Albemarle County Planning Commission
June 20, 2006

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, June 20, 2006, at 6:00 p.m., at the County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia. Members attending were Eric Strucko, Calvin Morris, Vice-Chairman; Jon Cannon, Pete Craddock, Marcia Joseph, Chairman; Jo Higgins and Bill Edgerton. Mr. Edgerton arrived at 6:05 p.m. Julia Monteith, Senior Land Use Planner for the University of Virginia, representative for David J. Neuman, FAIA, Architect for University of Virginia was absent.

Other officials present were Wayne Cilimberg, Planning Director; Sean Dougherty, Senior Planner; Francis MacCall, Senior Planner; Glenn Brooks, Senior Engineer; Amy Arnold, Planner and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

Ms. Joseph 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:

Ms. Joseph invited comment from the public on other matters not listed on the agenda. There being none, the meeting moved on to the next item.

Review of Board of Supervisors Meeting – June 14, 2006.

Mr. Cilimberg summarized the actions taken by the Board of Supervisors on June 14, 2006.

Consent Agenda*:*

a. **Review of South Garden Agricultural/Forestal District – Refer to Advisory Committee:** Proposal to conduct a review of the South Garden Agricultural/Forestal District. The District, which is contained within Tax Maps 110 and 109, consists of 5 parcels totaling 2,033.33 acres. The District is generally located in North Garden between Route 29 south and Routes 712 / 719 with northern boundaries adjacent to the South Fork of the Hardware River. Properties in the District are designated as Rural Area in the Comprehensive Plan and are zoned as Rural Areas District. (Amy Arnold)

b. **Approval of Planning Commission Minutes** – March 28, 2006.

Motion: Mr. Morris moved, Mr. Craddock seconded, that the consent agenda be approved.

The motion passed by a vote of 6:0. (Mr. Edgerton was absent.)

Ms. Joseph stated that the consent agenda has been approved.

Public Hearings Items*:*

SDP 2006-033 Ntelos-CV826 Rt. 250 East Glenmore Replacement Site - A request for approval to allow the construction of a personal wireless service facility to replace an existing facility that was approved with SP 99-37. The applicant proposes to construct a monopole that would be approximately 120 feet tall (10 feet above the height of the tallest tree within 25 feet),

with supporting ground equipment within a 400 square foot fenced compound. This application is being made in accordance with Section 10.2.1.22 of the Zoning Ordinance, which allows for Tier II personal wireless service facilities in the Rural Areas. The property, described as Tax Map 79 - Parcel 16, contains approximately 13.5 acres zoned Rural Areas and Entrance Corridor. This site is located on Richmond Road [Route #250] approximately 0.3 miles west of Louisa Road [Route #22], in the Rivanna Magisterial District. The Comprehensive Plan designation for this property is Rural Areas. (Keith Lancaster)

Mr. Edgerton arrived at 6:06 p.m.

Ms. Joseph noted that the applicant requests deferral of SDP-2006-033, Ntelos – CV826 Rt. 250 East Glenmore Replacement Site, to June 27, 2006. She opened the public hearing and asked if there was anyone present to speak to this request. There being no public comment, the public hearing was closed and the matter before the board.

Motion: Ms. Higgins moved, Mr. Morris seconded, to approve the applicant's request for deferral of SDP-2006-033, Ntelos, to June 27, 2006.

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

Ms. Joseph stated that the request was deferred to June 27.

SDP-2006-042 Pavilions – Phase II: Request for preliminary site plan approval for a 137 unit residential townhouse development on 25.8 acres. The property, described as Tax Map 78, Parcel 12, is zoned R-6, Residential and is located in the Rivanna Magisterial District on Richmond Road [Route # 250E] approximately 0.25 miles west of its intersection with State Farm Blvd, immediately behind Aunt Sarah's and Eckerd Drug Store on 250E. The Comprehensive Plan designates this property as Neighborhood Density in Neighborhood 3. (Francis MacCall)

Ms. Joseph pointed out that an individual of Westminster Canterbury asked for six minutes to speak on behalf of all the residents of Westminster Canterbury and the Commission has allowed that. Anyone else will be given three minutes to speak.

Mr. MacCall summarized the staff report.

- This is a preliminary site plan request for Pavilions Pantops Phase II for the creation of 137 townhouses using the clustering development option. It is on 25.8 acres out of the total site's 57.8 acres. The request before the Commission is in three parts:
    - The open space appropriateness,
    - The waiver for the disturbance of critical slopes, and
    - The adjacent property owners, the Fontana Homeowner's Association request for the Planning Commission to review the plan.

- The first section is the open space. With the clustering provisions, the applicant is proposing to obtain the lot size reduction to actually not have an applicable lot size for the R-6. The smallest lot size is in the 2,000 square foot area. The applicant might be able to specify that a little more. With the clustering provision there is a requirement that they provide at least 25 percent open space. In that section of the Zoning Ordinance it requires open space to be reviewed by the Commission. They have provided that amount, which is 34 percent of the site or the 25.8 acres. He emphasized that because this is a 57 acre site the total open space that was approved with this proposal comes

out actually at 44 percent of the higher 57.8 acres. But, for this particular proposal staff is recommending approval of the open space, which is outlined in the staff report.

- The critical slopes waiver has also been reviewed. Staff has reviewed that for engineering and planning staff. Staff is recommending approval of the disturbance of the critical slopes.

- The particulars of the adjacent owner's request are identified in Attachment G. Staff noted they were not specific. Staff had previous discussions with some of the adjacent property owners and believes that one of the main issues is the storm water issues. But, the adjacent property owners will most likely come forward and elaborate on their concerns. Staff tried to address that particular issue. Page 11 has sketches of the storm water facilities that show the relationship of those facilities to the development of Phase I and II and also to the Fontana properties.

- Staff is recommending approval of the request for open space appropriateness, the critical slopes waiver and the site plan with the conditions outlined on page 7. Staff would like to recommend an additional condition, which would be the Architectural Review Board approval of the plan as well.

Ms. Joseph asked if there were any questions for staff.

Mr. Morris asked if the road was public or private.

Mr. MacCall replied that the roads currently out there are public roads. The ones shown internally to this development are not in yet. The ones shown on the plan, Rolkin Road and Verona Drive, are the two main thoroughfares that are public streets. All of the other internal travel ways are private.

Mr. Morris asked if the Commission has to give approval for private roads.

Mr. MacCall replied not in this case. Since it is a multi-family development, the Subdivision Ordinance permits staff to review and approve it with certain standards that have been outlined.

Ms. Higgins asked what staff's expectations are for the ARB review.

Mr. MacCall replied that the applicant has been made aware during initial site plan review that the ARB will need to look at this, but he did not know the full extent of the subdivision review.

Ms. Higgins asked staff to expand on the tree canopy requirements and to explain the process.

Mr. MacCall said that the open space plan clearly shows an area that is called important wooded areas that have been identified. It has been further explained in the open space plan that it is still zoned land that can be developed and it talks about taking the appropriate measures to mitigate that. In the Zoning Ordinance the requirement is to provide a minimum of 20 percent plantings on site.

Mr. Fritz noted that the Zoning Ordinance specifically has different percentages for various types of developments for tree canopies. They have to plant new trees sufficient such that in ten years they will have a 20 percent tree canopy. They have a listing of all of the types of trees and based on its original planting type in ten years it provides a canopy of X square feet. They

have to go through the landscape plan and calculate it so it is 20 percent of the site. Then 20 percent of the site will need to be replanted. They receive credit for preserving existing trees.

Ms. Higgins asked if staff has a handle on what they are preserving versus what they are taking down.

Mr. Fritz replied that they typically don't have the exact numbers, but just look at it.

Mr. MacCall said that in this particular case it might not be a considerable amount, but he believed that the applicant was trying to preserve some of the existing trees. The applicant might be able to speak directly to that.

Mr. Edgerton noted that the staff report speaks to that on page 4 under the critical slopes discussion in the graph. It says that 100 percent of the critical slopes will be impacted. It is anticipated that the entire site will be cleared and graded. It does not say that they are planning to save any of the trees.

Mr. Cannon said that a critical slopes waiver is being requested. In their past discussions it has been of some interest as to what is in or on those critical slopes. There is something designated here as an important wooded area on all or some of the critical slopes for which the waiver is sought. He asked if that was correct.

Mr. MacCall replied that was correct in that there was a portion.

Mr. Cannon asked what if any impact he would say the designation of an important wooded area on those slopes should be on their consideration of the waiver.

Mr. Fritz said that the consideration is that it is an identified resource within the open space plan. Staff can obtain that plan for the Commission, and apologized that they did not bring it. It is a feature within the open space plan that is something to be evaluated and is something for the Commission's consideration.

Ms. Higgins said that those stream banks are important stream banks.

Mr. Fritz noted that it was not part of a system other than a wooded area. It is not a stream valley that is associated with the critical slopes.

Mr. Craddock asked staff if he had received any comments from Monticello.

Mr. MacCall replied no, that staff had not heard from Monticello. Staff believes that providing the 25 percent canopy on site as the development occurs basically mitigates to the extent for that view shed that does come down from Monticello. No one has voiced concerns on this application or the previous application that was done for Phase 1.

Mr. Craddock asked how much of the site has already been disturbed.

Mr. MacCall replied that the site disturbance has happened with the road construction somewhat and through the permitted waste area that has been on that site for a number of years. The current owner, North Pantops LLC, has had the appropriate erosion control plans and the like. There has been a lot of interest and there have been a number of inspections that have been done on site.

Ms. Higgins noted that this goes back to the Westminster Canterbury development. There was land disturbing that was shared for the residents of Westminster Canterbury and the roads there, which has been a part of that for many years.

Mr. Edgerton said that it appears that a lot of the townhouse units are going to be located on critical slopes. He asked if that was a fair assessment.

Mr. MacCall replied yes.

Mr. Edgerton asked at what point staff would make a recommendation that too much critical slopes are being proposed. Seventy percent of the site in critical slopes seems to be a pretty high number. That makes him begin to wonder why they have an ordinance requirement. He was having a great deal of trouble understanding this.

Mr. Fritz pointed out that staff was going through the particular criteria of the ordinance, which is a two section criteria. Section A is a provision that staff is charged at providing some guidance on. It is largely a performance section. Item B of that section is a provision that the Commission specifically needs to modify or waive. Staff tried to provide some comments to the Commission to drive the conversation to identify the resources and the like. But, there is no magic answer because each case is unique.

Ms. Joseph noted that the property is located on the Entrance Corridor. Therefore, the project would require Architectural Review Board review. The open space is something that the Commission has to approve in order to have the clustering take place. She requested to ask Mr. Brooks a question. In looking at the plan she is seeing within the open space a series of very high retaining walls. She wondered what kinds of things that engineering would require on these retaining walls.

