Albemarle County Planning Commission
April 8, 2008

The Albemarle County Planning Commission held a meeting and public hearing on Tuesday, April 8, 2008, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

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

Other officials present were Wayne Cilimberg, Planning Director; Joan McDowell, Principal Planner; Tamara Ambler, Natural Resources Manager; Judy Wiegand, Senior Planner; Claudette Grant, Senior Planner; Megan Yaniglos, Planner; Bill Fritz, Chief of Current Development; Patrick Lawrence, Planner; Amelia McCulley, Director of Current Development & Zoning 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.

Garnett Mellon, with the Thomas Jefferson Soil and Water Conservation District, reminded the Commission about their Riparian Easement Program. The Thomas Jefferson Soil and Water Conservation District started holding easements in 2002. They hold open space easements just like ACE, the Albemarle County Public Recreational Facilities Authority and the Virginia Outdoors Foundation for the very specific purpose of protecting water resources. She passed out an informational card that includes bullet points about their easement program.

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

Review of Board of Supervisors Meeting – April 2, 2008.

Mr. Cilimberg summarized the actions taken by the Board of Supervisors on April 2, 2008.

Regular Items:

SDP-2008-00007 Pollack Vineyards, LLC
The request is for site plan approval to establish a winery with an 11,000 sq. ft. building on a 34 acre site. Property is zoned RA (Rural Areas) and is described as Tax Map 69B, Parcel 19 and Tax Map 69B, Parcel 45. The site is located on State Route 690 (Newtown Road) approximately .27 miles north of its intersection with State Route 796 (Brooksville Road). This site is located in the Whitehall Magisterial District and is recommended for Rural Area uses in Rural Area 3 by the Comprehensive Plan. (Megan Yaniglos)

Mr. Morris noted that the next item was called up for review from the consent agenda for SDP-2008-00007, Pollack Vineyards, LLC.

Ms. Yaniglos summarized the staff report.

- The applicant is requesting approval of a waiver of a site plan requirement for the establishment of a tasting room in an existing structure for the vineyard. The entrance road, parking and building on the site already exist. This requires a site plan because it is expanded from a farm winery to also include on-premise wine and wine consumption. The waiver that is being requested is for the detailed construction, drainage and grading plans to not be shown on the site

plan. The Site Review Committee has reviewed this request and is able to support a site plan waiver in this case. Therefore, staff recommends approval of the waiver.

Ms. Joseph asked if the existing structure was built for farm purposes or to be a tasting room.

Ms. Yaniglos replied that the original building permit was given for a farm use for the winery, but the applicant can answer to what their intentions were with the building.

Ms. Joseph noted that in the report it indicated that an adjacent owner was concerned about the existing traffic on the road. She asked if staff had received comments from VDOT. She acknowledged that they could not require any improvements to be made on the road.

Ms. Yaniglos replied no, that VDOT did not comment officially, but Joel DeNunzio, a representative from VDOT, is here tonight and can answer questions.

Joel DeNunzio said that he had checked out the existing entrance on Route 690. They actually issued a permit several weeks ago to pave that section back to the right-of-way. They have good sight distances in both directions. The last traffic count was 80 vehicles per day on Route 690 in 2003. It does not look like there has been a lot of development in that area. He would expect the traffic count to be a little higher, but not significantly. It is difficult to determine the amount of traffic generated by wine tasting. He would not be too concerned with the existing road from the entrance south to Route 796 until they reach a threshold of about 400 vehicles a day. Right now they are around 300 to 324 vehicles per day. If the count went above 400 vehicles a day, then they would look at maybe needing a wider road. Going north from this site the road gets considerably narrower. However, he would not imagine that there would be much access to the vineyard from the north.

Ms. Joseph asked if there was a way that the applicant could work with VDOT to make sure that they use the best route that VDOT would approve with signage.

Mr. DeNunzio suggested that the applicant could do an application through the Virginia Logo Program to have signs posted along Routes 250 and 796 to the winery for those reasons.

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

Mr. Jak Bushing, Winery Manager, said that he was happy with the staff report, but would answer any questions.

Ms. Joseph asked when the building was built if the tasting room was anticipated.

Mr. Bushing replied that the tasting room was contemplated. They built the building on a farm winery permit with wine tasting in mind.

Ms. Joseph asked if he would take Mr. DeNunzio's suggestion in mind when they get their signage so that they can make sure that the best roads are used by the public.

Mr. Bushing replied that they started that process just today and submitted maps with recommendations for the routes. That is exactly what they have done.

Mr. Loach questioned if this was an expansion of services to meet the demand for something new or adding future demand on the road.

Mr. Bushing replied that they added this with the intention of having it for their tasting facility. They geared it towards what their neighboring winery's demands on the roads were. They have 18 parking spaces and they determined that would be approximate for their traffic load based on their neighboring wineries. So it was built in conjunction with the project.

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

Ed Strauss said that he lived within 50' of the proposed winery. He noted that they have an absentee landowner that bought Mountain Hollow Farm who made it into a vineyard and now wants to have a winery. He asked if the rules are for everyone. If he cannot submit a plan that meets the county criteria, then it should not be allowed. He questioned the tour buses that would visit the winery. He asked if the road would handle the buses or the retail sales for what they are creating here in the rural area. He asked that the applicant be required to follow the rules. Therefore, he asked that the Planning Commission deny this request until they can meet all of the criteria and remain a vineyard.

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

Mr. Kamptner noted that under the farm winery enabling authority under the zoning enabling statutes with respect to wine tasting the 2007 legislation provides that no locality shall regulate the on-premises sale, tasting or consumption of wine during regular business hours within the normal course of business of the license for the farm winery. It is not exactly germane to what is in front of the Commission today.

Ms. Joseph noted regarding the question about what can be sold at the winery that the ordinance was very specific in what is allowed to be sold at the winery.

Mr. Kamptner said with respect to farm sales that their regulations allow one location to be established on each farm for the on-premises sale of wine and wine consumption sales. He was not sure how that has been interpreted by zoning. There is some latitude allowed for accessory uses associated with the farm winery use.

Mr. Fritz noted that the predominant customary accessory things sold needs to be the wine from the particular vineyard. But, obviously there are going to be some accessory things that are sold such as wine glasses, carrying cases for wine, etc. that are related to the farm winery or some Virginia product. That is typically the way it has been done.

