Albemarle County Planning Commission
October 10, 2006

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, October 10, 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, Duane Zobrist and Bill Edgerton. Absent was Marcia Joseph, Chairman. 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; David Benish, Chief of Planning; Francis MacCall, Senior Planner; Amy Arnold, Planner, Claudette Grant, Senior Planner; Bill Fritz, Chief of Current Development and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum*:*

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

Other Matters Not Listed on the Agenda from the Public:

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

Jack Marshall, an 18 year resident of Free Union, said that he was speaking to the Commission this evening as President for Advocates of a Sustainable Albemarle Population (ASAP). **(Attachment A – Jack Marshall's remarks at Press Conference for CPA – Albemarle County Office Building, September 13, 2006)**

> In the four years since ASAP was founded they have been trying to raise awareness about the pace and consequences of local population growth and urging that our community take more responsible steps to manage it. They have observed that our decision makers may not be sufficiently aware of the cumulative impacts of the individual developments that are being approved at a relentless rate. They have argued that smart growth is necessary, but not sufficient. In addition to planning where and how growth occurs, our community is seeking a sustainable future and must acknowledge the limits of growth. As they well know limitless growth is simply not feasible. In an effort to help translate that truth into public policy, last month ASAP joined by the Sierra Club and Citizens for Albemarle asked the Board of Supervisors to adopt a Comprehensive Plan Amendment. This evening he was here simply to let the Commission know about their request. They would be pleased, of course, if the Commission would support us.
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> Their request to the supervisors was:
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> > "As a step toward defining more clearly a vision for our community that residents want, ASAP requests that Albemarle County amend its Comprehensive Plan to require identification of a sustainable optimal population size (or range) for the Charlottesville-Albemarle community. This ideal population size would be democratically defined and would be consistent with the sustained existence of surrounding natural systems and our community. It would provide an explicit vision of the scale and size desired by current residents, and would guide future county planning that involves land-use and development decisions.
> >
> > Given the current demand on planning staff, we urge that Albemarle County hire outside consultants to oversee this initiative.
> >
> > Further, given the massive potential impacts of already proposed developments, we request that the County make no changes to existing zoning until a Comprehensive Plan Amendment is established that sets forth an optimal population range."

Their monthly open meeting will be held on Wednesday, October 18 and will be devoted to the topic. They will have a critical discussion about the motion and possible tools to define it. They would be delighted if the Commissioners could join them at the meeting.

There being no further comments on items not listed on the agenda, the meeting moved on to the next item.

Review of Board of Supervisors Meeting – October 4, 2006.

Mr. Cilimberg summarized the actions taken by the Board of Supervisors on October 4, 2006.

Consent Agenda:

a. **SDP 2006-091 Mountfair Vineyards – Site Plan Waiver**: Request for a site plan waiver to allow the establishment of a farm winery in an existing structure on 40 acres. The property is zoned RA, Rural Areas. The property, described as Tax Map 15 Parcel 18, is located in the Whitehall Magisterial District on the south side of Fox Mountain Road (Route 668) approximately 0.4 miles east of its intersection with Browns Gap Turnpike (Route 629). The Comprehensive Plan designates this property as Rural Area in Rural Area 1. (Bill Fritz) - Tax Map 15, Parcel 18

b. **Approval of Planning Commission Minutes** – June 27, 2006; September 12, 2006.

Mr. Craddock asked staff if there were any other cases regarding vineyards where the County has a time limitation imposed like Monday through Sunday from 8:00 a.m. to 9:00 p.m.

Mr. Fritz replied no, that they have never placed any sort of condition like that on vineyards. There is nothing referenced in the ordinance. He was unaware of any ABC requirements that regulate that.

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

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

Mr. Morris stated that the consent agenda has been approved.

Regular Items:

SDP 2006-042 Pavilions at Pantops Phase II – Critical Slopes Waiver and Open Space Waiver Requests: Request for preliminary site plan approval for a 129 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 the Aunt Sarah's and Eckerd on 250E. The Comprehensive Plan designates this property as Neighborhood Density in Neighborhood 3. (Francis MacCall)

Mr. MacCall distributed copies of the new plan noting that the proposal has changed since the June 20 meeting. He summarized the staff report.

- Proposal: Request to approve a preliminary site plan which includes approval of open space in accordance with Section 4.7.1 of the Zoning Ordinance and request for a waiver to disturb critical slopes in accordance with Section 4.2.3.2 of the Zoning Ordinance.

- This plan was reviewed by the Planning Commission on June 20, 2006 for the open space appropriateness and the critical slopes waiver. It was also called up by an adjacent property owner. The amount of critical slopes being disturbed and the amount of trees being removed were the issues that were raised at the meeting that concerned the Commission. The applicant requested deferral of the project and has now brought back to staff a revised plan that addresses those issues.

- At the June 20, 2006 Planning Commission meeting the applicant requested that the decision by the Commission on this plan be deferred until they were able to work on a plan that addressed the concerns of the Westminster Canterbury residents that at the meeting voiced their concerns with the plan. Staff believes that the applicant has addressed those concerns.

- Staff has reviewed the revised plan and has noted on page 7 of the staff report the significant changes that were made in the comparison. The revised site plan that the applicant has provided has changed considerably from the previous proposal. The main changes are as follows:
    1. Two areas of tree preservation have been provided.
    2. The amount of open space has increased from 8.83 acres to 14.85 acres, a 68% increase.
    3. The number of dwelling units has changed from 137 to 129, a 5.8 % reduction.
    4. The travel ways have been rearranged. This allowed the two areas of tree preservation.
    5. The amount of critical slopes disturbances has been reduced.

- Staff believes that these changes have appropriately addressed the concerns raised at the June 20, 2006 Planning Commission meeting.

- **RECOMMENDED ACTION:** Staff has reviewed this request for compliance with the provisions of the Zoning Ordinance and recommends the following: The Commission finds that the open space is appropriate for the proposed development and the Commission approves the waiver of Section 4.2.3.2 of the Zoning Ordinance, to allow the disturbance of critical slopes. With a positive finding of the appropriateness of the open space and approval of the critical slopes waiver request, the preliminary site plan may be approved with conditions.

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

Mr. Edgerton asked to see the critical slopes map.

Mr. MacCall posted a larger representation of the critical slopes on the board for review.

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

Keith Lancaster, representative for the developer, made the following comments.

- This plan was brought before the Commission on June 20, 2006. Since then they have taken the feedback that was given during that meeting and from the adjacent neighbors to work with the adjacent neighbors to try to put together a plan that would work for everyone and protect more slopes and trees on the site. The major concerns on June 20 from listening to the audio was the tree area and in trying to save more trees and maintain more green area existing on the site. Other concerns were to lessen the disturbance of the critical slopes on the site and provide more of a buffer between the proposed development and Westminster Canterbury, the adjacent property owner. With the new plan viewed against the old plan the Commission will see that they were able to save the most important tree area on that site, which was the knoll of trees visible from 250. It also preserved some of the natural critical slopes in that area.
- A majority of this site has been disturbed. In talking with the Soil Erosion Control Officer with the County the first dump or waste permit was issued in 1983 on the site. Since then it has been ongoing. When Free Bridge was rebuilt some of that came up to that site. Working with the new layout they have actually reduced the density and had to remove dwellings to make it fit the site. They removed the two roads running cross that knoll in that tree area and tried to cluster off a section that will be referred to as Phase 2 West on its own. They also eliminated the road system that would go on the outside of the development and brought them inside the townhouses and will compact it more and move it further away from the Westminster site. The first go around there was not any critical slopes that were not going to be disturbed. With the redesign they are now only disturbing 62 percent and not 100 percent of the slopes. If they get to final they are also looking at adjusting the last two rows of townhouses in Phase 2 West, which would be adjacent to the power line with Fontana. It would slide the townhouses an additional 20' out to the west to allow that stand of trees against Westminster site and to allow more trees there and to also help eliminate some retaining walls in that area. They are also looking at removing some additional

guest parking to limit the impervious areas on the site as well that they have worked with the adjacent owners on in an agreement. The Commission should have received a copy of that agreement.

- This is a collaborative effort between the developer and the adjacent neighbors. They listened to the concerns of the Commission on June 20 and went back to address them with the adjacent property owners. Their engineer Dave Johnson, with WW Associates, is present to answer questions in regards to the critical slopes and engineering aspect.
- They thank the adjacent property owners for working with them. They reduced eight units out of the site to address their concerns.

Mr. Morris asked if there were any questions for the applicant.

Mr. Cannon asked what density has resulted from the removal of eight units.

Mr. Lancaster replied that there are five units per acre at this point. For the overall density tied into Phase 1 they are at 5.85 dwelling units when looking at both phases.

Mr. Cannon asked if the Comp Plan calls for 3 to 6 dwelling units per acre, and Mr. Lancaster replied that was correct.

Mr. Morris asked how many total parking spaces they have.

Mr. Lancaster replied that there are 297 spaces provided with 2 spaces per dwelling. They are meeting the ordinance with a minimum of 1 space per 4 units for guest parking.

