC and dated July 19, 2004;
2. Day care use shall be prohibited unless approved through a special use permit amendment.
3. Six additional shade trees should be incorporated into the site in the front half of the new parking lot and to be administratively reviewed by staff.

4. The applicant should show on the plan the reservation of VDOT right-of-way as determined by staff for future dedication on demand by the County.

Mr. Craddock seconded the motion.

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

Mr. Thomas stated that the motion carried for SP-2004-00045, Charlottesville First Assembly, which will be heard by the Board of Supervisors on November 10.

SP-2004-00040 Mount Fair Farm (Sign #73 & 95) - Request for special use permit to permit fill in the floodplain for the purpose of constructing two stream crossings for a second driveway/farm road, in accordance with Section 30.3.05.2.2(3) of the Zoning Ordinance which allows for fill in the floodplain. The property, described as Tax Map 26, Parcel 33, contains 75.3 acres, and is zoned RA, Rural Area and is located at the northwest corner of the intersections of Rt. 810 (Browns Gap Turnpike) and Rt. 673 (Slam Gate Road). The Comprehensive Plan designates this property as Rural Area in Rural Area 1. (Yadira Amarante)

Ms. Amarante stated that this request would go to the Board of Supervisors on November 10. The applicant is requesting approval of a special use permit to construct a dam, a pond and a driveway to provide access to pastures for the operation of a horse breeding establishment on this property. The new driveway will loop from a new entrance on Slam Gate Road, which was State Route 673 to a new proposed entrance on State Route 810, Brown Gap Turnpike. The driveways are proposed to cross the flood plain of a tributary of Doyle's River in two locations. The dam with a footbridge and a pond are also proposed in these floodplains. One new entrance on Route 810 is proposed in the floodplain of Doyle's River. All of the elements are proposed to be constructed in the Flood Hazard Overlay District. They are as listed in the staff report for a culvert for the driveway, two bridges for the driveway, and a dam with a footbridge. She pointed out that the applicant has indicated that footbridge may or may not be constructed, but it still appears on the plan. In addition, there will be excavation for the pond and an entrance on Route 810. All of those items are proposed to be in the floodplain. As you know, this property is located in the Water Supply/Water Shed District, and therefore their stream buffer is also associated with these streams. Basically, the stream buffer is the limit of the floodplain or 100 feet from the center line of the stream, whichever is greater. It is staff's opinion that the floodplain and the stream buffer disturbances can be minimized.

Staff has recommended denial of the special use permit. It is our opinion that the impacts to the floodplain and the stream buffers can be minimized. There are probably a number of different ways that this could be done. Staff has not come up with any specific solutions where they can recommend approval. Staff is not going to design this site for the applicant. All that staff can say is that there are probably alternative locations for this driveway. There are probably alternative ways to access all of the pasture lands that the owner would like to access. Staff realizes that the owner must have reasonable access to their property. But, it is our opinion that they can do it in a less invasive and intrusive way into the stream buffers and the floodplain. That being said, the applicant has not provided staff with these alternative locations. Therefore, staff has nothing to compare. Staff does not have two scenarios to use to compare it. Therefore, staff is recommending denial.

While engineering staff was reviewing this project against the Water Protection Ordinance, which offers protection to natural resource areas particularly in the Water Supply/Water Shed, engineering staff concluded that they could not approve the disturbances of the stream buffer and denied those disturbances. This is outside of the Planning Commission's purview. But, staff wanted to mention it because without disturbance of those stream buffers basically the items in the special use permit cannot be built. The applicant has appealed that decision of the Program Authority of the Water Protection Ordinance to the Board of Supervisors. The Board will hear that item on November 10 along with the special use permit.

In terms of impacts to the floodplain, staff did not get enough information in terms of what the dam and the pond would do to the flood levels. As you know, one of the things that staff looks for regarding

floodplain crossings is that the floodplain levels are not increased by the fill that is put in the floodplain. Staff could not determine that by the information that was given to us. That is one of the major reasons that staff is recommending denial. Parcel 33 is the little parcel south of the floodplain activity that is Mount Fair, which is a historic property. It is on the Virginia Landmark Register and the National Register of Historic Places. Recently, staff found out that it was also under easement with the Federal government. There are specific items in that easement where it lists things that cannot be done on the property. Therefore, the 3 acres, which includes the house and outbuildings, is not subject to this special use permit and the 75 acres, which is subject to this special use permit, are under the same easement. The entire 78 acres are under a conservation easement with the Federal government, which disallows the construction of dwellings, barns, outbuildings, roads and other structures without written approval of the Board of Historic Resources. At the end staff will amend the recommended conditions of approval if the Planning Commission chooses to approve the request to include something in writing from the Department of Historic Resources where they approve all of those structures.

