Albemarle County Planning Commission
February 5, 2008

The Albemarle County Planning Commission held a meeting and public hearing on Tuesday, February 5, 2008, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Thomas Loach; Jon Cannon, Vice Chairman; Linda Porterfield; Bill Edgerton and Calvin Morris, Chairman. Commissioners absent were Eric Strucko and Marcia Joseph. Julia Monteith, AICP, non-voting representative for the University of Virginia was absent.

Other officials present were Amelia McCulley, Director of Zoning and Current Development; David Benish, Chief of Planning; Gerald Gatobu, Senior Planner; Bill Fritz, Chief of Current Development; Megan Yaniglos, Planner; Joan McDowell, Principal Planner 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.

***Committee Reports**:*

Mr. Morris asked for committee reports from the Commissioners.

- Mr. Cannon noted that the McIntire Committee had been disbanded. Therefore, he would be available for other committee assignments as they become available.

There being no further committee reports, the meeting continued to the next agenda item.

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.

Bill Morrow noted he was present to speak about the issues surrounding a zoning request submitted on September 28, 2007.

- The request was accepted and date stamped by the County. After the submission he was informed verbally by the Planning Department that they needed signatures from every land owner in their Planned Development. Those land owners were to be classified as co-applicants to the rezoning application and not just signers of an approval. Their hearing was scheduled for this evening. After January 8, 2007 when they submitted responses to the Planning Commission, they were informed that a property sale had occurred in their Planned Development and now they were required to get a signature from that new buyer or their application would not be processed further.
- Tonight he wanted to make the Planning Commission aware of this procedure that has been evoked by the Planning Department, which is not in the County Code as a written procedure or outlined or otherwise referenced. They were informed by telephone of this procedure and were offered no guidelines whatsoever related to this issue. The County Code is clear about zoning submittals and this is nowhere to be found. In the absence of Code, statute or written documents this is clearly a procedure that is unlawful. Applicants are prohibited from amending their applications once they are submitted. This policy is a good one. It keeps everybody on the same page. The County, however, feels that it can change policy anytime during the procedure right up to and including today's date so they can require more signatures. Requiring applicants to update their applications upon each sale or a simple transfer of property effectively means that nobody can reach a public hearing anymore in a Planned Development. The policies issued by the Planning Department are instituting 100 percent compliance requirement. In cases of larger

developments tens if not hundreds of land owners would have to be co-applicants in any type of zoning requests. This is a legal co-application. It binds every signer to legal liability of whatever may transpire from amendment. In case of a corporation owning parcels in a Planned Development no corporation is going to subject its shareholders to this kind of unbridled liability. The latest buyer of the property in their Planned Development is an out of town corporation who has no intention of building on this site. They are flipping the property to a potential buyer who is under contract and the seller, on the advice of their attorney, has been counseled not to sign the co-application.

- This Commission and the Board of Supervisors uses the wisdom of mixed use as a blue print of the future. Imagine the potential conflicts when the residents of the Planned Community are involved in the commercial development and all of its complexities. Picture Biscuit Run five years from now when there are perhaps 500 owners and 20 commercial properties. Even with a small change proposed for one parcel, consideration needs to be given that houses are bought and sold every week. It is an impossible scenario and yet this is exactly the bureaucratic mirage that is begun to be created. He asked that the Planning Commission set aside this procedure until it can be thoroughly evaluated and passed by the Board of Supervisors like all other Code and procedural requirements.

There being no further comments, the meeting moved to the next item.

Consent Agenda:

Resolutions of Intent for text amendments to implement the Development Review Task Force recommendations for certain Administrative Approvals in the Development Areas.
(Ron Higgins)

Mr. Edgerton asked to pull the item from the consent agenda for discussion.

Ms. McCulley pointed out that procedurally this was the resolution of intent and it is just that. There is no draft text that has been prepared yet. The next step is that staff will come back to the Commission in work session on March 25. They will go through each item with recommended criteria that will be the guidelines for staff to review these administrative waivers. So at this point the item for tonight is a resolution that basically gives staff the okay to begin that process and come back to the Commission in work session. Staff wants to talk about concepts and principles before they look at words and provide draft language. That is the process that staff intends to follow.

Mr. Edgerton noted that he was concerned about item 5 on page 2 under critical slopes. It is something that was recommended by the Development Task Force. He stated for the record that he was concerned about how they deal with critical slopes, especially in the Rural Areas. He will remain concerned until they get some adjustment in the ordinance as recommended by staff and the Commission to the Board that the Board is no longer considering. He was concerned that until they have ordinance language that is more consistent with the Comprehensive Plan that they are going to be causing greater erosion in the Rural Areas. He was not comfortable with delegating this to an administrative review until they get that clarification.

Mr. Morris asked if there were any other concerns. He noted that he had one concern that was loosely tied to what they were looking at now. But, at some point in time as near in the future as they can possibly do it is there anyway that staff pull together a joint meeting of the Board of Supervisors, Planning Commission and the Architectural Review Board where they sit and listen to the wisdom of Mr. Kamptner that sets forth what are their duties and responsibilities and where does one begin and one end. He wanted it so that they were all on the same page and they are listening to the same person. He acknowledged that staff has more on their plate right now, but he did think this was long overdue.

Mr. Edgerton agreed.

Ms. McCulley responded that staff could do that sometime after the Board of Supervisors gets through the budget hearings. It would probably not be until April until staff would be able to accommodate that in

terms of everybody's schedule. That is something they intend to do and she would talk with Mr. Graham and Mr. Cilimberg about it.

There being no further questions about the consent agenda, Mr. Morris asked if there was a motion for approval as amplified.

Ms. Porterfield asked if they were not going to have the meeting at which they present some legal information until after April why are they going to do a work session in March.

Ms. McCulley replied that the March work session has really almost nothing to do with Architectural Review Board. She noted that none of the topics are Entrance Corridor, ARB or Certificate of Appropriateness topics. The topics are very different.

