Albemarle County Planning Commission
January 18, 2005

The Albemarle County Planning Commission held a work session and meeting on Tuesday, January 18, 2005 at 4:00 p.m., at the County Office Building, Room 235, Second Floor, 401 McIntire Road, Charlottesville, Virginia. Members attending were William Rieley, Rodney Thomas, Calvin Morris, Jo Higgins, Pete Craddock, Bill Edgerton, Chairman; and Marcia Joseph, Vice-Chair. Absent was David J. Neuman, FAIA, Architect for University of Virginia.

Other officials present were Wayne Cilimberg, Director of Planning & Community Development; David Benish, Chief of Planning & Community Development; Amelia McCulley, Zoning Administrator & Division Director of Zoning & Current Development; Rebecca Ragsdale, Planner; Joan McDowell, Senior Planner; Bill Fritz, Chief of Current Development and Greg Kamptner, Assistant County Attorney.

Call to Order and Establish Quorum:

Mr. Edgerton called the regular meeting to order at 4:00 p.m. and established a quorum.

Work Session:

ZTA 2004-00006 Historical Center: A work session to discuss amending Section 3.1 to modify the definition of community center and to add the definition historical center; section 5 to include supplemental regulations for historical center and amending Section 10.2.2 to allow historical center as a use permitted by special use permit in the RA Rural Areas Zoning District of Chapter 18, Zoning, of the Albemarle County Code. (Rebecca Ragsdale)

In summary, the Planning Commission held a work session to discuss ZTA-2004-00006, Historical Center, to amend Section 3.1 to modify the definition of community center and to add the definition historical center, section 5 to include supplemental regulations for historical center and amending Section 10.2.2 to allow historical center as a use permitted by special use permit in the RA Rural Areas Zoning District of Chapter 18, Zoning, of the Albemarle County Code. Staff reviewed and discussed the revised changes to the ZTA as previously requested by the Planning Commission and the Historic Preservation Committee. The Commission discussed and provided comments on the proposal. The Commission asked staff to craft the recommended changes to make the wording friendlier and schedule the public hearing to obtain feedback.

The Planning Commission made the following comments and suggestions:

- After some discussion and questions for staff, the Commission was supportive of the changes made to the community center definition.
- A suggestion was made that staff consider working on a definition for Neighborhood Center, but not to hold up this proposal in doing so.
- Regarding Proposed Supplemental Regulations, replace "Historic Preservation Planner" with "Agent."
- Under Accessory Uses, change the percentage from 20% to read, "No more than 10**%** total floor area of any historical center may be devoted to uses other than interpretative space open to the public." The Commission asked that a more conservative approach be considered. Under "Accessory uses may include:" delete "Research/library/educational facilities." Also, staff should consider working on a definition for snack shop.
- "Historical Centers in the Rural Areas of the Comprehensive Plan" should read: "Historical Centers: Newly constructed buildings or facilities for historical centers shall be limited to 1,500 square feet in size, including interpretative space and accessory uses. This change was made with the Commission noting that it may be appropriate to modify this supplemental regulation for particular requests for historical centers, especially for Rural Area zoned properties that may be located in the Development Area.
- Parking was removed from the proposed supplemental regulations because it is addressed by other sections of the Zoning Ordinance.

- Under special events, the Commission suggested that instead of seeing the requirement that requests to host them at historical centers be made with the initial special use permit application as an onerous requirement, that it should be viewed as an attempt to have a more honest dialogue between the applicant and the County as to what their intention is. If the applicant is hoping to come in after the fact to do a lot of special events it might be disastrous in considering the special use permits. It was suggested that staff use Jan Sprinkle's email response to work on adjusting this language since it was right on target.
- The capacity of the roads should be explicit criteria for evaluating requests for special events rather than just implied. The infrastructure should be adequate to support the use.
- The Commission agreed that requests for special events and festivals should be made at the time of the special use permit.
- The language should be worked on to make it clearer. It was suggested that the word "permission" be eliminated.
- Regarding the goal under Alternative Uses on pages 8 and 9, it was the general consensus (6:1) of the Commission that if they use these alternative uses, that it be an alternative to development and that subdivision should not also be allowed to occur. This should be an alternative to development and should not be allowed along with subdivision.
- Staff should reword the requirement for a Phase 1 Archaeological Survey so that it *may* be a requirement and clarify that only portions of the site that may be disturbed will require a Phase 1.
- The general consensus of the Commission was that 2,000 square feet is too big for newly constructed historical centers in the Rural Areas and should be changed to 1,500 square feet.

Staff pointed out that next week's 4:00 p.m. work session has been cancelled. Therefore, the Commission might have time to discuss the **ZTA 1999-006 Althea H. Randolph** again at a 6:00 p.m. work session. This work session was basically to get a resolution of intent started and staff had some basic questions.

ZTA 1999-006 Althea H. Randolph: Resolution of Intent to amend the County of Albemarle Zoning Ordinance to include a new category of use *special events*, such as weddings, corporate meetings, and other events, in the Rural Areas Zoning District. (Rebecca Ragsdale)

In summary, the Planning Commission discussed the proposed resolution of intent for special events in the Rural Areas regarding ZTA-1999-006, Althea H. Randolph. The Planning Commission noted two critical criteria are: 1) the degree to which the infrastructure can support it properly, particularly with the roads, and 2) the degree to which it is reversible so that after the event everybody goes away and the property looks the same way that it did before. The Commission took the following action to adopt the resolution of intent.

Ms. Higgins made a motion to pass the resolution of intent as drafted by staff.

RESOLUTION OF INTENT

WHEREAS, the Rural Areas (RA) district regulations do not presently allow special events, whether temporary or permanent, as either a by-right use or as a use by special use permit;

WHEREAS, the draft Rural Areas Comprehensive Plan currently pending before the Albemarle County Board of Supervisors contains the following strategy:

> Review the Zoning Ordinance to re-evaluate by-right uses and uses by special permit, such as home occupations and farm sales, to encourage uses that promote the preservation of rural lands and activities (including but not limited to farm sales and agricultural service businesses, low-impact forms of recreation, temporary special events, and arts and crafts sales), garden centers, and discourage uses that are contrary to the County's growth management policies (including but not limited to swim or tennis clubs, new schools, and off-site parking for industrial uses);

and

WHEREAS, the special events referred to above may include such events as weddings, corporate meetings and other similar events, and it is recognized that such events, conducted in a manner consistent with the overall policies and goals applicable to the Rural Areas could promote the preservation of rural lands and activities.

NOW, THEREFORE, BE IT RESOLVED THAT for purposes of public necessity, convenience, general welfare and good zoning practices, the Albemarle County Planning Commission hereby adopts a resolution of intent to amend Zoning Ordinance § 3.1, Definitions, § 5, Supplementary Regulations, § 10, Rural Areas (RA), and any other sections of the Zoning Ordinance deemed appropriate, to achieve the purposes described herein;

BE IT FURTHER RESOLVED THAT staff shall evaluate whether the range of special events should be allowed by right subject to supplementary regulations, by special use permit subject to conditions, or some combination thereof;

BE IT FURTHER RESOLVED THAT the Planning Commission shall hold a public hearing on the zoning text amendment proposed by this resolution of intent, and make its recommendation to the Board of Supervisors, at the earliest possible date.

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Mr. Rieley seconded the motion.

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

Mr. Edgerton stated that the resolution of intent was approved for ZTA-1999-06, Althea Hurt.

The Planning Commission recessed at 5:35 p.m. and reconvened at 6:00 p.m. in Meeting Room 241.

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, January 18, 2005 at 6:00 p.m., at the County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia. Members attending were William Rieley, Rodney Thomas, Calvin Morris, Jo Higgins, Pete Craddock, Bill Edgerton, Chairman; and Marcia Joseph, Vice-Chair. Absent was David J. Neuman, FAIA, Architect for University of Virginia.

Other officials present were Wayne Cilimberg, Director of Planning & Community Development; Glenn Brooks, Senior Engineer; Bill Fritz, Chief of Current Development; Francis MacCall, Senior Planner and Greg Kamptner, Assistant County Attorney.

Call to Order and Establish Quorum:

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

Other Matters Not Listed on the Agenda from the Public:

Mr. Thomas invited comment from the public on other matters not listed on the agenda. There being none, he stated that the meeting would move on to the review of the consent agenda.

Review of Board of Supervisors Meeting – January 5 and January 12, 2005.

Mr. Cilimberg summarized the actions taken by the Board of Supervisors on January 5 and January 12, 2005.

Consent Agenda:

SDP 2004-001 Parkview @ South Pantops Preliminary Site Plan - Critical Slopes Waiver Request. (Tax Map 78, Parcel 20) - (Yadira Amarante)

Mr. Edgerton asked if any Commissioner would like to pull the item off of the consent agenda for discussion or if there was a motion.

Ms. Joseph asked to make a comment on the project itself. Even though there were a lot of steep slopes on this project, a lot of them will be within an open space or a conservation area and will not be touched. The applicants received bonus density for doing that, which made more housing available in the urban area. She commended the applicant for doing that. Staff did a very good job on the staff report. The staff report was very clear and thoughtful. Therefore, she moved for approval of the consent agenda.

Mr. Morris seconded the motion.

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

Deferred Items:

SUB 2004-00332 Briery Creek Village: Request for preliminary plat approval to create a Rural Preservation Development with 20 lots on 141.64 acres. The property is zoned RA, Rural Area. The property, described as Tax Map 124, Parcels 14, 16A, & 17 are located in the Scottsville Magisterial District on Albevanna Spring Road [Route 622] approximately .25 miles from the intersection of Albevanna Spring Road and Ridge Spring Road. The Comprehensive Plan designates this property as Rural Area. (Francis MacCall) ***DEFERRED FROM THE JANUARY 4, 2005 PLANNING COMMISSION MEETING.***

Mr. MacCall summarized the staff report. Prior to the meeting he distributed the items that were requested from the last meeting, which were Fluvanna County's input on the proposed division and the impact in their County with the access easements shown and also the allocation of development rights. With the limited two week time period, he apologized for getting that information to the Commission so late, but they had to work it out with Fluvanna County. The letter had been received last Thursday. The applicant has also provided a revised plat, which does allocate the development rights as requested. The applicant is here. Staff is recommending approval with the conditions as stated in the memo. He pointed out that the applicant also requested a waiver from Section 14-505 of the Subdivision Ordinance as well, which needed to be acted upon. (Attachments: Memo dated 1/18/05 to Planning Commission from Francis MacCall and Letter dated 1-13-05 to Francis MacCall from Steven Biel, Director of Planning & Community Development for County of Fluvanna)

Mr. Edgerton asked if the Commission wanted a little more time to review this information.

Mr. Thomas asked staff if everything that the Planning Commission asked for previously had been met.

Mr. MacCall stated that he believed that it had. Basically, the Commission had asked for input from Fluvanna County regarding the access into Fluvanna County and also the allocation of development rights.

Ms. Joseph asked staff if he was satisfied with where the development rights had been allocated.

Mr. MacCall stated that he did not have any issues with what they have requested. Last week there was a possibility of the development rights being on some of the lots out near the main road. The applicant has limited three of the development rights internally to some of the internal lots and then three of them on the preservation tract.