Staff's recommendation for denial of the special use permit is based on the fact that staff has not received adequate information to access about the floodplain levels. The whole stream buffer issue will be left up to the Board to decide whether or not they feel that the disturbances are appropriate. Staff will have to make a finding that the proposal will not be a substantial detriment to this property or to the adjacent properties. Staff has not been able to do that.

To summarize, staff has identified the following factors, which are favorable to this request:

1. The proposed farm operation is consistent with the Rural Area goals of the Comprehensive Plan.

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

1. The applicant has not provided the County with enough information to analyze the impacts to public health, safety and general welfare in terms of post-construction floodplain levels.
2. The location of the driveway and extent of buffer disturbance do not appear necessary for reasonable use of the parcel as a horse farm.
3. The applicant has not provided an alternate design to eliminate unnecessary stream buffer disturbance.
4. The Water Protection Ordinance disallows unnecessary stream buffer disturbance.

RECOMMENDED ACTION:

Staff recommends denial of SP-2004-040.

Should the Board vote to approve the special use permit, staff recommends that the applicant be required to comply with the following conditions of approval:

1. With the exception of all changes that would be required in order to comply with the conditions listed herein, the site shall be developed in general accord with the plans entitled, "Mount Fair; Albemarle County, Virginia; MacFarlane Residence; Whitehall Virginia," dated 6/17/04 and provided herein, with Attachment C.
2. Provide a plan which shows all existing conditions – parcel boundaries, structures, driveways, entrances, culverts, floodplain (both on and adjacent to the property and along SR 810 and SR 673), and topography on and adjacent to the entire property.
3. Provide a plan which shows proposed topography, extent of fill and limits of the proposed changes to the floodplain and stream buffers.
4. Provide plans for the bridges, dam and culverts.
5. Provide sufficient engineering data to demonstrate that there will be no increase in flood levels during the occurrence of the one hundred year flood in accordance with Section 30.3.03.2 of the Zoning Ordinance.
6. Provide sufficient data to demonstrate that stream buffer disturbances are kept to a minimum, especially for driveways or roadways where reasonable access may be provided elsewhere, according to Section 17.312.5 of the Water Protection Ordinance.
7. Obtain necessary federal and state permits the US Army Corps of Engineers and Virginia Department

of Environmental Quality for work in the stream(s).
8. Written approval from the Virginia Board of Historic Resources is necessary.

The owner of the property is present as well as his engineers to answer any questions.

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

Ms. Higgins pointed out that the existing gravel road is an entrance and is suppose to be closed. But, that gravel road is not in the floodplain, but it is in the stream buffer.

Ms. Amarante stated that in 1995 there was a special use permit for a new driveway and a culvert. The special use permit was for fill in the flood plain. When making a field visit, staff assumed that was the driveway that she went on in the field. But, after a discussion with Ms. Higgins she thought that driveway was outside of the floodplain, but inside of the stream buffer.

Ms. Higgins stated that as far as items that are improvements to what is out there now obliterating that gravel road and entrance in its proximity to the stream would be an improvement to what is there now.

Ms. Amarante stated that was correct, especially if they were to replant it. Staff is not sure if that is part of their mitigation plan or not.

Ms. Higgins stated that there was no information about the section, but they keep talking about the road. From the discussion, she got the idea that this was gravel and used for tractors and horses.

Ms. Amarante stated that it was not a paved road, but a gravel road.

Ms. Higgins asked how wide the road was.

Ms. Amarante stated that she was not sure, but that it scaled to be about 12 feet wide.

Ms. Higgins stated that as far as mitigation that she felt that a lot of this hinges on this issue of necessary versus unnecessary. She asked for further discussion on that issue. She voiced concern about the safety of the tractor use if they put the entrance in around that corner on Route 810. She asked that they hear from the applicant.

Mr. Rieley asked if they know what the drainage area is coming into this proposed impoundment.

Ms. Higgins stated that the staff report says that the applicant did not submit any information on the floodplain analysis.

Ms. Amarante stated that the applicant's engineer could probably answer that question.