Ms. Porterfield asked if they don't need the legal information before they do that discussion. She felt that it would be a shame to have to do it twice.

Ms. McCulley pointed out that they would have that legal information for that discussion. She felt that the legal information being referred to relates to roles and responsibilities under the authority of the ordinance with regards to ARB review or things in the Entrance Corridor. Staff will be sure to provide that when they do have that joint meeting.

Mr. Cannon said that his motion was not supporting any substantive position. They were just moving forward with intent to have the discussion.

Motion: Mr. Cannon moved, Ms. Porterfield seconded for approval of the consent agenda as amplified.

The motion passed by a vote of 5:0. (Ms. Joseph and Mr. Strucko were absent.)

Deferred Items:

SDP-2007-00117 Bruce Property/Verizon Tier II PWSF - Final
Request for approval of a treetop personal wireless service facility with a steel monopole that would be approximately 77 feet tall (753 feet AMSL) and 10 feet AMSL above the height of the tallest tree within 25 feet, with a 12'x 30' x 10.58' (W x L x H) shelter/equipment cabinet. This application is being made in accordance with section 10.1.22 of the Zoning Ordinance, which allows for Tier II wireless facilities by right in the Rural Areas. The site contains 20.18 acres, and is described as Tax Map 41, Parcel 28. The property is located in the Whitehall Magisterial District and is zoned RA, Rural Areas. The Comprehensive Plan designates the property as Rural Area in Rural Area 3. (Gerald Gatobu) ***DEFERRED FROM THE DECEMBER 18, 2007 PLANNING COMMISSION MEETING.***

Mr. Gatobu presented a power point presentation and summarized the staff report. (See Staff Report)

- The applicant proposes a 77' tall monopole. This is not located on an Entrance Corridor so did not go before the Architectural Review Board. A balloon test was conducted on November 8, 2007. The balloon was flown at 10' above the tallest tree within 25', which is the reference tree. The balloon was only visible from one location. Three flush mounted antennae will be located on the monopole. There is an existing road. The reference tree has a ground elevation of 676' at means sea level. Several adjacent property owners have written letters to the Planning Commission. Verizon has done their part in talking to the adjacent property owners and addressing some of their concerns.
- Staff recommends approval of the facility at 10' above the tallest tree based on an analysis of the visibility and where the tower is located.

Mr. Morris opened the public hearing and invited public comment. There being none, the public hearing was closed and the matter before the Commission.

Mr. Cannon said that in reaction to the concern expressed last week about another cell tower there was a general presumption against towers that are seen as sky lighting. In this case the balloon was flown at a height of 10' above the referenced tree. The balloon was not visible from Route 614, which is Garth Road. The balloon was minimally visible from Route 810. When it is visible it is seen through the trees and it is sky lighted, which means that it can be seen sticking out above the horizon.

Mr. Gatobu replied that was correct.

Mr. Cannon asked if staff was saying that it was sky lighted, but it is not a significant intrusion.

Mr. Gatobu agreed.

Mr. Fritz pointed out that what staff looks at with the Wireless Policy is that sky lighting is whenever there is not back drop. That is to be discouraged in those cases. It is going to be impossible to view the monopole from all angles and have a back drop to it. So at some point it is probable that it is going to be sky lighted. In that case the policy goes into mitigation techniques. It talks about techniques of mitigation such as distance, color, height and mounting characteristics. In this particular case staff is advising the Commission that there is visibility to it and in their opinion due to the distance and the mitigation techniques being proposed that its impact is minimal. Therefore, generally it meets the requirements of the policy.

Mr. Cannon asked if they can be sure that the impact is minimal not only from Route 810, but from neighboring and non-neighboring properties as they had before. Apparently there the major offense is to neighbors who might not be on a public road, but are close.

Mr. Fritz pointed out that staff has the balloon flown and then staff travels around and try to find the locations where the monopole will be visible using the best skills that they can. It would be impossible for staff to pick every spot. Therefore, staff is giving them their best assessment based on the field observations.

Ms. Porterfield suggested that consideration be given to the color of the balloon. In this case the blue balloon did not stand out very well due to the color of the sky. She suggested that the red balloons would be best.

Mr. Gatobu noted that in this case staff just worked with what the applicant has. It is all a matter of what color balloon the applicant brings for the test.

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

Maynard Sipe, attorney with LeClair Ryan representing Verizon, said that also present were Mathew Tuff, Construction Engineer for Verizon; Stephen Waller, consultant to Verizon with Wireless Resources Incorporated and Matt Winstead, Project Manager for Verizon. They have two matters before the Commission tonight that were deferred at their initiation because they wanted to ensure that the adjacent owner notice was done correctly. It was corrected so that all adjacent owners were notified. Both of the sites are particularly good sites, which is reflected in the staff reports. Staff noted that it was only visible from one point from Route 810, which he felt was actually an achievement for them to be able to screen this so well.

Mr. Morris invited public comment.

Mike Stevenson, resident of White Hall, said that he was a part time beekeeper. (**Attachment – Notebook on Cell Phone Towers & Honeybees by Mike Stevenson, Beekeeper White Hall, VA 22901)** He questioned the distance that the photographs were taken from and what size lens was used on the camera. He felt that what was seen in the background was going to recede in that picture. Therefore, he wanted to clarify some of the images and statements that were made about distance. He submitted some information previously and was concerned as a beekeeper about the effects of micro-waves on the bees and their ability to navigate. That means they have to go out to forge. The bees go

out within a 3 mile radius to forge. The bees are going to be affected by this tower because of that. There are orchards in the immediate vicinity that they actually work with. He feels that will affect their ability to create a honey flow. If the bees are disoriented with their navigation they are not going to come back to the hive. The bees will get lost. He noted that on Carter's Mountain Mr. Childs brings beekeepers in when the flowers are out. The bees are moved around to different parts. The bees go back and forth to the trees in that situation and don't have to forge. The bees are moved around as the pollination takes place.