There being no further questions, Mr. Morris invited public comment.

Joe Knotts, Chairman of the Resident's Association of Westminster Canterbury, said that they have indeed worked out favorably agreement that gives substantially more open space and reduces the steep slopes disturbance. What Mr. Lancaster has indicated is all correct. The Commission received a copy of the written agreement with exhibits attached. Except for the large area of saved trees in the center, which Mr. Lancaster mentioned, those trees to the south and to the left of the pond area provide substantially more open space toward their boundary line and much less steep slope disturbance. Except for that none of the other items of the agreement are included on the plans reviewed by staff. Hence the applicant understands that they have to submit another plan or more plans to reflect on the final plan those items that have been agreed to with us. Accordingly, they request that the final plan be reviewed by the Planning Commission so that they all have the opportunity to be sure that those items in the final plan are reflected of the precise items in the agreement, which they have agreed to. Likewise he understands that those conditions according to the staff report have to be reflected in the final plan of a necessary covenant that the homeowner's association assumes the obligations to maintain existing trees and to plant new ones and replace trees that die. Those are the items that ultimately when the developer leaves the home owner's association will have to assume that obligation. They want to make sure that those things are in place in the final documents. Hence, they request that the Planning Commission review the final plans. If there are any questions about the agreement, he would be happy to answer them.

Mr. Morris asked if there are any questions for Mr. Knox.

Mr. Edgerton said that the agreement is between the Westminster residents and the developer. On page 2 paragraph 4 it references the County. It says that this agreement may be enforced by the Albemarle County administratively or by any party thereto in the Circuit Court. He questioned if that is appropriate for the Commission to be a party to the agreement if they are not listed as parties of this agreement.

Mr. Kamptner replied that there is nothing that they can do to stop private parties from putting provisions like that into an agreement. One way that can be resolved is if the final site plan reflects the areas that are going to be preserved and conserved. If the areas are disturbed then the County can participate and enforce the final site plan rather than the agreement itself. The County would end up in the same place.

Mr. Edgerton asked if the Commission should condition any approval this evening or in the future conditioning this agreement as part of the conditions.

Mr. Knotts pointed out that they intend that this agreement be incorporated.

Mr. Kamptner preferred that the County be in the position of only enforcing the final site plan. The final site plan can reflect the areas that are not to be disturbed. The County can enforce that through zoning enforcement action.

Mr. Edgerton said that Mr. Knox's request is for an adjustment of this plan to fully integrate whatever has been agreed and would solve that problem.

Mr. Kamptner replied yes.

Mr. Cannon said that if they were to proceed with staff's recommendation for approval the Commission could approve it subject to the condition that these elements of the agreement be included in the site plan.

Mr. Kamptner said that they would be approving the request subject to a condition requiring that all of the tree preservation and conservation areas reflected in that agreement are shown on the final site plan. The fact that they are shown and identified as such means that the areas would not be allowed to be disturbed, and if they are it would be a zoning violation.

Mr. Cannon asked if that would include a requirement that if the trees died that they would be replaced or does it take additional measures to ensure that.

Mr. Fritz noted that is part of a preservation plan.

Mr. Knotts asked that it be repeated because he did not understand it.

Mr. Cannon said that this was a discussion about instruments. The question is how they get Mr. Knox's understanding into a document that the County can approve. They understand that the appropriate vehicle is the site plan. The question is if the Commission has to do anything tonight, assuming they give an approval, to ensure that these conditions do get into the site plan in the appropriate form that can be enforced to the extent that they had in mind.

Mr. Knotts noted that is one of the reasons they were requesting that the final plan showing all the changes be reviewed by the Planning Commission.

Mr. Kamptner noted that the Planning Commission can request a final site plan review. This is the time to do it.

Mr. Fritz pointed out that on all site plans whenever there are trees to remain on a site plan they require a conservation plan. Whenever there are trees shown to be replanted or retained on a site plan there is a provision in the ordinance that says those trees shall be maintained in a healthy condition and replaced as they die. There is no need to take a special action because that is standard on all site plans.

Mr. Craddock has the same question he did. He could understand trees and things like that on a site plan, but not for the County to be held responsible for $3,000 of cleaning off cars and buildings and other such things as noted in 3a, b and c.

Mr. Knotts agreed that the County was not involved in those conditions.

Mr. Craddock noted that it should be for everything that is on the site plan.

Mr. Edgerton noted that there were smaller details, but trees were the big issue. There were some attachments to this agreement showing relocation of parking spaces and hopeful relocation of the units closest to the west. It needs to be done the right way whether it means seeing a revised preliminary plat

or final plat. He was not sure which way to go.

Mr. Knotts said that under the agreement they withdraw all of our objections to the plan approval including the open space approval and the handling of the steep slopes so long as these items that they have agreed to with the developer are reflected in the final approval.

Jean Davis, resident of Westminster Canterbury, said she had no further comment because all of the concerns have been handled.

There being no further public comment, the public hearing was closed and the matter before the Commission.

Mr. Zobrist favored pushing development into the development area.

It was the consensus of the Commission that the conditions of the agreement between the applicant and the Westminster Canterbury residents should be incorporated into the final site plan.

Mr. Kamptner pointed out that the additional conditions includes paragraphs 2a, 2b, 2c and 2e and that conditions 2a and 2b would also require a tree conservation plan. Paragraph 2e would also require that the landscaping plan incorporate the plantings that are required by that paragraph. An additional part of the action would be that the Commission wants the final site plan to return for their review and approval.

Mr. Morris asked if separate actions need to be taken on the critical slopes and open space.

Mr. Kamptner replied that a single action that staff has identified in the "Recommended Action", with the additional provisions as mentioned should be sufficient. He reiterated the motion for the benefit of the audience: "The Commission finds that the open space is appropriate for the proposed development and the Commission approves the waiver of Section 4.2.3.2 of the Zoning Ordinance to allow the disturbance of critical slopes with the 7 conditions recommended by staff and the additional condition incorporating the terms of the agreement, and to request that the final site plan come back for Planning Commission review."

Motion: Mr. Craddock moved, Mr. Cannon seconded, to approve SDP-2006-0042, Pavilions at Pantops Phase II Preliminary Site Plan, Open Space Waiver and Critical Slopes Waiver Requests subject to the conditions staff recommended in the report, as amended, with the finding that that open space is appropriate and the critical slopes waive additional condition.

1. [16.4.1] Prior to final approval a Conservation Plan as specified in section 32.7.9, must be approved by the Zoning & Current Development Division of the Department of Community Development with a copy of the original Conservation Plan and all subsequent revisions to be submitted to the Zoning & Current Development Division.
2. [14-317, 18-4.7] Prior to final approval the applicant must submit covenants or other such instrument, which evidences the establishment of an owners' association and provides for ownership and maintenance of proposed open space. Such document shall be subject to County Attorney review and approval and shall be in accordance with Section 14-317 of the Subdivision Ordinance - Instrument evidencing maintenance of certain improvements.
3. Zoning & Current Development Planning approval.
4. Zoning & Current Development Engineering approval.
5. Albemarle County Fire Rescue approval.
6. Albemarle County Service Authority approval.
7. Virginia Department of Transportation approval.
8. The final site plan shall show the "Potential Tree Save Areas" identified in paragraphs 2a and 2b of the agreement between North Pantops Townhouses LLC, Southern Development, Westminster-Canterbury of the Blue Ridge and the Westminster-Canterbury of the Blue Ridge Residents' Association dated October 3, 2006 (hereinafter, the "Agreement"). A tree conservation plan for the Potential Tree Save Areas shall be submitted to the Zoning & Current Development Division for approval. The number of parking spaces shall be reduced as provided in paragraph 2c of the Agreement to the extent that such reduction complies with the minimum parking requirements of

section 18-4.12. The landscaping plan shall include all of the planting required by paragraph 2e of the Agreement.

9. The final site plan shall return for review and approval by the Planning Commission.

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

Mr. Morris stated that SDP-2006-042, Pavilions at Pantops Phase II – Critical Slopes Waiver and Open Space Waiver Requests were approved.