Mr. Rieley stated that his other questions may be in the same category. He asked the distance to the head of the stream and whether or not this is in the FEMA floodplain and has been mapped.

Ms. Amarante stated that they do have FEMA floodplain here and it shows up on the new maps. She stated that the applicant had their own study done, but it has not been mapped by FEMA.

Mr. Rieley asked the degree to which agricultural ponds are exempt from a good bit of the typical County review. He asked what the limits are to that.

Ms. Amarante stated that Zoning made the determination that the agricultural pond is allowed in the floodplain. It is no longer a reason as to why Engineering is recommending denial of the special use permit. It is specifically just for the dam and the crossings of the road.

Mr. Rieley stated that it was the impact on the stream and the floodplain.

Ms. Amarante agreed and noted that it was not related to the dam.

Mr. Rieley stated that it was the dam as a feature regardless of whether it was impounded water or not. He thanked staff for that distinction.

Ms. Joseph passed around the information Ms. Amarante had given her regarding the former approved entrance on this site so that the Commission can see where it is located. (See Attachment)

Ms. Higgins pointed out that the entrance was actually constructed to the left of that. Obviously, there is a substantial difference because one can see where the water has been. There was some flooding and this is much higher with what they built.

Mr. Edgerton asked for clarification. He asked if the pond is okay, but the dam is not. If they took the driveway off the pond, would the dam be okay then.

Ms. Amarante stated that there was no driveway on the dam.

Ms. Higgins stated that there was a footpath on the dam. The driveway is actually proposed above the impoundment.

There being no further questions for staff, Mr. Thomas opened the public hearing and invited the applicant to address the Commission.

John MacFarlane stated that he along with his wife, Dudley, purchased the Mount Fair Farm about a year ago with the hope of turning it into a horse farm where they intend to breed and raise horses. He stated that they greatly appreciate this opportunity to explain their rationale. Actually it is not a driveway, but it was a farm access road from Route 820, which would bisect the property from the barn to Route 810 so that they can access all of the pastures. Unfortunately, this meeting falls right in the middle of the Washington National Horse Show where her wife is actually an exhibiter. Therefore, she could not be present tonight and had provided him with some notes. He stated that he would explain the rationale of the road and then would turn it over to Ken Collier from HGOR, who is their landscape architect from Atlanta, and Glen Curtis, of Dreyfus, who has done a lot of the survey work. They have worked hard with Mr. Loft who is in the office of Historical Resources. Before they bought the property they worked very closely with him. They actually gave him a list of all of the things that they proposed to do including the barn and the road accessing from Route 810. He gave preliminary approval that all of the things that they proposed to do that he felt were within the intent and the scope of the use of the property. He is the one who is charged with overseeing the easement. They have since worked very closely with him with their architects. Mr. Loft has approved the drawing for their proposed house renovations and the barn that was going to be placed behind the house. Also, he preliminarily saw the roads and said that they were okay, but wanted to see what was ultimately approved. Therefore, they were working very closely with them and are very sensitive that this is on the Historical Register. He stated that they were very committed to preserving the architectural integrity of the home. He explained the proposed use and why they need this access.

Ken Collier, environmental manager with Hughes, Geary, O'Leary and Ryan, stated that they have been working on this project since February. He stated that they had been deferred once because of receiving the comments back late. By the time that they received their response back they were not able to be reviewed until the next meeting. Therefore, they had to defer. He pointed out that they did not want to be deferred again and wanted to present it to the Commission so that they could start working through some of the issues. It has been a long process. He stated that their flood study did not get reviewed for this meeting. Therefore they will be addressing all of those issues. He hoped to get some feedback from the Commission to see how they can bring this project to a close. Mr. MacFarlane has already addressed some of the issues. He pointed out the location of the items on the plan concerning the proposal. He stated that this was not a new entrance to the house, but is a farm access road out on to Route 810 to access the pastures. There are two major streams that come onto the property. Their confluence is just

