Albemarle County Planning Commission
July 19, 2005

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, July 19, 2005 at 6:00 p.m., at the County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia. Members attending were Bill Edgerton, Chairman; William Rieley, Rodney Thomas, Calvin Morris; Pete Craddock and Jo Higgins. Mary Hughes was present for David J. Neuman, FAIA, Architect for University of Virginia. Absent was Marcia Joseph, Vice-Chair.

Other officials present were Wayne Cilimberg, Planning Director; David Benish, Chief of Planning; Judy Wiegand, Senior Planner; Claudette Grant, Senior Planner; Lee Catlin, Community Relations Manager; Rebecca Ragsdale, Senior Planner and Greg Kamptner, Assistant County Attorney.

Call to Order and Establish Quorum:

Mr. Edgerton called the regular meeting to order at 6:09 p.m. and established a quorum.

Other Matters Not Listed on the Agenda from the Public:

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

Neil Williamson, representative for The Free Enterprise Forum, distributed a report entitled, "Why Not In Our Community?" This was an update to the report of the Advisory Commission on Removing Regulatory Barriers to Affordable Housing by the U.S. Department of Housing and Urban Development. He noted that he had already provided this report to the Board of Supervisors, but had failed to provide it to the Commission.

> Mr. Williamson indicated the following to the Commission: The report speaks to the cost of regulation and its impact on affordable housing. The Commission has the opportunity to discuss a number of land use regulations, and he encouraged them to consider the cost of those regulations on affordable housing as they move forward. The findings include various forms of housing regulations, decrease in the annual amount of housing built and the increase in prices by as much as $40,000. The findings of a 2003 study includes that the regulatory system has gotten more complex over the last two decades and constitutes the single greatest problem in getting housing built. Moving from a light regulatory environment to a heavy regulatory environment raises rent by 17 percent, increases house values by 51 percent and lowers home ownership rates by 10 percentage points. He asked the Commission to give it some consideration. (ATTACHMENT ONE – Report entitled "Why Not In Our Community? Removing Barriers to Affordable Housing" by the U.S. Department of Housing and Urban Development)

There being no further public comment, the meeting moved on to the review of the Board of Supervisors Meeting.

Review of Board of Supervisors Meeting – July 13, 2005.

Mr. Cilimberg summarized the actions taken by the Board of Supervisors on July 13, 2005.

Consent Agenda:

Approval of Planning Commission Minutes: March 29, 2005, April 5, 2005; May 3, 2005; June 14, 2005 and June 21, 2005.

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

MOTION: Mr. Thomas moved, Mr. Rieley seconded, that the consent agenda be approved.

The motion that the consent agenda be approved passed by a vote of 6:0. (Commissioner Joseph was absent.)

Public Hearing Items:

ZMA 2004-017 Wickham Pond (Sign #64) – Request to rezone 20.52 acres from Rural Area, R-A zoning district, to Neighborhood Model – NMD to allow a combination of 107 single –family detached and condominium/townhouse residential units. The property, described as Tax Map 56 Parcel 92 is located in the White Hall Magisterial District on 5023 Three Notch'd Road (Route 240) approximately 1,000 feet from the intersection of Route 240 and Highlands Drive, which is also known as the entrance to The Highlands subdivision. The Crozet Master Plan of the Comprehensive Plan designates this property as Development Area Preserve [CT-1], Urban General [CT-4], and Urban Edge [CT-3]. (Claudette Grant)

Ms. Grant summarized the staff report by highlighting the following items:

- Weather Hill Development, LLC has requested a rezoning from Rural Area, R-A zoning district, to Neighborhood Model – NMD. With this rezoning the applicant is requesting approval of 107 residential units consisting of single–family detached and townhouse residential units. The property is 20.52 acres. The applicant's Application Plan and Code of Development, dated May 2, 2005 and revised on July 8, 2005 are attached as are the proffers.
- The applicant has provided four parks and open spaces. There is one located at the front of the site, another in the middle of the site and two at the rear of the site. One is adjacent to an existing pond on the site.
- There is a stream buffer around the existing pond. The applicant has worked very hard with staff to make sure that the residential lots are not located within a stream buffer.
- The applicant has also agreed to preserve the main existing house on the site and use it as a meeting house. Also, the applicant has agreed to preserve the existing smoke house on the site, which will be part of the tot lot area.
- The applicant has agreed to provide affordable housing on 14 accessory units.
- The project is in keeping with the Neighborhood Model District and the Crozet Master Plan. There are several pedestrian connections throughout the site.
- The applicant is proposing a slightly higher density than what is recommended in the Crozet Master Plan. Although higher, staff feels that the recommendation is acceptable because it allows for a better designed community and it also includes affordable housing options.
- The stormwater management for the site is a slight concern to staff because the applicant is waiting for an agreement with the adjacent property owner to use the pond that is partially on the subject site, but also on the adjacent property owner's site. The applicant has a verbal agreement with the adjacent property owner. But, staff is asking for a written agreement for the use of the pond for the stormwater management.
- The applicant is proposing that public streets be used in the site.
- Staff needs to work on the wording of the proffers. Basically, staff is working with the County Attorney's Office, Zoning and the Housing Director to firm up the wording that deals with affordability in the proffers. One example is that there are no long term affordability mechanisms. Therefore, staff is trying to figure out somehow to word the proffers accordingly.
- The applicant is proposing 15 percent affordable housing.
- The applicants have worked very hard with staff and also with the adjacent property owners in terms of several revisions of this to get to the plan that is before the Commission.
- The front buffer is something that the staff has recommended. It does meet the Crozet Master Plan goals. The ARB is satisfied with this buffer.

Staff recommends approval of the rezoning and proffers with conditions:

- The stormwater agreement issues get worked out with the adjacent property owner, and
- Staff to work on the final wording of the proffer.

Mr. Edgerton asked if there were any questions for staff

Mr. Rieley stated that he had several questions for clarification. He asked if the proffer issue was not a matter of staff proposing language that the applicant has not agreed to, but rather that staff is trying to figure out a mechanism to achieve what it wants to, and Ms. Grant agreed that was correct.

Mr. Rieley stated that from the staff report he understood that the overall density of the project on most of the site was consistent with the Comprehensive Plan, but that one area in which affordable housing is concentrated exceeded the density and that put it over. He asked if that was correct.

Ms. Grant stated that was correct.

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

Vitto Cetta, of Weather Hill Homes, stated that they filed this request in October of last year. There have been many meetings. He pointed out that they have met several times with the neighbors, and in fact have revised the plan several times addressing their concerns. He stated that they were very pleased and proud of the existing plan that reflects the Neighborhood Model concepts.

Mr. Edgerton asked Mr. Cetta to elaborate on the statement in the proposed proffer that "the owner shall convey the responsibility of constructing affordable units to any subsequent purchaser of the subject property."

Mr. Cetta stated that they were not the only people that will be dealing with this issue. The issue of "for sale housing" has been resolved. The wording has been worked out through Ron White, which is universal throughout any of these affordable units if it is for sale. There is a period for offering the property to the public with the price range, which has all been worked out. They are perhaps one of the first people to offer something that are for rent. He pointed out that Ron White's comment was that they simply did not want to monitor it. Mr. White has seen the product and very much liked it. The rental units are very small, compact accessory units in the townhouse unit. The townhouse units are three stories. The idea is that a family would live in the top two floors and rent out the bottom. There are no stairs that attaches to it. Down the road there is exactly the same plan, but the lower level is in fact accessible to the family and they can use it. One would have to go around the building to access these units. He felt that it would work well and was an efficient use. He pointed out that Mr. White felt that the market would take this over and there was no need for control. He stated that they were only one guy in the process and were prepared to do anything that would work out for them and the public. They were prepared to place a deed restriction on the units. He felt that it was going to take some time to figure out what would work for housing and for our community. Also, the solution is that they are air-conditioned and nicely designed units. He felt that when the units are placed on the market they would be affordable because of their small size. The one problem with a lot of the affordable projects that they were currently working on is it would cost over $200,000 to deliver the unit, but they would have to sell it at $180,000. In this case it is not like that. But, it is the fact that it is by its own nature something that was going to be affordable and there are no controls over it.

Mr. Edgerton asked if they would continue to own them or if those units would be sold.

Mr. Cetta stated that there was a buy benefit to it. The person who bought the townhouse would have a rental unit in it. They would be able to afford the townhouse because they would be able to get rent from the lower unit. It could be an older couple that does not need the space.