Mr. Edgerton asked staff to read the list concerning the allocation of the development rights.

Mr. MacCall stated that in note 21 they say that 26 lots were shown on the by-right sketch submitted with the plan. Nineteen development lots in one preservation tract are shown hereon. Therefore, there are 6 development rights to assign. Three development rights are assigned to preservation tract A. One development right is assigned to lots 10, 11 and 14. Lot 11 is a 4.5 acre lot. Lot 14 is a 5.0 acre lot. Lot 10 is a 5.16 acres lot.

Mr. Craddock stated that in order to use those development rights the applicant has to come back to the Commission.

Mr. MacCall stated that is correct if the ordinance were ever to change to amend the 20 lots for a rural preservation development, but it was still theoretical in nature.

Mr. Edgerton asked if everyone had reviewed all of the information.

Mr. Rieley stated that the Director of Planning in Fluvanna had a number of suggestions and concerns regarding future subdivision.

Mr. MacCall stated that note would be put on the final plat before it was signed. Fluvanna County would review the final plat to make sure that note is on there for their purposes. Currently the applicant is not doing a subdivision in Fluvanna County. Therefore, none of his concerns are actually going to be brought out without a full review of any kind of subdivision that would be proposed on the Fluvanna property.

Ms. Higgins asked if staff was suggesting that an item 8 be added that a note be added to the plat

Mr. MacCall stated that could be done as far as that goes. Before Fluvanna County signs the plat they would be looking for that themselves. He stated that Mr. Biel made a suggestion that a note like that be put on the plat and he will make sure that note is on there before he signs that plat for final recordation.

Ms. Joseph asked staff if he felt that this letter from Steven Biel fulfills the requirements of the Ordinance that says that no plat shall be recorded unless and until it has been submitted and approved by the adjoining County.

Mr. MacCall stated that he did not know if the plat has been submitted to them because it was now only in our preliminary stages. He pointed out that from speaking to Mr. Biel directly on the telephone and his letter that there was no objection to what he saw on there, but he had some suggestions as far as alternatives. He stated that he believed that Mr. Biel would sign the plat if it came to him.

Mr. Fritz stated that it was consistent with the level of information that they get for the preliminary, but it does not satisfy the requirement that it be submitted and approved by the adjoining County. But, Albemarle County will not sign the final plat until the Fluvanna County signature is on the plat. It is a two step process just like our preliminary and final process.

Ms. Joseph asked if they could add that as another condition.

Mr. Fritz stated that they did not need to because it was a requirement.

Ms. Higgins stated that since the applicant has come back before us addressing the issues that the Commission brought forth before that she would like to hear from him.

Mr. Edgerton opened the public hearing and asked the applicant to come forward.

Roger Ray stated that his firm prepared the plan for the applicant. Again, they were here two weeks ago and there were two issues. They were asked to consider a postponement to get that information. They think that they have done that. Regarding the development rights, they had six that they could assign. Therefore, they identified three lots that might be suitable, not for future subdivision, but that might be

suitable to have a guest house or something like that on it. Therefore, they assigned three of the development rights to those lots, which were located back from the public road. At the previous meeting the Commission noted that if the additional development rights were assigned to the Rural Preservation Tract then that assured that they would not be used. Therefore, they assigned three development rights to the Rural Preservation Tract. They feel that does their plan good to do that. They hand carried the plan down to Steven Biel the next day after the meeting. Mr. Biel responded to the plan. Whatever they do in Fluvanna County has to meet their ordinance. They do not need a note on the plat to say that because it has to meet that. The County's preliminary plat requirement does not require that they send the plan to him. Although, they have done that at the Commission's request. They do have to send the final plat and obtain his signature on it. He noted that they were prepared to do that and will do that. One of his suggestions was that rather than use the access easement out of the cul-de-sac to serve both parcels in Fluvanna County that they only serve the most northerly one of them and then they create an access easement for the preservation tract to serve the southerly part. That was their first plan that they had, which they had gone into an extensive discussion about. But, they had decided that it would be best to not encumber the preservation tract with that easement. But, if the Commission would rather see it on the preservation tract they would put it on the southerly edge of the preservation tract. But, again after careful thought they thought that it was best where it was at. He stated that these were the two issues and that he felt they had addressed them. If there are other concerns, he asked for a chance to come back and respond. Otherwise, he would be happy to answer any questions.

Mr. Edgerton asked if there were any questions for Mr. Ray. There being none, he invited the public to come forward and comment. There are two persons signed up to speak. The first person is Eric Cressdicint. He asked that he come forward and address the Commission.

Eric Cressdicint stated that basically when he looks at this development that he thinks that he is looking at Forest Lakes and this is suppose to be a rural area. He pointed out that it did not look like a rural area. Mr. Ray has inserted that he is trying to do the right thing. But, as far as he can tell Mr. Ray has made no attempt to locate a conservation buyer. On his map he has not put the wells which exist on the property. There is a garbage pile that has been sitting on the property for six months next to the existing houses. That indicates to him that they probably want to build a much larger house. That neighborhood is actually a neighborhood of well hidden houses that are very small. He opposed a lot of huge houses being built that are completely out of character with everything else that is there. The existing structures on the north end of the property include a barn, which is probably one of the greater scenic assets of the area. If you put a lot of large houses in front of it, then the value of the barn just goes to zero. He questioned what his rights were to a reasonable amount of water and what will happen in five years when there is no water again. He asked how the soil would be preserved on the steep slopes during the construction of the roads. He stated that he would rather see the by-right development with fewer houses and more open space that was presented as the alternative.

Mr. Edgerton asked if there was anybody else in the audience that would like to speak.

Jackie Akins stated that she addressed the Commission the last time that they met on this matter. There are a couple of issues that she did not get to address. They previously discussed water, but she has not heard anything in regard to what could happen and if any study has been or should be done by any kind of environmental protection agency to determine what exactly is there. In addition to that the few people that were close neighbors years ago when she first moved into this property fought hard and for a long, long time to get that road paved from a gravel road to a paved road. The excess traffic in the area that this kind of development would present poses a threat to everything they have worked for. They have people who walk their dogs. They have dogs that run free in that neighborhood. They have the natural beauty of that land that has been there as long as she has been there. The original owner, William Kidd, swore that he would never have that land developed. To see that this land is going in that direction is just heartbreaking. For these people it is just a business. But, this is the area where they live. They have always had an opportunity to walk without worrying about being run over. She asked that the Commission address these issues and protect the existing cattle use. She asked that the Commission not to approve this request.

Mr. Rieley pointed out that the Commission has no authority to keep the land in a cattle operation. This land has development rights associated with it and what is before the Commission is simply the configuration of the property. It seems that what the applicant has done is configured it on the part that is not across the road from her property. He asked if she would prefer to have the houses located across the road from her property. He pointed out that was really the alternative.

Ms. Akins stated that she did not want the development at all. There is no configuration that would make her happy and she will continue to fight it.

Jane Gate asked to clarify a few things brought up by Eric Cressdicint. One is the issue of water. They were told that everyone was entitled to a reasonable amount of water and what she has not seen is a working definition of what is reasonable. She asked at what point it would become unreasonable. She emphasized that they really did not want to see development on that property. She pointed out that last time it was brought up that this rural preservation configuration of development would promote a sense of community among the residents. But, she did not see where having a subdivision across the street with the backs of the houses facing the front of her house would promote the community. She asked that if the subdivision was allowed that the houses be built to facing the road, which she felt would promote more of a sense of community. She felt that it was very unfortunate that this was happening at all and worried that it would affect the future appraisal of her property.

Mr. Edgerton asked if there was any one else in the audience who would like to speak on this application at this time. There being no one, he closed the public hearing to bring the matter back before the Commission for discussion and a possible action.

Mr. Rieley asked Mr. Kamptner to briefly describe various property owners' access to the water.

Mr. Kamptner stated that water was available to all of the owners of land and they were all entitled to a reasonable use. The people who have developed their parcels before others don't have paramount rights. He pointed out that he was not a water lawyer and can't tell the public or the Commission what a reasonable or unreasonable use of the water is under the particular circumstances.

Mr. Rieley stated that everybody whether they have developed their property or not has equal claim upon that resource.

Mr. Edgerton pointed out that the County is trying to address some of the concerns of water resources. Actually if this project is approved and goes forward that by the time it does there will be new rules in effect. At the beginning of next month before a building permit will be issued the applicant will have to demonstrate that there is an adequate well on each lot. This was something that was passed by this Commission last summer and finally approved by the Board of Supervisors in December. It will go into effect on February 8, 2005. It does not address the concerns of long term depletion of the groundwater table. Unfortunately, the County is not in the position to do that. They have tried to figure out a way to do that, but they were not successful.

Ms. Joseph thanked Mr. MacCall and Mr. Ray for working together and contacting Fluvanna County in getting this all together within two weeks. She pointed out that they had answered all of the questions that she had. She noted that she would have preferred to see a development that used smaller lots and had a bigger area for the preservation tract, but she felt that they had done their best in giving us a piece around an old house that hopefully can be used for some agricultural purposes. But, she just wanted to thank the applicant for working so quickly and cooperating as they have done.

Mr. Rieley agreed with Ms. Joseph. He stated that he would also like to thank the other speakers. He felt that Mr. Cressdincint echoed the sediment of everybody on this board when he said that he does not want to see Albemarle's rural areas look like one giant Forest Lakes. He felt that was the reason why most of the Commissioners were here on this board. There was a limitation to their authority. They don't get to change the applicant's development rights that are on the property arbitrarily on the applications before them because they come with the land. This project is a pretty graphic example of the limitations

of their existing rural preservation ordinance because this project is doing everything that the rural preservation ordinance says that it is suppose to do. It is a graphic representation, as Ms. Joseph said, that the lots should be smaller and the preservation tract should be bigger. But, this is according to our current ordinance. He stated that they need to work on those rules, but at the same time they have to acknowledge that it meets the current ordinance. He moved for approval of SUB-2004-00332, Briery Creek Village, subject to the conditions recommended in the staff report with one additional condition that a note be placed on the final plat that states that future subdivision of tax map 26(A), Parcel 39 and 40, the 50-foot access easement will comply with all the regulations of the Fluvanna Subdivision and Zoning Ordinance.

Mr. Morris seconded the motion.

Ms. Higgins stated that they need to act on Section 14-505, which will affect lot 1 and the rural preservation tract since that access is not on the internal public road system. She asked if a separate motion was needed on that. Section 14-505 is the right to maintain the existing entrance on the public road for lot 1 and for the house. She stated that this action would allow the access of the two lots appropriate onto the existing public road.

Mr. Rieley amended the motion to include the action on Section 14-505.

Mr. Morris seconded the amended motion.