Glenn Brooks, Senior Engineer, said that engineering typically in a situation like this when the retaining walls are directly next to a travel way or road way that most of them step up the hillside from the site. Building permits would be required when they come in to do the permits for the houses. Typically, they get an engineering CO on the building permit. That is the extent of the review.

Ms. Higgins noted that the ARB would comment on the aesthetics.

Mr. Brooks agreed. Sometimes staff would comment on the retaining wall that has an objectionable feature to a neighboring site and ask for landscape screening. These retaining walls are fairly internal to the site for the most part. There are a few retaining walls down in the lower section above the lake that might be visible from town. One other inspection would take place with the zoning inspector when he goes out to the site. The zoning inspector may judge that there is a safety hazard and ask for a railing. There is some discretion if there is a road way or a travel way that ends at a retaining wall and they typically ask for a guard rail or something as a safety issue. But, there is not a lot of Code that speaks directly to that sort of thing.

Mr. Fritz pointed out that staff generally tells the applicant if they think a guard rail or something is required up front so that they are not surprised. Generally it is put on the plan. Sometimes they wait until farther along in the process if they did not know what the materials of the walls look like before they decide what sort of railing they need to put in.

Mr. Brooks pointed out the storm water facilities existing on site that serve as a sediment basis purpose

Ms. Joseph said that if they are sediment basins they are for soil erosion and sediment control and are not permanent structures.

Mr. Brooks noted that in this case they will be converted to permanent structures. He pointed out that on Olympia Drive, at the top left of the plan, there is also a sediment control basin in place that will be converted to a larger pond. All of this is built for the most part.

Mr. Fritz said that it needs diversion, but it is built.

Mr. Brooks noted that conversion meaning that they will feather out the slopes and may be change out a few structures to permanent structures and put in a few four bays, which are catch basins at the top of the pond, and also put some plantings in. Substantially they are near what they would look like in the future.

Mr. Cannon said that he had a comparison question between Pavilions Phase I and Phase II. He assumed that sometime in the past the Commission has approved a site plan for Pavilions Phase I.

Mr. MacCall replied that is correct that the Commission approved a site plan and a critical slopes waiver for Phase I.

Mr. Cannon asked if staff could give him a rough sense of the comparative characteristics of the land involved in Phase I with Phase II. Proportionally are there more critical slopes on Phase I than in Phase II. Are they situated differently?

Mr. MacCall replied that he did not think it was 100 percent as identified in this particular one, but it was a good number.

Mr. Brooks noted that Phase I occupied the bulk of the waste area, which was a fill area to this site. So it was all disturbed. There was nothing left of the original site except perhaps a bit of the slopes up above the Montessori School. He did not even know if that was the original ground. The pines near Westminster Canterbury are the last remaining undisturbed areas. That is where the Commission can see the trees in the photographs.

Ms. Joseph said that she had a question for staff about the open space aspect. The ordinance states that open space shall be maintained in a natural state and shall not be developed with any man-made feature. How do we talk about having retaining walls in there of such an extensive amount? It seems as if the retaining walls are circling this site with massive retaining walls. How do we justify those when the ordinance says this shall not be developed with any man-made features?

Mr. Fritz replied that what that section actually says is that it shall be maintained in the natural undisturbed state except that certain features can be located within an open space such as and it goes on to list those such as items. Things like retaining walls, recreation areas, detentions and access roads can be in those things. But, structures or buildings permitted are limited to recreational facilities associated with the development.

Ms. Higgins said that the other important question is that they are asking for the clustering and under the provision the open percentage requirement kicks in. But, since this is already zoned

R-6 it does not necessarily have to be a clustered development. They could come in without the open space element.

Mr. Fritz noted that if these units were not for sale units there would be no open space and there would be no minimum lot size. It would look just like it does. It is because they are proposing to put in individual for sale units that kicks in the lot size and therefore the clustering provisions. But, if this were a rental development they would be here solely discussing critical slopes. There would be no open space and no clustering.

Mr. Cannon asked what proportion of that open space is taken up with functions such as retaining walls, storm water collection basins, utilities and other what he calls structural elements.

Mr. MacCall replied that he did not know the actual number. But, when he looks at the plan he really was not thinking of the retaining walls being structures. But, like a storm water facility or a sanitary sewer he was seeing it as assisting with some of the roads and just with the site in general holding basically Westminster Canterbury up when he was reviewing this. They are providing for some recreational facilities in a number of small fields. There are a number of adjacent areas that do prove to be other open space such as a small tot lot. The tot lot is a requirement for recreation for the number of units that they are proposing. They were using that as a substitution to some of the requirements that they are allowed to substitute some things.

Mr. Craddock asked how affordable housing works in this.

Mr. MacCall replied that it does not.

Mr. Fritz noted that there is a provision for affordable housing, which actually allows an increase in density. It allows additional units, but the applicant is not requesting that. So there is no evaluation done for that because there was no request made for affordable housing.

Ms. Joseph pointed out that it is by-right.

Mr. Fritz said that it is a non-discretionary bonus. If they provide the affordable housing, then they automatically get the bonus.

There being no further questions, Ms. Joseph opened the public hearing and invited the applicant to address the Commission.

Katurah Roell, representative for the applicant, Southern Development, said that he would try to address some of the comments and concerns. To look at some of the issues the retaining walls seem to be a concern. There are a few retaining walls that hold up the road on the north side near the power lines that separate Ashcroft. The other main series of walls is the section between Westminster Canterbury. He noted that about one-half of the whole lower side coming around use to be a waste area for Westminster Canterbury when it was built. So a part of those critical slopes have been disturbed and were just left at a 2:1 slope because that was the condition they left them in. The retaining walls that adjourn Westminster Canterbury directly are specifically there so they could lower the units and get them closer to their road grade that is internal and lower their roof lines to Westminster Canterbury so not to obstruct their views. That will allow them to do some plantings in the terraces of the retaining walls due to the separation and plant some trees as shown on the landscape plan. They have met with Westminster Canterbury's Director several times and they are aware of the concerns of the Westminster Canterbury Homeowner's Group. They can address any concerns the group has about

screening or additional plantings. They are happy to improve the tree canopy requirements. They realize that they are clearing a good bit of the site. As you can tell from the Master Plan, it is in the heart of the development area. It has been intended for that for quite some time. Due to Phase I this is only barely a third of the remaining site that will be addressed. The rest of the Master Plan, regarding the roads and basins, has now been addressed for quite some time. They have made ever effort to try to fit those units into the site and keep them within the tolerances of the ordinances. They have submitted their plans accordingly. Again, they will try to keep the plantings and some of the existing trees. They have basins for the water ways. The units on the upper portion of the site are separated by some trees to the pond. They are leaving the trees that separate pond #2 as was discussed between Fontana. There have been some concerns expressed by some of the Fontana homeowners about basin #1, which is the large basin in the upper left hand corner of the sheet. That went through quite a bit of discussion and engineering review with VDOT to make sure that there was no inundation of high water conditions due to that basin. But, those three basins in conjunction serve for water quality and storm water management. They all have four bays currently and are designed and/or built for each sediment basin until they are converted entirely with cat tails and water plants to improve water quality. But, they serve the entire area that covers Luxor Commercial to the Car Max all the way down to KIA and parts of Town and Country. This additionally serves for a portion of Fontana and was the original basin for Westminster Canterbury. They understand the need for the critical slopes waiver. They consider this to be in the heart of this development area. The amount of critical slopes being disturbed in this portion of the site probably relates to less than 25 percent of the non-disturbed area. Most of the townhouses along the power lines that are in the main section in the lower right hand side are in a gentle slope of less than 25 percent with the one road that connects the two clusters of town homes proposed together. That goes through a small section of trees that probably does not consist of more than a couple of acres left at this point. They have talked about the canopy that will be replaced. That is following the ordinances. They have tried to meet the requirements and be in compliance with the County's regulations.

Ms. Higgins asked if this was the final piece of the interconnection between Fontana and Route 250.

Mr. Roell replied that was correct.

Ms. Higgins asked if there were any drive ways proposed off of any of those roads.

Mr. Roell replied that there was no drive ways proposed off of any of those roads, except entrances or roundabouts at the request of VDOT. It is all internal transportation again, which somewhat drove some of the internal roads to connect the developments.

Mr. Cannon asked what percentage of earth moving activities will disturb critical slopes.

Mr. Roell replied that he was on that site daily and from what he was aware of in the area that is not currently disturbed it would be less than 25 percent of this portion of the plan for Phase II.

Mr. Cannon said that if Phase II is less than 25 percent of the area to be disturbed in critical slopes.

Mr. Roell replied that that has not already been disturbed and has been left in a previously graded 2:1 condition.

Mr. Cannon said that assuming that the important wooded area has not yet been disturbed, if they left the portion of that which is on critical slopes alone what would that do to their development. How much would it reduce their space?

Mr. Roell pointed out the location of the remaining cluster of trees on the plan. He noted the area that was wooded, but was not in critical slopes. He noted the location of the area of critical slopes, which was previously disturbed by Westminster Canterbury in their waste area and basin.

Mr. Cannon asked if they left that area of wooded critical slope what would that do to their development plan. He asked what would keep them from having a drive way access with the critical slopes.

Mr. Roell noted that they would have to get an additional curb cut from VDOT, but that the road way follows the topography. He noted that this proposal is in the heart of the development area and that they have followed all of the ordinances and requirements.

Ms. Joseph invited other public comment.

John Knox said that he represented the community of Westminster Canterbury, but not the administration nor the Board of Directors. He was Chair of the Residents' Association and the Resident's Council. This matter has come up rather quickly regarding the issues of the open space location and the critical slopes. This room is filled with Westminster residents. He is going to talk specifically about the open space location and the critical slopes issue. His colleague, Tom Michie, is going to review a resolution that they have passed unanimously by their Resident's Association and the Building and Grounds Committee that has studied these issues. They were going to talk about the issue of the Architectural Review Board review. But, now they understand that the ARB will review this proposal so they don't need to discuss that. He was not familiar with the history, but it may be true that some of the critical slopes are on the boundary line with Westminster Canterbury and that some were created at the time Westminster Canterbury was developed. He did not have any knowledge of that and would not concede that. Generally, he did not know if that was a fact. But, regardless the critical slopes are what they are now and it seems that this is what this Planning Commission and staff is obligated to look at. He showed the Commission two photographs of the site that showed the existing trees that would be destroyed to build the townhouses. His understanding was that stand of trees was coming down and the townhouses would come all the way over to the edge of the development. Towards the west there was a second stand of trees. It was his understanding that the developer was going to get a demolition permit to level the ground and make it much more level. They believe that if the developer relocated some of the open space by moving the townhouses somewhat westward away from their boundary, they would preserve many large trees that will be destroyed. They would preserve a natural buffer between their development and their two different uses, which was a basic requirement of the regulations for the location of open space and how to treat critical slopes. By moving the townhouses away it would remove the necessity of building that heavy retaining wall on the southwesterly portion of where the townhouses will be on Phase II. That calls for the destruction of the critical slopes along that area. The open space standards and ordinance requires areas to be part of the open space that are deemed inappropriate for development. This includes critical slopes. Open space should provide reasonable buffering between different uses. The staff notes that some of this development is located in an important wooded area. He was not positive what they are talking about. But, he would suspect the important wooded area was the two large stands of trees on this Phase II development. Obviously, some of those trees are very old. They agree that this is an important wooded area and should be somewhat preserved. He believed that

their plan was to take all of those trees down from those two locations. He wanted to emphasize that this was being done in an important wooded area that was part of their criteria. It seems that by alternating the open space and moving it westward and saving some of the trees and getting back from the necessity from cutting the critical slopes will not unreasonable impair the reasonable development of this site for the developer. During the last several times they heard that the developer would be willing to meet and talk with their group. They would be delighted if that could occur.