before Slam Gate Road and then they join further on down. They are tributaries to the Doyle's River. The pond would intercept one of the streams. The road will be gravel with a single lane 12 foot wide. There will be two bridges that will cross the streams in order to access the lower pasture out by the highway and come back. There will be a culvert underneath the proposed access road to Route 810. There will be another culvert to continue to allow drainage through this other area. The other two bridges are designed to span the streams rather than have a culvert. They would also be spanning the bank to mitigate those impacts as well. They are not going to do any walls at the stream or anything like that. Therefore, the existing bank will stay impact. The proposed impacts for the pond location will affect 299 linear feet of stream. The stream buffer encroachment by the road will be .26 acres. The floodplain fill is estimated approximately 500 to 600 cubic yards. The pond can mainly be constructed through excavation rather than damming up and filling everything. They can do most of it through excavation. So the dam would be limited in size. It is only going to be approximately 8 feet deep because they hit rock. It is going to be fairly small on 1.2 acres and fairly shallow. He stated that as referred to earlier, engineering said that they did not have the information, but they found that it had been submitted and requested that it be looked at prior to this meeting. He pointed out that for some reason those plans were not looked at in time for this meeting. They have looked at a lot of different alternatives to try to avoid minimized impacts. They reduced the size of the pond to 1.2 acres. The farm road is going to be gravel rather than asphalt. The road location was designed to avoid existing trees. They can look at alternatives with the Commission's input. The original design was trying to increase the size of the pastures in this location. Therefore, they did encroach some into the stream buffer. If that becomes an issue they could look at an alternative layout for that. The bridges are going to be narrow, one-lane and wooden with a very low profile. The wetland impacts have been minimized to qualify for a nation-wide permit with the US Army Corps of Engineers. That application is ready to go in as soon as they work out a final design. They have already met with the US Army Corps of Engineers and DEQ on site. An important part of their plan is the mitigation plan. They realize that they have stream buffer encroachment issues. The areas in green are being proposed to be preservation areas to protect those areas in perpetuity and to be filed with the deed. It is a total of 15 acres. He stated that he just wanted to make them aware of the coordination efforts that they have gone to in attempts to get feedback. It has been really difficult in getting some comments like they hope to receive from the Commission to see how they can move this project forward. With that in mind he would like to have Glen Custer from Draper Aden address the floodplain issues since they did a hydrology study and determined what the flood elevations would be to show that the pond and the dam would not have an impact on the floodplain.

Glen Custer, of Draper Aden Associates, stated that there is FEMA floodplain shown on the plan. It is hard to determine what those maps really represent. Therefore, they went through an analysis on here to determine what the floodplain would be. He summarized what they went through. Basically the culverts on Slam Gate Road are insufficient to handle the high flows. In their analysis they found that in a 100 year storm the water will come up about 2 ½ feet over the road. Basically they have shown what they think about elevation 723, which was what they were coming up with. It will totally inundate the pond and it will come up to the top of the dikes. As Ken said, they have tried to keep everything very low profile. As far as filling in the floodplain, what they were looking at doing is for every cubic yard of fill that they put in they were willing to excavate out areas that are up above the floodplain to compensate. There will not be any loss of flood storage capacity behind the road. He stated that they were willing to take whatever measures as possible to not impact the floodplain. The floodplain area stays within the farm and does not impact any adjacent property owners. They have tried to present this information to staff several times, but the issue with them was basically whether you could actually put the pond in there. Engineering has their data to review. This is just a quick summary of what they have presented.

Mr. Thomas asked if there were any further questions for the applicants.

Mr. Rieley asked what size drainage area they would have.

Mr. Custer stated that he did not have his notes with him, but it was a very large drainage area.

Mr. Rieley asked if he knew how far it was to the head of the stream.

Mr. Custer stated that it was thousands of feet up to the head waters.

There being no further questions for the applicants, Mr. Thomas asked if there was anyone in the audience that would like to speak on the application. There being none, he closed the public hearing to bring the matter back before the Commission for discussion and a possible action.

Ms. Higgins stated that Mark Graham was present due to her telephone call. She felt that they recently ran into the same sort of dilemma when a certain position was taken and in this case maybe unnecessary being the key word that maybe this is an unnecessary crossing that the additional information was not considered to be pertinent. She noted that maybe the information was not in their hands in time regardless, but it did not give the Commission all of the information that they needed to make a decision if they decided to forward this to the Board. She felt that engineering has correctly done their job because they were reading the ordinance and interpreting it from an engineering perspective of if you could avoid impact to the stream buffer, then you avoid it. She stated that maybe Mr. Graham could shred some additional light on this issue. She invited Mark Graham to speak.