Ms. Higgins stated in the permitted land uses by block under the accessory block it is listed in blocks 2, 3, 4, 6 and 7 and checked on page 9 of 32 in the Code of Development. She pointed out that she was trying to figure out where this goes in the plan. There is a footnote under accessory apartments and it says accessory apartments allowed only if this block is developed as single-family detached dwelling - establishment of accessory apartments requires the creation of a third on lot parking space. Therefore, she lost what he was saying because this means that you could only put accessory apartments in the single-family detached. She asked if he could help her understand the model.

Mr. Cetta stated that he did not have the entire answer. But, they have identified exactly where these 14 units go.

Ms. Higgins stated that those units were in a townhouse three-story structure, and Mr. Cetta stated that was correct.

Ms. Higgins asked if the Code of Development table was wrong.

Frank Pool, with Weather Hill Homes, stated that the strict definition of an accessory apartment is a single-family detached unit.

Ms. Higgins stated that 33 percent of the gross area of that is limited to that, too.

Mr. Pool stated that because an accessory apartment cannot be a part of a townhouse is the reason why it is not checked as a use for a townhouse. Therefore, these units are not accessory apartments and they are actually counted as units when looking at the total density.

Ms. Higgins stated that she understood it in regards to the overall density, but she was trying to look at the implementation of what they were proposing. She noted that someone has to read the rules about what the use is when you apply for the building permit and they would have to go to this table to figure out where the different uses could be put. When she reads the table it is not consistent with what he was saying. She asked for clarification on this issue.

Mr. Pool stated that they have been working with staff for three months on how to define these units. The units cannot be defined as accessory apartments because they were townhouse units, but they are an individual unit within the unit. The term duplex was brought up.

Ms. Higgins stated that for the Code purposes they wanted to use the interpretation of a duplex.

Mr. Pool stated that was a staff request because of the Building Code.

Ms. Higgins stated that in reading the table and using the footnotes for accessory, you limit it to only allow them in certain blocks. Then they have limited them to those blocks which are limited to single-family detached. She suggested that they work on some consistency.

Mr. Cilimberg stated that what was getting confused was where an accessory unit can be used in association with dwelling unit type. He thought what they were doing was noting the blocks where accessory apartments can be provided, which are only those where there are single-family detached, and under the ordinance is the only place it can be done. The units they are talking about that would be the underneath, over/under kind of units are not accessory. Therefore, those units will not get defined in the Code of Development.

Ms. Higgins asked if those units were multiple family dwellings.

Mr. Cilimberg stated that they would be a second unit within a unit of townhouses. He noted that this had been worked out with Zoning so there would be no misunderstanding at the time of Code of Development interpretation. Staff can go back and make sure it is clear before the Board takes this action. But, he thought it was to reflect what Zoning thought would work for the purpose that she had just identified.

Ms. Higgins stated that this seemed to identify the accessory apartment being limited to certain blocks, but what he was proposing was above and beyond that. There could actually be more than 14. They would be required to do 14 units, but if they developed these other blocks with single-family detached there could be more accessory apartments than the 14 units.

Mr. Pool stated that the 14 units are affordable units and are not accessory apartments. He agreed that in all of the single-family detached homes they could have accessory apartments by nature of the definition.

Ms. Higgins asked which definition does the affordable apartments fall into in the Code of Development.

Mr. Pool stated that the affordable apartments were under the multi-family dwelling unit and in blocks 1, 5 and 7. The rental units would still be considered as a multi-family dwelling.

Mr. Craddock asked if the rental unit would be finished by the builder or if it would be left up to the purchaser.

Mr. Pool stated that was part of the deed restriction that they were proffering. They were working with staff to come up with some language that would offer this deed restriction that would help enforce that.

Mr. Craddock stated that the purchaser would have to rent it and could not just own it and allow the unit to sit vacant.

Ms. Higgins asked who would enforce it.

Mr. Pool stated that the homeowner's association would oversee this.

Ms. Higgins asked if they had considered that the main unit or one of the units has to be owner occupied. She asked what would prevent all of those from becoming multi-family rental units. She asked if that would change the neighborhood by someone buying a unit and renting both units. In the City there are locations that require that you can't have two non-owned rental units and one of the units has to be owner occupied. She asked if the rental restriction would only apply to one of the units.

Mr. Pool stated that he was not sure how to answer that question.

Mr. Rieley stated that as it stands now there is no requirement to allow that.

Mr. Cilimberg stated that both units could be rented, but one unit has to meet the condition of the proffer.

Mark Keller, of Terra Partners, stated that they have worked on the planning and engineering on this project. To that point, he lives in Forest Lakes and two doors away there is a rental unit that is a single-family house. They have lived in that location for nine years and have had good and bad neighbors. In his experience it has not been bad. He stated that they have spent a lot of time on this project, particularly in how they make their intent clear in the charts and tables for implementation in the future. There are many aspects of this proposal that are very exciting that have to do with the Neighborhood Model. They are really trying to apply a Neighborhood Model urban development philosophy to what he would call a quasi-urban or suburban setting because this is not in the core of Crozet. Sidewalks run throughout the entire development. There is not a single person who can't come out their front door and not get directly to the front door of a neighbor on anything but a sidewalk. The sidewalks interconnect everybody. The sidewalks connect with the adjacent property. A wide sidewalk is proposed along Route 240, which will eventually be able to be extended down into the urban core and could also be attached to the Highlands and other areas further to the east. They also have a trail system that comes in off of the road in the top center of the property. It comes around the back of several single-family homes and then includes a view or interaction with the existing pond. They intend to enhance that area as well. For safety reasons, they don't have a lot of straight roads and urban intersections here. A couple of the earlier plans that they came up with had a lot of little spurs going off to little pockets of 8, 10 and 12 units. They realized that they were coming up with 8 to 10 intersections. These are things where vehicles and pedestrians interact and not necessarily in such a great way. They have created several blocks with a minimal number of intersections and in some cases only crossing the road two times to get from one end of the project to the other. They feel that this is not only pedestrian oriented, but it is safe and friendly as well. They also hope to combine the lower speed limit and the stop signs at these very few intersections to make it very safe for children in the community.

Mr. Keller stated that there is open space preserved and set aside in the 100 to 120 feet of the frontage of Route 240. They hope that area would be utilized for open space activities. Coming off of that in the center front of the property you can see the promenade area that leads right in the front door of the existing farm house, which will serve as a meeting house for the community. They would not be creating a community center for Crozet at large, but creating a center for the neighbors to gather for special

events, such as a picnic on the fourth of July and things of that nature. That house and the smoke house, which would be made an integral part of the tot lot, would be preserved. He passed around some photographs that were a part of a historic resource study. He called their attention to photographs 1 through 6, which was the meeting house, and 15 and 16, which were pictures of the smoke house. In the center of the property would be the second large open space, which represents a pavilion or a bandstand of sorts. This is where they would want the community to gather for other special events. Soccer games could happen in the open areas there as well. There is at least 100 feet from the water's edge at the pond in the back that is being preserved and set aside for the enjoyment of the neighbors. It will be something that you will view as you travel through the community. Parking along the streets is available to these areas without creating a traffic problem in creating this neighborhood in this way. The last item is site planning that respects terrain. Of the entire project they have been working on over the past couple of years, this one will probably require the least earthwork, but it is one of the bigger sites that they have worked on. Fortunately, this is a site that is very gently rolling. He felt that they have the opportunity to create the roads that respect the existing terrain and to lay the units into the property so that they walk out on nearly virgin grade. He felt that the grading costs would be a very small component of the construction cost estimate.

As far as the stormwater management, Mr. Keller stated that he wanted everyone to understand that not only have they worked with the adjacent property owner in getting the easement, but this stormwater facility has been engineered and designed preliminarily and has been engineered to handle the complete development of the adjacent property. That is why they are alluding to the fact that they have a verbal agreement with this neighbor. This neighbor understands the value of their property and is familiar with land use and land sales. These people recognize that they are trying to compliment and accommodate future development of their property as well with it being in the growth area.

Ms. Higgins questioned why there is no written agreement with the adjacent owner if they have been working on this since last October.

Mr. Keller stated that they had to have a significant study done of the culvert under the railroad to see if it would carry that, how much of the pond dam could be altered or did it have to be taken out. He felt that ran them through Christmas. He stated that they have nothing in writing from the adjacent owner about the use of the pond at this point.

Ms. Higgins asked where the parking for the meeting house was located.