Mr. Edgerton said that he was sympathetic to the neighbor's concerns. The building was built as an agricultural structure with no permit required. Now they are going to bring the public into a building that has no building inspection, which was troubling. This appears to be a loophole that is mandated under the State Code. He was not sure how they were supposed to address this. There is no way to control it. Therefore, he was very uncomfortable with the request.

Mr. Strucko agreed with Mr. Edgerton and that they should review the site plan because traffic is an issue with the adjacent property owner.

Mr. Edgerton noted that the winery will be attracting a lot more people to the area once they establish the tasting and sales area. He felt that it would be appropriate to calculate the number of parking spaces for review

Mr. Fritz believed that the State Code was amended so that even the tasting portion of this would be considered a farm building.

Mr. Kamptner replied that was correct and was the result of their challenging the Totier Creek Winery, tasting and restaurant area, which went to the State Board of Appeals. Legislation was passed to expressly exempt these types of uses from building permit requirements.

Mr. Fritz noted that the applicant applied for a farm building permit and whether it was for the manufacture of wine or a tasting room, it is a farm building. There is no alternative.

Mr. Strucko said that certainly they could offer a recommendation on the site plan with regard to the other aspects of the parcel, such as parking, dumpster pads, surface materials, curb and gutter, two-way access isles, dimension for the parking spaces and landscaping.

Mr. Fritz said that this plan did go through a site plan process. The site plan waiver is before the Commission today. The specific request is to allow the drawing of a plan that is less detailed than would be required by the requirements of the ordinance. The ordinance, for example, would require a topo to be shown for the entire property plus 50' beyond. On a large parcel typically staff recommends that topography only be shown in the immediate area of the activity and not the entire parcel. These other waivers, as shown on page 3, are reviewed by the agent and not by the Planning Commission. Those waivers were reviewed by various members of the site review committee and granted by the agent. So those waivers are not before the Planning Commission.

Mr. Edgerton asked who is the agent and how did they calculate it.

Mr. Fritz replied that Ms. McCulley is the agent and what happens is that staff goes through an analysis. Farm wineries are a use not specified in the ordinance. So they have to go through and determine what the number of parking spaces are based upon the size of the facility and similar wineries in the area and what they believe the parking generation need is going to be. That is what they have done for all the farm wineries in the county.

Ms. McCulley asked to be clear about the parking waiver regarding the delineation of parking spaces. Typically with four or more parking spaces required they would need paved parking and then stripe the parking and use bumper blocks. If gravel parking is used, then they would have to use something other than pavement markings. That is what the waiver is in this case because it is gravel.

Mr. Fritz said that the Commission has expressed in past reviews, particularly with churches in the rural areas, the desire not to use paved parking throughout the rural areas because it imparts an urban character to a rural area. Staff is taking a lead from that also in trying to ensure that the parking is still adequate in terms of erosion, access, safety, slope, etc. But, obviously gravel cannot be painted.

Ms. McCulley noted that staff did not reduce the number of parking spaces, but it was a reduction in the construction standard for those spaces.

Ms. Monteith noted that gravel is permeable.

Action on SDP-2008-00007 Pollack Vineyards, LLC

Motion: Ms. Joseph moved and Mr. Strucko seconded, for approval of SDP-2008-00007 Pollack Vineyards, LLC site plan waiver with the condition as recommended by staff.

1. VDOT approval for all entrances.

The motion passed by a vote of 4:2. (Ms. Joseph, Ms. Porterfield, Mr. Morris and Mr. Loach voted aye.) (Mr. Strucko, Mr. Edgerton voted nay) (Mr. Cannon was absent.)

Mr. Morris stated that SDP-2008-007, Pollack Vineyards, LLC was approved. This does not require Board of Supervisors action.

Consent Agenda:

Approval of Minutes: November 20, 2007 and February 5, 2008

Mr. Morris noted that the Commission skipped the approval of minutes. Separate action will be taken on each set of minutes. Ms. Porterfield will not vote on the November 20, 2007 minutes since she was not here.

Action on November 20, 2007 Minutes:

Motion: Mr. Strucko moved and Ms. Joseph seconded, for approval of the November 20, 2007 minutes.

The motion passed by a vote of 5:0:1. (Ms. Porterfield abstained.) (Mr. Cannon was absent.)

Action on February 5, 2008 Minutes:

Motion: Mr. Strucko moved and Mr. Loach seconded, for approval of the February 5, 2008 minutes.

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

SUB-2007-00396 Clifton Lake, Phase I
The request is for preliminary plat approval to create 30 lots on 62.44 acres. The property is zoned PRD, Planned Residential Development and will be reviewed in accordance with the zoning and subdivision ordinances in place when the property was zoned. The property, described as Tax Map 79, Parcel 1 and Tax Map 79C, Parcel 1 is located in the Scottsville Magisterial District and will gain access via an extension of existing Shadwell Road [Rte. 709] in the existing Shadwell Estates Subdivision. The Comprehensive Plan designates this property as Rural Areas in Rural Area 4. (Patrick Lawrence)

Mr. Lawrence distributed the revised plat.

Bill Fritz presented a Power-Point presentation and summarized the staff report.

- On February 12 the Planning Commission denied a subdivision plat. The reason was because the proposed plat was not consistent with the approved rezoning because it did not meet the requirements of a condition of the original rezoning that, "The developer is to install a road across the dam, non-dedicated, to provide access to Route 729." The result has been that the applicant has revised the plat to show a private street that will provide access to Route 729. The approximate alignment of the public streets that were shown on the original plat was shown in yellow. Shown in red is the private street, which will access the new proposed public street, cross the dam, sweep around through the west side of Clifton Lakes, which is Phase II, and provide access to Route 729, North Milton Road. That is the approximate layout.
- Staff recommends approval with the conditions listed in the staff report with the exception of condition five being modified. The Commission and adjacent owners have expressed concern about the entrance to Route 250 and Route 709, which is the existing public road. Therefore, they have amended condition five to add language that would require the applicant to install signs or warning lights as necessary if they are determined to be needed by VDOT. It was implied in the language of condition five of the original rezoning, but staff decided that it would be clearer if it was spelled out. Therefore, staff added the language. (See Staff Report)

Mr. Edgerton noted that at the last public hearing the Commission was told by the applicant's representative that they did not have control of the property for phase II to provide the road that was required. He asked if the applicant has given staff the assurances that they have the authority to make this promise.