Public Hearing Items:

SP 2006-024 Charlottesville-Albemarle Airport – Pleasant Grove Baptist Church (Sign #39):
PROPOSAL: New church building.
ZONING CATEGORY/GENERAL USAGE: LI - Light Industrial - industrial, office, and limited commercial uses (no residential use); Airport Impact Area. SECTION: 10.2.2 (35)
COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (0.5 unit/ acre).
ENTRANCE CORRIDOR: No.
LOCATION: Earlysville Road between Route 606 (Dickerson Road), Walnut Hills Subdivision.
TAX MAP/PARCEL: Tax Map 31, parcel 27A (2.00 acre portion).
MAGISTERIAL DISTRICT: White Hall.
STAFF: Amy Arnold

AND

ZMA 2006-010 Charlottesville-Albemarle Airport – Pleasant Grove Baptist Church (Sign #39):
PROPOSAL: Rezone 2.00 acre portion of 11.451 parcel from LI - Light Industrial zoning district which allows industrial, office, and limited commercial (no residential) uses to RA - Rural Areas zoning district which allows agricultural, forestal, and fishery uses and residential density of 0.5 units per acre to allow new church under Special Use Permit.
PROFFERS: No.
EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (0.5 unit/ acre).
ENTRANCE CORRIDOR: No.
LOCATION: Earlysville Road between Route 606 (Dickerson Road), Walnut Hills Subdivision.
TAX MAP/PARCEL: Tax Map 31, parcel 27A (2.00 acre portion).
MAGISTERIAL DISTRICT: White Hall.
STAFF: Amy Arnold

Mr. Zobrist said that although he had never represented nor provided services to Pleasant Grove Baptist Church, another member of his firm has represented the Church on these transactions. Therefore, he was disqualifying himself from participating in this proceeding. He left the meeting room at 6:47 p.m. **(Attachment B – State and Local Government Conflict of Interest Act Transactional Disclosure Statement dated October 10, 2006 from Duane Zobrist.)**

Ms. Arnold summarized the staff report.

- The Charlottesville-Albemarle Airport Authority is requesting the rezoning of a 2 acre portion of an approximately 11.5 acre parcel, which is tax map 31, parcel 27 from the existing Light Industrial designation that allows industrial offices and limited commercial uses, to Rural Areas zoning, which allows agricultural/forestry and fishery uses. Under this proposal the remaining approximately 9.5 acres remains zoned Light Industrial and is included in the Airport Master Plan with a facility access road planned through the parcel residue.
- The Comprehensive Plan designates the proposed 2 acre church site as Rural Areas emphasizing the preservation and protection of agricultural/forestall, open space, natural historic and scenic resources as land use options. The remaining 9.5 acre residue is located within the development areas with a Comprehensive Land Use designation of institutional. The rezoning of this 2 acre portion of tax map 31, parcel 27A to Rural

Areas is consistent with the Comprehensive Plan. Uses permitted in Rural Areas by right or by special use permit will result in less intensive activity on this site than light industrial uses. Converting this 2 acre parcel to Rural Areas zoning establishes a Rural Areas boundary continuously along the adjacent Walnut Hill Subdivision. This continuous Rural Areas condition clarifies the boundary between Rural Areas and development areas, provides a less intensive use adjacent to the residential property than Light Industrial zoning and isolates the remaining Light Industrial properties adjacent to the Charlottesville-Albemarle Airport.

- Due to these factors, it is the opinion of staff that the impact of this rezoning on the public facility and services would be minimal and that likely would be reduced from the demands of the current zoning.
- Staff has identified the following factor favorable to the rezoning request:
  1. Clarified boundary between the RA and DA, provides a less intensive use adjacent to residential property than Light Industrial zoning, and isolates the remaining Light Industrial to properties adjacent to the Charlottesville / Albemarle Airport.
  2. Establishes zoning on the 2.00 acre parcel that is in conformance with the Comprehensive Plan.
  3. Reduced levels of demand on transportation infrastructure; no additional demand on local water and sewer services.

- Staff has identified the following factors unfavorable to the rezoning request:
  1. Reduction of overall area of Light Industrial zoning available in the County.

- Based on the findings contained in this staff report, staff recommends approval of Zoning Map Amendment 2006-10.

Mr. Cilimberg suggested that staff hear the special use permit and rezoning together.

Mr. Morris asked staff to present the staff report.

Ms. Arnold summarized the staff report for SP-2006-024, Charlottesville-Albemarle Airport – Pleasant Grove Baptist Church.

This Charlottesville-Albemarle Airport Authority and the congregation of Pleasant Grove Baptist Church are requesting a special use permit to construct a 36' X 80' 2,880 square foot church building with a maximum of 200 fixed seats, an entrance drive and a parking area within the rezoned 2 acre parcel, a portion of tax map 31, parcel 27A. The congregation is comprised of approximately 35 active members. The church would be used for worship services, group meetings, choir practice, luncheons, dinners, funerals, weddings and other expected uses associated with the church.

- Pleasant Grove Baptist Church and building is an integral part of the historic African American communities of Hydraulic, Rivanna and Profit. They have historically characterized this area.
- The construction of the Charlottesville-Albemarle Airport in the 1950's located adjacent and to the east of the proposed church site changed the existing communities. This is now an area of contrasting new development, established residential neighborhoods and remnants of local cultural history. The area includes the boundary between the development areas of Route 29 North and the adjacent Rural Areas to the west. The parcels along this section of Earlysville Road include light industrial uses and land that is heavily wooded.
- With the construction of the Charlottesville-Albemarle Airport and the subsequent enactment of the Airport Design and Safety Standards through the Federal Aviation Act of 1958 the surrounding area to the south of the Airport, including Pleasant Grove Baptist Church, was declared part of a Run-way Protection Zone to protect local people and property. The Airport Protection Zone is by law to be devoid of human habitation or structures. Charlottesville-Albemarle Airport Authority has worked closely with the congregation of Pleasant Grove Baptist Church for several years to find a site suitable

for a new church building that will allow the congregation to remain within the nearby community. The Airport Authority believes this relocation will protect the safety of the public and the aircraft utilizes the airport, but most importantly protect the safety of the congregation of Pleasant Grove Baptist Church.

- Based on the findings contained in the staff report, staff recommends approval of SP-2006-24, Pleasant Grove Baptist Church with conditions.
- Staff is recommending inclusion of a 50' no disturbance zone extending the full length of the eastern boundary of the proposed church property. Normally that is 20' between what they consider commercial and rural areas and nearby adjacent residential property. Given the species and the spacing of the existing stands of trees, the relatively small size of the impact of the proposed church building, the parking area and the septic field it is the opinion of staff that the 50' buffer would provide the total depth needed for an uninterrupted stand of trees between the properties. In addition, after visiting the adjacent Walnut Hills parcels with neighbors yesterday, staff is now aware that a minimum of about 15' of tax map 31, parcel 27A that is adjacent to Walnut Hills is occupied by the abandoned road bed from the original location of Route 743, which has remained primarily undisturbed asphalt. This non-treed portion of the proposed church parcel represents the importance of maintaining a full 50' buffer between the proposed church site and adjacent Walnut Hills. This recommendation is described in Attachment D and condition 4 of the staff report.
- Staff has received a memorandum from Patricia Moore representing opinions of the homeowners in the adjacent Walnut Hills Subdivision. Copies of that memorandum have been provided for the Commission.
- In addition the applicant has requested the following waivers.

    - Section 14-404 would require the church parcel and the residue of parcel 27A, zoned light industrial and adjacent to the south, to share the same entrance drive and road. The applicant has requested a waiver of this section to allow for a vehicular entrance from Earlysville Road serving the church parcel only. Both Planning staff and the County Engineer support the applicant's request.

    - The Zoning Ordinance allows 24 months for both construction and start of the new use of a Special Use Permit (18-31.2.4.4.). The applicant has requested the time allowed for construction and start of the use of this Special Use Permit, should it be approved, be increased to five (5) years. Staff supports the applicant's request.

    - Both waivers have been incorporated into the conditions of approval.

Mr. Strucko asked staff what the plan is for the existing 130 year old building.

Ms. Arnold replied that it was not clear at this point. The Airport and the congregation of the church are very willing to work with anyone who would like to relocate the building. There has been some discussion about that in the County. The church has been fully documented by three of the Board members of Preservation Piedmont in the spring of 2004.

Mr. Strucko asked if the church proposal outlined here, however, does not involve relocation of the church and is a brand new facility.

Ms. Arnold replied that was correct.

Mr. Edgerton asked if the congregation of 35 persons wanted to go to 200 members.

Ms. Arnold replied that was correct. There currently are 35 active members, but the congregation is larger than that and requesting 200 members for future growth.

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

Valerie Long, representative for the Charlottesville-Albemarle Airport Authority, said that Bryan Elliot, Executive Director of the Airport, was present this evening. Also, there are several members of the church congregation present, including Reverend Chapman, to provide their support and answer any questions if necessary. She felt that Ms. Arnold gave them a very helpful summary of the proposal. She assumed that based on that explanation and summary that the Commission understands the issues. Essentially, they need to down zone this parcel, which is just beyond the boundaries of the designated growth area, from Light Industrial to Rural Areas. Also, they need to obtain a special use permit, which is necessary for a church in a Rural Area district. They also, as staff indicated, requested two waivers to extend the two year period to five years for obtaining site plan approval and also to waive the requirement for a joint entrance. Staff does support the waiver requests given the disparity of the type of uses that would be involved between the church and the remaining industrial zoned land. Staff has already covered all of the issues. This proposal would be very consistent with the County's Comprehensive Plan. It would actually bring this land into conformity with the Comprehensive Plan. It was zoned Light Industrial even though the Comprehensive Plan designates it as Rural Areas. So the proposed down zoning would bring it into conformance with that. As the staff report notes there are other goals and objectives of the Comprehensive Plan that this proposal would further, particularly the preservation of historical and cultural resources. It would protect the environmental features of the site with the 50' wooded buffer. In particular, it would enable the church to continue serving its congregation in the same general area that it has served them for over 100 years. So the church and the Airport Authority have been working very closely together over the past 6 or 7 years on this proposal to come up with an area where they can relocate the church, but yet have it be in the same general area. So they are very pleased that they have reached an agreement with them and have come forward with a solution that they think serves the interest of both parties very well.