Mr. Keller stated that there are at least two spaces right along the street adjacent to the side of the building that are not required for meeting the parking requirements for the guests of the units. Handicap accessibility they feel from those parking spaces they can accommodate. The County is asking them to develop a pedestrian oriented development, which creates a problem.

Ms. Higgins stated that the use would still be an activity that might have a zoning requirement for a certain number of parking spaces. She wondered how that ties into it if they approve this plan with excluding that parking. She asked if that was the applicant's intent.

Mr. Keller stated no, that they have been working with staff on what activities they were going to exclude from the meeting house. In other words, you would not be able to have a dinner party there and invite all of your friends. This is for the community people to meet and play cards, have tea and that sort of thing. One or two people from out of the community may come.

Ms. Higgins asked what mechanism they have used to exclude all of those activities.

Mr. Keller stated that was going to be in the covenants and restrictions that are going to be developed.

Ms. Higgins suggested that it needs to be in the proffer, too. She questioned using the house as a community meeting house because someone living in the rear might not be able to walk to it at night or in the rain. She asked if they should exclude it and say no parking because everybody will walk. Or will they crowd the parking on both sides of the streets when only one side was meant for parking and cause a safety issue right at the main entrance of a significant development.

Mr. Keller stated that they have batted that issue around with staff.

Mr. Cetta stated that the house only had 2,500 square feet. Therefore, they would not be able to get very many people in there in the first place. There is no way that you could get 50 people in there. Also, if you take all of the street parking they would be way over parked. So if for some reason you did have 50 people in there they could certainly park down the street and walk to it.

There being no further questions for the applicant, Mr. Edgerton stated that there were several persons who signed up to address the Commission. He invited the first speaker, Diane Robertson, to come forward and address the Commission.

Diane Robertson, an adjacent property, publicly thanked Mr. Cetta for going above and beyond in listening to their requests and altering the plan. Short of not building in that lot, which they all would love, he really has been very good in hearing what the adjacent property owners have asked him to do and adapting the plan to that end. She pointed out that her home is in the back area of Wickham Pond, but in Highlands. One of the requests that they made as adjacent property owners regarded preserving their lovely views of the Blue Ridge Mountains. They requested that the homes that were built along that property line not be built directly in back of an existing home so that their views would not be cut off. They are willing to share them, but certainly would still like to see them a little bit. The plan that Weather Hill Homes has come up with has successfully done that. She requested the Planning Commission to stipulate that an individual builder who might come in to build a particular home would build it on the plot area that is shown on this map. That would ensure that another builder would not come in and shift the home's location on the property and block the view of the homeowners on Highland Place.

Tom Loach stated that he had one question for Ms. Grant. In the staff report it says that the fiscal impact of this project is $85,000 to the negative and the proffers are for $93,000, which makes a difference of $18,000. He asked what methodology she used to come up with an $18,000 cost against the overall infrastructure cost of the Crozet Master Plan of about $17 million. He stated that the bottom line was that they did not. What they have here is what the people knew was going to happen in Crozet. When the Master Plan was completed the County said that they were not going to sit down and discuss the long range funding. Therefore, if you don't discuss long range funding at the County level, then the only place that you have to do it is at the rezoning level. And what they have heard now is that the County has not applied any kind of methodology as to what impact or what the cost of this would be that the developer should proffer towards the total cost of the infrastructure. The Crozet Community Association's stand has consistently been that we will not support a rezoning unless and until there is a methodology developed and they know that the infrastructure funding is going to be there for the whole Master Plan. This has been their position all along. Mr. Rieley and Mr. Edgerton both know because he was on the DISC Committee with them and this is why he did not vote to go to the next Master Plan in Mr. Morris' area until there was a methodology set up on how the County was going to do this in the growth areas. This is not a bad plan. He stated that he did not fault the applicant at all. This is the County's problem now to deal with.

Mr. Loach stated that the County cannot come to the community and say that they are going to vote for this when they are fully aware that the total cost of the infrastructure is not included in this. It is not fair and it is not acceptable. Staff points out the two reasons. The first reason is the affordable housing. Since 1993, the Crozet Community Association has had an affordable housing stance in their community plan. There are Parkside Village, Waylands Grant, Bargeman Property and Gray Rock. All of these developments were approved by this Planning Commission over the objections of the community for one reason that there was no affordable housing included in any of these. He noted that he knew because he had asked for it. Therefore, it would be the height of hypocrisy for any of the Commissioners to come back now and say we are going to vote for this because it has affordable housing. The second one is if it does not go here, then it will go somewhere else. He stated that he did not care anymore. As a matter of fact, in the recent rural area plan that was passed by the Board of Supervisors there was not one rural area plat taken out of the rural area. Therefore, if they were not taking any plats out of the rural area when they do that the only thing they do by putting 100 homes in here is add 100 homes to the total population of Crozet and the overall misery of traffic. The community stance is if the County has not come up with a methodology for funding, then they will take the 5 by right homes.

John Harvey, President of Highlands at Mechum River Homeowner's Association, stated that there are two points that he would like to address. The first issue is the over/under units proposed as affordable housing units. The second issue is the overall height of the townhouse units themselves. They have had a bit of a problem in the Highlands with absentee landlords not attending to their property or their renters very well. He pointed out that this could become a concern for this development if the over/under units are approved. Pursuant to that, he would think that the suggestions that the over/under units be required to be owner occupied definitely be considered by the Commission. In addition, if he understands the units correctly, the over/under units are proposed in several long blocks. What is to keep an investor from buying one of those entire blocks and turning it into an apartment building? These are all things to consider in their decision. The other concern was the height of the units. Since the units are three-storied, what would be the impacts on the views from the Highlands? He stated that their views at present were really something that helped to sell homes at very good prices against the market. He stated that he was glad to hear about the sensitivity of the builder to pay attention to the homes that are directly above the proposed development. As a further point he asked that the Commission look at the precedent of what is around the proposed site. Neither the Highlands nor Rock Bridge contain these over/under units that are proposed for affordable housing. He stated the he could see the positives in it that a first time home buyer could come in and buy a unit and have their mortgage paid for by the rent. Therefore, he could see the intention. But, he felt that some controls need to be put on these to again avoid situations like the defacto apartment building status and things such as that.

Mr. Edgerton asked if there were any other public comments. There being none, he closed the public hearing.

Mr. Craddock asked if the owner occupied restriction could legally be done as a covenant or something similar to be controlled by the Homeowner's Association.

Ms. Higgins stated that they are doing this in the city under certain zoning restrictions.

Mr. Kamptner stated that he would want to look at that. He felt that it started to get into the realm of socio-economic zoning, which the Virginia Supreme Court has repeatedly told us we cannot engage in. If the owner wishes to insert those kinds of restrictions into their covenants, that would be perfectly fine as long as it was legal under general Virginia law.

Ms. Higgins felt that the proffer form needs some massaging. She assumed that Mr. Kamptner had looked at this, but suggested that the cash contribution statement be reworded to say this cash contribution has not been "expended" rather than "exhausted." She felt that the intent was that if the money was not spent in ten years that it will be refunded to the owner, and she had every confidence that the County with its demands on schools will expend the money. She supported the rental unit, which was very much like the carriage house situation that was not viewed positively in our last action. This is worded very well, but she still questioned how the County's goals were going to be met on the enforceability side. It still leaves flexibility for if these units are built. It says a total of 14 and there were 14 units in E and F. She suggested that the 14 units need to be tied to something in this plan so that it is very clear to everyone when someone comes in and makes a building permit application. She felt that the relationship between the plan and the proffers is still not as clear as it needs to be worded. She felt that the 14 affected lots need to be identified so that they clearly know where they are going to go and what the parameters are. She suggested that the plan and wording be made very clear to avoid any misunderstandings as the builders come in and the developers leave. If there is a commitment made by the developer to actually put these houses in the format as they show on the drawing and if he is willing to do that, then she felt it should be proffered or the neighbors will have to understand whoever buys that lot will put whatever home a willing buyer wants on that lot. She stated that if it was the intent of the builder, then he ought to explain that to the Commission.

Mr. Rieley asked to follow up on that because he felt that it was a legitimate point that Ms. Robertson raised and one that should indeed be nailed down if that is our intention. If it is Mr. Cetta's intention then it does not do any good to negotiate all of these view sheds and locate the houses respecting them if when it gets to the next stage there is nothing that nails that down. Certainly within lots of site development plans they often say in substantial compliance with the development plan. They don't have

the equivalent of that in a subdivision plan. Therefore, his question is what mechanism they use to forward that.