Mr. Fritz replied that they are working to do that. Condition one will require that those easements be provided before they can approve the final plat. The easements are not in place at this time.

Ms. McCulley noted typically at the time of the preliminary plat approval that the applicant would not have final easements in place.

Mr. Edgerton said that he was surprised that the most important point that was made at the last public hearing and the reason for denial was not included in the staff report.

Mr. Fritz noted that it was an oversight and that staff should have had the plats.

Ms. Porterfield asked if sight distance should be added to condition five.

Mr. Fritz said that at the intersection of Routes 250 and 709 VDOT will be granting an entrance permit and approving road plans only for the intersection with North Milton Road (Route 729) and the new public road. So there is no entrance permit that is involved at the intersection of Routes 250 and 709. All they

can require is the language seen here. They can't require any additional improvements to that intersection because it is an existing intersection in the state system.

Ms. McCulley noted that language is lifted from the zoning action word for word. That is where they get the basis for requiring something off-site because they normally would not have that ability. It is attachment F, condition 13.

Mr. Edgerton asked if VDOT has seen the location of the proposed second entrance.

Mr. Fritz replied that he believed that they have, but that Mr. DeNunzio is here.

Joel DeNunzio, VDOT representative, said that they have not reviewed the exact location of that entrance across from the school. But, VDOT would require adequate sight distance easements if necessary. That will be reviewed with phase II.

Mr. Fritz noted that is part of condition five for VDOT to approve the commercial entrance, which will include the entrance onto Route 729 for that private street.

Ms. Joseph asked if it would include both entrances.

Mr. Fritz agreed that the language in condition five includes VDOT approval of commercial entrance permit and necessary road improvements. It will cover the private street intersection with Route 729, North Milton Road, and will address the design standards for the new public streets within Clifton Lakes. The other language will deal with signage or warning lights at the intersection of Routes 250 and 709, which is the existing street.

Mr. Edgerton asked if there would be no VDOT review of the access to Route 729.

Mr. Fritz noted that it was covered by condition five.

Ms. Joseph asked that language to be added to condition five, and Mr. Fritz replied that he would do so.

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

Kelly Strickland, with Dominion Development Resources, said that he was present with the applicant, Greg Baldwin who can answer additional questions.

- They are proposing a by-right subdivision. The plan was approved in 1978 with the concept and development plan. It shows 30 one-acre wooded lake front lots. There are 24 acres of shared open space in the development. The site is located approximately five minutes from downtown Charlottesville. It is a nice location for residential development. The plan was approved in 1978 with 17 conditions of approval, which all still applies. They have been working with Mr. Baldwin on this project for four or five years, which is how long they have been trying to get this project moving forward. They have never proposed to do anything other than by-right development. Tonight they are requesting preliminary plat approval. The Planning Commission is granted the ability to approve the preliminary as well as the final plat. Even after tonight if there are things that come up in the conditions or in the deliberations the Commission would still have the final plat coming back for approval.
- The plan was denied on February 12 because there was a misinterpretation of condition 16 on their part. They went back and listened to the minutes of the Board of Supervisors meeting from 1978 and it was clear that the Board intended that private road across the dam to be an open through access road serving the community to access Route 729. That change has been made and is part of the new plan. There are a couple of letters attached that address Mr. Edgerton's concern, which are attachments G and H. When the property was further subdivided in 1990 into two parcels the county wanted to make sure that this plan would still be available as a by-right plan. So attachments G and H are letters of agreement saying that both landowners would allow the development of the property accordingly, which is the permission to be able to put an easement on the property. They are here with a preliminary plat request and don't have the

easements or the road plans. They don't have their entrance designs, erosion and sedimentation control plans or storm water management plan. All of these items will take a lot of work and are part of the final plat approval process. They will be back to the Planning Commission asking for approval of the final plat with all of those things taken care of and answered. It is going to take a lot of work and time to put those things together.

- There were issues with conditions 5 and 13. Mr. Baldwin has always acknowledged that the plan was approved with the different conditions and he is in complete agreement with the conditions that have been provided for approval of the preliminary plat as well as the conditions for approval of the original rezoning. He has never asked for anything other than that.
- The private road was originally approved with the rezoning. But, there is a stipulation on the plan that says that a portion of the private road on the west side of the lake could be incorporated into a public road. That would be a part of phase II. It is not part of what is before the Commission tonight as the phase I preliminary plat. There is a stipulation that would allow a public road, a cul-de-sac and a short section of private road that would cross the dam. In looking at the intersection at Route 250 and Shadwell Road they acknowledge that is a problem. By providing the private road he believed that they would allow people to exit the proposed and existing neighborhood and go out and make a right turn onto Milton Road to go to the traffic light. They would no longer have to go out to Route 250 at rush hour. This will be an improvement for the existing residents in the neighborhood.

Mr. Edgerton asked what has happened on the property since the 1977 approval to vest the approval that is 31 years old. Certainly the zoning ordinance has changed significantly in 31 years.

Mr. Strickland replied that the taxes have been paid.

Mr. Morris invited Mr. Baldwin to address this issue.

Greg Baldwin, applicant, said that nothing of any substantial improvements have been done, but they got involved in this process approximately six years ago.

Mr. Kamptner noted that the vested rights that attach to planned developments under our planned development regulations are kind of unique. They vest approved planned developments by ordinance allowing them to be processed at the applicant's desire under either current subdivision and zoning regulations or the ones in effect on 12-10-80 where they were rezoned to planned development prior to that.

Mr. Edgerton said that means that somebody does not have to do anything and they could not apply the existing ordinance. He asked if it was mandated under State Code 8.5.5.2.

Mr. Kamptner said that they don't have to do it. The enabling authority for planned developments is fairly broad and it allows the county to adopt reasonable regulations associated with planned developments.

Mr. Morris invited public comment.