Mr. Fritz pointed out that the site was approximately 1,500' from Wyant's Store as shown on page 12 of the staff report.

Mr. Morris invited other public comment

Richard Urgler said that he was the, owner of the orchard directly across from the entrance to this site. The appearance of the tower does not seem to be a big problem. If there is no harm done as Mr. Stephenson has been concerned about, he still has a question that deals with the precedent. He talked with Mr. Waller and they have been very helpful. W He was concerned with the 30' X 12' X 10' cabinet being proposed. Since the balloon was visible he felt that it would be visible. He was afraid of the precedent and that they would continue putting in more monopoles due to their need for additional ones within 2.5 miles. He asked if the monopole was going to stay the way it was approved or is it just a foot in the door. If the tower is safe and not too noticeable he did not have a problem with it if it did not set a precedent. He would like to hear some reassurance of that in their discussions.

There being no further public comment, Mr. Morris asked the applicant if they would like to address any of the comments.

Maynard Sipes presented a power point display of Sheet C1b from the packet. On this sheet the roads have been highlighted and the tree line has been shown and shaded in to show the wooded areas. With regards to first question posed he noted that there would be no problem with the appearance of the pole. They used a large parcel that was wooded. The site was located to the back of the parcel away from the road and residences. They are using an existing access, which would require minimal removal of trees. By siting it here they feel that it minimized the visual impact, which staff agreed. The only place as staff noted that it could be seen was from the one driveway entrance. It is really due the terrain dipping very low in one area as one passes by. Travelers on the road would really not be able to look away from the road at that point because of a turn in the road itself. He noted that they have the testimony of staff that viewed it from many points and provided photographs.

Mr. Sipes asked to address the second point that was raised by residents. That is an issue that is in an area covered by federal regulations. They took the concerns seriously when they became aware of it. Verizon authorized research by an environmental law firm. They tried to provide the research to the Commission as there were no comments on this issue in the staff report. The proposed site is over 900' from the nearest residence off site. It appears to be 700' from Mr. Stevenson's property line. They feel that it has been sited away from the adjacent properties to minimize its impacts in general. Their review of the research provided to the Commission earlier found no scientific basis at this point in time for its effect on bee colonies. One thing that was clear from reading other testimony in that research was that it is not an area that is a focus of research because no correlation has been found between cell towers and this issue that is out there about bee colony collapse.

Mr. Cannon asked if staff has reviewed the research.

Mr. Fritz replied that he has not reviewed any information prepared by the applicant. At the request of the Chair he did some research. He asked to preface this by saying that the Telecommunication Act is very clear on this point that no decision can be made based on our affirmations because they are regulated by the FCC.

Mr. Cannon said that they regulate the aesthetics, but can't make the projected impacts of the actual radio waves.

Mr. Kamptner noted that they regulate under our zoning powers. It is really not the aesthetics. Radio frequency emissions and interference are expressly preempted by federal law.

Mr. Fritz noted that the research that he conducted matches what the applicant is saying. There are some individuals who say there is some impact as far as colony collapse disorder. But, he did not find anything that was directly attributing it to colony collapse disorder.

Mr. Morris thanked the applicant and Mr. Stevenson for researching this issue because it is a serious issue. He asked if there was further public comment.

Bryant Fovel, a near by resident on Brown's Gap Turnpike, said that he had a strong background in the tower business having retired about 18 months ago from Crown Castle. He was concerned with the future potential of additional towers going up to provide the needs of this carrier since this request was for one tower only 10' above the tree line. He assumed that they had taken into account for future tree growth.

Mr. Morris closed the public hearing to bring the matter before the Commission.

Mr. Loach asked that the Commission address the issue brought up by the public. It was mentioned at the last meeting on cell towers that they were planning a work session in the near future to look at the issue again. It is a balance between this type of pole and having large tower farms like on Carter's Mountain. It is a trade off that they are trying to regulate. That issue will be coming back at a work session.

Mr. Morris pointed out that staff has set a tentative date for a work session on cell tower policy on April 22, 2008. There will be more information on that. The public is encouraged to attend.

Motion: Mr. Loach moved, Mr. Cannon seconded, for approval of SDP-2007-00117 Bruce Property/Verizon Tier II PWSF.

The motion passed by a vote of 5:0. (Ms. Joseph and Mr. Strucko were absent.)

Mr. Morris stated that SDP-2007-00117, Bruce Property/Verizon Tier PWSF was approved. This does not require Board of Supervisors action.

SDP-2007-00118 Mawyer Property/Verizon Tier II PWSF - Final
Request for approval of a treetop personal wireless service facility with a steel monopole that would be approximately 131 feet tall (10 feet AMSL above the height of the tallest tree within 25 feet), with a 12-foot high 320 square foot shelter/equipment cabinet that will be contained within a 3,600 square foot lease area. This application is being made in accordance with Section 10.1.22 of the Zoning Ordinance, which allows for Tier II wireless facilities by right in the Rural Areas. The property is 48.83 acres, described as Tax Map 98, Parcel 22, is located in the Samuel Miller Magisterial District and is zoned RA, Rural Areas. The Comprehensive Plan designates the property as Rural Area in Rural Area 3. (Megan Yaniglos) ***DEFERRED FROM THE DECEMBER 18, 2007 PLANNING COMMISSION MEETING.***

Ms. Yaniglos summarized the staff report. (See Staff Report)

- The applicant requests approval for a treetop personal wireless service facility with a steel monopole. Staff recommends approval of the request at 10'. Architectural Review Board review was not required for this submittal because the parcel is not adjacent to the Entrance Corridor and the proposed work is beyond 500' from the Entrance Corridor right-of-way.
- A critical slopes waiver would be necessary if the Commission approves SDP-2007-00118. The amount of disturbance is minimal since the access to the site exists and the lease area is only 3,600 square feet.
- Staff recommends approval of the wireless service facility and the critical slopes waiver.