Tom Michie said that the Commission has a copy of the resolution that they passed. (No copy distributed.) He passed out 12 pictures of the site. He noted that one picture was of the mature trees that were the closest to Westminster Canterbury. The most critical issue is to save this stand of trees in its entirety. Otherwise, they will be looking at 343 townhouses because they are higher than they are. It is not a satisfactory answer that 30 years from now that they will have cover. It is unnecessary because the townhouses can be moved that are closest to us because the applicant has 36 percent open space.

Ken Webster, resident of 505 Fontana Drive, hoped that in the future that the Planning Commission and Engineering Department is not in a situation where nobody has a clue what a site looks like before hand. He deeply regrets not having taken pictures over the year. Pavilion I's zone was not significantly changed in the two years that he has lived in Fontana. It concerns him that nobody knows what the site looked like originally. Regarding Pavilion II he wanted to make a point about the road. He had been given several different answers by staff and the developer. Apparently the roads are a separate entity and the County has no say so over the road plan. He realized that the roads were not a part of Pavilion II. But, the people in Fontana would ask that at a minimum that some kind of guarantee of a stop sign be provided in advance where the new Verona Drive hits Fontana. That would slow down traffic as they enter Fontana. He hoped that could be provided and that some assurance be given that would be there. Secondly, he had not seen the packet handed out today, but he was concerned about the bigger picture about police, fire and safety, not just in light of this development, but the fact that between Pavilions I and II, pending Cascadia and Lake Ridge, that they had 800 units coming in the near future in this development area. He hoped that there was a significant proffer in this plan and that the County, in general, is making accommodations for the added demand for police, fire and safety. Third, regarding the retention pond 1 that is part of Pavilions I,, which fuses these two plans together in the open space, who is going to monitor and maintain these retention ponds over time after the development is complete. He asked if someone would make sure the overflow at the dam at the new Olympia Drive would not get clogged or failed in five years. The problem that they had with the Olympia Drive Extended was that it will flood the Fontana common area and one of the homeowner's properties if it gets clogged or failed.

William Collier, resident of Westminster Canterbury, said that he was concerned with the development in that there is going to be insufficient water to support the population that would live in this area. Secondly, he was concerned with the water and sewage treatment facilities that the County has to take care of. Lastly, he did not understand about the schools that would support the population that would come into this area.

Ms. Joseph asked if anyone wanted to ask the applicant a question at this time.

Mr. Morris asked Mr. Roell about the current situation with Pond 1 and who is going to take care of it.

Mr. Roell replied that the long term maintenance on all of those basins is through the Homeowner's Association, which they will be responsible for. It will be shared with Westminster

Canterbury and Fontana for a portion of the ponds, specifically number 2. But, otherwise the Homeowner's Association will be responsible for that. As far as the flooding concern, they spent several months with Mr. Brooks and VDOT addressing the possible inundation of a 500-year storm and got VDOT to agree if those structures ever became clogged due to debris that they would, in fact, overflow the road before they would inundate a house. Those concerns were very carefully addressed.

Ms. Higgins said that with Pavilions I the County required them to enter into a storm water maintenance agreement, which is recorded with the land to run with the land.

Mr. Roell agreed that was required for each of the separate basins.

Ms. Higgins said that requires an annual inspection. The storm water maintenance agreement that the land owner signs at the time of development actually has provisions in it for how the inspections are handled and if it is not maintained that the County has the authority to step in and do something. That is recorded and runs with the land even if the property changes hands and the homeowner's association would take it over after it is converted.

Mr. Roell said that is correct. It is a recorded document that was not abandoned and holds their feet to the conditions. All of those are done before the permits are even issued. To address the water concern, they actually ran a new 18" water main from Ashcroft to feed the entire development, which actually ties into the main on Route 250.

Ms. Higgins asked if there was any provision for a stop sign at the intersection at Fontana or controls at that point regarding the concern that has been raised.

Mr. Roell replied that there was no provision for a stop sign coming on to Verona Drive because it was simply an extension of one of the side streets. If engineering deems that they would like a stop sign there or the homeowners wanted to create a traffic calming device they would be happy to accommodate that. That is more or less a part of the mass road plan that has been reviewed and been under consideration for quite some time.

Mr. Edgerton said that depending on which calculation they use to determine what percentage was in both calculations, it was greater than the 25 percent mandated on clustering. Would there be a way to reconfigure this layout to preserve those trees taking into consideration the concerns of the residents of Westminster Canterbury. He asked if they have looked at that.

Mr. Roell replied yes, that they have. This is about the fourth iteration. They went through several previous designs before they turned it in and then went through modifications with staff afterwards to make sure they could preserve some buffer. They cannot go further west because of the road and the boundary to the pond. They have units up to that. The pine trees that separate Ashcroft are separated by a major overhead power line. They are going to be putting plantings in separating their units from them.

Mr. Edgerton asked if the only way to save trees would be to reduce the number of units.

Mr. Roell agreed that they would have to reduce the overall density. Then they would have to reconfigure some sort of road access to that point because they can't come up off of that road. They are trying to drop those units down as much as they can without creating more intense retaining walls. The retaining walls that are built between them and Westminster Canterbury are already in a disturbed area as a result of their original grading that left that slope down to

their road that was used for access. That road already in gravel was used for construction of their buildings. He understood their concerns about the trees.

Mr. Cannon asked if he had any idea of what percentage of density would be lost to save those trees.

Mr. Roell replied that it would be about a fourth of the units that are on the far left side of the plan. His concern with leaving the group of trees standing on the crest of the ridge would be that it would be very susceptible to wind failure and be a hazard.

Mr. Craddock asked if they had met with the residents of Westminster Canterbury.

Mr. Roell replied that they had met with the management, but not the residents of Westminster Canterbury. They would be happy to sit down with the residents to discuss the plan and try to accommodate their concerns. They have had several discussions with the Fontana residents over the years, but there has been no meeting specifically on Phase II.

Ms. Joseph said that the public hearing was closed and the matter before the Commission.

Mr. Edgerton asked what density is being proposed.

Mr. MacCall replied that the density for both Phases I and II is right at the 6 dwelling units per acre that it is zoned for, which is the maximum.

Mr. Cannon said that his understanding from their discussion was that to protect the stand of trees would result in a reduction in the density of Phase II of 25 percent.

Ms. Higgins questioned if in the landscaping plan the applicant would be willing to protect the tree plantings in that area.

Ms. Joseph said that there are three actions for open space, critical slopes and the site plan itself. She felt that some of these issues are interconnected. She thought that what Ms. Higgins said was very compelling because when they have looked at critical slopes in the past to mitigate the effects of removing these critical slopes the applicant has offered more vegetation in the areas. It does not make the folks in Westminster Canterbury happy because it means that some of the trees will be removed. But, it also means that it will be greener as they are looking down. It might not be the green that blocks their view now, but it would be greener than shown in the landscape plan. That would go a long way to make the 12' retaining walls palatable. That is 38' if all of the retaining walls are added up. It seems enormous. They need some way to minimize the effect of those things in the area. In this case, landscaping could help a lot to cure what is going on with this particular project. It is in the growth area. It is a by right use. However, the open space, clustering and open space placement is not by right.

Mr. Edgerton said that there is a lot of interconnectivity in what is being asked for this evening. They are being asked to judge the open space. Staff's interpretation has primarily been focused on square footage or percentage of site. So they are being asked to judge the open space. If they judge it appropriately, then that allows the clustering of units on critical slopes that the ordinance says they should not put units on. So he had a real issue with that. Now it is a by right development and it is in a development area. But, just because is it in a development area, in his opinion, does not mean that it has to be developed to the maximum intensity. That is what he is still struggling with. He would like to think that the other provisions in the ordinance that talk about working with the natural topography and working with trying to preserve the

important trees are being considered. He questioned whether this property should not be clustered and developed in a more traditional sense. He was not sure if they were getting that much of a benefit. He questioned if staff could provide examples where this has been done where within a ten year period that they could accomplish what is being required in tree canopy. He hoped that they could up with a simpler plan that respects the elements of the Neighborhood Model. He had trouble with the idea of bulldozing and cutting down these mature trees and that they could be replaced. They have to make a decision about the open space and critical slopes. He felt that it was the whole site that was being disturbed and could not support the waiver requests. He suggested that the applicant come back with a plan more sensitive to the site that does accomplish the density that they were trying to get. He would like to see the applicant try a little harder.

Ms. Higgins suggested that they ask the applicant if he would like to request a deferral to try to address these issues before they take a vote.

Ms. Joseph asked Mr. Kamptner if these issues are denied if the applicant could come back with a changed plan.

Mr. Kamptner replied yes, but that deferring action and letting the applicant speak to the Westminster Canterbury residents before the Commission has to take action would be a much smoother process.

Ms. Joseph said that there was a member of the public that wanted to address the Commission. She asked if the Commission wanted to entertain the request. After discussion the Commission agreed to allow Ms. Davis to speak for a limited time.

Jean Davis, planner and resident of Westminster Canterbury, noted that Pavilions I and II combined permits 6 dwelling units per acre. There are 6.5 dwelling units in Pavilions I, which means that when you add the 2.44 to Pavilions II you get a high density of 8.44 per acre.

Ms. Joseph thanked Ms. Davis. She asked the applicant to come forward and advise the Commission if deferral is something that he would like to consider.

Mr. Roell stated on behalf of the folks they represent he would be willing to defer so that further discussion can be made. They can meet further with the staff and some of the neighbors and try to address some of the sensitivities to this site. Therefore, he would ask for a thirty day deferral if it was possible.

Mr. Edgerton asked for some clarification. He asked if they are asking for a deferral to argue the case for this plan or would there be a chance that it would be adjusted.