Rick Bowie thanked the Commission for recognizing the need to protect the public's safety at the last meeting. It appears that they are exactly where they were. The folks that live there can say there has been nothing done in the past 31 years. Right now as he understands phase 1 will exit out Route 709. There have been signs there for 20 years and nobody slows down. The sign says 35 miles per hour, but nobody slows down. If they put up a flashing light nobody will slow down. He noted that there is still no second entrance. That is something proposed in phase 2. In the meantime they have all of the traffic going up and down Route 709. It just does not make sense since they have not done it in 31 years. They feel that there is ample evidence going back to 1973 that a higher density is desired. It seems that the zoning ordinance in 1980 under by-right allows in paragraph 2 townhouses. In 2004, an application came in claiming to build 26 houses, but asking that the requirement for the second road be deleted and to allow 34 units per acre. He interpreted that to mean townhouses. Jerry Fisher, long time Chair of the Board of Supervisors, use to quote that once the camel gets his nose in the tent it is very hard to keep the camel out. They feel that they got the camel nose. They ask the Commission to reject it again if their

safety on Route 709 is not protected. They don't want to be protected by some hypothetical future possible second road.

Mr. Lee Hughen, General Manager of Clifton Inn and on behalf of the Wiley's who own phase 2, noted that they do not wish to grant any type of easement through that area. There are safety and environmental concerns. They have guests and their children going down to the lake and it would open up all kinds of safety and environmental issues for the Clifton Inn operations. He expressed the Wiley's concerns and that they don't wish to grant permission for an easement.

Ms. Porterfield asked if the Wiley's own the majority of the property where this road would go through and are not willing to grant an easement, and Mr. Hughen replied yes.

Mr. Edgerton noted that they had in their packet a letter with no date from T. Mitchel Wiley saying that he will agree to the conditions of the approval going back to 1978. He was hearing two different things. One he was looking at a letter that Mr. Wiley signed saying he would agree to it and then now they were saying that he would not agree to it.

Mr. Hughen noted that Mr. Wiley had not been approached for years on this matter and at this time his wishes are not to grant the easement due to the growing concerns about his present business.

Mr. Edgerton asked if he was saying that Mr. Wiley was not willing at this time to go along with this, and Mr. Hughin replied that was correct.

Mr. Morris invited additional public comment.

David Saltzman, resident of Shadwell Road, said that over 30 years ago his father built a house before the lake was built. He moved away to the city and moved back to this area. He did not want traffic in this area. He asked that it be a dead-end road and if possible to put a barrier at Route 709. He asked that they leave their neighborhood intact in the way that it was 30 or 40 years ago when he lived there.

Steve Houchins, adjacent property owner, agreed that road cannot handle the additional traffic. He had three daughters that live in that neighborhood. There are many children in the neighborhood that have to walk up the road to the school bus stop because the school bus cannot come down the road. On behalf of the children of the neighborhood he did not think their road could handle it. If they could come in the other way it might be a wonderful neighborhood. Shadwell Road cannot handle additional traffic.

There being no further public comment, Mr. Morris closed the public hearing to bring the matter before the Planning Commission.

Mr. Fritz pointed out that the private street would be built with phase 1. It was part of this plat and not part of the second phase.

Mr. Morris asked if a condition was needed that before the houses go in that the street goes in.

Mr. Fritz said that he did not know exactly how to word that condition. Staff does not allow the plat to be signed until the roads are built or bonded. Staff would work with the road's people to ensure that the roads are built proportionally to the construction of the houses. If there were other questions he would defer to Mr. Kamptner or Ms. McCulley for assistance. But it does not need a separate condition to require it on this plat because it is shown and part of the plat.

Ms. Joseph noted that what they heard from the applicant was that he was not going to be building that first. Therefore, she suggested that it be included as a condition of approval.

Mr. Fritz replied that was fine. What the applicant was saying was that there was an option that would allow it to be built as a public road also. The old application plan is shown.

Ms. Joseph felt that Mr. Morris is correct because they don't know who will be reviewing this plat in the future and they need to know. She supported adding that condition.

Mr. Edgerton asked Mr. Kamptner if there is any requirement that the Planning Commission has to approve a preliminary plat before given assurance that road is actually going to happen. The Commission gets to see the final plat, but he was struggling with it.

Mr. Kamptner said that ultimately if the Commission approves it with the condition that it gets the adequate easements at the time that there is actually a subdivision one way or the other they have to have an easement in place that allows a public right-of-way albeit be a public street or a private street that provides the second access. He did not have the 1980 Subdivision Ordinance, but even the current Subdivision Ordinance does not require ownership or things like that for easements as part of the preliminary subdivision plat. It would require the location and the dimensions of the easements. So even today they don't require that. The applicant will have one year to get everything in order and to have all of the easements in place.

Mr. Edgerton asked what happens if they don't get that within a year.

Mr. Kamptner replied that the preliminary subdivision plat will expire if they don't get a final plat submitted within that one year period. That is the timing that is required under current State law.

Mr. Strucko questioned if the prior letter granting the easement from Mr. Wiley and Mr. Hurt was binding.

Mr. Kamptner replied that he would say no from just this letter because certainly he had the ability to change his mind. Being a contract purchaser at the time he did not know if there were any reservations of rights that would reserve the right to grant this easement at the time the sale went through. Staff does not have that information.

Mr. Strucko asked if the easements have to be in place eventually for a final subdivision approval.

Mr. Fritz noted that the easements had to be in hand before the staff would sign the plat.

Mr. Joseph asked to add one condition for Planning Commission review and approval of the final plat.

Ms. McCulley suggested the following condition since she understood that Ms. Joseph wanted to have a condition that would be very clear about what they anticipate in terms of road construction. "This approval is based on construction of a new road extension to Route 709 (Shadwell Road) and construction of a road over the dam to Route 729.

Ms. Joseph agreed that language would be adequate to cover her concern.

Ms. Porterfield noted that the sticking point last time and now was the road over the dam. She felt that they need to get the easement first since they were dealing with something 31 years old.

Mr. Morris reiterated that Mr. Kamptner was saying if they approve this then the applicant has one year to do something rather than waiting another 31 years.

Mr. Kamptner noted to look at the bigger picture the preliminary plat is looking at the viability and it meeting certain general requirements in the Subdivision Ordinance whether it is the 1980 or the current one. A lot of issues are held off until the final plat because a lot of the engineering work is not done and a lot of title issues are not necessarily resolved until that point. He assumed that that the 1980 Subdivision Ordinance did not require as a condition of preliminary plat approval that they demonstrate that they have title or easement for whatever else is necessary to do what they say on the preliminary plat. The applicant will have to do it for the final plat. Before the applicant can actually subdivide they will have to make that showing.

Mr. Fritz noted that the final engineering of the road has not been done at this point and they don't know if they need easements. That is why it is put as a condition of the final plat.