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

Mr. Edgerton asked how much area was being disturbed as critical slopes.

Ms. Yaniglos replied that on page 7 it states that the critical slopes disturbed is .04 acres.

Mr. Edgerton noted that the proposed structure was located right in the middle of the critical slopes. He noted that it appeared that if the location had been moved a little to the north that it could have avoided most of the critical slopes.

Mr. Fritz said that it looked like the applicant was trying to put the structure closest to the end of the road.

Ms. Yaniglos noted that there were a lot of critical slopes on the property.

Mr. Edgerton noted that it appeared that there was no way they could get to it without going through critical slopes.

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

Maynard Sipes, attorney with LeClair Ryan representing Verizon, represented the request. The tower was sited so as to have a backdrop from the ridge, which was in accordance with the Wireless Policy of the county. The backdrop minimizes the visual impact of the pole as it stands among the trees. They did not want to push the site further back to extend the access further because there would be more disturbance. They also were avoiding the drip lines of the trees around the site that they were relying on for screening.

Ms. Porterfield asked what color is the fence.

Mr. Sipes replied that they would paint the standard chain link fence Java brown since it was not visible.

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

Action on SDP-2007-118:

Motion: Mr. Edgerton moved, Mr. Loach seconded, for approval of SDP-2007-00118 Mawyer Property/Verizon Tier II PWSF as per staff's recommendation.

The motion passed by a vote of 5:0. (Ms. Joseph and Mr. Strucko were absent.)

Mr. Morris stated that SDP-2007-00118, Mawyer Property/Verizon Tier II PWSF was approved. This does not require Board of Supervisors action.

Action on Critical Slopes Waiver:

Motion: Mr. Edgerton moved, Ms. Porterfield seconded, to approve the critical slopes waiver as recommended by staff for SDP-2007-00118, Mawyer Property/Verizon Tier II PWSF.

The motion passed by a vote of 5:0. (Ms. Joseph and Mr. Strucko were absent.)

Mr. Morris stated that the critical slopes waiver for SDP-2007-118 was approved.

Regular Items:

SUB-2007-00186 Pounding Branch Phase IV – Preliminary

Request for preliminary subdivision plat approval to create 14 lots [12 development lots and two (2) preservation lots] as a Rural Preservation Development on 207.63 acres. The property, described as Tax

Map 72 - Parcel 32A is located in the Samuel Miller Magisterial District on Pounding Creek Road [Route 689] approximately 0.38 miles southwest of the intersection with Dick Woods Road [Route 637]. The Comprehensive Plan designates Parcel 32A as Rural Areas in Rural Area 3.
(Megan Yaniglos)

Ms. Yaniglos summarized the staff report. (See Staff Report)

- This is a proposal for a rural preservation development that was presented to the Planning Commission in November, 2007 and was denied. The applicant has since revised the plan to address the reasons for denial. The revision will still require a critical slopes waiver. Staff found that the revisions addressed the reasons for denial of the rural preservation development. However, staff did not find that the critical slopes waiver had been adequately addressed. If the Planning Commission approves the critical slopes waiver, staff is able to recommend approval of the rural preservation development.

Mr. Morris asked if there were questions for staff.

Mr. Cannon asked why the treatment of the critical slopes was not adequate. He asked if the disturbance could have been avoided.

Ms. Yaniglos replied that the disturbance has not been avoided. The roads are still in the disturbance. There are several design layouts for the subdivision. The realignment of the public streets may lessen the amount of lots that they could get. The applicant did not provide any alternative locations or alignment of the streets.

Mr. Cannon said that her observation is that a realignment of the streets could eliminate intrusion upon critical slopes entirely or just reduce that intrusion.

Mr. Fritz said that part of it is that the subdivision in and of itself is not necessary to achieve a reasonable use of the property. So as is they have reasonable use of the property. It is staff's opinion that they could either eliminate or substantially reduce the impact on critical slopes and have a reasonable use of the property. Because they have to make positive findings, staff failed to make that positive finding that the denial of the waiver would deny them reasonable use of the property. Therefore, they cannot make the positive finding.

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

Justin Shimp, representative for the plan, asked to address this project's lengthy process. There actually was a different alternative layout originally that involved crossing stream buffers. This was one of the first requests that the new determination affected. He went back and did the best that he could to disturb as few critical slopes as possible to access the legal building sites. They had to bring the road around the stream in the northern portion of the site. That was the minimal disturbance that he could create that did not go into the streams and would access those building sites. He stressed that there is some disturbance, but also a lot of preservation. This layout throws in 160 acres of preservation tract that includes all the stream buffers and a large portion of the critical slopes. He feels that this plan meets the intent and asked that the Commission pass it.

Mr. Morris invited public comment. There being none, the public hearing was closed and the matter before the Board.

Motion: Mr. Cannon moved, Mr. Edgerton seconded, for denial of SUB-2007-00186, Pounding Branch Phase IV – Preliminary Plat for the reasons stated in the staff report.

1. The design does not meet Section 10.3.3.2 (c) and 10.3.3.2 (f) of the Zoning Ordinance.

Mr. Kamptner specified that those are the reasons listed on pages 3 and 4 – The failure of the application to satisfy Sections 10.3.3.2.c and f. They both deal with the with the location of the building site on the preservation tract intruding into the Mountain Overlay area and not preserving various resources, which the RPD form of development is designed to protect.

Mr. Cannon asked if that includes the concerns about critical slopes, and Mr. Kamptner replied yes.

Ms. Porterfield pointed out that she was going to vote for denial and wondered if the applicant wants the ability to defer this to see if they can meet some of the staff's conditions.

Mr. Shimp said that he appreciates that opportunity, but would be happy for the Commission to take action and cite the specific deficiencies with the plan. Then he will consider revision or going with another type of subdivision.

The motion passed by a vote of 5:0. (Mr. Strucko and Ms. Joseph were absent.)