Mr. Roell said that was not his call since he was not in charge of this. He was present simply to make a presentation for the applicant and discuss the critical slopes. He would be happy to take it to the parties involved.

Ms. Joseph said what she did hear from Mr. Roell was that he was willing to meet with the neighbors and discuss some of the sensitive issues that he had heard tonight.

Mr. Roell replied yes, and that he had expressed that prior to this deferral request. He would be happy to meet with some of the Commissioners to discuss some of their input that they feel would be pertinent.

Motion: Ms. Higgins moved, Mr. Morris seconded, to accept the applicant's request for deferral of SDP-2006-042, Pavilions – Phase II.

The motion passed by a vote of 7:0.

Ms. Joseph stated that the deferral was approved. That means that this item would come back before the Commission again, which would give the applicant some time to talk about some of these issues with the neighbors and staff.

The meeting recessed at 7:40 p.m. and reconvened at 7:55 p.m.

Public Hearing Items:

SP 2005-008 Tortilleria y Panderia la Michoacana (Sign #31) - Request for a special use permit to allow a Home Occupation Class B for a Catering business in accordance with Section 10.2.2.31 of the Zoning Ordinance, which allows for Home Occupations Class B. The property is described as Tax Map 99, Parcel 27A1, contains 13.68 acres, and is zoned VR, Village Residential and EC Entrance Corridor Overlay. The proposal is located at 3808 Monacan Trail (Route 29), south of the intersection of Monacan Trail and Plank Road (Route 712Route 692), in the Samuel Miller District. The Comprehensive Plan designates this property Rural Area. (Amy Arnold)

Ms. Arnold summarized the staff report:

- The applicant currently has a Home Occupation Class A (HO2004-140) that was approved on March 25, 2004 for a catering business. They prepare food in their home and deliver and sell food at construction sites, local soccer games and for the past three years at the Albemarle County Fair. In response to demand for their food the applicant constructed a shed to contain a larger kitchen dedicated solely to the home occupation. A complaint was filed about the construction of a shed and the applicant was found in violation for constructing the shed without a special use permit, the proper building permits or required inspections. The violation was abated when the applicant applied for a special use permit in February, 2005. Due to multiple complications with their well, septic system and Health Department requirements for the kitchen, the Gaona's application for a special use permit was indefinitely deferred on March 24, 2005.
- Since that time the Gaona's have worked with Eric Meyers with the State Health Department to comply with required standards by digging a new well, establishing an adequate septic system and establishing appropriate kitchen configuration. The Gaona's have returned to the County to continue their request for a Home Occupation, Class B proposing the use of one shed as a kitchen to support the expansion of their catering business. The shed is located adjacent to the house on the south side and constructed on a concrete pad with the finished shed measuring 18' X 20'. It is located approximately 15' from the property line.
- The immediate context is comprised of scattered residence located between the eastern edge of wooded ridge line and the west side of Route 29 south just south of the intersection of Route 29 and Plank Road at North Garden. The Gaona parcel is the southern most property in a pocket of existing Village Residential zoning located along Route 29 south. The adjacent property to the south is zoned Rural Areas.
- The neighbor immediately adjacent to the southern boundary of the property has expressed concerns about the location of the shed in relationship to their property and about aromas resulting from cooking. The applicant has agreed to ease the concerns of their neighbor by planting a 100' long buffer of evergreen trees or tall shrubs that will be

6' tall on planting along the boundary between the two properties. The proposed location of this planted buffer is included on the concept plan. The proposed buffer will not likely reduce cooking aromas, but will reduce the visibility of activities resulting from the proposed home occupation.

- Staff has provided copies of a letter written by Pastor Smith who is the pastor of the First Baptist Church in Covesville on behalf of the Gaona's neighbor, Ms. Rachel Walker, outlining her concerns. (Attachment)

- Staff has identified the following factors favorable to this application:
    1. Supports the economy of the County provided by low impact, small businesses.
    2. The shed/kitchen is of similar scale and type as other buildings in the Rural Areas.
    3. The proposed use does not increase traffic on near-by roads, nor does it constitute activity of a scale and intensity that is inconsistent with the character of the Rural Areas.
    4. This proposal does not include impacting the wooded portion of the Gaona property, which represents a majority of the parcel

- Staff has identified the following factor unfavorable to this application: the negative impact expressed by the neighbor to the south due to the location of the shed and aromas from cooking.

- Based on findings contained in the staff report, staff recommends approval of the special use permit for the Gaona home occupation with the conditions listed in the staff report. The applicant is present to answer questions. Also, staff is happy to answer any questions.

Ms. Joseph asked if there were any questions for staff.

Ms. Higgins said that staff suggests a condition 3 entrance from 29 South shall meet VDOT minimum standards for entrances to private street requirements. It is a public road. Therefore, is this suggesting a commercial entrance? In the way it references this VDOT would only have a residential requirement. But, when staff says private street requirements a public road is a commercial entrance.

Ms. Arnold replied no. VDOT's minimum standard for entrances onto highways has a drawing that is specifically called Private Street or subdivision entrance. That is the one that they have been continuing to reference for rural area projects and is this entrance.

Ms. Higgins noted that what the Commission has seen before they have not gotten into a more commercial type entrance if just two employees are involved. That would mean that the level of traffic is actually going to stay the same. That is why she questioned it.

Ms. Arnold said that the County Engineer is concerned about its proximity to Route 29 and wanted to make sure that trucks had a good footing before entering in on that highway. The configuration of the entrance is essentially what VDOT is requiring now. The primary thing missing is the paving. It is that wide already and already has a culvert with a great big radius on the other side, but it is just that it is gravel.

Mr. Edgerton noted that staff had said that the shed was put up without permits. He asked if the shed respects the building setback line on the south side.

Ms. Higgins pointed out that the applicant had gotten a permit for the shed.

Ms. Arnold said that it was located 15' from the property line. The building permit has been completely signed off on.

Mr. Craddock asked if the 100' of trees assumes that there is enough space on this property to plant those trees. He asked how far the 100' goes back past their shed. He assumed that Ms. Walker's house was almost directly across from their shed.

Ms. Arnold replied that the Gaona's house and the shed are below Ms. Walker's house by quite a bit. She visited the site and located where the buffer would go with the Gaona's to make sure there was enough space to plant the trees and agreed on where it would start. It goes actually back to the rear face of the main house, which is actually set back from where the shed is.

Ms. Higgins asked if staff is measuring it 100' from Route 29 as the sketch shows. The sketch shows the buffer going underneath the power line, too, which means as the trees grow up somebody is going to come along and clear the power line potentially and cut the trees down.

Ms. Arnold said that there is actually a stand of trees that would prevent that from happening. Before you get to Route 29 there is a stand of big deciduous trees.

Ms. Higgins asked if the 100' was not measured from Route 29.

Ms. Arnold replied no, that it was measured from that deciduous group of trees.

Ms. Higgins suggested that staff make sure that the sketch is corrected because that is what would have to be maintained. The zoning staff would only have this sketch to go by for enforcement purposes.

Ms. Arnold suggested that the wording be changed to say located at the deciduous trees.

Mr. Craddock said that it appears from the drawing that the Vess property that their driveway is on the Gaona's property. He asked if anyone else had complained about the odor.

Ms. Arnold replied no that no one else has complained.

Mr. Strucko asked what the building requirements for a cooking operation shed are. What does that need to have? He said that obviously it needs to have a ventilation system of some sort, fire suppression or something like that.

Ms. Arnold stated that was correct. Eric Meyers, with the Virginia Department of Health, has been out there helping the Gaona's walk through what their requirements are for a kitchen. What will happen should the Board of Supervisors approve the home occupation is our Building Inspections Department will go out and make sure that everything is as it should be.

Ms. Joseph said that the Health Department is the major concern here with the concerns about the well, septic and the cooking area itself. The Health Department has been out there and they have complied with a lot of things so far.

Ms. Arnold replied that they have completely solved the well by digging a new one. They have redone the septic system so that it meets their requirements. There is a very short list that she received by email from Eric Meyers of a few very small things they still need to do to the kitchen.

But, the big ones were really the septic and the well. The applicants have worked very hard to clear those two issues up.

Mr. Edgerton questioned the location of the shed on the photograph on page 10.

Ms. Arnold noted that photograph was part of the violation. The shed was originally built down under the power lines very close to 29. That was not an appropriate spot for the shed. So not only was it built without permits, but it was built in a place that it could not stay. So the shed has been moved up the hill and placed on a foundation.

Mr. Edgerton asked if all of that happened before it came back to the Commission.

Ms. Arnold replied yes.

Ms. Higgins noted that the applicant currently has a Home Occupation, Class A permit. The only reason it is before the Commission was the two employees.

Mr., Edgerton said that the shed requires a Class B, Home Occupation.

Ms. Arnold noted that the applicant is not asking for employees.

Mr. Strucko asked if they are cooking in the shed now.

Ms. Arnold replied no.

Mr. Strucko asked if the cooking odor complaint is from the residence.

Ms. Arnold replied that was correct. She suggested that they ask the applicant.

Mr. Strucko asked if the shed itself was not functional, and Ms. Arnold replied no that it is not.

Ms. Higgins asked what the applicant could do with just the Class A, Home Occupation.

Ms. Arnold said that they can cook in their house.

Mr. Cilimberg noted that they could not have employees, but they are not proposing employees anyway.

Ms. Higgins asked if they could still run their catering business out of their house.

Ms. Arnold replied that was correct. The use of an accessory building kicks it into a Class B, Home Occupation.

There being no further questions for staff, Ms. Joseph opened the public hearing and invited the applicant to come forward and address the Commission.

Ms. Deais said that she would be translating for Mr. and Mrs. Gaona because they have limited English.

Ms. Joseph said that she was amazed that they have done as much work that they have on the well and the septic. She felt that was impressive.

Mr. Morris asked where the cooking was being done right now.

Ms. Deais said that right now the cooking is being done in the mobile units. It is a very small cramped spot so they wanted a bigger kitchen to have more space and make more food.

Mr. Strucko asked if the cooking operation would move from the trailer to the shed. He asked if it would stay in both places.

Ms. Deais replied yes.

Ms. Joseph asked when the cooking takes place. Does it start at 8:00 a.m. and they keep cooking all the way at 6:00 p.m. or does it start at 8:00 a.m. and stop at noon.

Ms. Deais said that they start cooking right before they leave. Like at 8:00 a.m. they start cooking before they leave to a site that they are going to. If they run out of food, then they cook on the spot.

Ms. Joseph asked what time do they leave.

Ms. Deais said that when they go to construction sites they start at 8:00 a.m. and leave their house at 11:00 a.m. to be there around lunch time.

Ms. Joseph said that it is about 3 hours.

Ms. Deais agreed.

Ms. Joseph asked if any thing happens in the evening.