Mr. Edgerton agreed with Ms. Porterfield's concern since they continue to have an access problem along with the stale zoning. He felt that this has happened a few times too many in having to go back and look at the old zoning. He opposed the Commission expediting a process without some assurance that what is being proposed can actually happen legally. He had heard loud and clear from the agent that the owner of the land that the road has to go through is going to fight it. He just heard from the County Attorney that the document submitted previously as binding perhaps is not 31 years later. Since the letter did not have a date on it he questioned when it was actually written. He asked if VDOT would be involved in whether Routes 709 can even handle this traffic.

Mr. Fritz said that VDOT would be looking at the entrance only and the area immediately around the entrance and not at Route 709.

Mr. Edgerton noted that he was no comfortable approving the request.

Mr. Kamptner said that the scope of VDOT's review would apply if they were operating under the current regulations as far as trying to address off-site traffic impacts as a result of a by-right development. It is just the system they operate under.

Ms. Joseph noted that this request seems similar to the Bellair plat that the Commission was told they could not deny. She asked if there is something totally different about this request or if they are in the same place.

Mr. Kamptner replied that they may be in the same place because based on what staff has represented the applicant has met all of the requirements for a preliminary plat under the 1980 Subdivision Ordinance. Some Commissioners desire to have the easement issue resolved at the preliminary plat stage. If that was a requirement of the 1980 Subdivision Ordinance then the decision could be based on that. If not, he could recommend the Planning Commission approve the preliminary plat because it does meet all of the requirements and recognize that addressing all of the easement issues, including the right to easement, will be resolved before the final plat is signed.

Ms. Porterfield noted that the letter that came out on January 25, 1978 number 16 says the developer is to install a road across the dam (non-dedicated) to provide access to Route 729. Very clearly that is what is supposed to happen. The only difference in this packet from the last one is that they have these two letters from around 1990 that indicate that an easement would be granted. But they have had someone say that one of the letter writers has no intention of doing that. She felt it is very clear that they were to put this road in and the Planning Commission needed a letter saying yes or no that they will give an easement.

Mr. Kamptner said that could only be required if it was a requirement under the Subdivision Ordinance of 1980 for approval of a preliminary subdivision plat. The other change to the plat is that they show the access way going all the way as required by condition 16. So the plat was modified as well.

Ms. McCulley noted that is correct since the prior plat was not consistent with the zoning approval related to the requirement of that private road over the dam.

Mr. Edgerton said that Ms. Porterfield had an interesting point. In 1978 the property was owned by one developer who subsequently sold a piece of it to a second owner. He asked how two separate owners can provide the same assurance that was given in 1977 when one person owned the property. The Commission had heard from a representative of the subsequent owner that they were going to fight this. He questioned why they have to go back to the prior ordinance.

Mr. Kamptner replied that it is because of what our ordinance says. The fact that this land was divided and is now under separate ownership puts this applicant at risk. This applicant may never get the easement. Therefore, the subdivision as approved under the rezoning may never be allowed to take

place because of the refusal of the owner of the other property to grant the easement that would provide the required access.

Ms. McCulley noted that it is common that property that is zoned Planned-District that begins as just a few parcels then subdivides later and has different ownership. The property is still subject to the underlying zoning approval. An example is Hollymead Town Center where they have a lot of different owners that are then dependent on one another for satisfying the zoning.

Ms. Joseph moved for approval of the request because they have complied with the requirements for a preliminary plat with the conditions recommended by staff 1-13 as amended and shown on the screen.

Mr. Fritz noted that included the approval of the Planning Commission of the final plat.

The motion died due to the lack of a second.

Mr. Morris asked if there was a subsequent recommendation.

Mr. Strucko said that Mr. Kamptner asked about the 1980 zoning and whether it enabled them to take action given a certain condition.

Mr. Kamptner replied that it was whether or not the 1980 Subdivision Ordinance authorizes a preliminary subdivision plat to be disapproved because in this case issues of holding an easement had not been resolved at this stage. He noted that the current Subdivision Ordinance does not have such a requirement.

Mr. Strucko said that this particular parcel falls under the 1980 ordinance.

Mr. Fritz noted that he could not find it, but the 1980 Subdivision Ordinance has fewer provisions than the current ordinance.

Mr. Strucko asked on what grounds this could be denied.

Mr. Kamptner suggested that the Commission could take a lengthy recess so he could go research this, but his guess is that he was not going to find any reason based on the 1980 Subdivision Ordinance.

Mr. Loach said that it is hard to support because they had the applicant give his overview and say that he knows that 709 and 250 is problematic. But there is no problem because the applicant has the secondary road. Now they find out there is no easement that is going to be there for that road.

Mr. Strucko noted that there has to be a basis for denial.

Mr. Edgerton said that staff has explained that there are other efforts to make sense out of this. If it gets approved they need to reference the original plat in some detail. In reading condition 12 it says this approval is based on the construction of a new road extension to Route 709 (Shadwell Road) construction of a road over the dam to Route 709. It does not say following the alignment of the original plat. If they are being held to the old ordinance because a plat that was submitted, then the alignment has to be exactly the way it is shown. If that does not work, then that is the applicant's problem. He was struggling with the fact that they have the applicant saying one thing and the adjoining land owner another thing. The neighbors are saying that it is an unsafe condition if all of the traffic goes out the other way. They have VDOT not having looked at the intersection coming out on Route 709. There are lots of issues. Therefore, the Commission should ask to see those before granting an approval.

Mr. Morris agreed that the Commission has to have good sound legal reason to deny.

Mr. Kamptner noted that State law requires that they cite to a specific provision in the Code or ordinance and tell the applicant what they need to do to satisfy that requirement.

Ms. Porterfield suggested deferral to the applicant so they could come back with signed agreements with the property owners that they need to run the road through showing that they have the easement. It would make it easier on everybody.

Mr. Morris invited Mr. Baldwin to come forward and address the Commission's question.

Mr. Baldwin said that as part of the final plat approval that is the reason for the preliminary to be approved so they can go to that stage. If they are going to narrow it down to one specific thing or are there other things they are talking about. He had heard a lot of discussion about different things other than just that.

Ms. Porterfield noted personally that is what is hanging them up right now. The Commission has letters from 1990 and representatives of the land owner saying that he is going to revoke his letter. If they go back to the original approvals it says very clearly in #16 that they have to build that road. If they can't build the road it is a moot point.