Mr. Kamptner asked the Commission to go ahead and take action on the critical slopes waiver because they have an application pending before them and also to identify the reasons which are identified in the staff report.

Action on the Critical Slopes

Motion: Mr. Edgerton moved, Ms. Porterfield seconded, for denial of the critical slopes waiver for SUB-2007-00186, Pounding Branch Phase IV – Preliminary Plat for the reasons stated in the staff report.

The motion passed by a vote of 5:0. (Mr. Strucko and Ms. Joseph were absent.)

Mr. Kamptner said for the record the motion is based on staff's inability to make any of the findings under Sections 4.2.5.a.1, 2 or 3.

Mr. Morris said that SUB-2007-00186 Pounding Branch Phase IV – Preliminary has been denied. This does not require Board of Supervisors action.

The Planning Commission took a ten minute break at 7:26.

The meeting reconvened at 7:37 p.m.

Public Hearing Items:

ZMA-2007-00021 Cavalier Mini Storage (Sign # 102)
PROPOSAL: Rezone 2.169 acres from RA Rural Areas zoning district which allows agricultural, forestal, and fishery uses; residential density (0.5 unit/acre) to HC Highway Commercial zoning district which allows commercial and service uses; and residential use by special use permit (15 units/ acre)
PROFFERS: Yes__x__
EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/ acre)
ENTRANCE CORRIDOR: Yes__X__
LOCATION: North side of Route 250 East and approximately 1/10 mile east of I64
TAX MAP/PARCEL: TMP 78-36
MAGISTERIAL DISTRICT: Scottsville
(Joan McDowell)

Ms. McDowell presented a power point presentation and summarized the staff report.

- The proposal is to change the zoning district from Rural Areas (RA) to Highway Commercial (HC), to allow a mini-storage development on the property. There is a proffer that would eliminate

some of the by right uses in the HC District. The property is located on the north side of Route 250 East approximately 1/10 mile east of I-64.

- There are several issues with this rezoning request.
  - The proposed zoning classification is inconsistent with the Comprehensive Plan.
  - The proposed zoning classification would generate traffic above that normally anticipated in the Rural Areas. North Hill Road and Route 250 will be a U-turn for the Gazebo Plaza, which is the shopping center that has been approved in the Development Area just north of I-64 just off Route 250.
  - There is no identified public need for additional Highway Commercial in this area.
  - The property is located at the gateway to the Southern Albemarle Historic District and is across the street from properties that have been placed under easement and are also important historic resources.
  - The proffered eliminations of by-right uses in the Highway Commercial District do not mitigate the potential negative impacts of this rezoning.
- Staff recommends denial of this application.

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

Mr. Loach asked under the Rural Areas what would be allowable number of homes that could be built on the 2.169 acres.

Ms. McDowell pointed out that it has a house on it already.

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

John Grady said that he was present to assist the applicant, Mr. Chavan. He felt that they all agree on the importance of the Comp Plan and the long range planning. He believes that staff does an excellent job in trying to map out the direction of growth within the County. But, unfortunately there will always be a situation that is not considered or covered by the Comp Plan or the Zoning Ordinance. However good the Comp Plan may appear to be it is not perfect. There will always be a parcel of land or a situation that will require a waiver, modification or a special ruling from the Commission or the Board of Supervisors. The parcel owned by Mr. Chavan and several parcels around this area are examples of exactly that. They are not covered by the Comp Plan and are certainly not considered to be Rural Areas. Living in the Rural Areas as do some of the Commissioners he did not think anyone here would consider buying any one of these parcels between the hotel and the industrial park and building their home and raising their children here. Mr. Chavan property and several other parcels are surrounded by major highways, I-64 to the north and Route 250 to the south. There is Highway Commercial property on the west side and Highway Commercial and Industrial property on the east and directly across the road. The commercial property will never be down zoned to Rural Area or Residential. So that leaves them with what really needs to be done with this property trapped in the middle. The property does not have good rural character. Mr. Chavan is proposing an excellent use of the property if rezoned for a mini storage requiring minimal water and sewer, which are both supplied by existing well and septic. The traffic will be light as a mini storage has always been a minimal traffic generator. In researching these parcels in this area they have found that the majority or 90 percent of the owners don't live on these parcels. Some are rentals and others are vacant or not built on. Even the couple of property owners still living in the area agree with them in a rezoning request. They agree that others may come forward to rezone and they hope that they do. They hope that they are successful in their attempt. If others in this area can be creative and continue to come up with low impact uses, as they are attempting to do, hopefully the Commission will agree that it is long overdue for rezoning. Mr. Chavan and other adjacent property owners are not major developers or builders. They will need help from the Commission, the staff and the Board of Supervisors in order to rezone this property. They ask the Commission to look at this parcel for it really is as a parcel left out. He asked the Commission to rezone Mr. Chavan's parcel and allow him a reasonable use of it. He requested that the Commission review his map that showed what was really going on the property.

Ed Bain, attorney for Mr. and Mrs. Chavan, said that he had a letter that was in their packet that Mr. Grady has on, which he will try not to duplicate what he said. It really does makes the Commission look at the big picture of what is happening.