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

The Division of Zoning and Current Development shall not sign the final subdivision plat until the following conditions have been met:

1. A completed application and fee for erosion control and stormwater management. [17- 203, 17-303]
2. A stormwater management/BMP plan, computations, and maintenance agreement. [17-203, 17-303, 17-304, 18-32.7.4]
3. An erosion and sediment control plan, narrative and computations. [14-311, 17-203, 18-32.7.4.3]
4. Road plans, pavement design sheets, and drainage computations. VDOT approval will be required for the public roads. [14-512,14-304,Policy]
5. [14.302.o] All existing development rights are not being utilized by this proposal. Allocate the additional development right appropriately to any development lot that is at least 4 acres by placing a note on the plat to that effect.
6. [14.309 & 310] Written approval from the Health Department for all drainfield locations.
7. [10.3.3.3.f] Approval and recordation of a preservation easement by the Public Recreational Facilities Authority for the Preservation Tract.
8. A note should be placed on the final plat that states that any future subdivision on Tax Map 26(A), Parcel 39 and 40, the 50-foot access easement shall comply with all regulations of the Fluvanna County Subdivision and Zoning Ordinances.

Public Hearing Items:

SDP 2004-00045 Northtown Center: Request for preliminary site plan approval to allow the construction of a 150,930 gross square foot retail development. The property is described as Tax Map 45, Parcels 110, 110A, 111, 111A and 111B. The subject parcel contains approximately 15.9 acres, zoned H-C (Highway Commercial) and EC (Entrance Corridor), and AIA, Airport Overlay. This site is located on the east side of Seminole Trail (US Route 29 N.) immediately opposite Lowes and Kegler's. Three Special Use Permits are also under review for this project, SP 2004-24 (Drive-in for bank), SP 2004-25 (Drive-in for a restaurant) and SP 2004-62 (Drive-in for a pharmacy). This site is located in the Rio Magisterial District and is designated as Community Service in Neighborhood 2. (Bill Fritz)

AND

Modification of section 4.2.3 to allow activity on critical slopes.

AND

SP 2004-00024 Northtown Center – Drive-in Window for Bank: Request for special use permit approval, in accordance with Section 24.2.2(13) for a drive-in window for a bank. (Bill Fritz)

AND

SP 2004-00025 Northtown Center – Drive-in Window for Restaurant: Request for special use permit approval, in accordance with Section 24.2.2(13) for a drive-in window for a restaurant. (Bill Fritz)

AND

SP 2004-00062 Northtown Center – Drive-in Window for Pharmacy: Request for special use permit approval, in accordance with Section 24.2.2(13) for a drive-in window for a pharmacy. (Bill Fritz)

Mr. Edgerton stated that all five requests would be heard together, but separate actions would be taken.

Bill Fritz, Chief of Current Development, passed out copies of an email that he received today that was in the form of a letter and a copy of a letter that was included in the Commission's packet. This request has five actions that need to be taken by the Planning Commission. Three of those actions are legislative actions and two of those are ministerial. Three of the actions also need to be acted on by the Board of Supervisors. The staff report is broken into two major sections. One section deals with the three special use permits as legislative actions and discusses them. They are subject to a different type of review than the ministerial actions. Then, of course, there is the ministerial review for the Northtown Center Preliminary Site Plan as well as the modification to allow activity on critical slopes. The three particular applications are special use permits for a bank, restaurant, and pharmacy drive-through and the site plan itself for the Northtown Center property. In summary, staff is recommending the following: approval with conditions for the drive-through for the bank; approval for the drive-through for the pharmacy; denial for the drive-through for the fast-food restaurant and that the critical slopes waiver be approved in two parts. Staff recommends it as a two part review. Staff is recommending approval for part A and is giving some comments on section D, which will require some specific condition findings. Should the Commission approve the modification for activity on critical slopes, they are also recommending approval of the site plan itself. This plan shows the location of the buildings. The other plan shows the critical slopes. Both plans have been included in the Commission's packet.

The special use permits were reviewed for conformity with the Neighborhood Model and the Land Use Plan. Generally, they were found to be consistent with the Neighborhood Model. However, in regards to the building and spaces of human scale and relegated parking they were not able to make positive findings on all of those for all of the special use permits. In large part it was due to the lack of approval by the Architectural Review Board. Those comments were made available to the Commission in their packets. Because the design criterion for the Architectural Review Board encourages the moving of the drive-through away from the Entrance Corridor, staff was not able to support the restaurant drive-through, which is right up on Route 29. He stated that he had included the intent of the EC District and some guidance on what the ARB said. Again, staff was not able to support it primarily due to its location directly on Route 29.

For both the special use permits and the site plan, VDOT is requiring some improvements to be done, which are typical customary types of requirements. They have required some off-site and on-site improvements such as signalization, timing of the signals, full frontage improvements, and entrance improvements on site. The specific design of those things is not yet done, but it is not uncommon.

To summarize what they have found for the special use permits for favorable factors:

- The design of the drive-through windows meets the design criteria with a condition.
- The entrance with improvements will be adequate to accommodate the traffic generated by the drive-through windows.
- The special use permits for the drive-through is typically an impact on the Entrance Corridor and traffic review.

Staff has identified factors which are unfavorable to these requests:

- The location of the restaurant drive-through window adjacent to Route 29 directly conflicts with commons of the ARB and the ARB design guidelines.
- The ARB has not supported the development as proposed.
- The specific design of entrance improvements to the site is not available at this time.

Staff is recommending approval with conditions for two of the special use permits and denial of one. For the site plan there are two components to the site plan. There is the technical review of the site plan itself and the modification to allow activity on critical slopes. The plan has been reviewed by the Site Review Committee and is subject to the approval of the special use permits and the modification to allow activity on critical slopes so it will meet the requirements to the ordinance. Therefore, staff can support approval of the site plan. Staff cannot approve it administratively because it has been appealed by an abutting owner. Therefore, it must come to the Planning Commission. The criteria for activity on critical slopes have been divided into a couple of sections. The first is the analysis of Section 14.2, which is a four part section. One of those deals with aesthetic impacts and three deal with engineering impacts. The aesthetic impacts are typical developed by the Current Development planning staff. In this case it was himself. He pointed out that this site had a site plan on it some years ago for Home Depot, which did have critical slopes proposed. That request was denied. But, there are some differences between this request and the prior request.

He stated that he would go through the review. The County has conducted a stream assessment for the urban area. The stream identified on this property was identified as having value and designated as a designed urban water feature. Within the comments of the stream assessment some impact on the stream and the stream valley may be appropriate. The Neighborhood Model states development on steep slopes should be considered with regards to its impact on significant systems of slopes as identified on the County's Open Space Plan and the master plan for the development area. The Open Space Plan does identify some of the critical slopes on this property, but does not designate the slopes as major and locally important stream valleys with adjacent critical slopes. Those maps are in the packets and they can see the differences there. The master plan for this neighborhood is not yet developed. The Neighborhood Model also states significant features identified for preservation in the Open Space Plan as well as other environmental sensitive areas should be mapped during the master planning process. The stream assessment that he referred to before is the first step in the master planning process. The master plan is not yet adopted. The Zoning Ordinance does not limit the source used to identify aesthetic resources. Historically, staff has used the Open Space Plan as the primary tool to identify resources. However, it is not the only tool. The other observation is that the Open Space Plan designation of critical slopes on this property and other studies conducted by County staff has led the review staff to determine whether critical slopes on this property represented an aesthetic resource. Staff's conclusion is that they do not represent an aesthetic resource. The plan proposes to use portions of the stream valley for storm water management facilities. The site has limited opportunities for the creation of active or passive recreation and no trail systems have been proposed by the County along this stream valley. That addresses the comments for the design urban water feature, which states that they can be piped and channelized, but they can also include storm water management or recreational facilities.

The prior proposal to disturb critical slopes on this property was denied by the Planning Commission with the Home Depot preliminary site plan. Both the current proposal and the Home Depot proposal showed disturbance of virtually all of the critical slopes on the site. However, since the prior action on Home Depot the County conducted the Urban Stream Assessment and designated this stream corridor as a designed urban water feature. This designation acknowledges that the activity in the stream corridor may occur. Without this assessment it is likely that the staff would recommend a denial of the critical slopes and a restatement of the prior Planning Commission action. However, with the stream assessment study and the review of the Comprehensive Plan and Open Space Plan staff does not find this development results in the loss of an identified aesthetic resource. The impact on the critical slopes was also analyzed by the engineering staff for the specific analysis that must be done for impact on critical slopes. Generally it is found that the issues identified in Section 4.2 can be addressed. He noted that he was not going to go into great detail on those, but Glenn Brooks is here if the Commission wants to go into a detailed engineering analysis.

Our comments specifically address the provisions of Section 4.2.5.a. Staff has included the provisions of Section 4.2.5.b along with various comments by staff. In order for the modification to be approved Section 4.2.5 must be addressed, which is a two part review. Part A requires staff to recommend to the Planning Commission and Part B requires specific Commission findings. Staff has provided some information for the Commission, which was the full text of the ordinance in their packet. The analysis results in mixed findings.

The factors favorable to the approval of a modification to allow activity on critical slopes include:

1. The proposed critical slope disturbance will not result in the adverse impacts identified in Section 4.2 of the ordinance.
2. No identified resources identified in the Open Space Plan or the Stream Assessment would be adversely impacted by the approval of the modification.

Factors unfavorable to approval of a modification to allow activity on critical slopes:

1. Alternative development of the property may be possible with no or lesser disturbance of critical slopes.
2. The ARB was not supportive of the prior version of the application. It has not reviewed the most current version of the application. Its lack of support was not specific to the critical slopes issue. However, failure of the ARB to support a request for modification of critical slope disturbance has been considered a negative factor in other reviews.

Generally staff finds that this request is consistent with the criteria of Section 4.2.5a for granting a modification and therefore is able to recommend approval to the Commission of a modification of Section 4.2.3. If the Commission makes the necessary positive findings required by Section 4.2.5b staff also recommends approval of SDP 04-045 Northtown Center Preliminary Site Plan subject to the following conditions:

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

1. Architectural Review Board issuance of a Certificate of Appropriateness.
2. Virginia Department of Transportation approval of entrance design, signal improvements, frontage and turn lane improvements as well as any associated road plans and drainage plans.
3. Albemarle County Service Authority approval of water and sewer plans and road relocation for access to the sewer pump station.
4. Current Development Division approval of:
    a. Minimum sight distances within parking areas/travelways.
    b. Design/location of curbed islands in the parking lot.
    c. Stormwater BMP plans and calculations.
    d. Retaining wall designs for any walls of 4 feet or greater.
    e. Landscape plan.
    f. Lighting plan.
    g. Subdivision plat combining the parcels into a single parcel or realignment of existing parcel boundaries to result in lots meeting minimum requirements for building construction.
    h. Necessary access, utility easements.
5. Fire Marshall approval.
6. Building Official approval.

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

Mr. Rieley stated that the staff report indicates that the ARB was not in support of the proposal that they saw with the caveat that it was not the current one. But there was very little detail about what it was

about the proposal that they did see that they found objectionable and how much of that is in the front. He asked what it was that they objected to.

Ms. Joseph asked how close this plan was to the plan that the ARB looked at.

Mr. Fritz stated that there are some modifications to the site, but there are still some issues that he felt that the ARB was going to have.

Mr. Thomas asked what was the latest buffer and was it 20' or 50' between the Woodbrook homes and the rear of that retail area on the south. He asked if that has been altered at all in the new plan.

Mr. Fritz stated no that it was a 20' buffer.