Mr. Baldwin said that the Commission would then turn it down.

Mr. Morris reiterated that is normally not a part of this particular phase. He said that it is up to the Commission, but they need to have specific reasoning.

Mr. Edgerton asked if it was not enough to say too many unresolved issues, and Mr. Kamptner replied no.

Ms. Porterfield asked if it was not enough to say that there was nothing that referred to this from the '70's about having the easements. Today they need the easements, but back in the '70's it said that they will build the road.

Mr. Kamptner said that they have to build it as part of the subdivision process. It does not say they have to build it as a condition of preliminary plat approval.

Mr. Strucko noted that the Commission had explored their alternatives.

Mr. Kamptner noted that at some point they reach the date by which action on the preliminary plat is required. Then the applicant would file an action that compels action or challenges the lack of action in court.

Ms. Porterfield asked what date is that.

Mr. Fritz replied that they are very close to that date. The State Code says that when a plat is denied and there is a re-submittal the Planning Commission must act on it within 45 days. He noted that April 11 is the 45 days.

Mr. Morris noted this is April 8, 2008, which means their options are rather narrow for this preliminary plat.

Ms. Joseph noted their options are to approve the preliminary plat with the 13 conditions with possibly amending the condition that the road had to stay within the original plan or in 3 days because of inaction it is approved and they have no conditions.

Mr. Kamptner said that it would not be automatically approved, but they would have the ability to go to court to compel action.

Ms. Porterfield questioned how they can want to make sure of the road for the neighbors.

Mr. Morris noted that one of the conditions if Planning Commission approval of the final plat.

Mr. Strucko said that he would be comfortable seconding the motion if they add the provision mention by Mr. Fritz.

Mr. Edgerton said that he wanted the plan to be as consistent as it can possibly be to what was approved that they are being held to honor 31 years later.

Mr. Fritz said that the ordinance requires that the development be in accord with the application plan. That is in the current ordinance. The ordinance allows minor variations to be approved by the Director of Planning. .

Ms. McCulley said that includes road locations.

Mr. Edgerton said that basically the Commission was being told they have to approve something that was 31 years ago, but it can get changed and they don't have anything to say about it.

Ms. McCulley noted they are saying that they typically don't have a condition that is an ordinance requirement and the consistency with the zoning or application plan is already an ordinance requirement. They can insert it in the condition, but it goes without saying because it is already an ordinance requirement.

Mr. Loach asked what the time frame is to find out about the easements.

Mr. Fritz replied that because the applicant is choosing to go under the1980 Subdivision Ordinance they have a different provision. The current Subdivision Ordinance specifies that the approval is valid for one year. The ordinance in effect in 1980 specifies that they have to submit within six months.

Mr. Kamptner noted that staff would have to look at how the 1980 ordinance fits into State law since right now it is one year.

Mr. Fritz noted that certainly it would be within one year they would have to come back or this approval expires and they have to start all over again.

Mr. Strucko said that he shared everybody's concerns. But, he was also concerned about the legal procedures and did not want to tie the County down with legal proceedings. With the safeguards they have in place with regards to future action he would support the motion.

Ms. Joseph asked that condition 14 be crafted by staff to relate back to the original rezoning regarding the road layout.

Ms. McCulley replied that the condition could state that the final plat shall be consistent with the conditions of ZMA 77-24 and road alignment in condition 12 or as a separate condition.

Mr. Edgerton noted that he wanted it to be as consistent as legally possible.

Mr. Fritz suggested condition 14 to read as follows: Final plat shall be consistent with the conditions of ZMA 77-24 and specifically with the location of the private street accessing Route 729, North Milton Road and crossing the dam to connect with the extension of Route 709, Shadwell Road.

Kelly Strickland, a member of the public, asked if the applicant in negotiating with the adjoining land owner for the easement across the property to Route 729 agrees to slightly realign that road does condition 14 prohibit that from happening. The existing preliminary plat being reviewed is exactly in alignment with the originally approved plan.

Mr. Fritz replied that the ordinance allows the Director of Planning to make minor variations. The 1980 ordinance reads, "Variations in site development plans and subdivision plats from approved application plans may be permitted by the Director of Planning upon a finding that such variations are generally in keeping with the spirit and concept with the approved application plans in accordance with the Comprehensive Plan in accordance with the regulations currently in effect changes other than permitted herein shall be made only by a rezoning application."

Mr. Cilimberg noted that the zoning administrator would make that determination. From talking with Ms. McCulley, zoning administrator, she sees condition 14 as basically putting any determination of variation in the Planning Commission's hands as part of the final plat.

Mr. Edgerton asked for an amendment that all easements be required to make it consistent with the previously approved plan.

Motion: Ms. Joseph moved and Mr. Strucko seconded, for approval of SUB-2007-00396, Clifton Lake, Phase I with staff's recommended conditions (1 – 14) as shown on the screen, as amended and modified.

The Department of Community Development shall not accept submittal of the final plat for signature until the following conditions have been completed:

1. All easements shall be provided by current property owners for the access road to connect to Route 729.
2. Boundary line adjustment to combine Tax Map and Parcel #s 79-23 and 79C-1.
3. Current Development Engineer Approval of Storm Water Management plans and calculations.
4. Current Development Engineer Approval of Erosion and Sediment Control Plan and Road Plans.
5. VDOT approval of commercial entrance permit for the private street accessing Route 729 including any necessary road improvements. This shall include VDOT review of the intersection of Route 250 East and Route 709 in order to determine whether signs or warning lights are necessary; if it is determined that controls are warranted, they shall be installed at the developer's expense. VDOT approval of public street plans.
6. Fire Official Approval.
7. Approval of road names.
8. Submittal of a ground water study.
9. Health Department approval of two septic drain fields per residential lot not located on critical slopes.
10. Delineation of stream buffers as required by Albemarle County Code Chapter 17 Section 317 (C)
11. Submittal of final plat meeting the requirements of Chapter 14 Sections 19.0 et seq. and ZMA 77 - 24.
12. Final Plat approval shall require construction of a new road extension to Route 709, Shadwell Road and construction of a road over the dam to Route 729.
13. Planning Commission approval of final plat.
14. Final plat shall be consistent with the conditions of ZMA 77-24 and specifically with the location of the private street accessing Route 729, North Milton Road and crossing the dam to connect with the extension of Route 709, Shadwell Road.