To answer the Commission's questions about what will happen to the existing church building Ms. Long continued that again, the agreement between the church and the Authority is very flexible for the church. They have the option of either relocating the church structure to this 2 acre parcel if they wanted to or they could build a new building. Certainly the existing building could fit within the footprint that is shown on the concept plan that is proposed this evening. They could make that work within those areas if the church chose to. She thought that the church was leaning towards new construction. It would be a more modern facility for them and probably better serve the needs of their congregation. But again, if the church decides otherwise the terms of the special use permit conditions are flexible enough that they could relocate their existing structure here if they decided to do that. But, that is the church's decision. They are just working hard to ensure that the conditions of approval are as flexibility as possible so that they have the maximum amount of flexibility to make those decision as they move forward. She felt that the church would be looking hard at those issues if the rezoning and special use permits are approved.

In terms of the existing church structure, if they do decide to build a new church facility, it is her understanding that they prefer not to maintain the obligation and the liability of owning the existing structure. So that would fall to the Airport Authority, which likewise is not too interested in maintaining the existing structure. So they are working very closely among other groups, including the County and some of its planning staff, to try to find some uses for the existing structure so that it can be maintained. There are some private landowners who have come forward expressing an interest in using it for a variety of uses. They were hopeful that through those collaborative efforts with the County and the staff that they could find a use for it.

Mr. Strucko asked if the building itself poses any impediment for the Airport activities.

Ms. Long replied that in a sense yes. It is not technically in the way of any actual Airport activities, although it is within the Runway Protection Zones that the FAA has designated.

Mr. Strucko asked if the building would have to be moved anyway.

Ms. Long replied exactly, because under those guidelines the safety regulations require the church to make every effort to remove all structures from those Runway Protection Zones or any place that could be a place of congregation or habitation of anything. They really want those uses out of there for the safety and protection of the general public.

Mr. Canon said that under the agreement between the church and the Airport Authority the choice whether to build a new church or remove the old church and put it into the condition that it could be used on the new site that decision in either case is going to be supported financially by the Airport Authority. He asked if that was correct.

Ms. Long replied that was correct. The agreement and the contract between the church and the Airport Authority provide that the church will obtain the rezoning and use its best efforts to obtain the rezoning, special use permit and subdivision plat approval. This proposed 2 acre parcel has to be subdivided from the larger 11 acre parcel. Then the Airport Authority would then donate that 2 acre parcel of the land to the church along with some additional resources in the form of monetary compensation that would support the church's effort to either fund the relocation of the existing church structure or to fund the construction of a new structure.

Mr. Canon asked if the monetary allocation would be 100 percent of which ever of those alternatives the church would select.

Ms. Long replied that it is actually a specific set amount of money. She was not involved in the actual contract negotiations, but her understanding is that the figure that was negotiated between the parties would be sufficient for the new construction and/or relocation. She would invite Mr. Elliot to come forward and speak to that issue since she was not involved with those contract negotiations.

Bryan Elliot, Executive Director of the Airport Authority, asked to provide a little bit of background. This acquisition of the church property by the Airport Authority is being funded by the Federal Aviation Administration. So really the procedure they had to follow is those of the federal government. In our negotiations and discussions with the church they had to submit that payment amount to the FAA for approval and it on the order of about $460,000 plus the 2 acres of land that they are donating for the reestablishment of the church. He did not know the specifics of the church's efforts in terms of design costs and site preparation costs, but our engineers at the time did a quick take off and deemed that was close to what that number should be. Again, it just depends on the nature of the finishes and what the actual construction costs are. The aim was to get close to that number.

Mr. Canon asked if that number was determined by the size of the structure under some FAA guideline.

Mr. Elliot replied that they did a quick take off on constructing basically this site in providing the well, septic service, parking area and a church of similar size and the construction cost.

Mr. Canon asked if the church was not built in 5 years would the church be protected against the escalation of costs.

Mr. Elliot replied not in the existing contract.

Mr. Morris invited public comments.

Patricia Moore, resident of Walnut Hills Subdivision, pointed out that the Commission had already received their memorandum. She lived on Elderberry Circle where there were four homes. Two of the homes were going to be adjacent to the church with their back property lines backing up to each other. First, they are very happy to have Pleasant Grove Church as their neighbor. Their only concern was the buffer. They felt that if a minimum buffer was presented that there would be a severe loss of woodlands between the properties plus the impact of the old Route 743 asphalt road where there were no trees growing on it. That runs right down the

property line. So there was some empty space there. But, Ms. Arnold explained that to them and came out and met them on site. The memorandum was agreed upon by all of the neighbors. They support staff's recommendations. They support recommendations 4 and 5, which have covered all of their concerns regarding the possible detriment to the adjacent properties. They especially appreciate recommendation 5 that has included in it a tree protection plan. She thanked the Commission for allowing her to speak tonight and for staff's assistance. They look forward to their new neighbor.

There being no further public comment, the public hearing was closed and the matter placed before the Planning Commission.

Mr. Strucko noted that his only disappointment with this application was what is going to happen with the 130 year old building. Other than that he felt that when it comes to the historical importance for an entity like this that the congregation itself and not necessarily the building is part of the historical preservation. Therefore, he supported the request and saw no other concerns about this. He agreed with Mr. Cannon that lack of financial protection was a concern, but was something beyond the Commission's purview.

Mr. Edgerton agreed with Mr. Strucko that it would be wonderful if there would be a way to upgrade and relocate the existing church, but if it does not work there is nothing they can do about it. His only concern was if a 50' buffer would be enough buffer area.

Ms. Arnold noted that the boundary between the proposed church site and the two impacted Walnut Hills lots is literally defined by the road. As is customary when they abandon a road right-of-way they split it right down the middle. It appears that is exactly where the survey flags are located. It looked like the full width of the road was about 30'. So they are talking about 15' of buffer area. There are some knee high shrubs that have grown up in the asphalt area. There are no trees.

Mr. Edgerton asked if everybody, including the neighbors, is happy with the 50' being an adequate buffer.

Ms. Arnold replied yes, that was her understanding.

Mr. Cannon supported the approval of the requests. It represents an important opportunity to keep the congregation impact and in the area where it belongs. He would urge the Airport Authority in its stewardship capacity to do everything in its power to ensure that the move goes smoothly and if there are problems relating to an inadequacy in the estimate that the Airport Authority uses whatever means in its power to assure that those problems are overcome.

Mr. Cannon said that his greatest disappointment was the question of the existing building.

Mr. Strucko asked if they needed 2 motions.

Mr. Kamptner replied that actually the Commission needs to make 3 motions. He suggested that condition 7 be changed to read, "Section 14-404 is waived . . ." so that there is no confusion that "shall be" means something that has to take place in the future.

Action on ZMA-2006-10:

Motion: Mr. Strucko moved, Mr. Edgerton seconded, to recommend approval of ZMA-2006-10, Albemarle Airport Authority – Pleasant Grove Baptist Church.

The motion passed by a vote of 5:0. (Commissioner Joseph was absent.) (Commissioner Zobrist abstained.)

Action on SP-2006-24:

Motion: Mr. Edgerton moved, Mr. Cannon seconded, to approve SP-2006-24, Albemarle Airport Authority – Pleasant Grove Baptist Church subject to the conditions staff recommended in the report, as amended, with Mr. Kamptner's modification to condition 7 stating Section 14-404 "is required" deleting "shall be" required.

1. Special Use Permit 2006-24 shall be developed in general accord with the following: "Proposed 2.000 acre division off of Tax Map 31, Parcel 27A" prepared by Kirk Hughes and Associates and Concept plan dated June 23, 2006, prepared by Kirk Hughes and Associates, and titled "Pleasant Grove Baptist Church" (Attachments A1 and A2)
2. A site development plan shall be required.
3. Setbacks for the church property shall be 75 feet front, 25 feet sides, and 35 feet rear.
4. A 20 foot buffer (no disturbance zone) shall be maintained continuous along the boundary between the church property and TMP 31-23J to the north.
5. A 50 foot buffer (no disturbance zone) shall be established the full length of the easternmost property boundary of the church parcel; a tree protection plan shall be required as part of site plan approval.
6. Sanctuary and classroom expansion, or the addition of day care and other non-worship uses, will require amendment to this petition.
7. Section 14-404 is waived to allow for a separate vehicular entrance from Earlysville Road serving the church parcel only.
8. VDOT approval of vehicular entrance shall be required.
9. Virginia State Health Department approval of well and septic systems shall be required
10. The applicant is required to coordinate verification of adequate fire flow with the Fire Department during the building permit process.
11. Five years shall be allowed from the date of approval of this Special Use Permit to the commencement of the use.

The motion passed by a vote of 5:0. (Commissioner Joseph was absent.) (Commissioner Zobrist abstained.)