Mr. Thomas asked if the applicant has altered the restaurant drive-through approach at all.

Mr. Fritz stated that there were some modifications to the restaurant drive-through, but its location was essentially the same up on Route 29. There were some modifications to address some engineering concerns that they had in terms of its design, but not its location. The changes were done to address the original comments from Current Development staff, but not to address the ARB comments.

Ms. Joseph asked if they knew how high the retaining wall is.

Mr. Fritz stated that he would look at the plans to answer her question.

Ms. Joseph stated that she had a question for Mr. Brooks. On page 9 in the middle of the page, it says that in January, 2001 the Chief of Engineering stated . . . that some of these conditions made for the Home Depot site plan review still appear to be valid and there are four of them. She asked if he felt that the applicant has addressed those four items on this plan. It talks about reducing the parking and use of impervious blocks. It talks about providing bio-filters, downstream channel and pond restoration and on-site erosion and control measures beyond.

Glenn Brooks stated no because he took the ones out that he believed that the applicant has addressed. Those are the ones that he thought that the applicant has not addressed. In the letter from the applicant, which is Attachment G, they have six items. Regarding items two and three, it did note in the correspondence that they would try to look at these things. For instance in number three it says that we are also aware of the sensitivity surrounding erosion and sedimentation control measures and an effort will be made to work with . . . , we will design an innovative erosion control plan to prevent downstream run-off issues during the early stages. He stated that they have spoken to it, but he did not believe they have addressed it in the plan itself.

Ms. Joseph stated that she did not see it in the conditions either. She asked if that was correct.

Mr. Brooks stated that he did not want to make them conditions because they were recommendations before, and as far as he knew they were voluntary.

Ms. Joseph asked if he feels that the way they are managing the stream and the designation that it was given if he thinks that it reflects what Stephen Bowler's comments are in his initial review in the way they are handling the existing stream.

Mr. Brooks stated that generally yes, they have done that. He noted that the applicant has come a long way from the original application, but he could not speak for Stephen Bowler.

Ms. Joseph stated that she found his memo in the packet and assumed that there was a reason for that. Mr. Bowler talks about this being a designed urban water feature. She stated that she was trying to figure out what is a designed urban water feature and whether what they were looking at fits that category.

Mr. Rieley asked if it was a culvert in other words.

Mr. Fritz pointed out that the maps in the staff report come from the stream assessment.

Ms. Joseph stated that she was just trying to figure out what a designed urban water feature is. It sounds like it is this fabulous thing that has fountains in it, but she did not know for certain.

Mr. Fritz stated that the information from Stephen Bowler was pulled directly from the stream assessment.

Mr. Brooks stated that he felt that the basins are, but that it was subjective criteria. Therefore, he did not have any perimeters to deal with.

Ms. Joseph noted that somebody has to make that decision, and Mr. Brooks agreed.

Mr. Fritz stated that to answer the retaining wall question that he could not find it, but he could do the math. The tallest part of the wall is about 20 feet tall. In other locations it is 16 feet tall and then 10 feet tall. But once you get on to this side and again once you get over here the site is actually lower than the surrounding property. In one area there is an 8 foot differential where it was depressed about 8 feet. There is a retaining wall that would run all along here.

Mr. Edgerton stated that basically they would just be digging out this hole.

Mr. Fritz stated that they were filling in here and lifting it out and then pushing down on either side. Then it was 18 feet in another area where it was lower than these properties.

Mr. Thomas pointed out that there was a very steep hill in one area.

Mr. Fritz stated that on retaining walls of over 4 feet the County will require it to be an engineered wall, but it will also have to have some sort of railing to prevent anybody from coming across it and crashing down. He pointed out that would be based on the height of the wall.

Mr. Thomas stated that in relation to the back yards in Woodbrook what would the elevation of the railing be.

Mr. Fritz stated that the railing would be at the top of the wall and whatever is put at the top would be roughly the same elevation as the back of the lot.

Mr. Thomas asked if an undisturbed 20 foot buffer would be required.

Mr. Fritz stated that there would then be the undisturbed buffer. There would be 20 foot of undisturbed buffer, then the wall and travel way.

Mr. Thomas asked if there was some mechanism that would guarantee the life of the trees or existing foliage that is in there now.

Mr. Fritz stated that as they go through the review and what they would do as part of the final site plan is require a conservation plan. If modifications have to be made to the location of the retaining wall to preserve trees within the buffer it will have to be done. Staff considers activity that occurs outside of the buffer, which is likely to result in the death of a tree within the buffer, as disturbance within the buffer.

Mr. Edgerton asked if the 20 foot buffer goes right to the edge of the retaining wall.

Mr. Fritz stated that was basically true, but there was a slight setback.

Mr. Edgerton asked how you could build a retaining wall without disturbing that buffer.

Mr. Fritz stated that you could not and it was off the buffer by a couple feet. He pointed out that he could get a scale out to measure it on the plan, but it was not off by much. When they get the final design the applicant might have to redesign it such that they don't disturb the buffer.

Ms. Higgins stated that there was a note on the plans that talks about trees that will have to be replaced in the buffer or added to at the end of construction. She asked if that would be a requirement.

Mr. Fritz stated that as part of the final site plan review they would require a tree conservation plan as well as the landscape plan. They would cover that with the design of the retaining wall. They may require construction fencing. But, staff can require whatever measures that they think are appropriate.

Ms. Higgins stated that this says existing vegetation which requires them to meet tree cover requirements in the buffer area. If field conditions reveal that additional plantings are needed, they will be provided at the end of construction. She asked if he could show them where the 50 foot temporary construction and grading easement to be null and void upon completion of inner parcel connection would be. She asked what they involve.

Mr. Fritz pointed out that was over in this area. The idea was to allow the possibility since there is an adjacent property, which is zoned CO, but cannot be used for any commercial uses based on some restricted covenants. As you know they try to provide a connection to adjoining property and that is what that is there. It is to provide a potential should this property ever develop commercially or residentially. However, it is to get it to come back to a signalized intersection as opposed to either another entrance on Route 29 or an entrance onto Woodbrook. But, it would have to come back through to this entrance.

Ms. Higgins stated that in the meantime the landscape plan shows a line of trees there.

Mr. Fritz stated that it was done.

Mr. Thomas asked what would happen if it was a 50 foot buffer.

Mr. Fritz stated that the plan would have to be modified and they would have to pull things further in, which may result in the loss of parking and would result in the decrease in size of one or more of the buildings. It would just be a modification to the plan.

Ms. Higgins stated that if they increase the buffers at the edges, then they could give up what was in the middle of the stream. If they opened it up in the middle it would push it out to the edges.

Mr. Rieley stated that they could not push it any farther than it was right now.

Mr. Thomas asked if the pond was still going to be there.

Mr. Fritz stated that the pond was going to be there and actually be enlarged. It is a VDOT basin and it was going to be modified and enlarged.

Mr. Thomas asked if it was going to be just as deep, and Mr. Brooks stated yes and that it was going to be widened away from Route 29.

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

Wendell Wood, property owner, stated that he would like to give a brief history of this property. Since they filed the original plan on this they have met with staff. In taking in staff's considerations their site has been altered and elevations lowered. The residents of Woodbrook and Carrsbrook asked us to do that because by lowering it they would not be able to see it out of their back yards. The previous plan was higher and they would basically have been able to see some rooftops. Therefore, they have lowered the site to accommodate them and taken staff's recommendations into consideration. They have also taken

the first plan that was referred to by the ARB and taken their comments into consideration. In their first plans the buildings were not perpendicular to Route 29. They went back and reconfigured all of the buildings. As you can see all of the buildings are now perpendicular to Route 29. When they were talking about the drive up on Route 29, which was the corner building, they had the corner building at an angle so that the drive up would not be on Route 29. He noted that he did not know what the ARB's opinion would be on that. But, they have located the building the way the ARB wanted, but the drive up is still on Route 29. They are hoping that they will be able to solve that problem by extensive landscaping so that it will not be seen. They were certainly willing to do that. He felt that all of the other comments that were made by the ARB were addressed on the new submittal, but it was subject to their approval. Therefore, they had to go back before the ARB. But, they have had extensive meetings with Mr. Fritz and all the departments, and feel like they have satisfied the issues that people have brought forth to them. He stated that he would be glad to answer any questions that the Commission might have. They also have the engineers present to answer the technical questions that they might have about the storm water or any of those features. On the original plan, they did not have the highway pond in front because it was being filled in. There was a larger pond in the back that will actually be a water feature as well as a detention pond. They have plans to have a fountain that will be landscaped, which will actually be a feature along Route 29. By doing that they drastically reduced the quantity of the critical slopes that they have built on. They have actually enlarged that pond to contain the water in two different locations. The engineers are here and would be happy to speak to that.

Mr. Thomas stated that by enlarging the pond they were not going to be grading any dirt because they were just essentially pushing the pond back further.

Mr. Wood stated that was correct.

Mr. Thomas asked if the ARB was going to have a problem with where it was located in relationship to the highway.

Mr. Wood stated that as was mentioned that it was now located on Route 29 and they were hoping that they could handle that with extensive landscaping. But they relocated the buildings like the ARB requested of them. Previously they thought that they had a nice design, but the buildings were in a different configuration and in a different location and the ARB was adamant that they wanted everything to be perpendicular, and that is what they have done. In order to do that the traffic does not work to come around to the other side of the building. But they were still trying to come up with a way to solve it.

Mr. Thomas stated that the buffer between the property and Woodbrook still bothers him a lot with the proximity of how close those buildings are to the back yards.

Mr. Wood stated that was why they leveled the site. In essence by what they are doing now they have an extension in that they have added 20 feet to their back yard. There is nothing on grade because the site has been lowered. Before it was higher and they could look out of their back yard and into the buildings. They have lowered the site and have 20 foot of undisturbed buffer. They have agreed to put up a fence in any style that they want of approximately 6 foot.

Mr. Thomas asked if they could make it 8 feet.

Mr. Wood stated that they could make it 8 foot. He pointed out that the height had been debated back and forth. Some people wanted a 20 foot fence, but then they realized that they would be in a prison. He stated that they could make it solid. But, if they wanted to make it 8 foot, then they would make it 8 foot. What they were willing to do was to go in there behind and off of their property in the 20 foot buffer and extensively put in more landscaping as well as a fence.

Mr. Edgerton stated that it would not really be an undisturbed buffer.

Mr. Thomas stated that they would have to be able to go into the other property owner's back yard to make the wall that tall. That was where he was heading with his question in if he was prepared to have a waiver to get into the resident's back yard and to alter their property.

Mr. Wood stated no, absolutely not.

Mr. Fritz stated that it would require a modification to do plantings within the undisturbed buffer area. That is a long standing ruling of the zoning administrator that there has to be an undisturbed buffer.

Mr. Wood stated that was up to the Commission and the residents if they want us to plant more shrubbery in that undisturbed buffer. But, they were talking strictly shrubbery. If they want it, then they were willing to do it.

Mr. Edgerton stated that he mentioned that he had addressed the issues that the ARB had made on the previous plan, but not on this plan. The Commission does have the ARB comments from the July 16 meeting, which was a very negative report. The ARB was very concerned about the scale of the buildings. He stated that he had mentioned that he had changed the alignment of the buildings. He asked if he had done anything to address their request in what is in the ordinance in trying to have more human scale on some of these buildings to make it more appropriate for the Entrance Corridor.