Ms. Deais replied yes, that they prepare more food in the afternoon to go set up at Southwood Trailer Court. They cook on the spot if they need to. It depends on how much they need.

Ms. Joseph said that they cook at home from 8:00 a.m. to 11:00 a.m. and then go to the construction sites. Then they come home and cook from 2:00 p.m. to 4:00 p.m.

Ms. Deais said sometimes they cook to 5:00 p.m.

Ms. Joseph said that it is about 3 hours cooking at home in the morning and afternoon and that is it.

Ms. Deais replied yes, that it averaged about 6 hours a day.

Mr. Craddock noted that he had seen the trailer at Stone Robinson for the Sunday soccer and football games. It looks like they do a lot of business there because it appears to be very busy.

Ms. Deais agreed.

Mr. Craddock asked if there was any type of device that would remove the odors from the cooking. Or did the Health Department suggest anything.

Ms. Deais replied that the Health Department has not said anything about the odors. They told them once to put in the vent to draw the heat.

Ms. Higgins noted that actually throws the odor out to the outside. The requirement is to exhaust out of the dwelling.

Mr. Gaona said the Health Department had come and inspected it so that everything is correct.

Ms. Higgins asked if they operate with no employees at this time. She asked if they have helpers that they intend to hire.

Mr. Gaona said that it is only his wife and himself.

Ms. Deais said that sometimes his children help.

Ms. Joseph pointed out that their children do not count.

Ms. Higgins asked if they understand that it is limited to two persons outside of the family.

Ms. Deais replied yes that they understood. She asked if their siblings count.

Ms. Joseph asked if the siblings count.

Mr. Cilimberg noted that it is based on whether they live on the property. Persons living on the property don't count employees.

Ms. Joseph said that if a brother or sister comes and helps, then they would count as part of the two employees. She said that there was one person signed up to speak on this, which was Rachael Walker. She invited Ms. Walker to come forward and address the Commission.

Rachael Walker said that she lives south of the Gaonas. When this project got started they did not have permission to do so from the Albemarle County Office Building. It was stopped by them. They are talking about 2.7 acres of land instead of 13.68 acres. There is a lot of heavy aroma coming from the food. Everyone knows that when there is an excessive amount of food cooked that it will draw a lot of animals out of the woods that is being unwanted. In the back of the property is nothing but a wooded area. There is going to be more traffic in and out. They have band music going on. There is a lot of traffic in and out with that. They are raising vicious dogs. There is a lot of in and out traffic with that. There are other neighbors in our community that is complaining about the odor. One of the neighbors, Ms. Vess, her husband was in an accident that made her unable to be here this afternoon. She and her son had to stay with her husband because he had to go to therapy this afternoon. She built her house in the rural area and had no intention of building it near a restaurant or a catering business. She wanted a peace of mind. She likes fresh air and keeps her windows up. The food odor comes in and chokes her and settles in her hair and clothing. She is a Christian lady and goes to church. She pointed out that the Gaonas do speak English. The trees that they have planted on the property are over on her property a foot too much. Also, the trees are not at a height as this paper stated that they should be at 6'. She did not think that some of the trees were 6' tall. Another concern is that they have placed a driveway all the way around their house. This shed is very close to her house. She is concerned about the safety. If the shed would catch fire it was going to come to her house. The shed has a sliding window to it just like the ones at McDonald's or Hardee's, which concerned her due to the driveway being completely around their house.

Tika Hudson said that she was Rachael Walker's daughter. She also lives on the site and wants to address the issue with the increased risk to her mother's homeowner's insurance. If

this permit is allowed her mother's homeowner's insurance has a possibility of increasing due to the fact that her house now has an increase in the amount of exposures that could be brought on by fire or by the trees that are planted as a buffer. The trees are very short. They can see over the trees. She also wanted to address the fact of increased traffic. With increased traffic there is increased people and trash. They have already disrupted their water table by having to install an extra well and having to dig another sewage tank or facility. They are also going to increase the resources of electricity. There is going to be an extra strain on the community. The shed was originally placed on the property in violation directly beside Route 29. In the process of moving the shed someone went across their property with a huge truck and destroyed their lawn. No one gave them permission to do so. They came to their house the next day after they destroyed over one-half of their yard. They made an attempt to fix this, but you can still tell that their yard has been destroyed by this. It was a trespassing issue. Their band practices music after 9:00 p.m. even after being told not to do so. She has made continued reports to the police, but they continue to play their music after 9:00 a.m. So even if they do allow this what is going say that they are not going to go forward and do something else that is illegal because they did start this project illegally. So they do not follow any ordinance that is presented to them.

There being no further public comment, Ms. Joseph closed the public hearing to bring the matter before the Commission.

Mr. Morris said that his only concern is the comments that possibly people are coming to the site to get the food. He thought that all the consumption of the food was at another site such as a construction site or the trailer park, etc. But, what he was hearing was that possibly people come to the site to get food.

Ms. Higgins said that if that happened that it would be a zoning violation. That is an enforceable issue.

Ms. Joseph noted that they were not addressing the band at this point. They are addressing the traffic issue by limiting it to the fact that things are not bought on site and that limiting it to two employees reduces the traffic. The hours are reduced from 8:00 a.m. to 6:00 p.m. The building has been relocated and the buffer planted. They can put driveways where they want to as any one can do in the rural areas.

Ms. Higgins asked if the buffer has already been planted.

Ms. Arnold said that the buffer has actually been planted. But, she has not been out there since the trees were planted.

Ms. Higgins asked if someone would verify that the trees are the correct height and in the right location.

Ms. Arnold replied that zoning will do that.

Ms. Joseph said that they can plant trees any where they want to right now on their land. The other concern is the trash. She would assume that the Health Department would come periodically and inspect.

Ms. Arnold said that she did not know if the Health Department would do that.

Ms. Higgins said that the Health Department would inspect a commercial kitchen.

Mr. Craddock asked how often the Health Department would inspect the property.

Ms. Higgins noted that the Health Department could inspect at random or upon a complaint.

Mr. Edgerton said that if they deny the request, they would only be denying the use of the shed.

Ms. Higgins said that the food would still continue, but it would be cooked in the house.

Mr. Cilimberg added or in the trailer.

Mr. Edgerton said that there was no way to deny the use of the trailer to cook.

Ms. Higgins said that this special use permit request would move the operation out to the shed.

Mr. Morris said that the advantages of the special use permit outweigh the disadvantages.

Mr. Strucko agreed, but noted that he was concerned about the way that they got here. He noted that there had been violations over the course of a couple of years. It even required the relocation of the original building and apparently the crossing of a property line to accommodate that. But, yet it was hard to get in between a dispute between neighbors like this. That is bad. But, as the staff report suggests it does support commercial use of low impact. Therefore, he was in favor of that.

Ms. Joseph said that home occupations always offer people the opportunity to start a business small. She was hoping that the Gaonas in the next year or so will be so big and so successful that they will be in another place somewhere closer to town. But, she felt that it was unfortunate. It is true that if they get the Home Occupation, Class B it will be regulated by the Health Department and will be under all kinds of regulations from the County. There will be things that can be enforced. If they don't, then they can continue cooking and the odors will still be there and things will still be happening. But, once they have the Class B, then anybody coming to food on site and all of those other things can be regulated including the trash. Someone can call the Health Department and asked if they are in violation of their approval. Therefore, she could support it.

Ms. Higgins recommended that condition 7 be changed so that the buffer is not per the plan, but per Ms. Arnold's field guidance. The plan needs to be corrected to show where the buffer actually is.

Mr. Cilimberg said that staff will modify condition 7 before the request goes to the Board to reflect that.

Mr. Edgerton said that he would vote against this motion. He feels that Ms. Walker bought her home in good faith. If this happened next door to his home, he would hope that he could get some relief from the County. With the approval of the special use permit, it makes this legal. That does not help Ms. Walker with her concerns. He felt that she was being denied the use of her property the way that she intended to use it. There are no two ways about that. He said that they could continue to cook, but they cannot continue to keep putting up sheds and expanding businesses. He felt that they have an obligation to try to provide some relief. Therefore, he could not vote for this request.

Ms. Joseph pointed out that she had worked for the Zoning Department for a long time and that a lot of people don't know that they are breaking the rules. She felt that the applicants have shown a good faith effort to not be in violations because it is not cheap drilling another well or fixing the septic. Therefore, she felt that there has been a good faith effort to come into compliance.

Mr. Strucko said that he hoped that the Class B would impose the restrictions necessary to address the concerns more effectively than the existing Class A. That would include monitoring the trash, making sure that the operation is health compliant and that traffic is not moving in and out.

Mr. Craddock noted that the expansion was limited by the size of the dwelling.

Motion: Mr. Morris moved, Ms. Higgins seconded, to approve SP-2005-008, Tortilleria y Panderia la Michoacana with the conditions as recommended by staff, as amended.

1. Special Use Permit 2005-08 shall be developed in general accord with the concept plan, titled 'Gaona Home Occupation' (Attachment A.) and dated June 8, 2006. However, the Zoning Administrator may approve revisions to the concept plan to allow compliance with the Zoning Ordinance.
2. The proposed shed shall be constructed no larger than 18' x 20'.
3. The entrance from Route 29 South shall meet VDOT Minimum Standards for Entrances to Private Street requirements.
4. No more than two employees other than persons living on the property are permitted to come to this site for any work-related purpose.
5. The hours of operation of this home occupation shall be limited to 8:00 am until 6:00 pm.
6. Vehicles parked on site associated with this home occupation shall be limited to one panel truck and one trailer.
7. The applicant shall plant and maintain a 100' long continuous buffer adjacent to the southern parcel boundary. The buffer shall begin 15' from the westernmost trunks of the existing cluster of large deciduous trees located at the intersection of parcels 27A1, 27A2, and Route 29 South. The plants comprising the buffer shall be evergreen trees or large shrubs (6' tall minimum upon planting; 8' minimum mature height); mixed species or a monoculture. The trees/shrubs shall be planted a minimum of 8' on center for the continuous 100' length. Suggested species include: Juniperus virginiana (Virginia red cedar) and Ilex opaca (American holly). The approximate location of the buffer is indicated on the concept plan (Attachment A.).

The motion passed by a vote of 6:1. (Commissioner Edgerton voted nay.)

Ms. Joseph stated that SP-2005-008 Tortilleria y Panderia La Michoacana would go to the Board of Supervisors on July 12 with a recommendation for approval.

SP 2006-010 Charlottesville Waldorf School Amendment (Sign #11)
PROPOSED: Amendment of Special Use Permit to allow for revisions to approved concept plan.
ZONING CATEGORY/GENERAL USAGE: R-4 Residential (4 units/acre)
SECTION: 15.2.2.5 which allows for private schools in R-4 residential by special use permit.
COMPREHENSIVE PLAN LAND USE/DENSITY: Urban Density Residential - residential (6.01-34 units/acre) and supporting uses such as religious institutions, schools, commercial, office and service uses in Neighborhood Two.