Mr. Benish stated that it appeared that the most important thing was to get the lot layout lines set with the platting with certain benchmarks. Once that is done then the lot sizes and setbacks pretty much minimizes how much the building can spread out on the lot.

Ms. Higgins stated that the house could be three stories and a basement so that it could get a better view. If it is a commitment, then Mr. Cetta is going to have to struggle with how to comply or meet it. Based on these setbacks, then you go to the chart of 14 of 32 as it applies to the larger lots.

Mr. Rieley asked if there was any reason why Mr. Cetta could not simply offer a proffer that the locations of the houses will be in substantial accord with the plan that they have before them as dated.

Mr. Kamptner stated that it could either be proffered or be placed in the Code of Development.

Mr. Rieley suggested using words like "substantial accord" or "substantial compliance" in order to leave that view open.

Ms. Higgins stated that the roads and a lot of details are looked at carefully on a concept plan, but a particular house plan on a particular lot has always had a lot of flexibility. That is not necessarily a bad thing, except when concerns like this are raised. On the minimum lot and yard requirements they have gone into a definition of primary and secondary. She asked if that has been done before. Under the primary and secondary they gave a drawing, but it was not clear on page 15 of 32. She questioned if the dotted line is a primary setback because it shows steps and other things over the setback. It also shows a porch. She asked if this would be difficult for zoning to enforce.

Mr. Cilimberg stated that the Code of Development is reviewed at some length by our zoning people because they are the ones who do have to make interpretations. There are adjustments that occur in the Code of Developments to reflect what zoning feels are going to be necessary in the interpretation.

Ms. Higgins asked if they have looked at having two different definitions for primary and secondary.

Mr. Cilimberg stated yes, that they should have done that. He stated that he would yield to Ms. Grant because she has worked on this project. But, that is what staff has the zoning people look for.

Mr. Edgerton stated that this was the exact issue that came up last week in the Briarwood session. Now if this porch gets enclosed it would be his understanding that it would be in violation of the primary setback. He stated that zoning deals with unenclosed structures that are exempt.

Mr. Cilimberg stated that a porch could protrude into the setbacks up to 4 feet, but it cannot be any closer to the lot line than 6 feet. This is establishing those kinds of activities that are acceptable to be closer to the lot line than the back of the house.

Ms. Higgins stated that there was a 10 foot green strip along the rear of the lines. She asked if someone wanted to reduce that could they request a variance from the Zoning Administrator.

Mr. Cilimberg stated that in the Planned Development District the setbacks are set by the action on the district. Secondly, under the ordinance they can be modified by the Director of Planning based on the circumstance that exists in a particular case. This is a starting point, but it allows some flexibility.

Ms. Higgins asked if there were any concerns about the parking and the uses in the meeting house.

Mr. Cilimberg stated that for any activity that would be proposed for the meeting house that the use would be subject to a zoning clearance. If there was not adequate parking for that and it is determined at the time of the zoning clearance, then they can't have the use. He felt that it was going to be self enforcing.

Ms. Higgins asked where the use of the meeting house was addressed in the Code of Development.

Mr. Cilimberg stated that the use was referred to as the meeting house. They will be asking for a particular use on the zoning clearance and the zoning administrator will determine if adequate parking is available for the proposed use. If it does not, then they will not be cleared for that activity.

Ms. Higgins stated that based on that requirement they may need to include a parking lot in the open space.

Mr. Cilimberg stated that they could not put a parking lot there without the Commission's approval. They would basically be restricted to very minimal uses of that meeting house, which the applicant has indicated as their plan.

Ms. Grant stated that the Code of Development lists the use as a community center/clubhouse.

Mr. Cilimberg stated that the applicant may be able to show in a parking study that they are meeting the parking requirements to the satisfaction of the zoning administration.

Ms. Higgins noted that the applicant did not describe the proposed use of the clubhouse/community center. She pointed out that the applicant went back and forth with zoning on this particular issue and with herself because they agreed that there needed to be some parking. In the end zoning was satisfied with the applicant providing two parking spaces on the street.

Mr. Benish stated that they should keep in mind that the parking requirements for residential parking includes visitor parking. With the on-street parking that is available there is a capacity within the site for some visitation parking built in with the residential parking required.

Mr. Rieley stated that with that issue notwithstanding, it seems that the Commission has focused on two areas in which they would like additional work:
1. Clarification of the mechanism in the language relative to affordability and its long term application.
2. A proffer stipulating substantial compliance with the plan as it has been presented to both the neighbors and to the Commission.

He felt that both of these issues are things that the applicant has worked in good faith with both staff and the applicant. Therefore, he suggested that the Commission allow this request to move ahead and give the applicant an opportunity to have it all worked out by the time it gets to the Board.

Ms. Higgins suggested adding an item to the list regarding the resolution of the pond, and Mr. Rieley agreed that it should be on the list.

Ms. Higgins suggested that the affordable means being tied down should be worded more carefully concerning where the affordable units will be located and not just say as identified in the application plan.

Mr. Morris pointed out that the condition for the pond is very clearly spelled out in the conditions.

MOTION: Mr. Rieley moved, Mr. Morris seconded, that ZMA-2004-017 for Wickham Pond be recommended to the Board of Supervisors for approval subject to the following directions to staff:

1. A written agreement between the applicant/developer and the adjacent property owner regarding the stormwater management use of the pond must be submitted prior to the Board of Supervisors public hearing and final wording of the proffers will be worked out between the Planning Commission and the Board of Supervisors meeting.
2. Critical slope impacts will need to be formally resolved with engineering and current development staff during the site plan stage.
3. The proffers regarding affordability and the long term application of the affordable units need to be worked out and be acceptable to staff before it goes to the Board.
4. The proffer stipulating substantial compliance with the location of the houses and the configuration of the units needs to be worked out between the Planning Commission and the Board of Supervisors meeting.

Ms. Higgins pointed out that the applicant needs to come up and volunteer that because the Commission cannot make a condition to ask for a proffer that says that.

Mr. Rieley asked Mr. Cetta to come forward and address this issue.

Vitto Cetta agreed to the proposed revision to the proffers.

Mr. Rieley stated that the Commission was acknowledging that the applicant had said that the proposed proffers were acceptable and they were simply making the Commission's directions state that the proffer language would be worked out between now and the time the request goes to the Board.

Ms. Higgins asked that the wording of proffer 1 be changed to remove the word "exhausted" because it sounds strange.

Mr. Kamptner stated that staff would look at some of the proffers done recently, but he thought that they have used the term "exhausted."

Mr. Cilimberg pointed out that the issue regarding critical slopes would be handled separately.

The motion passed unanimously by a vote of 6:0. (Commissioner Joseph was absent.)

Mr. Edgerton stated that ZMA-2004-017 for Wickham Pond would go to the Board of Supervisors on August 10 with a recommendation for approval as noted above.

Action on the Modification:

MOTION: Mr. Rieley moved, Mr. Thomas seconded, to grant the critical slopes waiver as requested for Wickham Pond.

The motion passed unanimously by a vote of 6:0. (Commissioner Joseph was absent.)

Mr. Edgerton stated that the critical slopes waiver was unanimously approved for Wickham Pond.

SP 2005-013 Hollymead Swim Club (Sign #67) – Request for special use permit to allow membership from outside of the Hollymead PUD for the swimming pool in accordance with Sections 20.4.2.1, 22.2.2.6, 18.2.2.3 and 5.1.16 of the Zoning Ordinance which allow for swim, golf, tennis and similar facilities. The property, described as Tax Map 46B2 Parcel 4A contains 0.825 acres, and is zoned Hollymead PUD. The property is located at 2000 Hollymead Drive in the Hollymead development, within the Rivanna Magisterial District. The Comprehensive Plan designates this property as Neighborhood Density in the Community of Hollymead. (Rebecca Ragsdale)

Ms. Ragsdale summarized the staff report.

- This is a request from the Hollymead Citizens Association, which is an association that governs the Hollymead Planned Unit Development. The Citizens Association is the entity that is in charge of the Hollymead Swim Cub, which is an existing pool within that Planned Unit Development that has been functioning as an amenity for the residents only. The Association would like to allow membership from outside the Hollymead Planned Unit Development (PUD) to the Hollymead Swim Club, which is an existing swimming pool. The membership has been low for the past several years and the pool would like flexibility to open up membership opportunities for people outside of the PUD so that they can operate the pool more efficiently and financially.