Mr. Wood stated that he believed that they have addressed it through lowering the site where the buildings don't have the appearance of the height.

Mr. Edgerton asked the height of the buildings.

Mr. Wood stated that the ordinance allows the building to be as tall as 65 feet. He stated that he was not sure of the exact height, but that the buildings were four stories with elevator shafts and approximately 45 to 55 feet.

Mr. Edgerton stated that with the retaining wall being 18 feet that the building would still be 20 feet higher than the back yard of these residents.

Mr. Wood stated that the maximum height of the building on the right side is 20 feet.

Mr. Thomas pointed out the location of the multi-story building at the back.

Mr. Edgerton asked if their comments referred only to that building.

Mr. Wood stated that was correct.

Ms. Joseph pointed out that there was a note on the plan that speaks to the building height. It says that the maximum building height was 65 feet and that no buildings on the site exceed the maximum allowable height. That is all that the note says.

Mr. Wood pointed out that the buildings on the right are all one-story buildings.

Mr. Rieley stated that the application was before the Commission and not his statement. Therefore, they have to worry about what is on the application. Based on the application every one of those buildings is 65 feet high.

Mr. Wood stated that they would be glad to proffer that all of the buildings from the center of that plan to the right are one-story buildings.

Mr. Rieley asked why it was not on the plan to begin with.

Mr. Fritz stated that the only building that had a specific height was the bank, which was at 60 feet. The rest of the buildings have a number of floors.

Ms. Higgins stated that it would all be limited in the site plan.

Mr. Edgerton stated that it could get pretty high on some of these retail establishments.

Mr. Wood stated that they were basically one-story retail buildings that usually have an interior height of 12 feet and usually beyond that is 4 feet. Therefore, these buildings would mostly be 16 feet and then with the roof line added it would be 20 feet.

Mr. Edgerton stated that the buildings would still be higher than the back yards, which was what he was trying to determine. It was requested that he lower the site to respond to the concerns of the neighbors and because of that they would not be looking at these buildings. If the buildings were 20 feet and the highest retaining wall was 18 feet, then they are going to be looking at these buildings.

Mr. Wood pointed out that they have agreed to a 6 foot high solid fence of any type that the resident wanted. Therefore, with the 6 foot high fence they would not be able to see a 60 foot building.

Mr. Edgerton asked what sort of analysis should be done to determine the impact of the traffic that this center will be increasing on Route 29.

Mr. Wood stated that the Highway Department determined that there was no need to have an additional traffic analysis because it was considered when they widened Route 29 into the eight lanes in this area a few years ago.

Mr. Edgerton stated that considering the reports that they have done in recent months he was surprised to hear that.

Mr. Wood stated that VDOT did speak to how they would have to reconfigure the traffic light timings in each direction. But as far as the additional traffic the additional widening of Route 29 a few years ago accommodates this. When most of these questions came up the Highway Department said that an additional traffic study was not required.

Mr. Edgerton pointed out that they did not have that information in their packets so he had to ask the question.

Mr. Craddock asked if the three-story multi-story building on the Carrsbrook side was three or four stories.

Mr. Thomas stated that the middle building was four stories and the back building was three stories.

Mr. Craddock asked how much higher those buildings were than the retaining walls. He asked if those buildings were overlooking the back yards of the Carrsbrook houses.

Mr. Wood stated that there was no way that a Carrsbrook house can see this property. He stated that it was impossible. It could not be seen from Carrsbrook. He pointed out that he met with Mr. Burton of Carrsbrook and that the back of his house is roughly 1,000 feet away and the hill behind it still slopes up. Therefore, the properties there cannot be seen. There is one house that will be able to see that last row into the back. Those houses are located on 3 to 4 acre lots and they front on Carrsbrook Drive, which is roughly 1,000 feet away. There is wooded land going down a ravine and then going up. He stated that when they stood out on the site Mr. Burton could not even find his house.

There being no further questions for Mr. Wood, Mr. Edgerton invited other members of the public to speak regarding this application. There are several people who have signed up on the list. He invited Charlie Trachta to address the Commission.

Charlie Trachta, resident of Woodbrook, stated that some of the words that he would like the Commission to think about is cars and critical slopes. If they don't grant the waivers for critical slopes the buildings get smaller and everything gets pushed around and this becomes a better project for the neighborhood. The ARB has already told the Commission that they don't like this and have a lot of problems with the project. Again, they were going back to the critical slopes and the river. That brings him to the river. The County finally is saying that this river does exist and it is worthwhile to the community and yet they are going to pipe it. The next word is stupidity. Some of the things that they have here is not Mr. Wood's fault. Right now they are being told that the restaurant can't have a drive-through because it is near Route 29, yet they would have a drive-through that would be approved behind people's houses where cars could go technically go 24 hours a day. Through the night they could have cars going through a drive-through pharmacy beeping their horn and playing loud music, which does not make sense. Whereas, a building that was away from all of the residents that the County was saying no they did not want a drive-through. They have a lot of problems regarding some of our County laws with what they were looking at. The critical slopes were denied before. If they continue to deny the critical slopes waiver they were going to have to make these buildings smaller. Some of the Commissioners have already brought up if you have a 20 foot buffer and you put this wall next to it that you are going to have to disturb those trees. The roots of the trees are going to come out and the trees are going to die. If anybody went up Route 29 the last couple of years and saw Hollymead Town Center, it looked like a moonscape. Here in a very small piece of property they are going to lower this land, build up this land and that kind of stuff. What are they going to have? He felt that it would look just like Mars. He felt badly about this because over the years in dealing with this project that Mr. Woods has come back with something that is better than was offered to them before, but they were not there yet. They need to keep those critical slopes intact. He requested that the Commission deny the waiver and think about not having a drive-through in people's back yards.

John Gallagher, President of the Woodbrook Neighborhood Association, stated that he was not going to be talking about design urban water features because they don't know what they are either. He felt that the County should follow their own guidelines and reject the waivers in this plan. He pointed out that he was referring to the critical slopes waiver and the drive-through window waivers. Just for a moment imagine that they are going to take this development and turn it around and put it out on Route 29. They would say no, we can't do that because it is too ugly and nobody would like that. He asked why it was okay to take that same thing and turn it around and put it back near their neighborhood. Another thing that was unclear was why an earlier version of a site plan was rejected due to a drive-through being too close to Route 29, but now it was okay because it was safely tucked back into their neighborhood. It is okay if it is next to us, but not for the cars driving by on the highway. He pointed out that he did not understand that. He felt that the drive through waiver should be rejected due to the amount of traffic that a 24-hour pharmacy and a 24-hour fast food restaurant would attract. He stated that he could hear the car engines revving and the boom boxes playing at night. That noise could have been out by the highway, but somebody does not want that and wants to push it back into the neighborhood. Again, he does not understand that. He stated that he also could not figure out why the critical slope and the stream were important issues early on in the review process, but now it seems like our planners are not that concerned about them. He felt that they should be concerned about it. Just because they could fill in a stream and a critical slope valley with tons of dirt, he felt that they have an obligation to preserve the stream and the critical slopes along with the ponds downstream. Therefore, the Commission should reject the critical slopes waiver, too. He stated that he had told some of them about a sewer problem on Woodbrook that flows from the Woods Pump Station on that site. The sewer hook up right now is broken. It smells down there in their neighborhood. Who is going to fix that? Or are they going to continue wearing those blinders and say that the site plan has nothing to do with the sewer problems. Do you think the sewer problem is going to get better magically when the shopping center begins sending us their sewage? Of course it won't. Why isn't anybody addressing that problem? How many times do they need to bring this up? Should they rent one of those honey dipper trucks to deposits some samples on various people's front yards and see if they like the smell? How about that mud slide that somebody brought up about a week ago? Have you called a newscaster saying something like the developer said that he had followed all of the proper procedures at the site? He stated that he was certainly glad of that. He asked aren't you? What do you think would happen with our ponds downstream if that critical slope fill that they are talking about suddenly washed down into the ponds? The ponds would be history. You can't begin to know what will happen if you remove all of the trees and level that site. But, you can

prevent a disaster by concurring and voting against the plan and denying the critical slopes waiver. You have no mandate to permit the developer to run amuck and pave over everything on this site. As mentioned before, it looks like the developer has some sort of vendetta against our neighborhood. Perhaps it has to do with the difficulty of getting his plans approved. Perhaps he is made at Carrsbrook because of their deed restrictions. But, he really did not know what it is. It seems like the developer is trying to get even with someone else. He asked why Mr. Wood has not contacted the neighborhoods to try to work with them.

James Craig, resident of Carrsbrook Subdivision, stated that his wife and he lived on a lot which is adjacent to the site that is being proposed for development. In the interest of accuracy he was going to read his comments. It is our hope that this site can be developed in a way which will preserve the stream and wooded valley in the middle of the property. The current proposal appears to require the covering of most of the critical slopes by extensive fill to provide a level area for the buildings and parking area. Filling in the valley or the stream will result in a loss of an aesthetic resource that cannot be replaced. We note the July, 2004 recommendation of the staff of the Architectural Review Board to, "incorporate the significant natural features, streams, slopes and noteworthy trees of the site into the development." They agreed with the statement of the Site Review Committee comments of June, 2004 that, "the piping of the stream retains none of the existing resource and will result in the irrevocable loss of an aesthetic resource. The stream valley should be retained and any development of this property should be incorporated into the overall design." In the materials submitted to the Commissioners for this meeting the staff had concluded that the critical slopes "do not represent an aesthetic resource and does not find that this development results in the loss of an identified aesthetic resource." He pointed out that they were baffled by this reversal of opinion by the planning staff since they are not aware of any change in the County's Stream Assessment Study or the Comprehensive Plan Open Space Plan between June and the present time. A request for the waiver to develop the areas of critical slopes that was made in 2000 as part of the Home Depot proposal for this site was in that instance denied by the Planning Commission for the waiver and then their action was sustained by the Board of Supervisors. We again request the preservation of this natural resource. They certainly acknowledge the right of the owner to build on this property within the guidelines prescribed by statutes and regulations. Our goal is to encourage the type of development which will retain as many of the significant natural features as possible and will minimize the impact of such factors as the run off of water, silt, light and noise on the adjacent neighborhood.

Chris Honnenberger stated that he was President and Chief Executor Officer of Second Bank and Trust located in Culpepper, Virginia. Appearing with him this evening is Mr. Van Dike who is the Chief Operating Officer of the Virginia Financial Group, Incorporated, who is the parent company of Second Bank and Trust. They come this evening in support of this project. They are the banking institution identified in the plan. They have worked closely with the developer and are very excited about the prospect of being associated with this project and with this entire development. By way of introduction, Second Bank and Trust is a 320 million dollar community bank based in Culpepper, Virginia. They are over 100 years old and serve the north central portion of the state in Orange, Madison, Harrisonburg and Culpepper. Virginia Financial Group is located throughout central Virginia. They have their home offices for the parent company in Staunton and Culpepper. The reason for the larger bank building is that they have intentions of moving their corporate headquarters for the financial group to Charlottesville. This would bring a lot of their high level corporate employees and technical jobs to the area. They are very excited about the prospect of locating a major banking operation in Charlottesville. They are one of the largest Virginia based holding companies in the state. They have not had one located here since the Virginia National Bank left some years ago. Therefore, it would be an exciting opportunity for us and the community. They very much support this proposal.