ENTRANCE CORRIDOR: Yes
LOCATION: 734 Rio Road, near the intersection of Penn Park Road and Rio Road.
TAX MAP/PARCEL: Tax Map 61, Parcel 17
MAGISTERIAL DISTRICT: Rio
STAFF: Sean Dougherty

Mr. Dougherty summarized the staff report.

- This is SP-2006-010, Charlottesville Waldorf School Amendment. The special use permit was originally approved for this project in 2002 under SP-2001-004. Kevin O'Brien, Project Manager for the Charlottesville Waldorf School, represents the application. The project includes basically an amendment of their concept plan, but the general function of the school understood back in 2001 remains the same. That limits the school to 300 students and establishes the normal hours of operation.

- **Factors Favorable:**
    1. The amendment helps to shift the campus buildings closer to Rio Road, more in keeping with the Neighborhood Model
    2. The plan continues to reflect the recommendations of the Jones and Jones study for the Meadowcreek Parkway and the urban core proposed near the entrance to the Parkway.
    3. The plan reflects a future road reservation width (to the northern properties) that is more keeping with current County standards.
    4. The additional condition that applies the building setback to parking as well ensures an appropriate condition given the neighboring residential uses.

- There are no factors unfavorable to this request. Therefore, staff recommends approval of this request with the condition outlined in the staff report. Staff distributed copies of an email response to Ms. Joseph sent this afternoon.

Ms. Joseph asked if there were any questions for Mr. Dougherty.

Ms. Higgins said that in the staff report it talks about Attachment D and E as the plan and the action letter. Since Attachment E was not the official Board action letter, she asked if all of the ten conditions in Attachment E were adopted by the Board. Since this was an amendment to the original special use perm it she felt that they have to go back to the originally approved conditions and compare it to the modified conditions. She said that staff's conditions don't match up to the original conditions. Therefore, she has a lot of questions related to those.

Mr. Dougherty said that some things have changed and the conditions have been updated in coordination with Zoning. The conditions got a little out of date, especially with different changes to property ownership and different parts of the original special use permit that are still relevant. It is basically the concept plan, which shows the critical slopes.

Ms. Higgins asked if staff has the conditions of the special use permit that is in effect right now. She asked if those conditions were exactly like what is in Attachment E. She understood that he was trying to update those conditions, but felt that if they skip one are they in essence deleting that condition. Do those conditions live through the amendment?

Ms. Joseph asked if the new set of conditions replace the other ones.

Mr. Dougherty replied that the new set of conditions do replace the other ones.

Mr. Cilimberg said that when staff works on the conditions of a new special use permit they work with the County Attorney's Office and the Zoning Department to make sure they are reflecting what needs to be in place now. Some conditions get outdated or they may have been satisfied or what have you. So while they have a staff report from back at that time that gives them conditions what this report does is recommend the conditions that are felt to be necessary now based on circumstances that exist with the site and what meets legal and zoning requirements.

Ms. Higgins said that since this was an amendment and not a new special use permit would the conditions from before be replaced.

Mr. Kamptner said that it depends on the application. In this case, although there is a special use permit that is being amended, because the use has already been approved, there is a wholesale revision of the conditions to bring them up to date. Sometimes the whole amendment is just changing one number in a particular condition.

Ms. Higgins asked if they could say that the ten conditions of before no longer apply and that these new conditions take the place of them.

Mr. Kamptner said yes, that is the case.

Mr. Cilimberg said that all of the recommended conditions would replace the previous conditions.

Ms. Higgins asked why the maximum number of students 350 is and the maximum staff was 65 and now it is 40. In the new conditions staff has been downgraded to 40 and it was approved for a maximum of 65.

Mr. Dougherty noted what explains that is the interim step with the amendment with the amendment 2003-40, which allowed for the separate house to be used for an early childhood center. He was following the conditions that were the result of that. From that it started at 40 for employees.

Ms. Joseph said that was special use permit amendment 2. But, they are on amendment 3 here.

Ms. Higgins said that Attachment E is amendment 2.

Mr. Dougherty apologized that Attachment E was the wrong thing because it was actually the staff report or the summary from the initial request.

Ms. Higgins asked if he had the action letter that was issued.

Mr. Dougherty replied that he did not have that action letter with him.

Ms. Higgins said that he was saying that some how between what was recommended to the Board for the amendment 2 when they recommended 65 they have gone down to 40. That was just a question of whether that was correct. Then there was a number 9, which is a 50' greenway dedication along Meadow Creek Parkway. Staff has another condition that relates to that. Then there is one condition that has completely been done away with that seemed to be number 4 regarding a tree buffer that was specified as a certain distance of 1,006.39 linear feet. It is specified to be maintained. When it says maintained are they taking the requirement away for that and the maintenance of it. It was number 4 in Attachment E.

Mr. Dougherty said what takes the place of that is there is a green line shown on the concept plan now and a condition that respects it. He understood her confusion. What they don't have here is the middle step and the most updated conditions. He apologized for that. If that was eliminated in step 2 and in step 3 it sort of guarantees the buffer remains around the property. To tidy things up a little bit in conjunction with the Zoning Administrator staff proposed the

amendment to condition 11 in the current staff report that says that the 20' setback will apply to buildings, parking and also undisturbed buffer.

Ms. Joseph noted that the problem is that they cannot read this. They can't see that there is a buffer on this sketch. There is a little skinny line on here that they don't know what it means. The sketch makes it confusing.

Ms. Higgins said that she just went through and tried to relate what they were doing with what was there. Number 6 and 7 are changed conditions. If they are changing it she just wanted to understand on the plan what they were changing. Some of the conditions are repeated. But, when a condition is left out or changed she was trying to understand what was previously. She noted that zoning needs to understand what the conditions mean and what it refers to when they go on site to enforce them. Why was number 6 about the alternative access connections that were necessary to change from what was in the old one, which specifically talks about two adjacent properties on Rio Road and that the final site plan connection should show future connections with 173A and 174. She asked if there was a final site plan that showed those.

Mr. Dougherty said that 173A was absorbed into 170. There were two parcels combined into tax map/parcel 61-170. That accounts for some of the changes and updates. Number 7 talks about that a final site plan is suppose to be done. In number 6 staff has changed the wording, which implies that it was not done in the final site plan that was approved from the previous special use permit. It was either satisfied and it went away or not. That would be number 7 of Attachment E recommendation.

Mr. Cilimberg noted that there are two missing pieces in this. One she is not referring to that is in the report and the other is the action letters themselves. The Board's action letters are not part of this report and should have been. But, she was referring to the original special use permit conditions when she cites changes. Those were not the ones that are in effect right now. The conditions that are in effect now would be reflective of the special use permit that was done in 2003, which is in Attachment C

Ms. Joseph said that was the stand alone parking.

Mr. Cilimberg noted that Attachment C was where all conditions were updated from the original approval. That is on pages 16, 17 and 18.

Ms. Joseph noted that it says that the conditions are original except where you see italics.

Ms. Higgins said that the action letter was still missing.

Mr. Cilimberg noted that these are the applicable conditions based on the action letter, but not the Attachment E that was the original.

Ms. Higgins said the staff report said that the action letter was in Attachment E.

Mr. Cilimberg agreed that it was a mistake in the staff report since it was not.

Ms. Higgins said that now comparing the recommended 12 items they relate one to one except for the ones that were already done.

Mr. Dougherty replied that was roughly correct. The parcels that have been accounted for in the original special use permit have been now combined into parcel 170. That accounts for some of the updates.

Ms. Higgins asked about condition 9 on Attachment C. It refers to greenway dedication along Meadow Creek at the western boundary being made at the time of final site plan approval. She asked if that had been done.

Mr. Dougherty replied that final site plan approval has not been requested.

Ms. Higgins asked if since 2003 there was no final site plan approval.

Ms. Joseph asked how they vested this project.

Ms. Higgins noted that it would have expired. She felt that something like that either should have been done or would not be repeated. But, now they were repeating it again. Therefore, she just wanted to understand it.

Mr. Cilimberg said that if he was not mistaken, that the only thing that has actually been built on these properties is the early childhood center.

Mr. Dougherty noted that just the parking for the early childhood center had been done.

Mr. Cilimberg pointed out that required a site plan that was done.

Mr. Kamptner said that they also built a road.

Mr. Cilimberg said that the applicant did the improvements associated with establishing that as a use for an early childhood center, including parking. That required a site plan.

Mr. Edgerton noted that was the new parking in the rear.

Ms. Joseph asked why they did stand along parking instead of combing those parcels in 2003.

Mr. Dougherty replied that was because of the different parcels that were there. The stand alone parking was on a separate parcel.

Ms. Joseph pointed out that staff said they combined the parcels on the other part. She asked why they did not combine those instead of doing stand along parking.

Mr. Dougherty noted that tax map/parcel 61-174 with the stand alone parking at the house is owned by a friend of the school who is leasing the property to the school. Technically, if they were to combine that parcel they could potentially not sell or redevelop that parcel in the future. That may occur. So in order to basically keep that as something that the school could one day potentially sell or not use or get rid of, that sort of allows that condition to stay in place. That was part of the agreement to get that parking set up.

Ms. Joseph said what they are looking at in this request is this building showing no parking.

Mr. Dougherty said if the County asks for that interconnection to happen in the future, then the applicant would have to construct alternative parking.

Ms. Joseph asked if this parking was enough to serve both buildings. So they were looking at this building and a future building site.

Mr. Dougherty noted that is not part of this special use permit. The reason that is shown is really more for the guiding principles of the Jones and Jones Study, which anticipates potentially having a public green facing that other area. The Zoning Administrator asked that potential future building be placed on there. But, that would not be part of this special use permit. It was just the main building, which was proposed in red, and then the existing building.

Mr. Edgerton said that there would be a significant reconfiguration of the vehicular access. He noted that he was not comfortable with a building shown going across walkways.

Mr. Dougherty suggested that the applicant could speak to some of their questions. He pointed out that this application had been fast tracked due to time restraints on the expiration of their lease at the old Crozet Elementary School. He understood that there were some concerns.

Ms. Joseph noted that this is a public hearing and not a work session.

Mr. Edgerton said that he was struggling with this because it seems to be an incomplete plan, which will not be incomplete once they grant the special use permit. Once they amend the

special use permit this will become legally binding. He suggested that they try to work with the school, but they need to look at it and figure out what they need and then possibly address that. Then they could have the rest of it come back.

Ms. Joseph opened the public hearing and invited the applicant to address the Commission.