- The Zoning Ordinance allows private pools and clubhouses by-right in residential developments because they are considered to be accessory to the primary residential use of the property. This proposal to allow pool memberships to people outside of the Hollymead PUD changes this from

an accessory use that is by-right to *Swim, golf, tennis or similar facilities*, a primary use that is permitted by special permit in commercial areas of PUDs.

- In addition to the standard special use permit review; this report also addresses the supplemental regulations for swim facilities found in Section 5.1.16 of the Zoning Ordinance. Two modifications are sought to these regulations for setbacks and screening requirements to the adjacent residential properties. Pursuant to these regulations, permission is also sought for food concessions at the pool.

- The pool is within the Hollymead PUD, which was first established by a special use permit in 1972. The site is located along Hollymead Drive, approximately one-quarter mile east of its intersection with Route 29 (Seminole Trail). The pool is surrounded by residential uses primarily but shares an entrance and parking with the Silver Thatch Inn. The pool has adequate parking and it is expected that most users of the pool would still be from the Hollymead PUD and would walk. The current pool was built in the mid-90's to replace an older pool.

- With this request staff is recommending approval to allow what would become under the zoning ordinance a Swim, golf, tennis or similar facilities, which requires a special use permit.

- The applicant is not proposing physical changes with this special use permit that would increase impacts to adjoining residences. The pool would remain open to residents of the Hollymead PUD and they would still be given priority opportunity to join the pool. VDOT has identified a safety concern with sight distance at the entrance to the pool. The applicant has agreed to work with VDOT to correct the problem, which involved removal of shrubs.

- Staff recommends approval of SP 2005-013 with the following conditions:

  1. Family memberships, not including residents of the Hollymead PUD, shall not exceed 75.
  2. Prior to the issuance of a Zoning Clearance for the commercial swim club, the applicant shall provide sight distance at the entrance/exit to the property onto Hollymead Drive to the satisfaction of the Virginia Department of Transportation.

- Staff recommends approval of the following modifications to Section 5.1.16.a and 5.1.16.b of the Zoning Ordinance with the condition that existing vegetation be maintained to continue screening the pool. Also, staff recommends that a concession stand be permitted within the pool house, in accordance with Section 5.1.16.e.

  - Approval of a modification to Section 5.1.1(a) to allow a reduced setback against a residential property line.

  - Approval of a modification to Section 5.1.16(b) not to require additional screening around the pool, with the condition that existing vegetation documented and maintained to continue screening the pool.

  - Approval according to Section 5.1.16(e) to allow concessions within the pool house for serving food, refreshments, or entertainment in accordance with Section 5.1.16.e

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

Mr. Thomas asked how many residents were eligible to join the swim club outside of the Hollymead development.

Ms. Ragsdale stated that 75 residents outside of planned unit development were eligible, which included the persons living in the apartments and townhomes.

Mr. Edgerton asked how staff came up with that figure.

Ms. Ragsdale stated that was based on a number that would provide the applicant some flexibility. In the information submitted by the applicant on the application it said that 40 was the number that the association would like to do now with some flexibility to increase it if they are not getting the membership needed. They also wanted the number to be one that would not have any impacts on the traffic. The pool is located about a quarter of a mile off of Route 29 on Hollymead Drive, which is a road that could handle these additional trips. She pointed out that the applicant was comfortable with 75 also. The parking is actually based on the pool itself. Therefore, they have adequate parking for the use.

Mr. Edgerton asked staff where VDOT wanted to clear in order to provide the sight distance.

Ms. Ragsdale stated that the shrubs on both sides of the entrance need to be removed in order to provide adequate sight distance.

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

Charlie Smith, President of the Hollymead Citizens Association, stated that he and Pete Chapman, a Board member and head of the Pool Committee, were present to speak regarding the application. He pointed out that they are here because of the restrictions on the current site plan from 1996 when the current pool was built. Over the last couple of years the membership has dropped quite significantly within Hollymead. It cost about $50,000 a year to run that pool. They charge $255 a year for a family membership. They have been at that price since 2001. In 2001 they had 192 members, which dropped this year to 115 members. If the membership dropped that much with the price staying the same, it does not make a lot of sense to increase that price. They tried two years ago to raise the rates about $10 a month for their homeowner's fees. But, it was clear that there were a significant number of homeowners that really did not want to pay anything extra to become a member of the pool. Therefore, they have examined other alternatives to make this thing a more viable operation. Historically, the overall association has subsidized the pool at $5,000 to $10,000 a year. The association would like to come to the position where the pool was simply self-sufficient and it pays for itself. The most obvious way would be to simply open it up to outside members.

Mr. Smith noted that opening the membership up to outside members really will not affect the neighborhood at all. He pointed out that they want to have the following 3 restrictions removed that were on the 1996 site plan: 1) The facility is for the residents of the Hollymead P.U.D. and their guests; 2) Parking for swim meets will be allowed on Maiden Lane. The association will attempt to encourage this through education of members and temporary signage used at each meet directing cars not to park on Hollymead Drive and to park on Maiden Lane; and 3) During special events there must be a certified person to direct traffic at the intersection of Maiden Lane and Hollymead Drive. In the staff report for 1996 there was a note that restriction could be removed if the speed limits were reduced, which has happened. The speed limit has been dropped to 25 miles an hour from 35 miles an hour. Also, there are only 3 swim meets per year. He felt that it was a more dangerous situation created by people parking on Maiden Lane because there was no direct pathway over to the pool. The people had to park in front of houses and walk out in the street, which he felt was a more dangerous situation. He asked that all 3 of those restrictions be removed. He asked that there be no limitation on the number of people so that there would be some flexibility. As it stands they could have 466 members if everyone in the community was a member. But, they are no where near that. He asked that the County leave the membership decision to the Hollymead Homeowner's Association Board.

Pete Chapman stated that he had five children who would like to see more people be able to use the pool.

Mr. Craddock asked if the swim team was restricted to the people who belong to the swim club.

Mr. Chapman stated that it was open to anybody in the whole County.

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

Mr. Morris stated that just as an individual who lives in a community with a community pool that has opened it up to the public he was not in favor of having the stipulation for 75. He stated that he could see no reason in having any restriction on that since the organization is going to take care of that.

Ms. Higgins stated that the 466 are all people within the neighborhood walking distance, which she felt would be self governing. But, she felt that they have to consider some limit because of the zoning implications of what the parking requirements are and that they have to compare them to the next application that comes in. It is an important goal to keep community centers like this viable because they are promoting them in more and more developments. This one has been around for a while and they have actually done an improvement by doing the new pool, but it was still struggling. That is something to keep in mind with other applications that they see and the need to build into it a way to keep it economical viable.

Mr. Thomas stated that if there had to be a number that he would support a higher number and allow them to manage their own maximums in accordance to what the parking lot will hold.

Ms. Higgins asked if staff weighed in on the other restriction about the VDOT certified flagman. She asked if there was a recommendation that those notes would be deleted from the site plan.

Ms. Ragsdale stated that those were noted on the 1996 site development plan. She felt that staff can work on those outside of the special use permit process.

Mr. Kamptner stated that the weight of those notes is determination whether they were required to satisfy some requirement of the Zoning Ordinance.

Mr. Cilimberg stated that the first note that it would only be allowed within Hollymead was what kept it from having to be a special use permit. Therefore, that note would no longer be valid if they get a special use permit.

Mr. Kamptner stated that the second note could be read to simply say that you could park on Maiden Lane. He noted that it sounds like it has been interpreted differently.

Mr. Rieley stated that he was inclined to defer to Mr. Morris who has specific experience that he does not have. It does seem that this is something that has a self regulating mechanism and that their board will be just as or more sensitive from the problems that arise from too high a number. He stated that he was sympathetic in eliminating or substantially raising the limit.

Ms. Higgins stated that she would be inclined to substantially increase the number, but felt that the issue of how much can the site handle has to somehow be weighed in.

Mr. Rieley stated that the point was well made that most of the people in Hollymead would drive to the pool and not walk to the pool and the upper limit now is the total number of housing, which in the hundreds.

Ms. Higgins stated that the limit of 75 people was just for the outside people driving in.

Mr. Edgerton stated that they could still have members from the 466 units.

Mr. Craddock stated that it seemed like they have adequate parking for the pool. Except on swim meet nights it is not that crowded. It looks like there is access to Maiden Lane through the property.

Mr. Rieley stated that if the crowding gets to be a problem the people of Hollymead are going to take the initiative to deal with it.

Mr. Morris suggested that the condition read that the maximum number of the swim club not exceed 400.