Mark Graham, Director of Community Development, stated that as Ms. Amarante mentioned this is an issue under the Water Protection Ordinance with the Program Authority to make a determination on whether this is necessary for a reasonable use of a property. That was something that engineering staff did struggle with. He pointed out that he did speak with Glen Brooks who was the engineer on this project. He agrees with his interpretation of it. Whether this use fits that criteria he felt was hard for them to say. There is an appeal to the Board on this issue as far as what can be allowed with the stream buffers. The decision is to go forward with the special use permit to the Board. The idea is that the appeal can be considered simultaneously with the special use permit.

Mr. Rieley asked Mr. Graham if this ever got to the point at which specific mitigation measures were being discussed.

Mr. Graham stated no, not really because the staff did get into the issue of whether it was necessary for reasonable use. There was no sense discussing mitigation measures if they can't even agreed that the use is allowed at all.

Mr. Rieley stated that the Water Protection group essentially made that determination, and Mr. Graham agreed.

Mr. Thomas stated that his thoughts were along the line as Ms. Higgins had mentioned that the bridge would keep the tractors and equipment out of the stream.

Ms. Higgins stated regarding the interpretation of the ordinance that she felt that engineering had done the correct thing, but she did not think that they have a way where mitigation efforts could be considered with the net effect of denying this would be. There are programs that offer contributions to fencing to keep livestock away from streams. She stated that maybe staff does not have the flexibility to go to that level. But it would have been helpful for them to say that these are the proposed mitigation things and these are the proposed impacts. She suggested that maybe that was something that the Planning Commission could consider. Since staff did not analyze that information we don't have that input. She stated that they will be asking for additional information that engineering has had. She felt that it was reasonable that tractors and horses being led don't have to walk through the streams.

Mr. Rieley stated that he did not feel comfortable acting on this without the engineering department reviewing the information.

Mr. Morris agreed that they need all of the information.

Mr. Edgerton asked if there was time to defer this request.

Mr. Kamptner stated that this request was scheduled to be heard by the Board on December 8.

Mr. Morris suggested that they ask the applicant if he would request a deferral.

Mr. Collier stated that the applicant wants to formally request a deferment.

Mr. Rieley made a motion to accept the applicant's request for deferral of SP-2004-00040, Mount Fair Farm, to no later than the November 16 meeting.

Ms. Amarante stated that the appeal goes to the Board of Supervisors on December 8. Therefore, the issue should be resolved by November 16.

Mr. Craddock seconded the motion.

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

Mr. Thomas stated that the motion carried to defer SP-2004-00040, Mount Fair Farm, to no later than the November 16 meeting.

The Planning Commission took an eighteen minute break at 8:45 p.m.

The meeting reconvened at 9:03 p.m.

The Albemarle County Priority List of Road Improvements - Annual review of the County priority list of road improvements. (Juandiego Wade.)

Mr. Benish stated that some of the Commissioners had a chance to look at this last week and make a few comments. He pointed out that he would just hit a few of the highlights to the Six Year Secondary Road Plan. As a reminder what staff focuses in on is the priority list of road improvements which is a big long list that far exceeds the funding that VDOT has to fund these roads. VDOT does prioritize their six-year secondary plan based on County priorities. Therefore, as you see on the list the number of projects that are in the secondary plan for funding has a priority that is in the last column to the left. Because of the funding situation that VDOT is in staff does not anticipate any new projects entering into the six-year plan for funding. In fact, they are working on trying to maintain the same estimated year of construction for the projects already in the plan. With that being said, there are a couple of new projects that staff has added to our priority list and one adjustment that is being made to the plan. Technically, it is not an adjustment to the priority list, but staff did want to make the Commission aware of this. The Board had requested that funding for Old Ivy Road to be used on Georgetown Road to expedite that road construction project. That directive will be given to VDOT so that in their six-year secondary planning they will do that. Staff does not believe that it requires an adjustment of our priorities since the roads are close to one another anyway. It is just to move that money over to Georgetown Road. Of note is that Reservoir Road had been on the priority list as an unpaved road project. The Board of Supervisors had recommended that this year that be adjusted to a spot improvement project. It is a difficult project to pave because of the topography and the available right-of-way and probably the willingness of some of the property owners to donate the right-of-way for improvements. The emphasis now is to do spot safety improvements where there are tight or blind curves. It could be potentially some maintenance pavement in certain high washed board and eroding areas. Instead of trying to do it as a paving project, it will be just to address acute problems along this segment. It is a road that is receiving additional traffic due to the trails that have been opened up to the public around Ivy Creek. Therefore, there is a public use out there that is generating a little bit more traffic on that roadway. There are five unpaved road projects, which are identified on the list in the Commission's packet. They are all public requests and most are fairly low volume roadways. There is one school request to place a turn lane on Route 729 at Route 250. As he understands, there is a problem with buses leaving the school site and then stacking up on that road. The idea is that a right turn lane would create more space for buses to align at the intersection and allow for a little better flow of traffic out of the site. Therefore, that is a request that has been made. With that he would open up to any questions or comments that the Commission might have on the projects. The first part of it talks about staff reevaluating our criteria based rating system. Staff is looking at massaging