Mr. Morris stated that SP-2006-10, Albemarle Airport Authority – Pleasant Grove Baptist Church would go before the Board on November 1 with a recommendation for approval.

Action on Waiver:

Motion: Mr. Strucko moved, Mr. Craddock seconded, for acceptance of the waiver requests from Section 14-404 to allow a vehicular entrance from Earlysville Road serving the church parcel only and the 5-year time element allowed for construction.

The motion passed by a vote of 5:0. (Commissioner Joseph was absent.) (Commissioner Zobrist abstained.

Mr. Morris said that the requests for ZMA-2006-10 and SP-2006-24, Charlottesville-Albemarle Airport – Pleasant Grove Baptist Church, would go before the Board of Supervisors on November 1 with a recommendation for approval. He noted that the two waiver requests were approved.

The Commission took a two minute break at 7:17 p.m.

The meeting reconvened at 7:19 p.m.

Mr. Zobrist returned to the meeting.

ZMA 2006-09/5th Street-Avon Center (Signs #48, 67, 68)

PROPOSAL: Rezone 86.895 acres from LI - Light Industrial zoning district which allows industrial, office, and limited commercial uses (no residential use) to PD-SC - Planned Development Shopping Center zoning district which allows shopping centers, retail sales and service uses; and residential by special use permit (15 units/acre) Approx. 398,300 sq. ft. of commercial uses.

PROFFERS: No.
EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Community Service/Mixed Use-community-scale retail wholesale, business and medical offices, mixed use core communities and/or employment services, and residential (6.01-34 units/acre) Neighborhoods 4 and 5.
ENTRANCE CORRIDOR: Yes.
LOCATION: Northeast intersection of Interstate 64 and Fifth Street Extended (Rt 631), bounded on the east by Avon Street Extended. Access is Bent Creek Road.
TAX MAP/PARCEL: 76/M1-2A, 76/M1-2B, 76/M1-4A, 77/11E.
MAGISTERIAL DISTRICT: Scottsville.
STAFF: Claudette Grant

Ms. Grant summarized the staff report.

- The applicant proposes to rezone 86.9 acres from Light Industrial zoning to Planned Development Shopping Center. The property is located at the northeast corner of the intersection of Interstate 64 and Fifth Street Extended (Rt 631). It is bounded on the east by Avon Street Extended. Access is Bent Creek Road.
- The applicant has proposed a 398,300 square foot shopping center, which includes a variety of commercial retail uses and five (5) additional pad sites for employment uses with a range of 51,292 - 68,389 square feet. A park/open space area and trail are located on a portion of the site. This proposed access would include the Bent Creek Road access as well as access from Avon Street Extended.
- The proposed project includes an 84,500 square foot grocery store, a home improvement store with 138,000 square feet, a major retail store with 105,000 square feet, three (3) retail areas respectively with 11,000 square feet, 17,800 square feet and 24,000 square feet, and two (2) restaurants, one with 11,000 square feet and the other with 7,000 square feet. A three level structured facility with approximately 411 parking spaces is proposed to be located between the home improvement store and the major retail store. It might be helpful to note that the Lowe's located on Route 29 is approximately 114,000 square feet with a 30,000 square foot garden center. The Target Store on Route 29 is 142,500 square feet.
- In 1997 a Comprehensive Plan Amendment was requested from Industrial Service to Regional Service. After a series of public meetings and a joint session with the City of Charlottesville the Planning Commission recommended to the Board of Supervisors a designation of Community Service Mixed Use. The Board further refined the recommended Comprehensive Plan language and was prepared to adopt it at its September 15, 1999 meeting. Prior to the meeting the applicant withdrew the project and the recommended language was never adopted.
- On July 8, 2003, a revised Comprehensive Plan Amendment was submitted and the Planning Commission held several work sessions regarding the request. The revised request included the Avon Street and Grand Piano property, which expanded the project area by 30.48 acres. The Avon Street property was formerly the City landfill.
- The Board of Supervisors adopted Comprehensive Plan language to be added to the Neighborhood IV profile on September 8, 2004. This property is currently designated Community Service Mixed Use in the Comprehensive Plan. As the staff report and several of its attachments describes there are many unanswered items that need to be addressed in order for staff to access the rezoning request.
- Some of the positive aspects of this rezoning request are:

    1. The road connection from 5th Street via Bent Creek Road to Avon Street Extended creates an additional east and west connection in this portion of the County and City.

    2. This development will add additional commercial/retail uses to a portion of the County that lacks a variety of retail shopping options; particularly as residential development in this portion of the County continues to be built.

- Generally the staff comment letter dated August 3, 2006 to the applicant needs to be addressed. Although the letter from the applicant dated September 27, 2006 attempts to answer some of staff's questions, many of these items need to be shown on a plan. Attachment F in the staff report is the adopted Comprehensive Plan Amendment with the applicant's response as

submitted per the plan dated May 30, 2006. There are unanswered and unclear issues to several of these items, which helps to determine if this plan is consistent with the Comprehensive Plan. In addition, the following items are also areas of concern.

1. As described by Attachments F & D the lack of details on the plan makes it difficult to determine how consistent this plan is with the comprehensive plan.
2. Environmental features including floodplain, critical slopes on the development plan and stream buffers are not shown on the plan.
3. Traffic and transportation issues are still outstanding and the traffic study needs to be updated.
4. Commitments to mitigate impacts of the development have not been made.
5. This request is located within the I-64 and Avon Street entrance corridors, and requires comments from the ARB. The vast majority of the home improvement and major retail stores face the Interstate 64 entrance corridor. These elevations will be required to have a finished appearance. An unfinished back of building appearance will not be acceptable for the entrance corridor. This request has not been submitted to the ARB.
6. Assessment of the landfill area is needed.

- Staff is not able to recommend approval because these issues just mentioned have not been addressed and are not resolved. There are unanswered issues and concerns regarding this application that, depending on how they are addressed, would dictate the substance of a recommendation.

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

Mr. Kamptner requested to ask staff a question, which was another unresolved issue. Another of the unresolved issues was that in July staff's recommendation was that the rezoning be disapproved because of the question of the validity of the studies as to whether or not this area reached a saturation point for commercial uses. He asked if that would be considered as well as this project moves along. The fact that this is on the southern side of the City may put it in a different light. His recollection was that the studies that were out there were looking at Albemarle County and the City as a whole

Mr. Benish replied that is correct. He felt that would be an ultimate consideration once they have the opportunity to look at some of the site related issues. There is some distinction, but spatially providing these types of opportunities around town and balancing those impacts and traffic mitigation issues. But, ultimately staff would look at the impact to the full County of the capacity of retail that this would have.

Mr. Craddock asked when this project was going to the ARB.

Ms. Grant replied that it was not scheduled at this time. The applicant has not made any application to the ARB.

Mr. Edgerton asked if they were up the state mandated 90-day reject or approval at this point.

Ms. Grant replied that was correct.

Mr. Edgerton noted that was why this project was before the Commission. So the only way to get answers to the questions that staff was talking about is if the applicant voluntarily requests a deferral.

Ms. Grant replied that was correct.

Mr. Edgerton said that he was surprised with the staff report on how much has been unresolved on the plan. Therefore, he was curious why they were not having a work session as opposed to the public hearing. He suggested that the applicant could address that.

Mr. Cannon questioned if it would be more of a regional use drawing people from a broader area than essentially adjacent neighborhoods.

Mr. Benish asked to start out with some history with the Comprehensive Plan Amendment. He felt that the intent of that language when the Board adopted the Comprehensive Plan Amendment was that it recognized that it would have regional scale commercial within it. That is the reason that there are a number of conditions that do allow for big box development. The total square footage that is shown is not typical of what they would classically and under our Comp Plan consider Community Service. The reason it is designated Community Service- Mixed Use was that was a way to in part to communicate that there was also a community function that was expected and a form that type of regional type of shopping area should strive for. That is why the language other than Regional Service was used.

Mr. Morris said that staff had indicated that the traffic study had not been updated. He asked when the last traffic study was done in this area.

Ms. Grant replied that the last traffic study was done in 2004.

Mr. Morris said that the maps provided showed that the connector goes all the way over to Avon Street. He asked if that was correct.

Ms. Grant replied that was correct.

Mr. Morris asked if there have been any engineering studies done as to the portion of that road that goes over the previous landfill. Do they have any data that shows that they can even put a road there?

Ms. Grant replied no, but that the applicant might be able to answer that question better.

Mr. Edgerton said that when the Commission saw this last in a work session he remembered a parkway proposal as proposed to the road as shown connecting Avon Street. He asked if his recollection was correct.

Ms. Grant replied that it is a parkway. It is a two lane road.

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

Steve Blaine, representative for the applicant, said that others present tonight includes colleagues Frank Cox and Mike Fenner from the Cox Company. They were saying before the meeting that this group has been involved with this property for almost ten years. They understand and appreciate the staff report and agree that there are a number of outstanding issues. They believe that the information is in the public realm. It is their task to point that information out to the Commission. What they hope to do is address some of the critical first step questions to develop this plan to a plan that can be built. They are concentrating on a zoning application to change the zoning designation. What they hope to do is gain from this public hearing from the Commission and perhaps from others who will comment how they might improve the plan and move it forward.