Frank Rice, resident of Carrsbrook, stated that he came prepared to address a number of issues that have already been spoken to. Since he agreed with the previous speakers from the neighborhood he would not repeat what has already been addressed. He stated that he would simply limit his remarks to the ethical issue that is involved in the development of not only this site but any site. No one in Carrsbrook or Woodbrook that he had spoken to contests the right of the commercial property owner to develop his property. That is indisputable. But the right for the adjacent residential neighbors to have that property developed in such a way that it minimizes the negative impact that it will have on their

communities is equally indisputable. So the ethical issue has to be taken into consideration regarding the decision that is before the Commission with regards to this particular site. In the packet of materials the Commissioners have a letter signed by the President of the two Homeowner Associations for Woodbrook and Carrsbrook. He asked to quote from the end paragraph of that letter. "Woodbrook and Carrsbrook are established residential communities where the vast majority of homes are owner occupied and rented units are the rare exception. Attractive well maintained homes on large lots with mature landscaping, including many mature trees, and convenience access to the schools, services and employment provided by the greater Charlottesville area make Carrsbrook and Woodbrook a highly priced oasis in the urban ring. Commercial development of the property adjacent to our residential communities by right can and will occur. However, what is legally right cannot be in the public good if it unnecessarily violates the rights of private citizens. Ethical considerations require that commercial development proceed in a manner that preserves residential property values, quality of life amenities, and the gentile character of our communities. We believe that the recommendations that we submitted to you in that letter to which I have just referred are just and fair and that they do not encroach on the developer's legal right or ask for more than is required by normal business ethical standards. Our concerns are legitimate and our recommendations are compelling with that. As noted by others and in materials that the Commission has before you there are alternate possibilities for the development of this site which will enable the owner to realize a profit on his investment. We do not have to disturb the natural fixtures to the extent that it is proposed in this plan in order for the property to accommodate facilities, even the ones that Mr. Wood proposes, in such a way that there will be economic profit to him. He encouraged the Commission to take these considerations seriously when they make their decision to approve or disapprove this particular site plan. It is important to the welfare of our communities that you consider this issue.

Joe Mason, Chairman of the Carrsbrook Homeowner's Association, stated that he wanted to reiterate a couple of things that have already been mentioned. One is that there has been a lot of speculation about what the ARB's response to the revised plan is going to be. He suggested that they wait for that until they move forward. They had a lot of strong objections and it is doubtful that all of those have been adequately addressed with this plan. Therefore, he would hope that it may be premature to make a decision at this point without incorporating that. Another is as Mr. Craig stated that the planners and ARB's words were very strong in support of maintaining the stream that cuts through the property. It is clear that the property is much more profitable without that stream. However, when many, many attempts were made to circumvent that by doing what is proposed now, which is to essentially obliterate the stream by filling it in, it does not seem to have adequately addressed the problem. Obviously, with the recent mud slide we know that it is hard to predict what the impact of lowering a site by 25 feet and filling the stream could be. It could be devastating if it has not been addressed adequately. At any rate he felt that there has not been enough explanation as to why the assessment of the stream has changed so dramatically in six months. He assumed that there has not been another stream assessment done. If there has been why was there one done when there was already a conclusion reached previously. If there has been no new stream assessment why has the conclusion now so drastically different from the original site plan reviewed in June.

Mr. Edgerton asked if there was anybody else from the public that would like to address the Commission on this request.

Katie Hobbs, resident of Albemarle County, stated that as they do more and more of this retrofit of small parcels they are going to run into points that need to be addressed on both sides. For instance, in this 20 foot undisturbed buffer she believed that the Planning Commission should ask that the buffer include a majority of trees that are not deciduous so that during the winter the noise and the site screening does not change dramatically as they have seen it happen in other parts of the County. She heard Mr. Wood make reference to the idea of putting more trees in there and she was sure that their landscape people on the planning staff can help him with making the right choices. She stated that an urban water feature in her mind includes an open stream buffered with maybe a small trail beside it. In neighborhood plans that the DISC committee would recommend there needs to be a small park. This area stretches the point to be called a neighborhood because it has no park or other walkable feature that is accessible for the people who live there. If there were a trail with the open stream it could connect interiorly with commercial

property to the north and to the south. It will be interesting to see what the master plan, soon to be developed, would say about this site. Certainly it would not say this.

Edith Turner, resident of 107 Carrsbrook Drive, stated that her residence was the closest to the left side of the proposal. This is going to be a serious matter to her with the extra traffic on Route 29 and the development that would be seen. It is not only that the stream would be aesthetic, but such a neighborhood has a right to the nature that grows in these wetlands and stream parks. It is a cultural matter and not just an aesthetic matter that they should be preserved for the birds and the particular plants. It would be nice if this area could be a park or a children's playground. She felt that the Board should make this decision. She felt that there should be some good generosity shown towards their subdivision which had some very fine people who have offered great guidance and service to this community.

John Ken stated that his property in Carrsbrook abuts the proposed development in the northeast corner. His residence was probably the one that Mr. Wood was talking about when he said that one property would be able to see the building. First he asked for some clarification. On page 15 of the materials that he picked up from Mr. Fritz last week it shows the far rear building on the left side being 3 stories, but he believed that he has seen plans dated in November where that is a 4 story building. He asked what the size of that building was going to be.

Mr. Rieley asked for clarification from staff on that.

Mr. Fritz stated that it was a three story building of 42, 930 square feet and any significant deviation would require it to come back before the Planning Commission.

Mr. Ken pointed out that he gets his water from a well. Therefore, he was not quite sure what is going to happen when most of the land behind him was covered with asphalt and the water piped through the property across the side and front of his property. He stated that he had asked questions about that and basically was told by staff that they don't know and can't tell him where the water that feeds his well comes from. The suggestion was made that he have some study done. That is out of his reach to have a study done to find out where the water which replenishes his well comes from. There is a letter in their packet that he wrote concerning the run off coming from this development. He has been told that he water will be trapped and released at a slow ratio so that it will not overwhelm what is already there. But he questions that due to the way that water comes out of there now. When the rain hits the ground a lot of it is absorbed where it is at. But, some of it runs off and comes down to a pond that is located in front of his property. The size of the pipes that handle that water is indicated in that letter. Some of that water goes directly into his driveway. If that is overrun the worse case scenario for him would be five years from now he would have no driveway, which is his only access. Also, possibly he would have no well. Therefore, he did not know what he could do about it. But, he felt that someone should look into it. When he asked questions about it he was told that he might want to contact the County Attorney. That seems like those are things we should be protected from and not be told where to get advice to fix after it happens. Therefore, this project is going to have negative impacts on the people in that neighborhood. There is a very small well pumping station at the very far end of that property. He pointed out that he could see that little building from the bedroom of his house now. Therefore, he knew he was going to be able to see a grocery store or a four story building.

There being no further public comment, Mr. Edgerton closed the public hearing to bring the matter back before the Commission for discussion and a possible action.

Mr. Thomas asked how staff determined that the stream was not an aesthetic resource.

Mr. Fritz stated that it was a multi-prong approach by using the two primary tools that staff has available. The first tool used would be the Open-Space Plan. Staff reviews the composite map, which is a summary of the identified resources, which is the primary tool. The only resource identified on the composite map on this property is the buffer, which matches what is required by the ordinance. That is located in various places up and down Route 29. It does not show the major stream valley. However, one of the supporting

maps does show it as a critical slope. Historically, staff does not use that as a primary tool to identify it as an aesthetic or critical resource. But, staff can note that for the Commission. The other tool is the most recent tool that they have, which is a stream assessment, and that is a designed urban water feature. One of the questions asked was the difference between staff's first review and the current review. In the first review the stream was literally piped almost the entire distance through the property. In this case it is piped through the center of the property with ponds at both the upstream and downstream ends of the property. In our view that is what a designed urban water feature is, which does not call for a storm water facility. Staff found that was consistent with the comments of the designed urban water feature, which was the difference between June and today.

Mr. Thomas stated that if wells have problems and this project is built would the County be bound to run water lines to the Indian Spring Road property that consists of six lots.

Mr. Fritz stated that he could not answer that question.

Mr. Thomas felt that something would have to be done in that situation. He asked if the Commission could condition that.

Mr. Fritz stated that he would have to refer that question to Mr. Kamptner.

Mr. Kamptner stated that the ultimate decision would be made by the Board of Supervisors and the Water and Sewer Authority.

Mr. Thomas stated that he thought that Mr. Wood had met with the Carrsbrook and Woodbrook residents on a regular basis for the last six months. He questioned if that was not true.

Mr. Fritz stated that he did not know the answer to that question.

Mr. Thomas stated that possibly later the Commission could approach that question again with the applicant.

Ms. Higgins asked if there were any planned improvements to the existing Carrsbrook pumping station. At one point she recalled that there was a sewer line that bisects that site along the critical slope that they are talking about. They have already put a public utility in. She asked if staff had any information on that. The other question is when the Route 29 expansion was done it apparently identified this area as a pond and it appears that there is a structure or a pipe through a dam and it outfalls into the stream that everybody has been referring to. She stated that typically VDOT's standards are not necessarily compromable with the County requirements. She asked if Mr. Brooks could expand upon that because usually situations like this are potentially deteriorating anyway and does this do anything for that gradual deterioration. The last question relates to the water issue and creating an impervious area. Potentially it would be her understanding that all of this except for the buffer potentially would be captured and the drainage would be diverted so that it would not go on to the adjacent properties. She asked if a statement about that could be made so that the Commission could have some clarification. She stated that how creating impervious area would affect wells is another level of looking at this, but she felt that there was some benefit of what is happening on one site now not going to run off into the neighbor's property.

Mr. Fritz stated that he would ask Mr. Brooks to answer her question about the designs of the VDOT basin changes and how the canalization is being done.

Ms. Higgins asked if anyone had talked to the Albemarle County Service Authority about that pump station.

Mr. Fritz stated that staff has talked to the Service Authority about the pump station. Gary Whelan at the last site review meeting was supposed to follow up on that. It sounds like that did not happen and he would call him again. Over the years there have been complaints about foul odors in that line.

Ms. Higgins suggested that there should be some odor control. It could possibly be because there is not enough flow in there. If there is a septic problem in this area that it needs to be addressed by the developer before putting anything else in this area.

Mr. Fritz stated that pump station was put in a number of years ago in size to capture development from this drainage area including this property. So its capacity was designed that way. Is there a problem with the downstream lines with blockage? He pointed out that he did not know, but the Service Authority is supposed to be investigating it.

Ms. Higgins stated that a lot of times odor control is a whole separate issue than capacity.

Mr. Fritz stated that there is not a capacity issue that has been identified by the Service Authority to this property.

Ms. Higgins asked if the stream assessment notes that there is already a public utility been put in which disturbs the critical slopes.