those rating systems and will be looking at those over the next couple of years in how to clean that up and modernize it a little bit.

Ms. Higgins asked if the project on Route 776 one of the fords.

Mr. Benish stated that it was one of the fords. It might end up being a rural rustic road.

Ms. Higgins asked how the notification would be given on that project.

Mr. Benish stated that staff would notify those that initiated the requests at this point in time. There will be a general public notice in the newspaper for the public hearing showing this item, but there is not adjacent owner notification.

Ms. Higgins stated that the only reason she brings that up is that the other one for Catterton Road went so far including Bill Finley dedicating along his property line about 14 acres. She stated that Mr. Finley asked her about a year ago if he could get his land back. When people dedicate willingly and then someone comes in at the eleventh hour and says we don't want and then the decision is made it is just a shame that it could not be addressed earlier before it stays on the list for so many years.

Mr. Benish stated that one of the things staff is looking into for unpaved roads is that while they are looking at a general massage of the criteria one of things they are going to give serious discussion to is revisiting that overriding policy that sort of gives them direction. This rating system just helps staff relatively rank projects. There is a question as to whether staff should even put roads with certain traffic volumes on the list at all and set a false expectation. The other thing is that there has been a process that the Board has informally used is that as a project enters into the VDOT six-year plan where it actually becomes a real project that has a scoping aspect to it, that they have a public meeting process. That was done on roads just north of Miller School in Ms. Thomas' district so that they could reaffirm that it was a project that had a consensus to do. That is an approach that staff will probably continue to use so that before these projects get too far down the path that they could reaffirm that everyone actually wants to do the project. He pointed out that concluded his overview. If there were any questions, he would be happy to answer them.

Mr. Thomas asked if there were any questions.

Ms. Joseph stated that when reading through attachment A on page 8 and 9 they have Stony Point asking for regular paving and then Stony Point also asking for a rural rustic road. Since there is not a lot of traffic in that area she was curious about why that road was listed in both places.

Mr. Benish stated that at this point in time VDOT had indicated that one segment of that road could meet the criteria for a rural rustic road and another segment might not. Sometimes it has to do with geometrics and there is a level of judgment that VDOT has in the rural rustic program to determine that surface and that style of development is not a safe approach to the roadway even though it might otherwise meet the criteria for a rural rustic road. Therefore, VDOT is very cautious. In fact in this priority for all of these new projects it would probably from a preliminary look reveal that most of the new projects could be rural rustic roads, but staff put them on the regular unpaved road list until VDOT gives us more definite information.

Ms. Joseph asked if staff has given any consideration of some type of public notice to homeowners on a road where one property owner works with VDOT to complete their own paving. An example of this is on Route 795 where Chuck Proctor of VDOT has indicated that the property owner wants more paving where he owns both sides of the road. She asked staff to consider some type of notification so that the citizens who live along those roads will feel that they have some type of input.

Mr. Benish stated as he said specifically under the rural rustic road program there is a process of notification. It is actually patterned by the general process that staff spoke to on all unpaved roads. He stated that this was something that staff needs to clarify with the Board as they move to their next unpaved road projects, to get that check in from the community as to whether they do want to continue

doing the project. If this property is not owned that you are speaking to and they are paying for this by a construction permit, as he understands how that process works, that he did think there was a notification process that VDOT has to go through. He stated that he thought those adjacent property owners would be notified of that improvement. He stated that he would confirm that answer for her.

Ms. Higgins pointed out that she had made a lot of comments at last week's meeting.

Mr. Benish stated that the Commission could hold a public hearing if they wanted to, but traditionally for the past few years they had not done so. Staff will be forwarding this to the Board with any comments that they have. He asked that the Commission take an action on this matter.