- The Commission has reviewed the Pantops Neighborhood and that sort of thing. This property is just beyond I-64. It is clearly not Rural Areas along there, which he felt that they have to look at. Staff talked with us about possibly coming in with a Comprehensive Plan Amendment for the whole area. But, as Mr. Grady said, they are not big developers and have one small piece of property that they would like to put to this particular use.
- There are some rezonings that have taken place in this area since the 1980 County wide down zoning. In 1986 the Hunter's Hall was rezoned, which was behind a commercial property on Route 250 East. In 1988 the parcels immediately adjoining their property was added to the motel property and rezoned. The objection that came in via email was from someone that one of their parcels is already zoned Highway Commercial. Since that parcel is immediately adjacent they don't have an issue of spot zoning. There is substantial commercial area across the road and down the road.
- As indicated in the letter, there are churches and other uses. Staff talks about vehicle trips and vehicle counts, but their study shows approximately 25 to 30 vehicle trips per day on this property with 325 units. They have 40,000 vehicle trips a day on this property now according to VDOT. When they are looking at the churches that have been rezoned with a special use permit it is clear that the one done in December at the intersection of Routes 22, 231 and 250 was a 373 capacity church. They are talking about traffic far more than what they have. As a land use he would ask that they treat them equally. They have no where near with this particular use that kind of traffic. In the staff report from that hearing the factors that were favorable were that the church would be located in an area already characterized by Highway related commercial and resource extraction uses. That would be heavy uses in other words. That is where they are. This property is about 1 mile west of that. They are 1 to 1.5 miles east of the City limits. So they are not Rural Areas even though it is shown on the plan that way. Clearly this is not that.
- In the staff report for the church, again which is just a mile east of this property, the character of the surrounding area is unusual as it contains LI, HC and Natural Resource Overlay zoning within areas designated as Rural Areas in the Comp Plan. Here it is not Rural Area. He asked the Commission to take a strong look at that and support their rezoning application.

John Chevan said that his family has been living in Albemarle County for approximately 10 years. Both he and his wife are registered nurses and work at the University of Virginia. They chose Albemarle County to be their home due to its rich heritage, the beauty and for the opportunity it provides to grow. Most of all they love the people that they have come across from all walks of life. He wants to rezone his property from Rural Areas to Highway Commercial so that he can own and operate a self storage business there. He has chosen this particular business because it has a low impact on traffic, it utilizes the least of County resources and it will be local consumer friendly. It will have a positive tax impact. In addition, his goal is to own it, operate it and pass it on to his children. The storage business will provide income so they can raise and educate their children without relying on anybody. The decisions that the Commission makes will have a ripple and echoing effect on his family not only today but for many years to come. He hoped that the decision the Commission makes will be in a manner that will encourage citizens of Albemarle County to enjoy continuing living here, working here, investing here and raising their families here. He asked for support of the request.

Mr. Morris invited other public comment. There being none, he closed the public hearing to bring the matter back to the Commission.

Ms. Porterfield said that she visited the property and it certainly was not what she would term rural property. She knows that it is still in the Comprehensive Plan, but for realism sake it is not. . It is a corner that they are going to have to figure out what to do about. She did not know if this was absolutely the best thing to do with it because it is to a certain extent spot rezoning. There is a lot of other property that sits there. But, they really need to talk about it and see if there is something that they can do. There is public water that could come to site. But, there is no sewer. She was assuming that most of the properties there are currently running on wells and septic tanks. She suggested that the applicant attach to the public water if this was to be rezoned in some way. There is an awful lot of commercial very near

by. Currently this area is an Entrance Corridor into the City and it is not doing too well. She felt that this was a corner that needs work. They need to figure out if what is in the Comprehensive Plan is realistic in 2008.

Mr. Morris agreed that if one had gone by that area that they have the hotel, the little stretch of Rural Area and then it starts commercial again. It is a strange site. However, there are existing homes in that entire strip going up the hill. He asked if they have gotten comments from the residents.

Ms. McDowell replied that there was just the one letter that was attached. She received one call for information that she did not get any indication whether they felt it was a good or bad idea.

Mr. Morris asked if staff has received any input from Monticello as far as the Monticello view shed.

Ms. McDowell said that she sent plans and discussed it with them and because they have an outstanding application they felt like they did not want to say anything about this one right now.

Mr. Edgerton agreed with all of the statements that have been made, but this is not the way to rethink this whole area. He thought that there may be good arguments for rethinking this as a rural zone in the Comp Plan and the Land Use Plan. But, to do it one lot at a time with really is not good planning. That is going to be problematic. As Mr. Morris pointed out there are other folks that live there who are relying on the Commission to honor and respect the Comp Plan. To grant a rezoning for a particular 2 acre parcel is going to set a very dangerous precedent. It truly will be spot zoning. He was uncomfortable doing that. He was struggling with the request. If the entire infill area needs to be rethought he would like to invite all of the folks that have ownership interests in there to participate in that discussion and not just one individual property owner.

Mr. Morris agreed.

Mr. Loach said that to raise a difference between this and what they did with the Watkins, although it went from Residential/Rural Areas to Highway Commercial, it was already in the Master Plan. It was already in the Neighborhood Center. Mr. Watkins also stripped out all of the uses except for the one he was using it for. As far as looking at precedent, that would be the one that he would chose. The big difference is that it is not in a planned area as of yet.

Mr. Cannon felt that was fair. He was moved by Mr. Chevan's statement. He has no doubt that he would develop and use the site responsibly. But, there is the question of equity and balance to the area as a whole. He did not know enough about the area to know exactly how this would fit in with the other uses that are being made or planned and how other folks would respond to a broader set of changes in this area. To rezone this is a real commitment and it would not be a commitment that he would be comfortable taking at this point. But, maybe there is a way that they can accelerate a review of this area or an integrated review of this area and other planning efforts that are going forward so that they can not delay this indefinitely, but get some resolution on a more comprehensive basis.

Mr. Morris asked Mr. Benish if he had any thoughts on taking a look at the entire area.

Mr. Benish said that the question was raised as part of the discussion in the Pantops Master Plan looking at the fringe area. The result of that deliberation in the Pantops Plan was to look at areas to reduce the boundaries of the development area mainly along Route 20 North. There was a pretty clear consensus from the community not to intensify development along the 250 Corridor. They did not look at site by site or parcel by parcel areas, but that was the sentiment. The only other thing he would add is that if they are going to do a hard edge planning with designated development areas and rural areas they are always going to have the other side of the road. It does not mean that there could not be good planning for the other side of the road. But, our method of planning creates a hard edge. There are a variety of rural uses under special use permit that help provide for some transition for those type of uses that they think are consistent with the Rural Areas by special use permit. Things like churches that were raised certainly are intensive activities but they are seen within the preview of the Rural Areas as having some acceptability there and providing certain services of need. So those are possibly uses that are there. He thought that

it has always been a troublesome area for a number of years because of all of the existing development that has taken place. Most of the zoning out there was kept in place to reflect existing development that was out there.