Mr. Edgerton suggested that the maximum number not exceed what could have been accommodated.

MOTION: Mr. Morris moved, Mr. Rieley seconded, that SP-2005-013 for Hollymead Swim Club be recommended to the Board of Supervisors for approval subject to the following conditions:

1. Family memberships, including residents of the Hollymead PUD, shall not exceed 466.
2. Prior to the issuance of a Zoning Clearance for the commercial swim club, the applicant shall provide sight distance at the entrance/exit to the property onto Hollymead Drive to the satisfaction of the Virginia Department of Transportation.

The motion passed unanimously by a vote of 6:0. (Commissioner Joseph was absent.)

Mr. Edgerton stated that SP-2005-013 for Hollymead Swim Club would go to the Board of Supervisors on September 7 with a recommendation for approval with the conditions as approved.

Mr. Thomas left the meeting at 8:00 p.m.

Action on the Modification:

MOTION: Mr. Morris moved, Mr. Rieley seconded, to grant the three modifications to Section 5.1.16 as requested for Hollymead Swim Club.

- Approval of a modification to Section 5.1.1(a) to allow a reduced setback against a residential property line.

- Approval of a modification to Section 5.1.16(b) not to require additional screening around the pool, with the condition that existing vegetation documented and maintained to continue screening the pool.

- Approval according to Section 5.1.16(e) to allow concessions within the pool house for serving food, refreshments, or entertainment in accordance with Section 5.1.16.e

The motion passed unanimously by a vote of 6:0. (Commissioner Joseph was absent.)

Mr. Edgerton stated that the three modifications were unanimously approved for Hollymead Swim Club.

SP 2004-053 Wildon Grove Baptist Church (Signs #33) – Request for a special use permit for a church to allow for a building addition, in accordance with Section 10.2.2.35 of the Zoning Ordinance which allows for church uses in the RA (Rural Areas). The subject parcel, described as Tax Map 36, Parcel 22, contains approximately 1 acre zoned RA. This site is located at 6820 Wildon Grove Road (Route 645), which is approximately 1.5 miles southwest of the intersection of Magnolia Road (Route 645) and Happy Creek Road (Route 608), approximately 2 miles south of the Albemarle/Orange County line. The property lies within the Rivanna Magisterial District in the area designated as Rural Areas 2 by the Comprehensive Plan. (Rebecca Ragsdale)

Ms. Ragsdale summarized the staff report.

- This request comes from a church located in the rural areas at the end of Wildon Grove Road, which is near the Orange County line in the northeastern area of the County. The property is about one acre in size and has an existing 1,700 square foot church with a 660 square foot building. The church has been used for a fellowship hall and is a historic building. The church would like to add an addition of 1,500 square feet to the east to accommodate the needs of the existing congregation. They are using grass parking now, which has been working. The County engineer and staff suggest that it is working and that the 23 parking spaces are adequate for the existing church use. There is a condition to the number of seats that the sanctuary would be limited to, which is a typical condition. Another condition is that the addition will be in accordance with the application plan.
- It is important to note the property is located near important rural area resources identified in the Comprehensive Plan, including the Mountain Overlay District and the Southwest Mountains Rural Historic District. The Historic Preservation planner has commented on the historical significance

of the site and suggested that the building be documented. That is listed as a recommended condition of approval of this special use permit. No other detrimental impacts to Rural Area resources were identified. Staff recommends approval.

Mr. Edgerton asked why staff does not support VDOT's recommendation that the entrances be consolidated.

Ms. Ragsdale stated that VDOT did identify that there was adequate sight distance and that the entrances are not meeting their current requirements. But, given the uniqueness of this rural area location and the fact that they do have sight distance it was not a major concern. Staff did not want to put a burden on the church and did not feel that the request warranted those additional requirements that the entrances be consolidated. In order to keep the rural character of the church now and the fact that it has been functioning quite well, staff did not recommend that the entrances be consolidated with the approval. She pointed out that the church is located at the end of the state maintained road.

Ms. Higgins pointed out that was VDOT's standard to reduce entrances. It is really irregardless of uniqueness.

Mr. Rieley stated that VDOT almost always asks for a commercial entrance and the Planning Commission almost always does not require it.

Mr. Edgerton asked if the photograph shows the original church.

Ms. Ragsdale stated that she was not an expert on the history, but felt that when the church started meeting that was a structure that dates back to the establishment of the church.

Mr. Morris asked if that was the building to be removed, and Ms. Ragsdale stated yes.

Mr. Rieley stated that there was a recommendation of documentation by an architectural historian or other qualified person. He asked staff what she was expecting that would entail.

Ms. Ragsdale stated that would be photographic documentation of the resource in accordance with the general standards. The architectural historian has discussed this with representatives of the church. Staff is envisioning somebody like Preservation Piedmont going out there who is an expert in documenting churches.

Mr. Rieley stated that being the case, he asked if it would be sufficient to make condition 4 say make the property available for access by an architectural historian to document the building.

Ms. Higgins stated that it might become a time issue because it says prior to proceeding removal. She suggested that it just say time for that access to occur.

Mr. Rieley applauded staff for bringing the Commission an application that supports grass parking for a country church and using an existing entrance. He stated that it makes a lot of sense.

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

Tracy Holiday, business manager for Wildon Grove Baptist Church, stated that the church that was being removed is the original church that was built in 1929. The church is in the process of working with Preservation Piedmont to have the original church documented.

Mr. Edgerton stated that the concern expressed by Mr. Rieley was that this would be an onerous obligation on the church. He asked if this would be problematic for the church to do.

Ms. Holiday stated no it would not be from their discussions with Preservation Piedmont.

Mr. Rieley stated that he had no problem with the church making the property available for Preservation

Piedmont.

Mr. Edgerton stated that the question was how long they have to make it available.

Ms. Holiday stated that it would be as long as they need. But, they are in the midst of working with them right now to have them come out and do the documentation.

Mr. Edgerton invited other public comment on this matter.

Neil Williamson, representative for Free Enterprise Forum, pointed out that they do not take positions on projects. He asked to raise the issue that the form used in Attachment D is poor. With all due respect to staff he believed that the comment, "I have no objection to the proposed addition" is improper. Staff may cite why they have objections, but individuals should not. That is carried out throughout this document. He hoped that would be something that they could work on.

Mr. Edgerton asked if there was any other public comment. There being none, he closed the public hearing to bring the matter back before the Commission for an action.

MOTION: Mr. Rieley moved, Mr. Morris seconded, that SP-2004-053 for Wildon Grove Baptist Church be recommended to the Board of Supervisors for approval subject to the following conditions as amended:

1. The site shall be developed in general accord with the plan entitled "Application Plan for Special Use Permit 2004-53," revised June 13, 2005;
2. The area of assembly shall be limited to the existing 94 seat sanctuary;
3. There shall be no day care center or private school on site without approval of a separate special use permit;
4. The church shall make the property available for documentation of the fellowship hall building (as labeled on the Application Plan Attachment B) by an architectural historian or other person approved by staff, prior to proceeding with removal.

The motion passed unanimously by a vote of 5:0. (Commissioners Thomas and Joseph were absent.)

Mr. Edgerton stated that SP-2004-053 for Wildon Grove Baptist Church would go to the Board of Supervisors on September 7 with a recommendation for approval.

Mr. Thomas returned to the meeting at 8:13 p.m.

SP 2004-032 St. Nicholas Orthodox Church (Sign #34) – Request for special use permit approval, as set forth in Section 18.10.2.2.35 of the Zoning Ordinance, for a church use to be established on a 4.45 acre parcel. The property, described as Tax Map 70, Parcel 12A, is located in the White Hall Magisterial District on State Route 250 (7581 Rockfish Gap Turnpike), approximately .5 miles west of the intersection of State Route 691 (Greenwood Road) and Route 250. The property is zoned RA Rural Areas and EC Entrance Corridor. The Comprehensive Plan designates this property as Rural Area 3. (Rebecca Ragsdale)

Ms. Ragsdale summarized the staff report.

- This is a request in the Rural Area of the County along Route 250 West in the Greenwood area of the County. The site is about 4.4 acres in size. Currently there is an existing 5,220 square foot building that has been historically used as a retail building. The request from St. Nicholas Orthodox Church is to locate their church there to provide a maximum of 100 members based on their congregation projections and number of parking spaces that are available. This site has existing parking and is sufficient without expanding the parking area to accommodate this church.
- In reviewing this, there is another church located to the west of this site. The property is a reversed shaped L. The Emmanuel Episcopal Church adjoins this property. Immediately they own the residence there to the west. Then the historical Emmanuel Episcopal Church is right there to the west. To the east is a residence that is owned by the property owner subject to this request to locate the church there.