Ms. Higgins made a motion to move forward with the Six-Year Plan as staff incorporates the comments that the Planning Commission gave them at last week's meeting and this week's meeting.

Mr. Rieley seconded the motion.

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

Mr. Thomas stated that the motion carries and would go to the Board on the December day meeting.

Old Business

Mr. Benish asked to clarify the church issue and a little bit of the vagueness about reservation and dedication. If the right-of-way has been purchased, then this really is a moot issue. If it has not been purchased, then that potential dedication of right-of-way could amount to a pretty significant amount of property that would go uncompensated. Based on this review, it is not an intensification of use. It does not increase traffic volumes. It did have an impact on the land, but it was to accommodate additional parking. So the question would be whether that is an onerous condition. The reservation gives us a little bit of latitude. He felt that it was a little bit more flexible than just saying you are going to dedicate the right-of-way. It left the reservation and future dedication to the discretion of the County. But as Mr. Kamptner was mentioning, 100 feet from the center line of that roadway roughly calculates out to be a fifth of their property that they might own.

Mr. Kamptner stated that would be if it went the whole depth across their property line.

Mr. Benish stated that was a significant amount of land. He pointed out that was why he kept saying reservation instead of dedication. It is the same in the end if the County executes the dedication, but it did not leave it as a flat out dedication and it had to be acquired at this point in time.

Mr. Rieley stated that he appreciated Mr. Higgins raising the point because it was an important distinction that he was not quite clear about.

Mr. Benish stated that their attachment was poorly copied because it was so light that you could not see the shaded area. Staff will try to focus on getting the copies a done a little darker in the future.

Ms. Joseph stated that while reading through the minutes it mentioned that the Commission had asked to get copies of what ever it is that they are amending, and that does not seem to be happening. The Commission does not know what has been approved if they don't get the original approval. The Commission has asked for that in the past and it is included in the minutes.

Ms. Higgins pointed out that in tonight's hearing the previous special use permit was not being amended. Therefore, the Commission did not know how the current special use permit related to the prior one.

Ms. Joseph stated that if they don't have a copy of the prior approval that they have nothing to compare the current proposal with.

Mr. Benish stated that he would make sure that staff was aware of that.

Mr. Edgerton stated that it should be standard policy if it was something that they were amending that the Commission should see the prior approval.

Mr. Rieley stated that it was not a criticism of our staff, but a couple of weeks ago he raised a question about one of the items in number 8 and the wording of it. As the motion was made his recollection was a little different than how it turned out. Staff listened to it and did not agree. Therefore, he asked for a copy of the recording. It came as a CD and he had to download some software to be able to even listen to it. He stated that he listened to the CD and it was not just him, because Ms. Taylor verifies this, but it is full of gaps. They don't have a complete recording of that meeting. He stated that he felt like he was listening to the Watergate tapes. There is something wrong with that system. It really is appalling. One of the gaps did come at a really critical point when Bill had summarized number 8 the way he thought it was, and then he said something along the lines that this needs a little bit of work. He stated that he did not think that the minutes the way they are currently configured are a drastic variance of what was actually said, but that system has got to be fixed. The Planning Commission just has to have good recordings.

Mr. Benish stated that the same type of thing occurs in this meeting room and it was not just in the auditorium.

Mr. Rieley stated that there was also a big gap when Mr. Morris was talking. It is just like there is something that clicks off and on and it was not just going away from the microphone. Along those same lines he felt that Sharon deserves a medal for being able to get the information off of those tapes that she got off of it. He noted that he listened to just about the whole CD and read the transcript and it was remarkably good. What she was able to pull off of there was tremendous. He noted that he made a few editing changes. But trying to work with a recording system when there are legal implications for what is said, they just have to have a good system. He asked that the Board be made aware of the discrepancy. He stated that if condition 8 stays in that it should reflect what was actually in the minutes. He stated that he would send an email to a Board member to make sure that at least gets on the table at the meeting or possible Mr. Kamptner or Mr. Davis will bring the issue up. He stated that they really need to get the recording system fixed.

New Business

Mr. Thomas asked if there was any new business.

There are no items scheduled for the Commission on Tuesday, November 2. The next scheduled Commission is Tuesday, November 9.

There being no further new business, the meeting proceeded.

Adjournment:

With no further items, the meeting adjourned at 9:45 p.m. to the November 9 meeting.

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V. Wayne Cilimberg, Secretary

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