Kevin O'Brien, project manager for the Charlottesville Waldorf Foundation, said essentially it sounds like there is a lot of confusion about what is being requested. The parking change from the original site plan was administratively approved. There are a lot of reasons why it got changed. Likewise, the building in green there is nothing changing. That is still in the orientation and the counter request. The reduction in faculty is something that he missed when he reviewed this. They did not want to reduce the amount of amount of faculty they were allowed to have. Our original site plan was five buildings. It was a phased plan that allowed them to alter the phases as they saw fit during the process. The original special use permit cites two diagrams. It says that the southern part of the site must be developed in accord with the one they just held up. It says that the northern part of the site must be developed according to the conceptual sketch, which essentially shows a park at the northern boundary. So that is all the same. What they are asking is to take one of those buildings, which was an early childhood center that was the brownish building, which was in the original plan sort of way up in the eastern edge of the green L-shaped building.

Ms. Joseph pointed out that the Commission does not have that plan.

Mr. O'Brien said that he created several diagrams that he did not see here specifically at the request of Elaine Echols and Jan Sprinkle to show the evolution of the site plan.

Mr. Edgerton said that the Commission needs a copy of that plan.

Mr. O'Brien said that the school leases from the County. The County has a use for the building now and their lease is not to be renewed starting in the fall of 2007. That is the old Crozet Elementary building. The building with the check mark is not going to be ready by the fall of 2007 when they need to get out. So they are scrambling and thinking what are they going to do. They are going to build the early childhood center first and occupy it as the grade school. When the second building is done they are going to move into the grade school and move out of the leased space and put the early childhood center into that building. In reference to the question about vesting the plan he noted that because it was a phased plan, phase 1A, the stop light, the BMP, bringing the sewer onto the site and the parking lot vested the plan. By moving the early childhood center down the hill they would get closer to the existing water and sewer and the existing parking; there is a natural bank which allows the building to have great access from both sides, which also reduces the cost of building it because of the reduction in the sprinkler system and the elevator. This part of the site is uniquely suited to building 6,500 square feet relatively inexpensively and quickly. The plan is to build this building, with their approval, and have the grade school occupy it at its current size. Then upon completion of this building the grade school will move in and the early childhood center, which leases this space, will move into this building. The school campus will then start to orient itself around these buildings.

Ms. Higgins asked if he had read all of the recommended conditions and agreed with them.

Mr. O'Brien stated that his understanding was that they were still subject to all of the conditions. The only condition that they are changing is actually more onerous on us. They have widened the access easement that they have already granted to 52'. They have tilted it to take more of our land to make it better to parallel Rio Road. They have agreed to a 20' buffer on a part that

there previously was not one. They are under a time restraint and he did not want to cause a problem, but it was not their intention to reduce their staff. He noted that until they build the high school they do not need 65 staff. But it was their term plan for growth. So if that was attached to the first three phases it makes perfect sense. But, if it was for the whole plan being limited to 40 it is too limiting.

Ms. Higgins pointed out that the condition states that for them to go over 40 that they would have to come back and amend the special use permit.

Mr. Cilimberg noted that is the existing condition #1 that is actually laid out in the approval of the Board in June, 2003.

Mr. O'Brien noted that is request is really only about moving the building to the front of the site.

Ms. Joseph suggested that he work with staff on that issue.

Mr. Edgerton questioned if the applicant needed a decision tonight. He noted that it was hard to know what they were approving without that drawing.

Mr. O'Brien pointed out that the building was proposed to be moved about 200' to the east.

Mr. Cilimberg noted that the new plan on the board replaces the original plan. He apologized that the Commission did not get a copy of the new plan. He noted that the high school was not part of this approval and would require an amendment to the special use permit and plan. The enrollment and staffing can be readdressed at that time as well. The request tonight is really only asking for one change that is in where that early childhood building goes as compared to what the old plan would have allowed. The rest of what they are showing is consistent with the old plan, except it no longer shows the high school because that is not subject to this special use permit.

Ms. Higgins asked if that was the case why were the conditions rewritten and changed.

Mr. Cilimberg said that the conditions that get attached to this special use permit have to replace the prior conditions. So what this is doing is giving conditions that are now applicable to the plan for this location that is replacing the prior approvals. He noted that staff should have given the Commission a better update on the conditions. One of the things the Commission could notice in the old approval is that they would have had parking that would have faced Village Square associated with the high school. Now that is a semi-circular drive with no parking along it that faces Village Square. They still have the buffer, but they don't have the parking pointed towards Village Square. They don't have a building over there any more and that can be considered as part of the future special use permit that will establish the high school.

Ms. Joseph asked Ms. Higgins if she had any problems with the conditions.

Ms. Higgins replied no, but that when she looked through the new conditions number 4, which is almost verbatim like the old #5, the part that is left out has to do with the special use permit justification submitted January 26, 2003. So now in the operational part they have made a conscious decision to leave out something that was part of the conditions of their previous operation, and she did not know why.

Mr. Dougherty replied that part of the reason is that the justification acts as bit of a defector Code of Development. It is a long list of how they are going to develop the site within the

context of their concept plan and their approach to pedestrian facilities and treatment of different things. Basically, it is a reiteration of a commitment to implement the Neighborhood Model when they are putting the site together. So for context and for what it commits to he felt that it was important to keep that justification in there, but the plan is superseded by this plan.

Ms. Higgins noted that staff took out the middle of the sentence in #4. Specifically he left out the application and justification submitted January 26, 2003. The old condition had that in there. So she was assuming that he read that and something has changed. The new #4 is the old #5. On handwritten page 17 are the conditions that they would be under now. It talks about it shall be operated in accordance with the special use permit application '01 and then it goes to the '03 action. She noted that he had repeated it almost verbatim, but left out the center of it. She felt that historically that he made a conscious decision to leave it out or just omitted it. She suggested that it was something that he could look up between now and when it goes to the Board of Supervisors. She suggested that he either repeat it the same way it was or provide an explanation on why it was changed.

Mr. Dougherty said that the answer to that is that the facsimile which remains is basically what he had referred to as a defector Code of Development. This other portion would become, with that other justification in place, has been updated with the new application and justification. He was confident that the conditions take care of the justification.

Mr. Cilimberg noted that staff would work with zoning to make sure that is covered correctly. He felt what Ms. Higgins was asking was if there was a new justification that replaces the older ones or was one of the older ones removed.

Ms. Higgins said that the specific one was the middle one, which was that it shall be operated in accordance with the special use permit application and justification submitted January 26, 2003 for SP-2003-04.

Mr. Dougherty pointed out that the new concept plan is part of the new application. He noted that the critical slopes did not get referenced on this plan. So it had to reference back to the general accord of that other plan which shows the critical slopes on the plan. What they are committing to is not disturbing the critical slopes on the back part of the plan. That includes the general accord portion.

Ms. Joseph suggested that staff work with that.

Mr. Dougherty pointed out that he understands her point and confusion.

Mr. Cannon asked if there was a way that they could get conceptual agreement here because he did not hear anybody arguing about the basic issue as he understands it. He asked if there was some way they could get agreement so that he could have some assurance that on the basic issue he was okay and then allow any additional questions to be worked through. He felt that would be useful. He asked if counsel has any suggestions.

Mr. Cilimberg noted that counsel would be on vacation. He suggested that the Commission could, if they wanted to keep the applicant on track to the Board, take their action with the understanding that the conditions are going to be further reviewed to reflect what needs to be carried forward from the old conditions as well as what is applicable to the new plan. He felt that was what Mr. Dougherty has tried to do with zoning. Obviously, those changes were not explained well enough here for the Commission to understand that. But, staff can certainly make sure that is happening between now and the Board meeting. This is a perfect example of

what happens when these things get on a fast track because of timing. Staff does not suggest ever doing this. This is an example of what happens when we do this. It ends up serving no one as well as the time that is supposed to be allotted to these special use permits. The problem is getting this done for the applicant because they are losing their lease with the County, which is out in Crozet, which expires starting with this coming school year. So they have a Board date that is set very close to this Planning Commission date. Very honestly, staff may have to ask for an extra week just to make sure this is taken care of between now and the Board meeting. It is set for July 5, but it may have to go to July 12. Staff may have to do that in order to do what they need to do to address the Commission's concerns. If the Commission wants to act tonight and feels comfortable with the plan and the special use permit conditions with the idea that staff is going to work to make sure that they are finalized to address what needs to be carried over, which is unique to this new plan, then the Commission could act in that way and staff will make sure that is done before the Board meeting.

Mr. Edgerton asked why the brown building goes over the pedestrian path.

Mr. O'Brien stated that because of the slope for the bio-filter and the better grade for the path and handicap access, which is now needed for the school, they have reviewed it and the far side of the building is the better location.

Mr. Edgerton asked if that path is going to be reconfigured, and Mr. O'Brien replied that was correct.

Mr. Edgerton said that they would not be approving that path. He questioned what the Commission was actually approving.

Mr. O'Brien said that they were approving the moving of the location of the building.

Ms. Joseph asked if they could have the drawings changed before the Board of Supervisors meeting.

Mr. O'Brien said that they created in conjunction with Jan Sprinkle and Elaine Echols three diagrams that showed the changes in the site plan. They entered those drawings in on time. Those plans are around here somewhere. Therefore, the answer to the question was yes.

Ms. Joseph suggested that those plans be gathered up so that the Board could see that they were not going to be putting a building on the pathway. They would also show the other parking that is going on. This is sort of just floating in space.

Mr. O'Brien said that it is superimposed on another plan.

Ms. Joseph asked if there were any other questions for Mr. O'Brien. There being none, she asked if there was any public present who would like to speak to this item. There being no one, the public hearing was closed and the matter before the Board.

Motion: Ms. Higgins moved, Mr. Morris seconded, to recommend approval of SP-2006-010, Charlottesville Waldorf School Amendment, with the recommended conditions as stated, as amended as follows. Staff is to review the conditions of concern that are not repeated exactly, but have slight changes, to make sure that they are entirely accurate and as intended and that the applicant review those carefully to make sure before this goes to the Board. The attached plan is recommended for approval as it represents the change in buildings.