Mr. Cannon asked if the commercial uses grandfathered uses.

Mr. Benish replied that he was not sure that grandfathered was the appropriate word. But, there were uses that existed prior to the 1980 Comp Plan designation. There were uses that might have pre-existed the zoning that was established in the 60's. Some commercial uses came after the 60's but before the 80's plan.

Mr. Cannon said that the uses were not grandfathered in the sense that they are subject to zoning, which is consistent with the use.

Mr. Benish said that what they have is inconsistent zoning. That is what they are seeing beyond the Rural Areas. They are reflective of existing uses that have been out there in place.

Mr. Cannon asked if they would expect those uses to go away at some point.

Mr. Benish said that it would be difficult for them to go away if they give them the zoning. What they intended to do was to let the zoning set and not encourage intensification of zoning.

Mr. Cannon said that they could down zone them and let them wither away over time.

Mr. Benish said that is an option. The other approach to these inconsistencies is to take the more aggressive approach of actually down zoning to be consistent with the Comprehensive Plan.

Ms. Porterfield said that this is a clover leaf off of I-64. This is major league. If they all think of clover leaves where they drive they are pretty much heavily commercial in some way, shape or form. She did not think they are going to go away. She told the applicant when she visited the site that she was not in favor of spot rezoning. But, she thought that they need to figure out what to do with this clover leaf area. She asked what they can do. She asked if they could create a buffer zone. They need to come up with something. This needs to be looked at heavily at this point. The amount of traffic for this applicant is small with what is going to come in from farther to the east on 250. This property should look a lot better than it does since it is in the Entrance Corridor. The parking lot below Comfort Inn looks awful. She did not know how to go about it, but hoped that they could encourage changes there in the near future in the area as opposed to little pieces. She asked if there is a way they can do this to move this along in some way.

Mr. Benish felt that the approach that they would need to undertake would be a plan amendment of some sort. There needs to be a consensus of what is the appropriate use, what are the goals and objectives they are trying to achieve with the change in policy from what the current policy is calling for. They are in the process where they are close to adoption of the Pantops Plan where this was a fringe area of discussion. He would hesitate to continue to delay that. It would be good to have an action on that plan, but perhaps a step could be to engage in an amendment that looks at maybe the 250 Corridor. The other thing that he wants to be careful about is that they are just getting underway with the Rivanna Master Plan. They are already beginning to hear a fair amount of comment about concern of the impact of the 250 Corridor. There is some desire to get that completed in a timely fashion. They only have a certain amount of man power to get these plans done. But, perhaps within the context of completing the Pantops Plan and the Rivanna Plan, if the Commission and the Board choose to give staff a priority to undertake looking at this area. If the Commission wants to undertake an approach to evaluate this area, he would suggest that it be through a Comprehensive Plan Amendment approach. He was concerned with compromising other planning efforts that have gone through.

Mr. Morris said that it would be well worth while to take a look at it, but outside of the current plans.

Ms. McDowell said that one of the things she did not emphasis in the staff report is precedent setting, which the Commission is addressing now. There are 3 applications in the process now just filed for across the street for Lego and down farther for a car dealership, office buildings and a very large skate park with underground parking. It is a rezoning and 2 special use permits.

Mr. Edgerton said that the appropriate way to approach this without getting into setting a precedent would be to go for a Comprehensive Plan Amendment for this and perhaps all of the property left over between the 2 pieces of at least Highway Commercial on the north side of Richmond Road.

Mr. Benish said that what he was hearing is that the issue is that the rural area designation and therefore the intended uses are not appropriate for this area. They know the negative. But, in order to figure out the best uses they have to understand the affirmative that is considered by the community the appropriate uses for that area.

Mr. Edgerton noted that involves a lot more than talking to one landowner.

Mr. Cannon noted that this is a sensitive area. It is an I-64 interchange and they know what happens at interchanges. It is also next to some very sensitive historic and preservation areas. So it would not be automatic that it converts to more intensive commercial zone.

Mr. Benish pointed out that they have an interstate interchange policy. The intent of that was to be very clear about which interchanges they did feel like development was appropriate and not appropriate. There are interchanges where they clearly do not. This interchange was perceived as a hybrid where it would not necessarily undertake the full level of development on both sides of the boundary. Again, what intensity of use they want to make at interchanges is a decision that is made based on the land use issue design. Another factor is that beyond land use they have to have a clear understanding of what they may need to do in terms of the interchange itself. One minor correction is that it is not actually a clover leaf, but it is an urban diamond interchange. A clover leaf would require much more land, most of the land that they would be considering changing the land use designation on if that was the plan for that area. So they have to look at land use as in the context of what sort of transportation needs they have for that area. Rural Areas is the least intensive land use designation that they have. If they are intensifying it they need to make sure it matches up to the transportation needs.

Mr. Morris noted that it sounds like a whole lot more work needs to be done. He called upon the applicant to ask if this is something that they want to defer and wait for or would they prefer taking it to the Board on March 12. He pointed out that was the applicant's option.

Mr. Bain said that they would like the Commission to act tonight. There are a number of things that they did not anticipate, but they might then ask for a deferral at the Board level.

Mr. Grady said that they would like to have something done as a whole out there and get all 15 property owners to agree. They have talked with them, but the adjacent property owner does not want her property rezoned right now. It is going to be extremely problematic to try to get 15 people together at one time.

Mr. Loach asked if the applicant would consider a proffer that this will be the only use for the land.