Mr. Fritz stated that cannot be one of the factors that lead to a stream assessment of a non-urban water feature instead of a higher more pristine feature. Since he did not go on this stream assessment he could not tell answer her question. But, that is one of the criteria that they use.

Ms. Higgins asked if anyone has visited the site and gone down to the VDOT dam and walked that stream.

Mr. Brooks stated that has been done.

Ms. Higgins asked what condition the stream was in now.

Mr. Brooks stated that it actually was in pretty good condition. There is disturbance right next to the stream where the sewer line went in. That sewer line was in place when the stream assessment was made.

Ms. Higgins stated that in the zoning history it says that in 1980 it was part of the mass rezoning. On the cover sheet of the preliminary site plan it says that the current zoning is HC and A1A.

Mr. Fritz stated that there were three zonings on the property. It is zoned HC, Highway Commercial; EC, Entrance Corridor Overlay District; and AIA, Airport Impact Area.

Mr. Morris agreed with Mr. Mason in that he would love to see the Architectural Review Board's finding on the second page before he would feel comfortable with the request.

Mr. Edgerton agreed with Mr. Morris very strongly, but felt that the Commission was stuck here because unless the applicant was willing to ask for a deferral on this that they were going to have to go with what they have.

Ms. Higgins stated that based on the understanding that the ARB would have with this she did not know if the ARB's goals do consider the neighborhood's at all. To make the Entrance Corridor be less impacted that it usually means pushing it away from the Entrance Corridor.

Ms. Joseph stated that it does not because the ARB looks for buildings that come up close with less impact for the parking.

Ms. Higgins stated that putting the parking and drive-through windows next the neighborhood was not a good neighborly thing to do. But, on the Entrance Corridor there is activity 24 hours a day. The ARB's interest and goals are less sensitive about the neighbors behind the site than in front of the site. She

suggested that they might want to redesign the site to move the remaining drive-through towards the rear of that building.

Ms. Joseph stated that there were many other issues other than the drive-through windows that the ARB addressed. She pointed out that a statement as strong as the ARB made with extreme prejudiced cannot recommend support was one she had never seen before.

Mr. Edgerton stated Mr. Wood had indicated that he had made a lot of adjustments to the plans, but the Commission had no way of knowing this without the ARB's input. If the Commission has to make the decision tonight, then they have to make it based on the information that they have. He asked Mr. Wood if he was willing to request a deferral.

Ms. Joseph stated that there were other things that really affect the neighbors, particularly the very high retaining walls. This site has come before many boards over the years and it looks approximately the same. What they are looking at now that is a little bit different is that there are a couple of ponds on the site. But, everything that she has ever seen throughout the years has always had enormous retaining walls in the rear pushed way up as far as you can possibly get it. They are all thinking that the impossible can happen in that these retaining walls can be placed within a 20 foot buffer without injuring any of the vegetation. If you listened to Mr. Wood, he said that he would be happy to plant shrubs, but he never said trees. It is an awkward situation when you have something that is that high and then there is the 6 foot fence. She felt it was unacceptable. She felt that in this plan there was no respect whatsoever regarding the layout of this site. She felt that they need to work with the topography of the site to try to get some of this square footage on here. Some of the buildings are indicated to be three and four stories, but other buildings like the grocery store do not have any height or square footage listed. Therefore, she did not know how it was going to be viewed.

Mr. Rieley stated that he would like to go back to some of the issues that the public brought up. In the seven years of during this he did not know when he had heard a more articulate group of arguments about a project on both sides. In thinking about what his feelings are about this project he could almost go back and read some of the comments that people said. Mr. Trachtra said that this would be a better project if the critical slopes waiver is not approved. He pointed out that he thought that several years ago when they voted against the Home Depot and still thinks the same way now. He did not think that it precludes the development at the site, but felt that it would make the development at the site better. Mr. Gallagher stated why not turn it around, but his view was that is very much what the ARB would suggest here. It would also make it a better plan and also help the neighborhood. Dr. Craig was puzzled by the aesthetic resource not being designated or acknowledged by staff, and he was also baffled by that. He agreed with Mr. Honnenberger's wonderful statement about this institution becoming a part of this community. He hoped that they can come into this setting in the condition of making the community better and not adding to some of the problems that they have had in the past. Mr. Rice said that an ethical project is one that acknowledges the rights and the concerns of adjacent property owners, and that seems to be exactly right. He agreed with Mr. Morris when he said why not wait for the input from the ARB. Ms. Turner made a point that the protection of the stream is a cultural matter and not only an ecological one, and he agreed with her. Ms. Hobbs made the point that they don't know what the Master Plan is going to say about the site, but it is almost certain that it is not going to say this. He felt that was equally true. Mr. Ken mentioned that he was not sure what is going to happen with the runoff. He stated that he had a pretty good hint in what was going to happen to the runoff. The runoff can be gleamed simply by looking at the pipe sizes. The 30" pipe that comes under Route 29 and then the part that leaves after it goes under the parking lot that takes the runoff from these rooftops and the additional impervious surface in the parking is 60". A 60" pipe is not double a 30" pipe. It is 4 times the volume if those pipes are at the same gradient. Now granted there will be detention that will reduce the amount of that water that comes out at any given time, but it does not affect the total amount of water that comes. There is no question about that and it will have an impact on the ponds. There are three big issues. First, they absolutely should have the ARB opinion before voting. Once again, in the 7 years he has served on the Board he has never seen the ARB's language so strong. He pointed out that the ARB's vote was 5:0. Secondly, he thinks that it is irrefutable that the critical slopes disturbance will in fact affect an aesthetic resource. Third, the same critical slopes that are going to be affected are an aesthetic resource and also

relate directly to the runoff. It would be very difficult for him to support this. But, he would be happy to look at it again after the ARB review. He stated that short of that he would vote against it tonight.

Mr. Thomas agreed with what Mr. Rieley has said. If this is recommended at a future time, he would ask that the applicant provide a downstream channel and pond restoration upon completion of the project. It is listed on page 9 of the staff report as a consideration, but he felt that it needs to be stronger. He asked that there be a buffer between this site and Woodbrook for the resident's protection. He asked that the silt fences be quadrupled to try to stop as much as they possibly can. It would be to the applicant's benefit if he would do that, particularly if he agrees to clean the ponds out after this. He agreed that the Commission needs the ARB's input.

Mr. Craddock stated that this was the last undeveloped parcel on the north of Route 29. There have been improvements made to this, but he still thinks and agrees with Dr. Craig about the middle stream and the critical slopes along there. He stated that if Mr. Wood could bring somebody in like a brass proshop and develop on each side of it and leave the stream as a middle natural area that it would be an ideal location for something like that. He opposed paving over the middle of the whole stream valley. The applicant does have the right to develop the site, but as it stands now he would like to see something done with that middle stream as far as it being left open and not being as intensively developed with the three and four story buildings right behind Carrsbrook.

Ms. Joseph stated that a critical slopes waiver was being requested. She questioned what the benefit would be to the community for the Commission to approve a waiver request for these critical slopes. She felt that they would be losing an aesthetic aspect that is along Route 29. She recognized that it was not going to be a park. She felt that there are other ways that this site could be developed without losing square footage with all of the uses being proposed on this, but to be much more sensitive to the community.

Ms. Higgins stated that when she looked at this from a preliminary standpoint as opposed to the previous plan she did make note that the area of the site is 64 percent impervious. That is a significant reduction in what you see on intense commercial development. The down side of that is that some of the structures are multi-story. She felt that setting the site into the land helps with the buffer, although there is a huge amount of grading to be done. She would hope to salvage, as Mr. Thomas brought up, and to beef up the buffer, the fencing along the top and actually the differential height as opposed to respecting the topography. The differential of height to the back yards has benefit over the long term that has been measured at other places. Looking out on some of the subdivisions north of town where the backyards are well above the road, it actually offers some sound attenuation to not be at the same level. Therefore, she felt that was favorable. She agreed that there were some factors brought up in the previous report that she did not agree with. She disagreed with the pervious blocks because she felt that they were not very effective in parking lots due to the clay dirt. She felt that it did not create an impervious area. There might be some techniques that could be developed on the final site plan that would respond to a lot of these issues. She supported beefing up erosion control in all aspects of that to avoid tragic events that would put silt in downstream areas. She felt that the County's perspective on that is going to be very much sensitized based on some recent occurrences. But, the bottom line is that under infill and development in the development area and going multi-story and making footprints smaller has been a goal in a master plan or neighborhood plan type of situation. It is a tough thing to have 3-acre residential lots in such a highly intense part of the development area. She was sympathetic to the neighbors. But if you review the critical slopes layout some of them have been maintained and some of them are actually man-created up front where VDOT did their pond. She did respect that staff did an analysis of streams and that all streams are aesthetic, but in that analysis they rated this stream against other streams and came up with a standard. She felt that aesthetically any stream is better than a flat area, but that this one has had a utility placed along it. It has a sewer that bisects the site with a pump station at the rear of it. Amongst the trees there has already been some development. She stated that she would like to see that improved upon if there is an odor problem and to make sure that the capacity issue has been addressed. She felt that there were things that could improve the situation that need to be dwelled upon. She stated that she would like to retain the positive parts of this and build upon it if the applicant wants to request a deferral.

Mr. Edgerton stated that he had a lot of problems with staff's opinion. He pointed out that he was particularly concerned about the fact that no assessment of the traffic impacts of this project were presented in the staff report. Mr. Wood has assured us that is not a problem. The reality of the recent months tells us differently. He finds it hard to believe that the Virginia Department of Transportation anticipated this development in the previous widening projects. The ARB comments were about as strong as he has ever seen and he would have to accept their comments unless they were able to get something more positive from them before they were asked to make a decision. Staff's assessment really bothers him. He pointed out that he went through the 12 points of the Neighborhood Model. By his evaluation of this project this project fails on 11 of the 12 points. He believed that in their initial review of projects that they are suppose to start at that point and look at that. Again, he did not understand that. He believed that the use would be a substantial detriment to the adjacent properties. The Commission has heard first hand from a number of the neighbors about this fact. Mr. Wood contends that he has worked with the neighbors and the neighbors contend that he has not. He felt that they need to invite Mr. Wood back up to respond to that charge. He stated that he was really quite confused from the reversal from last June of the determination of this stream being an aesthetic resource. He stated that he started wondering why they had the stream assessment report if they are not going to consider it in reviewing these resources. Finally, he strongly disagreed with staff's statement in the third paragraph of paragraph three on page 10. It says staff has not found that the approval would be detrimental to the public, health, safety and welfare and the orderly development of the area or to the adjacent properties or contrary to sound engineering practices. He strongly disagreed with that regarding the proposal that was before the Commission tonight. For that reason he will not be able to support this proposal.

Mr. Thomas invited Mr. Wood to come forward and address the Commission.

Mr. Edgerton asked Mr. Wood to address two issues. The first is that it has been suggested that he might want to ask for a deferral so that the Commission was able to receive comments from the ARB on this plan. The second is that he would like him to briefly respond to the confusion that has come up on whether he has been working with the neighbors.

Mr. Wood stated that regarding working with the neighbors that they have had two meetings at Woodbrook Elementary School that was attended by at least 40 to 60 people on this project starting back with Home Depot and all the phases on this project.