They have three objectives that they would like to try to achieve tonight. First, is to confirm what the public benefits are related to this rezoning application. What is the public getting from this rezoning? They have heard about the big box retail. They would submit that the parkway that is planned and what will be proffered will be a significant public benefit. They think that they can confirm that the land use proposal is consistent with the Comprehensive Plan. The Commission has the plan features to make that determination. Thirdly, to receive aid and direction from the Commission on plan features that will enable them to go forward and develop proffers, which they intend to make for this project. What public benefits are offered by the rezoning application? As Ms. Grant mentioned, it is the road connector primarily and principally. When they bought the Comprehensive Plan through to the Board of Supervisors that road connector was recognized as a critical component to the transportation improvements that will help in the southern end of the County.

In a power point presentation, Mr. Blaine pointed out the important features on the area plan and made the following points.

- The project will provide a vital connector, which cuts off traffic that would have to come into the City and use Elliott Avenue to come over to Avon Street.
- The idea of the parkway is that it will have limited access. When they got the Comprehensive Plan approved the engineers, the Cox Company and the experts in Richmond worked with DEQ to develop an engineered plan or a feasibility of connecting that road through an area that was the former City landfill. That whole process will entail another ½ million dollars of engineering costs. So one of the green lights that they are looking for is if this proposed land plan in keeping with the Comprehensive Plan to support a zoning so that the engineers and the environmental experts can process this road plan through. It is estimated that the added construction costs for crossing this area of the former landfill, which requires a technique called dynamic compression, will add to about $2.00 to $7.00 a square foot for building costs. They want to make sure that they have done the math and they have the engineering.
- The benefit of this road is estimated at 6 to 7 million in savings to the community by our client proffering to make that improvement.
- They understand that there are challenges beyond dealing with the environmental issues here. They also have to deal with the bridge that connects Bent Creek Road over to this site. They would proffer that they would have to make that bridge substantially significant to allow VDOT to accept it into the state system. This would be a state maintained road. They understand that this is a tight right-of-way here. It may require acquiring additional right-of-way. That would be the developer's responsibility. They want to make sure that the land plan will succeed in the approval process before they go into that lengthy process.
- They know that they will be working with the City to improve the intersection here. They have spoken with Jim Tolbert and the City engineers and they are supportive of this park way concept for the added benefits that it provides to City traffic convention. So they are optimistic that these issues can be worked out. But, naturally they are time consuming and will have to be dealt with in an engineering site plan process.
- Some of the other benefits of the project are that they think they can provide an integrated trail system, which can link up with the Rivanna Trail system. They can provide through the ownership that they control a trail system that would link and go underneath I-64 and actually provide a trail link to other projects south of I-64, including the proposed Biscuit Run project.
- They would propose parks and open space in much of the green area that will show on the plan. They would concede that the plan could be better labeled and identified. Those can be incorporated into specific proffers. What they want to get from the Commission is what is the nature of that park and open spaced area and should it all be retained as natural. Or, should they provide active recreation such as ball fields in some of those areas that might support it? Or, should it be solely a nature area with nature trails?
- In terms of other environmental benefits, what they can do through the engineers is actually enhance some of the stream valley that is currently in the state of degradation in Moore's Creek. This has been a drainage area for a lot of development that has been unplanned in both the City and the County. They see it as an opportunity to actually enhance that stream valley through stream valley preservation techniques.
- They have labeled one area as a woodland or nature trail. There can be a trail system that can link the highway network, including both bike and pedestrian, along this parkway. What makes this a parkway is that it does not have multiple access points to other uses. One of the things they would like to hear from the Commission, which is a suggestion in the staff report, is that this area might serve as high dense residential. Their approach to this is to keep it natural and maintain it as open space. But, if they hear that it is a strong desire to develop this, of course, it may change the character of this road because it would then require access points.
- The theme here is a limited access parkway that would be below the grade of the main shopping center. It would be separate and apart from the developed area in the shopping center.
- He asked for some direction and aid from the Commission. He asked for input partially because this plan insofar as the retail portion is not going to meet with the Neighborhood Model. It was not intended to. When they went through the Comprehensive Plan process it was recognized by the Board of Supervisors that this was a location because of the capacity of the road network and because of the infrastructure that they may need to do some further analysis in terms of the

absorption. But, this was the right area for the big box retail users. In the minutes of the meeting they were very clear in expressing the terms of what the owner's intent was. So the Neighborhood Model is not going to fit neatly on an analysis of this. They are not going to call it the Neighborhood Model. That is not what they intend.

- They acknowledge that the zoning requires information for the Commission to make their findings. They are set forth in Section 8.1.5 in the Zoning Ordinance. They have identified from the ordinance and the staff reports some areas where they need to provide some additional information. In the typical street cross section it would be nice to know that the Commission concurs with their approach of the parkway and that it would be a low speed designed road, probably 35 to 40 miles per hour without sidewalks, but with some more nature rural type curbing certainly with streetscape. Some information and feedback on that would be helpful. Then they would come back with a typical cross street section. They need to develop standards of development, including building heights and proposed yards. They will do that, but would like to take away from this some guidance to develop those. They obviously can better label the open space plan for environmental features and areas for preservation. They are in the plan. But, the fact that staff cannot point them out tells them that they need to do a better job. They will provide larger plans and formal proffers on the approved proffer form. They have said that they will build the road and do these features as part of the plan. If desired, they can do that on the proffer form.
- They are familiar with the Architectural Review Board. At the time that a certificate of appropriateness is required, the ARB can provide preliminary advisory commit. But, frankly they don't think that is going to be very instructive because they are going to require this information to ultimately approve a site plan. They are going to need to have specific tenants with architectural renderings down to the materials and the way the roof is going to look. They know what that process is all about and the time it will take after they get the zoning. They would welcome questions that would help them to improve their plan.

Mr. Morris asked if there were any questions for the applicant.

Mr. Edgerton asked if the applicant expects the Commission to make a decision tonight.

Mr. Blaine replied that his understanding is that there is no legal constraint to requiring an action. Naturally, they would like for the Commission to recommend approval. But, he did not think they should feel constrained by it because it is not a site plan.

Mr. Kamptner noted that with a rezoning the Commission had to make a recommendation within 90 days.

Mr. Blaine said that they would welcome a recommendation for approval. But, if they get to a point where they have a list of things that they think are inadequate they would rather have a full recommendation than a recommendation for denial.

Mr. Morris asked staff where the application was in regards to the 90 days. He invited other public comment.

Hugh Underwood asked to speak in favor of this proposal because the south side of Albemarle County and Charlottesville needs retail space. He would like to avoid having to drive to Route 29 for lumber supplies. The traffic has increased a lot since 1969 when he moved to this area. He has the traffic now and would like to have the convenience.

Jean Savage, resident of Fox Trot, expressed concerns about the traffic problems on Avon Street and would hope that the Commission would think about this in a comprehensive way and not just in terms of this development, but also Biscuit Run and the other kinds of development in the growth area. They all know that the growth is coming, but hoped they could think about it in a broader way.

Morgan Butler, an attorney with the Southern Environmental Law Center, said that he heads the Charlottesville/Albemarle Initiative that works to support sustainable land use and transportation patterns in this region. As staff has pointed out in its report, this application plan leaves a number of important issues and concerns unresolved. In deed, the lack of detail in the plan precludes an appropriate review of

the proposal's impacts and makes it difficult to access its compliance with the Comprehensive Plan. However, based on the information that has been provided they have a number of concerns they would like to voice at this time.

- The first issue involves retail space. Recently they released a report comparing the amount of retail in the County's pipeline with the County's own estimates of what they can absorb over the next ten years. That report demonstrated that the County has already approved or is currently considering an amount of retail space that is two to three times or about 2 million square feet beyond what would satisfy our needs over the next decade. These figures do not include the roughly 400,000 square feet of retail in this proposal. To be clear, they do think that a reasonable amount of retail may be appropriate at this site. However, they are concerned that 400,000 square feet well exceeds that mark, especially due to the fact that the shopping center is intended to become a regional shopping destination, but will be located on a site that the Comprehensive Plan describes as demanding aesthetic and environmental sensitivity.
- The second issue is traffic impacts. They agree with staff's recommendation that the 2004 Traffic Impact Analysis be updated to make sure that it identifies all off site traffic impacts and needed mitigation. The Commission should make clear tonight its expectation and that proffers are used to implement all transportation improvements necessary to ensure that they don't create new traffic snarls in this part of our community. Further, to set forth in the Comp Plan that the transportation for this site must accommodate mass transit as well as bicyclist and pedestrians. As best he can tell, the current application plan contains no such provisions.
- There are multiple design strategies that could be used to lessen the impacts of what staff has accurately described, "Conventional large scale auto oriented regional strip shopping center." For example, some of the proposed retail space could instead be designated as small professional office uses and live/work units or as a public library identified as appropriate for this area and the County's CIP.
- Second, while they applaud the inclusion of a structured parking facility in the southern portion of the property. They feel that the sea of parking in the center of the development should be better relegated behind the buildings after those buildings are reoriented so they front the development's internal road network. The conversion of some of the proposed retail space for less parking intensive uses as previously mentioned would also reduce the overall amount of parking needed.
- Third, as the Comp Plan sets forth this site represents an ideal spot to incorporate green building principles, such as pervious pavements and green roof technology that could reduce impacts from increased storm water run off. Finally, the development could be made much more compact simply by requiring that the big boxes be multi-story buildings.
- In conclusion, they urge the Commission to reject this request and to keep these concerns and recommendations in mind as they determine how the applicant should respond to the numerous unanswered questions and unresolved issues of this proposal.