- Staff is recommending approval since they feel that this is a good reuse of that building. In the course of review VDOT had similar comments regarding consolidation of the entrances. The existing entrances do not meet sight distance. They did recommend again that these entrances be consolidated, and their initial recommendation was for the western most entrance. In the course of review of this application the entrances are not actually on the church property itself and the western most entrance is problematic. In working with the adjoining property owner that did not turn out to be the best entrance to recommend. So the entrance that is recommended is for minimum improvements to the eastern most entrance. Staff is recommending it in this case based on the road conditions and that there was not adequate sight distance based on the configuration of the current entrances.
- That does necessitate the need for a site plan for these entrance changes, but staff is recommending a waiver in this case with conditions that the erosion and sediment plan be provided and that the applicant work with VDOT to construct the new entrance before a zoning clearance for the church is granted. So there is a special use permit action to be taken and a site plan waiver request. Churches in the Rural Areas don't generally have any negative impacts on rural areas uses. Therefore, staff is recommending approval.

Mr. Edgerton asked if there were any concerns expressed from any of the neighbors.

Ms. Ragsdale stated that the Jordans did not express any concerns. She noted that there were some concerns expressed during the discussions of having the western most entrance right in front of their residence from Emmanuel Episcopal Church. Also their concerns alluded to having simultaneous church uses going on at the same time. But, she has not heard from them since this application was reactivated from the deferral and they did receive a notification. Those were the only neighbors that she had heard from.

Mr. Rieley stated that he would presume from the alignment of the old driveway that Emmanuel Church has a right-of-way across this property. He asked if that was true. He stated that it looked as if the driveway that leads to Emmanuel Church goes across the front of parcel 70-12A, which is the subject parcel.

Ms. Ragsdale stated that the existing driveway comes off of Route 250 that goes to that residence. It is more like the Jordans who are property owners of 12A went across the Emmanuel Episcopal property rather than the reverse that he was asking about. She asked that for whatever documentation that they could find about the right-of-way there and the applicant could not provide staff with anything as far as what the agreement was that was legally recorded there, who had rights and what the width was. So once they moved the entrance over staff did not ask for any additional documentation there about that situation because it is existing drives.

Ms. Higgins stated that it does not interfere with it in this layout.

Mr. Rieley stated that it certainly could if the right-of-way was a prescribed right-of-way down here where it was and it is being shifted and now parking is on top of the old roadway. He felt that is an issue that ought to be resolved. If that is an access for Emmanuel Church off of 250 it is certainly changing and at the very least should be addressed.

Ms. Higgins stated that it was probably too old to even figure that out. As long as they are not blocking anything it is probably onerous just to try to figure it out because it was between property owners.

Mr. Rieley stated that if they are changing it, then they should have that information.

Ms. Ragsdale stated that they are not changing the entrances that Emmanuel uses.

Mr. Rieley stated that he understood that, but noted that it is not in the same place as the existing one. Therefore, first it is important if there is an existing right-of-way that they maintain it. Secondly, it is important for this church to understand that they now have through traffic through their parking lot.

Mr. Edgerton stated that currently they have through traffic through their parking lot.

Mr. Rieley stated that there was no parking lot there now.

Ms. Higgins asked if a word was missing in number 5.

Ms. Ragsdale stated yes, that "without prior approval of a new special use permit" was missing.

Ms. Higgins suggested that the applicant could possibly shed some light on the issue.

Mr. Rieley stated there was another sort of an associated issue that has come up from time to time when they have been reviewing church additions and special use permits. That is that they have talked about the role of the Religious Land Use Act relative to church applications. For some time staff inserted a small excerpt of that text of that federal law in the staff reports. He felt that it was an important benchmark for the Commission because they don't review these under the same criteria as they do other applications. There is a higher standard that has to be met. He asked that staff continue to put the applicable parts of that Land Use Act in the staff report so that they were reminded of what their standard is.

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

Reverend Robert Hulet, Pastor for St. Nicholas Orthodox Church, stated that he was sure that the Commission gets a number of inquiries and requests from groups such as his. They begin as small churches and congregations that possibly break off from another one. They go through a curve of growth and stumbling along in renting spaces in looking for a church home. He pointed out that they have been in the process of doing that for about five years now. Being a nature of a growing community of a small church they were very pleased when they came across this particular property because it appeared that it had kind of a commercial character to it in that it already had a parking lot to it and had been used for retail purposes and that sort of thing. They were actually surprised to find out that it was not so zoned, but rather was zoned rural and so they would have to request a special use permit. They have entered into a contract with the Jordans and have been pursuing this process for a special use permit. He believed that he could speak just a little bit about his understanding of the research of this business of the easements and the entrances. It is his understanding that when this property was divided back in 1989, that those two properties were divided. Originally this was one lot with the house that the Emmanuel Episcopal Church owns, which is between this property and their church property. This is the property in question that they were looking to acquire. In order to provide access to the property that they are looking to purchase, of the 4.4 acres, an easement was granted across the front of the adjoining property that is 70/12 parcel Y and Y1. He seemed to recall in his discussions that was the nature of how that easement came about. In their negotiations with the property owners it was not possible to pursue that western entrance. In re-consulting with VDOT they said that they would consider the redesign as it was proposed. They have with them this evening Mr. Basil Finnegan, from Blackwell Engineering, who engineered this redesign and can speak much more clearly and accurately as to the technical aspects of what is on this design. He stated that Mr. Finnegan prepared this design. He stated that he would be happy to speak to the Commission as to any aspects of their community life or the kind of uses that they do in the Orthodox Church. He stated that the nature of Albemarle County and the Charlottesville area is that they really are a magnet of people from many different cultures and many different areas around the world, including areas from which Orthodox Christians come. This includes people with many other backgrounds that are Russian, Ukrainian, Jordanian, Ethiopian, etc. who come to this area. The only other Orthodox Church in town is the Greek Orthodox Church just down the road. Therefore, this provides another opportunity for them to find a place to worship. As you see and approve all of the growth that is going on people need a place to call their church home. Therefore, that is what they are doing.

Basil Finnegan, representative of Blackwell Engineering, stated that his understanding was as Father Roberts said that the right to traverse the adjacent properties, parcel X, has the right in its subdivision to traverse Emmanuel Episcopal but not the reverse. Since Emmanuel Episcopal Church was not in favor of improving the entrance in front of their house on parcel Y all of the focus shifted to the eastern entrance.

Ms. Higgins stated that if you go out to the site when you go up the existing driveway there is a switchback because it is so steep. It just gives you the appearance that it has to go across it.

Mr. Finnegan stated that as you are heading west along Route 250 you can make a pretty rapid departure up into the existing pavement now. Once the entrance is redesigned you will have to slow down in order to make a turn.

Mr. Rieley stated that he understood that, but the point that he was concerned about that had not been addressed yet is that road continues coming from the west as an existing road and continues in to the road labeled existing drive, which goes by the house and continues up to the church. What he is saying is that parcel 70/12 and parcel 70/13 currently have no right to use that access. He asked if that was what he was saying.

Mr. Finnegan stated that his understanding was that parcel 12A has the right to traverse parcel 12.

Mr. Rieley stated that what he was saying was that currently one can leave 250 go up this drive and access that parcel and the church beyond. In order for that to be legal it has to be some sort of right-of-way.

Mr. Finnegan stated that was probably true, but the way that it is being used now is that you come off the road and go on to the next one.

Mr. Rieley stated that there is a right of access on that parcel.

Mr. Kamptner stated that the question is whether or not when this is approved there is that right or that easement, but that he would assume that there is some kind of easement.

Mr. Finnegan stated that he had never seen it.

Mr. Rieley asked Mr. Kamptner if that is the current use if there was an implied use easement.

Mr. Rieley stated that they would have to establish a prescriptive easement, which would take 20 years to establish to open a notorious and continuous use.

Mr. Rieley stated that the question is that the Commission has before us a situation in which there is an existing use that one would normally anticipate that there is an easement across that property. It may not be an easement that has metes and bounds, but it may be recorded and nobody here knows whether or not there is one. The Commission needs to know the answer to that question.

Ms. Higgins asked when people go to the Emmanuel Church's house and the Church next to it do they actually use the eastern entrance and cut across. She stated that she believed that they use the existing driveway and do that little switch back. That is what looks most traveled if you go out there.