The motion carried by a vote of 4:2. (Mr. Morris, Mr. Strucko, Mr. Edgerton (with prejudice) and Ms. Joseph voted aye.) (Ms. Porterfield and Mr. Loach voted nay.) (Mr. Cannon was absent.)

Mr. Morris stated that SUB-2007-00396 Clifton Lake, Phase I was approved. This does not require Board of Supervisors action. The Planning Commission looks forward to seeing the applicant come back with the final plat.

The Planning Commission took a ten minute break at 7:51 p.m.

The meeting reconvened at 8:01 p.m.

Public Hearing Items:

SP-2007-00059 John Cann Boat Dock (Sign # 2)
PROPOSED: Private boat dock on the South Fork Rivanna Reservoir
ZONING CATEGORY/GENERAL USAGE: RA -- Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre); FH--Flood Hazard: overlay to provide safety and protection from flooding
SECTION: 30.3.05.2.1(2) Water Related Uses within the Floodway

COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Area 1 - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/density (.5 unit/acre)
ENTRANCE CORRIDOR: No
LOCATION: Dock to be placed at west side of the Reservoir, approximately 1.3 miles upstream of the Earlysville Road (Route 743) bridge crossing. Dock to serve Cann property (TMP 45-3A1)
TAX MAP/PARCEL: 44-12V
MAGISTERIAL DISTRICT: Rio
(Tamara Ambler)

Ms. Ambler presented a Power-Point presentation and summarized the staff report. (See Staff Report)

This is a request for a water related use in the floodway in accordance with Section 30.3.05.2.1(2) of the zoning ordinance, which allows such things as docks. The applicant is proposing to install a floating dock on the South Fork Rivanna Reservoir to serve his private property, which is tax map 45, parcel 3A1. The South Fork Rivanna Reservoir is owned by the City of Charlottesville, who is a co-applicant to the special use permit request. Rivanna Water and Sewer Authority, who manages the reservoir, granted a boat dock permit, which basically deals with the construction of the dock itself.

There have been very few requests for private boat docks on the reservoir in the past few years. Two were approved in 2006. Prior to that 1999 was the most recent boat dock request. Currently there are about 19 boat docks on the reservoir. An example of the recently approved floating docks occurred on Mr. Newman's and Mr. Kaplan's property last year.

As detailed in the report, county staff has reviewed the issues that surround installing boat docks in a drinking water reservoir. One concern is the proliferation of docks that could be detrimental to the primary use of the reservoir. While the addition of this one dock would certainly not undermine the primary use county staff expects to address this more overarching issue in the upcoming Comprehensive Plan update. There is a strategy in the Comprehensive Plan that actually asks staff to develop a policy for recreational use on the reservoir.

Another concern by staff was the removal of buffer vegetation. Review of the reservoir properties in 2006 and 2004 did not show a correlation between the removal of beneficial vegetation and the existence of a boat dock. In some cases the granting of a special use permit for a boat dock had provided an opportunity for the county to require additional plantings. So it actually improved the buffer vegetation. So there was not a direct correlation there.

Other issues are contamination from gasoline and the introduction of pathogens. These do not pose a problem because our current ordinances already restrict gasoline powered engines and prohibit swimming. The introduction of invasive species still does not pose a risk for Virginia currently.

The Cann property is very sloped and wooded. It actually has a problem with invasive vines. The Cann's have been coordinating with the county in removing invasive vines. That is one of the provisions that are allowed within the buffer to remove invasive vines in an area that does not contribute to erosion. They are coordinating with the county to install new appropriate ground cover plants to replace where vines were. The Cann's have installed a low impact walking path, which is the extent of a path that is allowed in a buffer. Decking or stairs are not allowed in the buffer. The dock would be installed at the bottom of the walkway. The pathway conforms to the existing topography and is filled with mulch or pervious materials.

Staff has identified the following factors which are favorable to this request:

1. No direct impact to the water supply or neighboring properties is expected as a result of this special use permit
2. No increase in flood levels will result from installation of a dock.
3. The proposed dock is supported by the Charlottesville, and meets the requirements of the Rivanna Water and Sewer Authority for residential boat docks.

Staff has identified the following factors which are unfavorable to this request.

1. The applicant has proposed a fixed deck attached to the boat dock. (Note: But, during the coordination staff recommended that the fixed deck not be attached. It would be just the ramp and the dock as approved before. The applicant agreed with the suggestion.)
2. If a significant number of these requests are approved, the resulting proliferation of boat docks could impair the primary function of the Reservoir as a drinking water supply

Staff recommends approval of the request with the following conditions:

1. There shall be no lighting within 25 horizontal feet of the Reservoir, measured from the elevation of normal pool, which is Elevation 382 (North American Vertical Datum of 1988).
2. There shall be no removal of vegetation or earth disturbance with the 200-foot stream buffer associated with the installation of the boat dock. The stream buffer is measured from the edge of the floodplain, which is Elevation 391.
3. There shall be no other structures, such as decking or stairs, constructed in the 200-foot stream buffer.

Mr. Morris invited questions for staff.

Mr. Loach said that there were now 19 boat docks. The concern is that at some point this would become problematic. He asked is there going to be a threshold set and at point does it become problematic. He asked how they determine that.

Ms. Ambler replied that they don't have that, but is what staff will be looking to determine. Staff does not have that policy yet. In her research across the United States, some localities have established a number or threshold based upon whatever factors they chose. In some instances it was based on a number of lots to evaluate the potential number of docks to establish a threshold. But, currently there is no scientific basis for establishing that threshold.

Ms. Porterfield suggested that staff put something in about the docks that fall into disrepair. Staff noted that there were 19 boat docks, but that some of them were not in very good shape. There should definitely be some teeth in the ordinance that if someone does not keep their dock in good repair that it has to be removed or otherwise if they don't do it that it will be removed at county expense and the owner would be billed.

Ms. Ambler said that Rivanna Water and Sewer Authority as part of their boat dock permitting is trying to beef up their review and maintenance inspection of those docks. There is a time when docks were installed and not much follow up was done on those docks. As a result of the 2006 boat docks the Rivanna Water and Sewer Watershed Manager sort of revamped the process and now require permits. They are now requiring an inspection fee whenever they approve a boat dock to try to get a better handle on what is out there and make sure that everything that is out there is safe and not a detriment to the water supply.