Gary Leavell, resident of Old Lynchburg Road, pointed out that the same concerns that he had heard tonight were ones he heard ten years ago. He was hoping that the Commission will allow this project to move forward and that all of their questions will be answered over a period of time. But, the folks who live on that side of town need more commercial support. The developer is going to give the road connection to Avon, which is something that they need for conveniences and emergency purposes. The buses will be able to get to the schools in that area much faster. He asked that the Commission allow this project to continue and to be able to work out the problems over a period of time.

Jeff Werner, representative for Piedmont Environmental Council, said that it is difficult to offer comment on a proposal which staff has identified as lacking information and has unresolved transportation issues. Despite the applicant's assurances that the answers are in the public realm the critical statement by staff is that there are unresolved issues and concerns regarding this application. Lacking a complete application on which to offer informed comment, he would still like to put in the record some overall concerns about the scale and the timing of the retail component of this project. Primarily the question that must be asked is how much more retail space does this community need? There is no doubt that the residential development in the southern growth area will generate additional demand for new retail. For the record, they are very pleased to see the proposed connector road as the County's population grows. This road will allow the County's suburban traffic to be diverted out of City neighborhoods. As a City resident, that is important. It is highly doubtful that this new big box center is intended to simply support

new residents in southern Albemarle. It is highly doubtful that this new big box center will somehow reduce City traffic and traffic on Route 29 North. He wanted to cite documents provided in the previous application in 1998 by the Cox Company. In a letter of February, 1999 it says that the close proximity of the interstate makes this an ideal location for a commercial use with a regional draw. This will in turn reduce congestion on roads supplying access under current consumer patterns to regional traffic destinations on Route 29 North. He wished that they could be so lucky. They have attached a map that they have identified as their retail study area. The map shows the draw from Orange County, northern Albemarle County, Fluvanna, Louisa and Nelson. So let's be honest about this being a shopping center for the people in Mill Creek. Also, in a retail analysis by the Cox Company in June, 1998 they have looked at retail figures for the 7 counties within the Charlottesville Metropolitan Statistical area. That is a big area. They conclude that by the year 2010 that there will be additional retail demand that would support 1.8 to 2.2 million square feet of new retail space. That is in the entire MSA. They say that Charlottesville and Albemarle County absorb a significant portion of retail sales from residents living out side of the geographical boundaries. In the last couple of years this county has approved 2.8 million square feet of new retail at North Pointe, Albemarle Place, Northtown, Gazebo Plaza and Hollymead Town Center. There have been a number of smaller projects that have been approved, such as Luxor and Wickham Pond with another 180,000 square feet. This proposal has another 1 million square feet. The 2.8 million that has been approved and what is in the pipeline would total 4 million square feet of additional retail. That is almost double of what Mr. Cox projected that the entire MSA could absorb by the year 2010.

There being no further public comment, Mr. Morris closed the public hearing to bring the matter back before the Commission. He asked Ms. Grant if she had the answer yet as to where they are in the 90 days.

Ms. Grant said that they are up against the 90 days.

Mr. Benish noted that there really was no time so that a deferral would have any substantive effect.

Mr. Craddock requested to ask Mr. Kamptner a question about the old city/county dump. If they go in there and start putting in a road and pads would the county and city have any more responsibility because that was a previous dump.

Mr. Kamptner replied that he did not know the history of the dump. Therefore, he would have to research that and get back to him.

Mr. Strucko said that he had heard from numerous people that live in that area south of town about what is almost border lining on their desperate need for commercial presence in this area. They tell him when they go shopping that they either visit Pantops Mountain, Barracks Road or up to Lowe's on Route 29. He agreed with some of the speakers that certainly a commercial presence may be warranted here, but to what degree and to what scale. He felt that kind of intelligent approach is what he would like to see done. He did not understand how it exists at this level and its incompleteness. With all of these unfavorable factors, as per staff's recommendation, there are too many detailed questions about the report to accept this report and take a favorable approach tonight. He asked if the proposed parkway was on critical slopes. He asked if it violates the buffer on Moore's Creek. If there is going to be active recreation ball fields will they share parking with the commercial space? He can't with this report answer any of those questions. So without the details how can the Commission pass judgment on this rezoning.

Mr. Cannon asked if the parkway has been proffered.

Mr. Kamptner replied that it has not yet been proffered. Normally, staff would have the proffers in hand and worked on revisions with the applicant by the time the rezoning request comes to the Commission.

Mr. Edgerton shared Mr. Strucko's concerns. He still wondered why they were not in a work session. He felt that would be a positive experience for everyone. Staff has brought up a lot of concerns that have not been addressed in what they have before them. Mr. Blaine and Mr. Cox are very familiar with the process that is typically followed. Frankly, what has been submitted here is a fraction of what they typically submit for a rezoning. One could argue that they need some indication that this is the direction

that the Commission would be comfortable going to before they spend the money to get the answers to the questions. But, that has never been their process before. They normally ask for a lot of specific information in a rezoning, which includes proffers. The reason for doing that is it will hopefully expedite the process when the site plan comes up so there will be no big surprises. This is a big box development and will provide some of the commercial needs for the southern part of the community. But, it will provide a lot more traffic from out of the area. He will not be able to support this tonight. He hoped that the applicant might consider asking for a deferral and begin the process of answering the questions. There are a lot of environmental issues on the site that have come up during previous reviews of this project dating back many years. As Mr. Blaine noted a lot of this is in the public realm. But, for some of the people who were not sitting at those previous meetings it might be helpful to have that information before they have to make a decision. If the Commission has to take an action tonight, he would recommend denial of the rezoning.

Mr. Zobrist noted that Mr. Blaine asked a series of questions during his power point presentation. He asked why they were not in a work session giving conceptual review of what they were doing. He asked Mr. Blaine to reiterate his questions.

Mr. Blaine replied that one question had to do with the character of the parkway. That would provide specificity for them to then write a proffer. He would take issue with the view that they must have a proffer before an action such as this. But, the Commission must be satisfied that the commitment is there to make the improvements. So what they would like to know are they off base with their approach to this as a parkway with limited access, two lane and low speed design. Then they would have something to prescribe in specifications in a proffer. That is one area. The other area is fundamental to the plan. They could imagine over ten years how many different arrays of these uses they have put to the limited area trying to preserve these critical environmental features and try to achieve the critical mass that is needed that they believe can be shown is needed for the market demand. This Commission is not competent to determine what the absorption of retail space is. If that is going to be a basis of their decision, then they should probably go ahead and make a recommendation. They have retailers that are prepared to make the investment. They have an owner that is prepared to make the investment in all of this engineering design that they know that they have to do before they can put the first spade in the ground. So if that is a determination let's go ahead and make that now. That is going to be fundamental. They can support the shopping center with retail users. There is a demand for it. But, they have a lot of characteristics to this open space area. They don't really have any fixed plan on what this employment area could be. They could take that off the plan. Or, they could provide some guidance to recommend to the Board to put more definition on what they think would be appropriate uses here. Should this be active recreation? Or, is it better suited for remaining a natural open space? He would hope that they would recommend them to pursue the Rivanna Trail network. Then they would put that in a proffer. He felt that they could proffer that by having it on an application plan. That would be a good thing to have front and center in the proffer. He was inclined to recommend to his client that they not force this issue unless they were hung up on these points that he just mentioned regarding the absorption issue and the form of the development that is a big box retail development that is needed in this community. That is what it is and they are not going to call it something else.

Mr. Zobrist asked if he was saying that he was willing to defer the decision if the Commission was willing to give him some guidance on those two issues.

Mr. Blaine replied yes, because they need to write some proffers. They need to clean out where on the plan that the critical slopes are shown and where the floodplains are. They believe that they are there. But, perhaps the Commission having received the plan on Friday and this being Tuesday has not had an opportunity to dig for the information. It is all there. As the representative from Piedmont Environmental Council pointed out there are ten years of research that can be done on this project. They have pulled together the germane issues that are necessary for the recommendation, but they don't want to force the issue. He would recommend a deferral.

Mr. Zobrist noted that the two questions he wanted Commission input on were: Is the parkway appropriate and is something that they would like to see there? Are they going to try to make economic decisions for the private people that want to build commercial in this area?