Mr. Finnegan stated that was correct.

Ms. Higgins stated that there use to be an art gallery there and she did not think they allowed the traffic to cut back and forth across there.

Mr. Thomas stated that years ago that property use to be a garage and traffic came in both ways. Then the eastern driveway deteriorated and so they only used the other western one.

Ms. Higgins and Mr. Craddock agreed with Mr. Thomas.

Ms. Higgins stated that when you are out there coming up that existing drive in front of Emmanuel Church it is actually the path of travel.

Mr. Rieley stated that he was not talking about the pattern of travel, but whether there was an easement or not. He pointed out that nobody knows the answer to that question.

Mr. Craddock stated that it appears that it is drawn in here as a road.

Mr. Finnegan stated that there is no easement shown.

Mr. Rieley asked if anybody has done a deed search.

Mr. Edgerton stated that there was nothing here.

Mr. Morris stated that it was existing pavement.

Mr. Edgerton stated that they had a confirmation of easement, but there was nothing there in 1989.

Mr. Rieley stated that he would ask the Emmanuel Church representatives this question just so they understand the easement.

Mr. Thomas stated that only the Fox brothers would be able to answer that question.

Mr. Craddock stated that he wondered where the gas tanks are located.

Mr. Edgerton invited Mary Donn Jordan to come forward and speak.

Mary Donn Jordan stated that she and her husband were the adjacent property owners on the east as well as the owners of the subject property. She stated that they certainly agree with the petition and would welcome St. Nicholas Orthodox Church as neighbors to our community. She asked to shed a little light on the easement question. She pointed out that when she ran the retail business in this building she always assumed that there was an easement, but when St. Nicholas approached them about this purchase they could not find any recorded easements on either side. But, she did not know if that helps or not.

Mr. Rieley stated that it does help.

Ms. Jordan suggested that they could ask that question to the representatives present from the Emmanuel Church. But, the church property itself is not accessed from the driveway in question. She stated that the little red brick house could be accessed from the property, but not the church since 1989 when she purchased the property.

Mr. Edgerton invited further public comment.

Charles Mitchell, resident of Crozet and Senior Warden of Emmanuel Church, stated that their objections to this request had to do with access because the basement of the house that the church owns right there is used for a youth house. They did not want to have any access coming up in front of the house. The area that they are talking about was an old road and has been moved to a new road. There is no pavement out there other than just coming up and access to that house. They wanted to limit and restrict any access to that building so that they could keep it away from the children. Therefore, they support the fact that VDOT is having another entrance to it. Regarding the discussion tonight about entrances to church property, they support this change. Emmanuel Church accesses their church off of 250. This area is not paved and is grassed over. There may be asphalt left underneath there, but for any practical purposes that is all green land all the way through.

Mr. Rieley asked him to clarify what area he was talking about.

Mr. Mitchell stated that this piece is an entrance into the house, but the pavement stops right in front of the house. He pointed out that nobody drives over here to the church because their entrance is directly off of Route 250. He stated that because of the children they only wanted access off of this piece to the house and not into the subject property.

John Savage, Junior Warden at Emmanuel Church stated that one reason that they don't drive from the

house over to the church is because there is a 400 year old Oak Tree that sits there and they don't want to do anything to jeopardize the root system of that tree. He stated that they would welcome St. Nicholas as their neighbor. But, the only concern he has is that Route 250 has increasing traffic on it. He pointed out that he lives in Corey Farm and drives Route 250 a lot to the church. The area adjacent to the property has some blind spots as you are kind of coming up a hill and around a curve. He pointed out that the other thing is that when it was a retail business their hours were separate from each other. They do their business on Sunday and the retail business on Monday through Saturday at most. Therefore, there was never a traffic conflict that existed before. It happens that St. Nicholas and Emmanuel both are Sunday centered in terms of the crowds that will be there. He asked to put it on record to ask staff as they are working with VDOT to really do as much work as possible in looking at all of the traffic flows to ensure that neither the people from St. Nicholas nor the people attending services at Emmanuel are thrown into a dangerous situation from a traffic standpoint.

Ms. Higgins stated that they have had this before where churches in the Rural Areas are in close proximity. She asked if they have given consideration in staggering their service times. This is something that the County does not want to control, but between the two churches it would be very helpful to avoid the peak of heavy traffic coming and going at the same time.

Mr. Mitchell stated that Emmanuel Church does stagger their service since the only time that they have one service is during the summer time. He noted that their services are at 9:00 a.m. and 11:00 a.m.

Ms. Higgins suggested that the staggering be between Emmanuel Church and St. Nicholas Church since she felt it would help their congregations.

Mr. Savage stated that he lived in the Crozet area and that the traffic is becoming more and more of a concern. That is the only thing that he wanted to bring to the Commission's attention.

Mr. Edgerton asked if there was any other public comment. There being none, he closed the public hearing to bring the matter back before the Commission for an action.

Mr. Rieley stated that while he is almost always adamant on the subject of not requiring commercial entrances for country churches in the Rural Area that he thought that coming out onto Route 250 is a very clear public responsibility.

MOTION: Mr. Rieley moved, Mr. Morris seconded, that SP-2004-032 for St. Nicholas Orthodox Church be recommended to the Board of Supervisors for approval subject to the following conditions as amended:

1. The site shall be developed in general accord with the plan entitled "Application Plan-SP 2004-0032", prepared by Blackwell Engineering, PLC, revised July 2005.
2. The area of assembly shall be limited to 100-seat sanctuary;
3. There shall be no day care center or private school on site without approval of a separate special use permit;
4. The applicants shall secure VDOT approval of the entrance from Route 250, prior to the issuance of a zoning clearance for church use of the site.
5. No building expansions are permitted without prior approval of a new special use permit.

The motion passed unanimously by a vote of 6:0. (Commissioner Joseph was absent.)

Mr. Edgerton stated that SP-2004-032 for St. Nicholas Orthodox Church would go to the Board of Supervisors on September 7 with a recommendation for approval.

Action on Site Plan Waiver:

MOTION: Ms. Higgins moved, Mr. Rieley seconded, to approve the site plan waiver for St. Nicholas Orthodox Church, subject to the two conditions recommended in the staff report.

1. No construction activity shall occur until an Erosion and Sediment Control Plan has been approved and any required bonds have been posted.

2. No Zoning Clearance will be issued for the building until VDOT approval of the installation of required entrance improvements.

The motion passed unanimously by a vote of 6:0. (Commissioner Joseph was absent.)

Mr. Edgerton stated that the site plan waiver was unanimously approved for St. Nicholas Orthodox Church.

The Commission recessed for a ten minute break at 8:42 p.m.

The meeting reconvened at 8:48 p.m.

Worksession:

Places 29 – Monthly Update. (Judy Wiegand)

In summary, the Planning Commission held a work session in order to receive a monthly update on Places 29 from Judy Wiegand, Lee Catlin, and Harrison Rue. Staff distributed and reviewed the following new materials with the Commission:

1. Summary of input and comments from each table at May 25 Public Workshop.
2. Summary of major discussion and priority items – compilation of items.
3. Memo from Sarah Woodworth, ZHA, Inc. economic consultant.
4. Questionnaire results.
5. List of stakeholder groups.
6. Update on meetings about Places 29 County staff has held (since May 26).
7. Memo on County staff activities, June – October 2005.
8. Memo on dates chosen for October charrette.

Staff provided an overview of the past meetings and the public participation process used up to this date and asked that the Commission look at the issues of process and procedure, provide liaison between the neighborhoods and businesses, look at the materials to make sure they are clear, and provide comments and suggestions, particularly about the public participation element.

Old Business:

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

New Business:

Mr. Edgerton asked if there was any new business.

Mr. Rieley requested staff to provide the names and number of Comprehensive Plan Amendments that have been approved without a Master Plan in the last five years.

Mr. Cilimberg stated an email was sent today that next week's packet would be delivered on Thursday. He apologized that staff was not able to get everything pulled together, but expects that to be the exception. He pointed out that Kenridge will be on the agenda for next week. During the last several weeks staff has been trying to use an executive summary format to cover the bulk of the staff reports. He asked for comments or suggestions on the new format.

Mr. Craddock provided an update on the Mountain Protection Committee Meetings.

There being no further new business, the meeting proceeded.

Adjournment:

With no further items, the meeting adjourned at 9:20 p.m. to the July 26, 2005 meeting.

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V. Wayne Cilimberg, Secretary

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