1. Maximum enrollment of the Charlottesville Waldorf School shall be three hundred fifty (350) students, with a maximum of 40 staff. Any increase to enrollment or staffing shall require amendment of this special permit;
2. Normal hours of operation for the school shall be from 8:00 a.m. to 6:00 p.m. weekdays, with occasional uses in the evenings and weekend;
3. The approved final site plan shall be in general accord with Drawing 3 titled "Amendment to SP 2001-040", dated May 24, 2006, hereinafter, the "Concept Plan" and shall reflect all required pedestrian and road connections to adjacent properties.
4. The school shall be operated in general accord with the Special Use Permit Application and Justification (SP 2001-040) submitted August 27, 2001 and the Site Development Strategy Narrative submitted via facsimile December 18, 2001; and the stand-alone parking Special Use Permit Application and Justification submitted March 20, 2003 for SP 2003-029;
5. If it is determined to be necessary by the County to provide for interparcel access as shown on the concept plan and labeled "Proposed Road Easement", the owner shall make the reserved vehicular connection available for such use. This reservation may be relocated or modified so long as it is in general accord with the Concept Plan.
6. If it is determined by the County that alternate access connections are necessary for the properties adjacent to the school's main access road, the owner shall construct vehicular access from this parcel to the property line of Tax Map 61, Parcels 173A and 174 in an appropriate location and manner to be determined in conjunction with the County's review and approval of the site plan for the school, so as not to conflict with access to the private school.
7. A pedestrian connection shall be made to the parcel or parcels located to the south of the school property as shown on SDP 2003-097.
8. As a condition of final site plan approval, the owner shall dedicate to Albemarle County are for a greenway along Meadow Creek at the western boundary of the parcel as delineated on the Concept Plan.
9. No disturbance of the critical slopes located at the western portion of the site or other undisturbed areas identified on the conceptual master plan of the original SP 2001-040 shall occur as a result of site development other than development of a pedestrian access to the greenway. As a condition of final site plan approval, the owner shall submit a tree preservation plan for approval by the Zoning Administrator, addressing in detail the limits of all disturbed areas, diameter and location of trees to be preserved, clearing and limbing policy for trees to be preserved, and supplemental trees and shrubs (if any), and related issues. Screening consisting of an opaque fence and landscaping shall be installed along the shared boundary between Parcels 170 and 172A where deemed necessary by the agent for screening;
10. As a condition of final site plan approval, the area necessary for a future sidewalk along Rio Road shall be identified and right-of-way dedicated.
11. No structure, parking, or loading shall be located closer than 20 feet to any residential district. This 20-foot setback shall also include an undisturbed buffer, subject to Section 21.7.3.
12. Future amendments to this special use permit shall be evaluated for conformity with the Jones and Jones study (Final Report dated May, 2001) for relationships of building placement and their relationship with open space.

Ms. Joseph asked if she would include the other information that was submitted verbally by Mr. O'Brien in the motion.

Mr. Edgerton said that there were three sketches with changes that Mr. O'Brien referred to.

Ms. Higgins said that she was not sure that was part of their action.

Ms. Joseph asked if there was any further discussion on this.

Mr. Edgerton suggested a friendly amendment to the motion that what the applicant did would help the Board understand what has happened a lot more clearly than the Commission was able to understand this evening.

Ms. Higgins said that she could recommend that to staff, but she could not make something part of her motion that she has not seen. She felt that staff could bring that to the Board and it could be presented that way, but she could not make it part of the motion. Therefore, she rejected the friendly motion.

The motion passed by a vote of 7:0.

Ms. Joseph stated that SP-2006-010, Charlottesville Waldorf School Amendment would go to the Board of Supervisors on July 5 with a recommendation for approval.

Mr. Cilimberg stated for the applicant's benefit if they need to go to the July 12 Board meeting staff may have to do that.

Old Business:

Ms. Joseph asked if there was any old business.

The Board of Supervisors received the Commission's recommendations for the framework of changes to the Rural Areas zoning district regarding phasing and clustering. They also received the Mountain Overlay Committee's recommendations as to the framework for changes in ordinances and other program changes regarding Mountain Overlay. At the time they received that the Board decided that they wanted to do two things. One was to have public open houses for the interested public to understand what the proposals in each area were. Two, to have two joint public hearings with the Planning Commission to receive public input on those individual matters, Mountain Overlay District and the phasing and clustering. Staff has been working towards dates to hold that in respect of the Board's and Commission's schedules. What they have been able to conclude, and the Board has agreed to, are the following dates:

- The first public open house for the Mountain Overlay would be Tuesday, July 25. That is in lieu of the regular Planning Commission meeting on that night.
- The second public open house on phasing and clustering would be Thursday, July 27.

The Board also decided that the joint Board/Commission public hearings will be held on the Mountain Overlay District proposals and the phasing and clustering on separate nights. The two nights for those will be:

- On Tuesday, August 1, in place of the regular Commission meeting, one of the joint public hearings will be held. The decision will be made shortly which of the two issues will be discussed.
- On Thursday, August 3, the second joint Board/Commission public hearing will be held. In both cases the joint public hearings will be held at the Burley Middle School because that is the venue felt large enough to handle the possible crowd in each case.
- Staff will provide all the Mountain Overlay District framework information that has been provided by the committee to the Board.

Mr. Strucko noted that he would be absent from all the meeting during the last week of July.

Mr. Morris noted that he would be absent the first week of August.

Regarding the Biscuit Run meeting last week, Mr. Edgerton said that one of his concerns was that there seems to be a moving target on how many units they may or may not have. He was wondering if there is any way that the Commission addressed that regarding the traffic study.

Mr. Morris noted that it was based upon the maximum and no consideration of what is less.

Mr. Edgerton asked if they look at the maximum and the traffic study says that they can't support that, then it is all or nothing. He suggested that they look at a phasing of the project over a period of time. One of the arguments they keep hearing about the 5,000 units is that the reality is that is going to take a long time for the market to absorb that. So that is not a realistic view at this point. He suggested that they tweak the traffic study to more realistic schedules than just plopping 5,000 units in.

Mr. Cilimberg said that the applicant indicated last week that they may be actually factoring in some phasing in their analysis for points of time. What they said that they were not going to do is an overall study for a lesser number.

Ms. Joseph noted that the only person who said anything about phasing was when she was confused about the traffic light of the timing and phasing. The consultant said that they may and that is a way that they could do it, but he did not say that they were going to do it.

Ms. Higgins noted that the traffic study was based on the level of service. It is really about factoring in the a.m. and p.m. key issues at certain intersections.

Mr. Edgerton recalled the applicant discussion about how long this project was going to take, which softens the blow a bit. Hopefully, money will materialize out of Richmond or Washington and eventually the County will have some help on the infrastructure. But, the other thing that he had been wondering about that fits into this concern is whether the 5,000 units was just pretending that the whole property was flattened and just on acreage. That was the density that this acreage could support. He asked if his perception was correct.

Ms. Higgins noted that was not her perception.

Mr. Cilimberg said that what he thought they were doing is showing the development that they thought they could accomplish within the area designated with what they believe they could do reasonably with the land.

Mr. Edgerton asked if that has been affirmed by staff.

Mr. Cilimberg said that the Commission has had a work session and the applicant has actually brought it to them and the Commission has raised issues or questions. He did not think that it has been affirmed by anyone at this time that is how far they can go.

Mr. Edgerton said that he had heard mutterings that it could support about one-half of that.

Mr. Cannon said that he had heard rumors about various possible compromise levels. He felt that was just rumors. It is left up to the applicant to put the information on the table.

Mr. Cilimberg said that the traffic study was the applicant's. Steve Blaine at last week's meeting made some indication that they were still thinking about the maximum numbers for this project. It implied that if that changed, then that is the way that they were going to do the traffic study.

Mr. Craddock noted that they figured in the Southern Parkway, which was going to be many years down the road.

Ms. Joseph asked if this would be an opportunity if they were really worried about what is going on to let the applicant know now instead of later when the study is done. If they were talking here and all felt comfortable with what is going on. What he was saying was that the applicant was going to go max and they were going to see what happened and that would make them pull the numbers back if they need to because they will see all of these improvements that need to be made. But, she really did not know.

Ms. Higgins felt it was great that it came back to the Planning Commission and it showed what they were going to analyze. But, traffic studies take on a life of their own when VDOT is involved. They are always going to look at the maximums because that is what VDOT requires them to do.

Ms. Joseph noted that the City was involved in the traffic study, too.

Mr. Cilimberg said that he was planning on contacting Mr. Blaine to mention that he ought to at least think about how the project will develop out over time as they approach their traffic study so they could reflect phasing.

Ms. Joseph felt that would be helpful.

Mr. Cilimberg noted that in their staff reports tonight they used a one page summary on top of the report. He asked if that was the kind of information that the Commission was looking for as a cover to the staff reports.

Mr. Edgerton asked that all staff reports include what the actual density can be on a project.

Mr. Cilimberg noted that staff would have to work with Current Development because they have been using a different form of report.

Ms. Higgins noted that when a request comes to the Commission with a recommendation of denial typically the report says if the Commission decides to approve the request it should be subject to a list of conditions. She suggested that be done in all cases.

It was the general consensus of the Commission that the one page summary on top of the staff report was useful. It was noted that staff needs to remember to take the previous information out of the form.

There being no further old business, the meeting moved on to the next item.

New Business:

Ms. Joseph asked if there was any new business.

- Mr. Edgerton said that the County suffered a blow from the General Assembly. To do away with the estate taxes in Virginia part of the deal was the conservation easement. They have put a 50 million dollar cap on the State tax credits that will be available commencing in 2007. It is actually going to be phased through 2007. It will fully be phased in during 2007. If the Governor does not veto that it will put a real slow down on conservation easements. After talking with Sherry Buttrick, he found that it will not affect anyone this year. So if anyone knows anybody who is interested in the conservation easement they should go for it this year.

- Ms. Higgins noted that there is a Crozet Advisory Committee that was appointed by the Board of Supervisors, which she was appointed to. Last Thursday night she attended her first meeting. There is a lot of concern about the Crozet Master Plan and its population projection. They are struggling with is how to effectively provide their advisory role. She was struggling, too, because what they seem to be indicating is that they want to start looking at all proposed developments in the Crozet Development Area and somehow give an opinion about a particular development. They are anxious about what is in to the County. Staff is being very helpful about providing what is going on. Jack Kelsey came to the meeting. The committee is advisory to the Board. She felt if their feedback does not come to the Planning Commission, then it is pretty far down the road and then it goes to the Board where they were being advised by the Planning Commission and a Board appointed advisory committee. She was not sure how to solve the issue. It is all about density and not approving commercial things. A lot of the items on the list are different from the Master Plan. Her suggestion is going to be that they try to instigate changing a few of those rules or portions of it that they can't input into such issues like density or transportation.

- Ms. Joseph said that she had a discussion on affordable housing with Noah Schwartz, Redevelopment Director in the City of Charlottesville. Mr. Shultz offered to come in with Ron White, Overton McGee and someone from PHA to talk to the Commission about what is going on regarding affordable housing.
- Mr. Cilimberg said that he sent Ron White an email today about whether he was interested. He suggested that Ms. Joseph, Mr. White, Mr. Shultz, Mr. McGee and he all try to sit down and think about what they would do in a work session and when they could do it. It is going to have to be in August sometime.

There being no further new business, the meeting proceeded.

Adjournment:

With no further items, the meeting adjourned at 9:46 p.m. to the Tuesday, June 27, 2006 meeting at 6:00 p.m. at the County Office Building, 401 McIntire Road.

V. Wayne Cilimberg, Secretary

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