Mr. Grady replied yes, they would consider accepting that and doing that as a mini storage as the only use. If they get something like that built he was not sure where they could go with some other type of use other than demolishing the property. They understand that they are never going to bore I-64 with sewer. Whatever is done out there they are either going to have to build plants or live with what they have on the property. If public water was offered they would take it anytime. But, sewer he would have to defer that to someone in a development agency that he could say how much land would you have to give to develop a new system in that area. He did not see this area across the bridge as being something for public sewer. He felt that the office building was going to be a problem. But, yes they would proffer it out for this simple use.

Mr. Morris noted that the Commission has a plan before them that they have to act on.

Motion: Mr. Edgerton moved, Mr. Cannon seconded, for denial of ZMA-2007-00021, Cavalier Mini Storage for the reasons as outlined in the staff report.

1. The proposed zoning classification is inconsistent with the Comprehensive Plan.
2. The proposed zoning classification would generate traffic above that normally anticipated in the Rural Areas.
3. There is no indentified public need for additional Highway Commercial in this area.
4. The property is located at the gateway to the Southern Albemarle Historic District and is across the street from properties that have been placed under easement and are also important historic resources.
5. The proffered eliminations of by-right uses in the Highway Commercial District do not mitigate the potential negative impacts of this rezoning.

The motion passed by a vote of 4:1. (Mr. Loach voted nay.) (Mr. Strucko and Ms. Joseph were absent.)

Mr. Morris stated that ZMA-2007-00021, Cavalier Mini Storage would go to the Board of Supervisors on March 12, 2008 with a recommendation for denial.

Ms. Porterfield noted during the discussion that the northeastern quadrant of the I-64/Rte. 250 interchange presents a challenge due to the location of many businesses under old commercial zoning mixed in with other properties zoned rural. The sad condition of some of these properties indicates that the current mix is not working. She suggested that some type of transitional zoning would benefit this area. She also suggested that the applicant possibly defer since there appear to be four more issues regarding the southwestern quadrant of that intersection working their way to Planning Commission hearing and it might be good to look at them all at one time. The applicant requested an up or down vote on his current proposal.

Mr. Benish said that staff has to figure out how this would fit into other work program priorities that have been established.

Ms. Porterfield said that this needs to be moved to the front if there are 4 items coming before the Commission

Old Business

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

New Business

Mr. Morris asked if there was any new business.

Mr. Edgerton said that he received a call from a colleague who is a professional engineer that is a member of the James River Green Building Council. They are trying to put together a forum for their membership to talk about smart growth. They are looking for ideas. He agreed that he would bring this up with the Commission. His initial reaction when he got the call was by any other definition our Neighborhood Model is New Urbanism. He thought that this might be a way to celebrate the Neighborhood Model and the philosophy behind it. The public is not as aware as he would like them to be of the principles of the Neighborhood Model and what is hoped for down the road. There have been several projects that have followed conceptually the Neighborhood Model that they probably could have one of the developers come and talk about it or several if they wanted to extend it for several hours. He was looking for some ideas, thoughts or reactions.

Mr. Loach said that as long as he let them know that not all of the Commissioners were in a celebratory mood over the new urbanism of smart growth.

Mr. Cannon said that smart growth is good and they can't be against it. The question is what smart growth is. He felt that they were in the process to see if they can work economically and whether they make sense as forms of communities, etc.

Mr. Loach noted that they have not set up methods to review, measure and analyze what has happened for both positive and negative. He questioned how they can quantify it to make decisions.

Mr. Morris noted that at the last retreat that is actually what the Commission worked on.

Mr. Cannon noted that the Commission needs the data to determine how it affects the big picture overall. They want the status and trends to show how policies are working. They have some useful information, but need to keep collecting data. He said that he would be happy to participate in something like this if something was setup.

Mr. Loach felt that it was a good topic for a panel discussion.

Mr. Edgerton asked for any ideas from the Commission on his idea both positive and negative.

Mr. Morris noted that a joint meeting with the City Planning Commission has been scheduled in March to discuss the topic of water and sewer. Staff will provide the details. This is an information session to get information from various agencies.

Mr. Benish explained his hesitancy about the review schedule for the interchange area. He did not want to complicate or assume that they can incorporate a new area either within the existing Pantops Plan that they are working on or the Rivanna Plan. But, it does seem to make sense that if they can find a way to do this. Before too long they will have a Pantops Advisory Committee, which is a citizen's advisory committee. They will be at some point in the Rivanna Plan that it might be the possibility to somehow dovetail this analysis with the Rivanna Plan. But, he did not want to do that at the sake of the expectation of that community and what that plan is suppose to do. He wants them to be comfortable with that process. That might be a way to expedite it and get work done sooner. It impacts both those areas. But, he would like to try to work with those two planning processes so that they don't seem to be ignoring one decision making process that they have almost concluded and throw something in that the Rivanna community wasn't aware of beginning with the process.

Mr. Edgerton noted that Ms. Porterfield's point is that corridor is going to be significantly impacted by both of these plans and plans at Zion Crossroads, which they have no control over.

Ms. Porterfield pointed out that it was going to be very difficult for anyone to evaluate the proposals for the eastern side of the I-64/Rte. 250 interchange if there is no consideration of the current realities of that area. With four more issues approaching Planning Commission consideration, it would be very helpful to have staff thoughts and other guidance as to options for the area.

Mr. Benish noted that staff can certainly provide some advice. He felt that collectively in the Comprehensive Plan there is clear policy in this area. What she was looking for is something different than what staff can find in the plan.

Mr. Edgerton noted that this argues for a Comp Plan Amendment.

Mr. Benish said that staff does not want to make up our own mind of what they think is the appropriate thing that is different from the Comprehensive Plan.

There being no further items, the meeting proceeded.

Adjournment

With no further items, the meeting adjourned at 8:45 p.m. to the Tuesday, February 12, 2008 meeting at 6:00 p.m. at the County Office Building, Lane Auditorium, Second Floor, Auditorium, 401 McIntire Road, Charlottesville, Virginia.

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V. Wayne Cilimberg, Secretary

(Recorded and transcribed by Sharon C. Taylor, Clerk to Planning Commission & Planning Boards)