Mr. Edgerton asked if he had any meetings on this plan.

Mr. Wood stated that they have taken those comments and incorporated them into this plan since June when the County actually held a meeting. They requested a meeting of the neighbors in which more neighbors than are here tonight attended in which they gave their comments. That was just held sometime during the past summer on this very project. He felt that all of the faces that he saw here tonight were at that meeting.

Mr. Thomas pointed out that he attended the first meeting and the Woodbrook meeting on Home Depot.

Mr. Wood stated that they have had numerous contacts. They have met in some of their homes. He stated that he had met with Mr. Rice no less than 7 to 10 times personally. He also has met that many times with Mr. Burton. He stated that he had met with the lady that spoke who lives on the corner lot. He noted that he had met with members of Woodbrook personally on their property. He stated that he has met with every homeowner that adjoins this property personally on the site. The elevations of this plan are the result of meeting with them. They wanted us to lower the site. The plan that the ARB saw is a totally different elevation plan. It was a direct result from meeting with those people and their input to staff and staff's input back. This is a result of all of those meetings. He stated that they would put in trees. He requested a deferral. He stated that he would also like for the Commission to give him some consideration. He noted that he had heard several comments made tonight that makes it look like it does no good. He heard people say that I am not going to support this plan regardless of what you do. He noted that is what they have been here on five occasions for. He stated that he had told them what he

was willing to do. It is almost like you are telling us that they have given them a false plan. He stated that he had no problem labeling one-story buildings. Someone brought up that it was labeled four stories one time and now three. That is correct because they were asked to lower it. These things were done for the citizens that are here. He pointed out that they had worked extensively with staff.

Mr. Edgerton stated that some of the Commissioners have suggested that they would welcome a deferral. He stated that he was trying to get his response to that.

Mr. Wood stated that if there was something missing on the plans that all the Commission had to do was tell him and he would put it on them.

Mr. Rieley stated that complete plans are good. He suggested that he obtain a checklist from staff on the items that need to be included on the plan. He asked that the height, elevation of buildings and square footages be included. He felt that information was important so the Commission would know if the neighbors would be able to see the buildings.

Mr. Wood stated that he felt that the plans were complete, but anything they have missed that they would do so.

Ms. Higgins stated that a site section through the site would be helpful to understand the relationship to the Entrance Corridor all the way to the neighbors in order to show the buffering.

Mr. Morris moved to accept the applicant's request for deferral of SDP-2004-00045, SP-2004-00024, SP-2004-00025, the modification request of section 4.2.3 and SP-2004-00062 for Northtown Center in order that the applicant could provide the additional information requested by the Planning Commission.

Mr. Rieley seconded the motion.

Mr. Edgerton asked staff to provide a specific meeting date.

The Planning Commission suggested that the following information be provided on this request:

- A copy of the Architectural Review Board submittal, including the graphic material and their comments.
- The applicant should provide complete plans. The Commission suggested that the applicant look at the guidelines that the Planning Commission has asked staff to provide for rezonings, site plans and special use permits. Those guidelines are specific and not only ask for the heights of the buildings, but also for the elevations of them.

Mr. Fritz stated that February 15 was the earliest date that the packets could be completed by. The next date after that would be February 22.

Mr. Rieley suggested that it be deferred to February 22 to ensure that all of the requested information could be obtained.

Mr. Morris amended the motion to defer all five of the requests for Northtown Center to February 22.

Mr. Rieley seconded the motion.

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

Mr. Edgerton stated that the five requests for Northtown Center were deferred to February 22.

Old Business:

Mr. Edgerton asked if there was any old business.

Mr. Kamptner stated that the minutes for October 19 for Gazebo Plaza will be adopted by the Planning Commission next week. Ms. Higgins requested that the first basis for denial be revised to clarify Hansens Mountain Road. The action letter was sent out six months ago to the applicant. Because of the litigation he had concern about creating any kind of deviation in the action since the action letter stands. In going through the minutes it is obvious what Ms. Higgins was saying. He requested that Ms. Taylor listen to the tape again and she confirmed that what was in here originally was what the Commission approved. He requested that it remain as it was originally.

Ms. Higgins stated that she had no problem with that. All of the conversation leading up to the motion, whether those exact words were approved, really talked about Route 250.

Mr. Kamptner pointed out that in order to comply with that section the applicant needs to address the things in the VDOT letter, which could go into the problems with the intersection of Hansens Mountain Road.

Ms. Higgins stated that the very reason that she suggested it was that because it was going into litigation that they were as clear about the jest of things.

Mr. Kamptner stated that the change could create more problems than leaving it as it was. He pointed out that the Commission would have the minutes in front of them for approval next week.

Ms. Higgins stated that this has happened twice in that they have not approved how the action memo was written. She pointed out that she had problems with that.

Mr. Kamptner stated that the applicant wants the action letter and the time for them to challenge that in Court does not begin to run until it goes out.

Mr. Edgerton asked if there was a way that they could put in a catch all on the bottom of the action letter.

Mr. Higgins pointed out that the action letter has already gone out by the time that they receive the minutes.

Mr. Kamptner suggested that the Planning Commission review a draft of the action memo.

Ms. Higgins noted that it was very important on the ones that they deny. She suggested that the Commission start assisting the recording secretary with the action memo via email.

Mr. Fritz pointed out that staff would be happy to do that.

Mr. Edgerton suggested that staff send each Commissioner a copy of the draft action memo electronically and give them 48 hours to provide comments back.

Mr. Cilimberg stated that if there are comments back from more than one Commissioner that it should probably come to their next meeting for them to resolve any differences in opinion. Otherwise, they would be conducting too much business electronically.

Mr. Kamptner pointed out that they definitely want to avoid having staff becoming the referee when two individuals have different opinions.

Mr. Cilimberg stated that staff does not want to referee and would prefer putting it back before the Commission to discuss. He felt that they could handle it this way.

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

New Business:

Mr. Edgerton asked if there was any new business.

Mr. Thomas summarized the current activities of the Transportation Committee. The Committee is basically trying to concentrate on finding the money to put these transportation modes into place and not put them off any longer.

Ms. Higgins stated that they have had numerous times when something comes before them and the ARB is kind of out of sync. She pointed out that it was very bad for the ARB, the applicant and the Planning Commission. Considering that the new calendars just came out with the scheduling for submittal and reviewing comments, she asked if there was a way to look at a more composite submittal scheduling to allow it not to be this game of getting the applicant to work this out so that the ARB could be more in sync with the regular review time. This has happened numerous times and it seems to backfire on some of the major components. Originally when the ARB started it seemed like an easy review and it only affected certain plans. Now it is just like dealing with a whole separate entity. On issues like the previous one that is located on the entrance corridor, they really need that input more frequently than they are able to get it. She asked if there was a way to do that.

Mr. Cilimberg stated that the ARB meets twice a month to review projects. Their review is going to be essentially mandatory when there is a special use permit in which the decision you make is dependent upon the ARB's findings as to that particular matter. The one that he is thinking of is for outdoor display because that relates specifically to the ARB. None of the other ARB reviews are mandatory. The Planning Commission has established its interest in having that, but it is up to the applicant. What they are dependent upon sometimes is that the applicant with twisted arm actually agreeing to go to the ARB to get the comments that come to the Commission. Without an ordinance requirement for the ARB to review all of these projects, then staff really does not have anything other than saying to that applicant that this Planning Commission and the Board is going to be interested in seeing the ARB's review on a project. He felt that staff is doing the best that they can right now to be very honest. He felt that there was not another way to handle it.

Ms. Higgins stated that she was not interested in adding a requirement, but just in coming up with calendars for review times. The other side of it is that when something is submitted the ARB does not look at items that come to the Planning Commission. The applicant has to submit a separate package to the ARB. If they are going to be required to get a Certificate of Appropriateness and the Planning Commission is going to continue to not want to act without those comments, then something has to change.

Mr. Cilimberg stated that they would have to change the ordinance.

Ms. Joseph stated that this is a little bit more complex than just the scheduling. This item was submitted way back in time and because of whatever circumstances an applicant might have submitted things and not resubmitted on schedule so that all of the schedules are off. But, the schedules get off because of the applicant. She pointed out that she has done it to herself many times.

Ms. Higgins pointed out that the schedules do not add up at all.

Mr. Fritz stated that the timing for the ARB review is such that they can actually submit their ARB application after they have submitted their site plan application and then get the ARB review before they even have to do their revisions. Their review is a shorter time period and they meet more often.

Ms. Higgins stated that she found it to be the opposite, but she felt that the Monday date was just not in sync. She felt that a small adjustment could be considered to make it more useful.

Mr. Cilimberg stated that he did not think that was the essence of the issue. From his experience, he felt that most of what they want to review that is ARB related ends up going to the ARB after staff suggests to

the applicant that it needs to go there. The request gets reviewed there with comments before staff is even writing the report. But, it does not necessarily satisfy what the ARB is looking for. Multiple reviews by the ARB may be necessary. Occasionally, there are applicants that won't even take it to the ARB. He pointed out that the North Point application was to its second review by the Board of Supervisors before anything even went before the ARB. There is nothing in our ordinance that requires that they submit any earlier than that. There is not a requirement that you submit for an ARB review as part of a preliminary site plan. Staff urges people to do it, but they don't always do it. There was a purposeful decision made by the Board when they established the Entrance Corridor provisions that they were not going to require ARB review as part of a preliminary site plan. They said that they did not want to put that direct onerous requirement on the applicant because he assumed that they felt that they needed to be as flexible as possible. Therefore, they made it a requirement of the final site plans.

Mr. Rieley asked how long ago that was done.

Mr. Cilimberg stated that it was about fifteen years ago.

Mr. Rieley stated that it was time that they revisit that issue.

Ms. Higgins stated that the Planning Commission needs that information from the ARB in order to take action on the submittals.

Mr. Cilimberg stated that outdoor display is the one place where the ordinance specifically cites the impact on the Entrance Corridor as the reason for approving or denying the request for outdoor display. Staff does not have to urge the applicant to send that to the ARB, but can require that.

Mr. Edgerton asked how they could begin the process to try to suggest to the Board that maybe it is time to revisit this issue in the ordinance.

Mr. Cilimberg stated that the process can be begun very easily through some resolution of intent of this body. But, honestly the time to do that work right now is very limited because of everything that they have going on. Everything is a priority right now.

Mr. Kamptner stated that they need to adopt a resolution of intent. Staff would do an executive summary and then that sends staff on its way to start working on it.

Mr. Edgerton asked staff to get that on a future agenda when it was reasonable. He stated that another item of new business was the possibility of the Commission holding a retreat. He noted that Mr. Kamptner has indicated that there is a way that they can do that. Before taking the next step to organize the retreat, he asked for an email listing of issues that each Commissioner feels should be addressed. He asked for a very specific list and suggested serious venue. Then with that information they can decide on how much time they need to commit to it and what would work. He asked for this information by February 1 under old business.

There being no further new business, the meeting proceeded.

Adjournment:

With no further items, the meeting adjourned at 8:57 p.m. to the January 25, 2005 meeting.

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V. Wayne Cilimberg, Secretary

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