Mr. Kamptner asked to comment on that issue because one of the factors that the Commission and Board are charged to consider are the current and future requirements of the use of land for various purposes. It includes retail, residential, industrial, office and all of those different things. So this is a factor that they are supposed to consider so they don't under zone or over zone for a particular use.

Mr. Blaine said that the statute says that they have to find that the existing zoning is unreasonable and it meets with the Comprehensive Plan. That is what this plan supports. The Board of Supervisors has determined that these uses are appropriate in their 2004 action. That would be their counter to that point.

Mr. Strucko noted that the extent of retail was something that they could reserve judgment on, but not necessarily the activity.

Mr. Blaine felt that the Board in their Comprehensive Plan language was quite express in deliberating the nature of the retail. In fact, they were to the point in defining what they meant by big box and setting out the limits on what is meant by big box. They may end up with actual buildings that are less than this size. But, these fit within the terms that were defined and deliberately adopted in the Comprehensive Plan in 2004.

Mr. Strucko asked if there were two big boxes there being the big box retail and a major home improvement center.

Mr. Blaine replied yes. The Comp Plan language says that as long as that does not exceed 300,000 square feet the Comp Plan supports it. The grocery store was exempted from the definition of big box. In any event, that has remained and they proposed less than 100,000 square feet for that.

Mr. Zobrist suggested that the Commission try to answer Mr. Blaine's questions.

Mr. Blaine recommended to his client that they defer action because he felt that there was information that was germane to their finding needed. They are not going to be debating the Neighborhood Model application on this retail site because it does not fit. They think they can find a number of Neighborhood Model features to it, but it is not going to fit square four. They are not going to debate the absorption rate of retail because they have been doing that for ten years for this site. There has been no evidence that they can pull out. The actual people who do this for a living that build retail can provide their data. But, it is not germane to their finding. They disagree with that. They don't think that they have to find that.

Mr. Cannon asked if he was recommending deferral of the request to his applicant.

Mr. Blaine replied yes, that he was prepared to do that.

Mr. Cannon noted that the Commission could have a discussion and not be compelled to decide. They would not be prejudice in their future ability to decide under that.

Mr. Blaine replied of course not.

Mr. Kamptner agreed.

Mr. Cannon said that it was the Commission's obligation to interpret and apply the Comprehensive Plan. He did not yet fully understand what this category in the Comprehensive Plan means. He asked to understand more about that before he was ready to commit on the issue that he had raised.

Mr. Blaine asked for a deferral if it was for a six week time frame, but not for an indefinite deferral. He asked that the Commission read the Comprehensive Plan language and apply it to this application. He felt that six weeks was ample time for them to draft proffers and meet with them individually and answer specific questions. He pointed out that there was a Comprehensive Plan Amendment made in 2004 by the Board of Supervisors that specifically referenced a grocery store, large discount department store and the home improvement store that went into much detail in what the size of the limitations are. If the Commission needs to review that, then he felt that they should.

Motion: Mr. Zobrist moved that the Commission accept the applicant's deferral request and move into a work session this evening.

Mr. Strucko suggested that they take the applicant's offer for this six week deferral. Perhaps during that six week period of time this application can be presented in a more thorough comprehensive way and have a lot of the staff questions answered. Perhaps the applicant should feel that he has an obligation to bring to the Commission a complete set of information. He noted that he had read the Comprehensive Plan. He takes that quite seriously because that is part of his responsibility in serving the community on this Commission. Part of his responsibility is also to review a complete application, especially coming from applicants that have been through this process before. This is not a complete application. He asked that the work session be scheduled to another date and not be done this evening. That would give them a period of time to go through this information thoroughly.

Mr. Kamptner suggested that staff check the calendar and set the deferral to a specific date.

Mr. Morris said that the date was dependent on the applicant and the staff working together to work everything out.

Mr. Blaine said that they accept the obligation that there is additional information that they have an obligation to provide. They are prepared to do that. He felt that this was the point where an application can get broke down. They have the information. They can better label and elaborate on it.

Mr. Morris said that he really likes the road network. He questioned how they were going to get across the old dump. He acknowledged that he had heard many comments from residents about the need for retail in the southern part of the County. As far as park areas, he suggested that they bring in Parks and Rec on that.

Mr. Craddock said that in some of the earlier discussions a couple of years ago, which was why he was surprised that a lot more information was not included in the application, the parkway was looked at a little more favorably. Those rock outcrops were looked at as being something environmentally important to keep out there. It is true that there is not a whole lot of shopping down south. But also with this regional draw, the traffic is going to come from Buckingham and other places. It is going to be a lot of traffic. But, he did like the connector road.

Mr. Strucko noted that its location to I-64 is ideal. That may do something. There were some specimen trees issues on this site in the prior consideration.

Mr. Edgerton asked that the location of the specimen trees should be noted before they start.

Mr. Morris noted that his comments tied back in with his questions.

Mr. Edgerton said that he liked the connector road, but was unsure if it was in the right place. But, he would have no way of knowing that. It appears to be following the existing access to the old warehouse, at least the first part of it. He was no fan of big boxes, but he would try to be open minded about large scale retail if there was any effort made to minimize the sea of asphalt. He believed that those footprints can be reduced by multi-story facilities. That is done elsewhere in the country quite routinely. He felt that the parking should be configured to be hidden behind the buildings and the buildings brought up closer. He said that the Commission cannot ignore the Neighborhood Model review, which was in the Comprehensive Plan.

Amended Motion: Mr. Zobrist moved, Mr. Strucko seconded, to amend the motion and accept the applicant's request for deferral of ZMA-2006-09, 5th Street-Avon Center, to December 5, 2006 for a work session.

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

Mr. Morris stated that ZMA-2006-09, 5th Street-Avon Center was deferred to a December 5, 2006 work session.

Old Business:

Mr. Morris asked if there was any old business. There being none, the meeting moved on to the next item.

New Business:

Mr. Morris asked if there was any new business.

- Mr. Benish said that the staff report for the work session on ZMA-2006-15, Glenmore – Livengood/Leake property is not in the packet tonight and will be hand delivered.

- Regarding the 5th Street Avon Center project the Planning Commission noted the following concerns:

  - Mr. Edgerton pointed out that the Commission had a similar hostile application a couple years ago on the North Pointe project. In that case the applicant basically told the Commission that he did not care what they thought and went forward to the Board. The Commission felt compelled to recommend denial. The Board sent the request back to be negotiated with subcommittees. He felt that they have a similar situation here and he hoped that the Commission could stick to their responsibility to the community. He felt that the Commission has a huge responsibility and that he took great offense by what occurred this evening. If the request comes back with incomplete information, he felt that it was time to say no thank you because the applicant understands the process. He opposed allowing an applicant to change the whole rezoning process.

  - Mr. Benish noted that the non-clarity of some of the information makes it difficult for staff to fully assess the Comp Plan and there are some issues on the 5th Street Avon Center site that staff wanted more information on. Without proffers and adequate information regarding the site staff was not able to completely evaluate the impact of the site. There were certain areas in the Comp Plan where it would have been better to have had more information and dialogue with the applicant. From staff's perspective, it would have been less frustrating to have had more information. Without the applicant's commitment to provide specific proffers it was difficult for staff to recommend moving forward with the request. What they are proposing is not completely inconsistent with what the Board intended. They did recognize that it was going to be a regional center. They left enough language in there that sent the message to try to make it more than a regular shopping center. That was really the gap. Staff could not get any definite information on why they did not do certain things.

  - Mr. Strucko expressed similar sentiment.

  - Mr. Craddock noted that the previous request that the Commission heard in 2004 on this item was more complete.

  - Mr. Cannon said that he did not understand how the Commission can act on a rezoning request that is conditioned upon the offer of a proffer without having a proffer in some form before us. When they adopt a rezoning it is a done deal.

  - Mr. Kamptner replied yes, but that the Planning Commission is only making a recommendation to the Board. The requirement that the proffers be submitted in writing really only applies to the Board of Supervisors. For the Commission to make an informed decision, it wants the proffers to at least have the concepts identified so that it can make a meaningful recommendation.

  - Mr. Cannon questioned how they would make a deal without the proffers.

- Mr. Edgerton noted that on many occasions the Commission has asked applicants for additional proffers on a rezoning and gone ahead and granted the rezoning with an understanding that the proffers will be satisfactorily worked out with the County Attorney's Office. It becomes a condition of the Commission's recommendation to the Board. By the time it gets to the Board the proffers are in an enforceable form they trust.

- Mr. Kamptner noted that this project was scheduled to go to the Board on November 8, which means that the proffers would have had to be final by tomorrow. The proffers have to be final 3 weeks before advertising. Therefore, the proffers would have had to be final by tomorrow or no later than next Wednesday.

- Mr. Morris said that he would be absent next week on October 17.

There being no further new business, the meeting proceeded.

Adjournment:

With no further items, the meeting adjourned at 8:40 p.m. to the Tuesday, October 17, 2006 meeting at 5:30 p.m. at the County Office Building, 401 McIntire Road.

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V. Wayne Cilimberg, Secretary

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