Ms. Porterfield asked if there was an annual fee to have a boat dock in the water, and Ms. Ambler replied yes, that fee is paid to the Rivanna Water and Sewer Authority.

Ms. Porterfield noted that it says no lighting within 25 horizontal feet of the reservoir, which is well inside the buffer. She asked if someone has put in lights.

Ms. Ambler replied that there was an issue with the 1999 approval for Mr. James Ogg. That dock was put in without a permit and then came back for permission. He was able to get an approval, but there were issues of lighting. That was the condition that they placed on that permit. Certainly a one pole structure is not something that would be prevented in a buffer. In terms of what it specifically would look like she could not say.

Ms. Porterfield asked if there was a reason to have lighting go all the way down into this buffer. Since it is a 200' buffer they were talking about 175' of light potentially.

Ms. Ambler noted that what was happening before is that there was no prevention for people to go all the way down to the water and put lights on their dock. So this is actually pulling the lights further off the water. There was no ability to do that before.

Ms. Porterfield asked if she wanted to leave it within 25' of the dock as done in the past.

Ms. Ambler said that was certainly at the Commission's discretion, but she was just going by what was done before.

Mr. Edgerton said that in the buffer standards it sounds like there is a quite a bit of flexibility in what can or can't happen within the 200' of buffer. If it is a totally undisturbed buffer he was trying to figure out how they get from the yard to the dock.

Ms. Ambler replied they are allowed to have reasonable access through a buffer. They don't want to prevent people from accessing the water resource that actually provides a benefit through education for them to be able to do that. Actual structures, such as a deck or a set of stairs, are not allowed.

Mr. Edgerton asked if the path shown in the slide is acceptable.

Ms. Ambler replied yes, that path is allowed. The board path actually conforms to the topography with no grading or disturbance of the actual grade being done to actually put that there. It is pervious stepping stones. Staff talked to zoning about that and said that was the most extent of what could be done for a walking path.

Mr. Edgerton said that it was reviewed on an individual case by case basis that was decided by zoning, and Ms. Ambler replied yes.

Mr. Edgerton noted that staff does not want a deck connection, and Ms. Amber replied yes.

Mr. Edgerton asked if that should be placed in a condition.

Ms. Amber assumed that could be covered in condition three. Staff can make that condition clearer if the Commission wants.

Mr. Edgerton said that he had trouble seeing a significant difference between building a walkway and having a deck. But, he liked the pervious surface.

Ms. Amber said that what she considered a deck would be the actual structure that is affixed. The difference between the walkway is that it is pervious with mulch between the steps. In the past staff allowed a couple of posts for a rack for a boat, but they could not have a roof on it to make a little boat house. That would be addition of impervious area within the buffer. Past staff made a distinct difference between actually adding some sort of impervious type area within the area, which was not allowed. But, pervious steps or stepping stones would be allowed. Also, two-four by fours could be used to hook a boat to.

Mr. Loach said that it seems reasonable if they allow a dock that there should be a way to get down there safely.

Mr. Edgerton said that the 200' buffer to the water sounds like a pretty liberal buffer.

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

Jack Cann, applicant, said that he was present to answer questions. This is a schematic he drew based on the general parameters of what can be put there. It can be larger according to the ordinances. He noted that they don't need a large dock.

Mr. Morris asked based on the sketch if staff says no deck, then how was the dock going to be affixed without the deck.

Mr. Cann replied that there are two 6' X 6' posts. That is a conceptual path basically, but he called it a deck. That is probably a bad choice of words. It is not intended to be a deck, but just a path. The two posts will anchor the basic gangway that goes to the floating dock. There is not other way to reach the shore from the dock if they don't have a gangway.

Ms. Joseph said that in the application he says that the neighbors will be able to use that.

Mr. Cann said that he offered the use of his dock to his two adjoining neighbors.

Ms. Joseph said that was compelling because one of the things they are considering is how many decks are too many on the reservoir. So it sounded like that was a good idea to offer that to his neighbors.

Mr. Cann said that is the concept that if they offer to share the dock that it would lower the number of decks on the reservoir.

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

Motion: Mr. Edgerton moved and Mr. Strucko seconded, for approval of SP-2007-00059, John Cann Boat Dock with the conditions as recommended by staff.

1. There shall be no lighting within 25 horizontal feet of the Reservoir, measured from the elevation of normal pool, which is Elevation 382 (North American Vertical Datum of 1988)
2. There shall be no removal of vegetation or earth disturbance with the 200-foot stream buffer associated with the installation of the boat dock. The stream buffer is measured from the edge of the floodplain, which is Elevation 391.
3. There shall be no other structures, such as decking or stairs, constructed in the 200-foot stream buffer.

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

Mr. Morris stated that SP-2007-00059, John Cann Boat Dock will go before the Board of Supervisors on May 14 with a recommendation for approval.

SP-2007-061 Western Albemarle High School Rowing Club Dock (Sign # 20)
PROPOSED: Public boat dock on the Beaver Creek Reservoir
ZONING CATEGORY/GENERAL USAGE: RA -- Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre); FH--Flood Hazard: overlay to provide safety and protection from flooding
SECTION: 30.3.05.2.1(2) Water Related Uses within the Floodway
COMPRHENSIVE PLAN LAND USE/DENSITY: Rural Area 3 - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/density (.5 unit/acre)
ENTRANCE CORRIDOR: No
LOCTION: Dock to be placed at east side of the Reservoir adjacent to the Beaver Creek Park entrance road, off of Browns Gap Turnpike (Route 680).
TAX MAP/PARCEL: 57-4
MAGISTERIAL DISTRICT: Whitehall
(Tamara Ambler)

Ms. Ambler noted that because it was spring break the Parks and Rec Department nor the actual school officials could be present to speak. But, they do have a parent of one of the rowers, Ms. Cox, who has been kind enough to provide her time tonight to answer questions.

A special use permit is being requested in accordance with Section 30.3.05.2.1(2) of the Zoning Ordinance to allow a boat dock in the Flood Hazard Overlay zoning district. The boat dock will be placed within the public access area of Beaver Creek Park, and will be utilized by the Western Albemarle High School Rowing Club and the public. The applicant has coordinated with the County's Parks and Recreation Department to select a suitable location for the dock within the park. The dock will be located approximately 350 feet upstream of the dam, close to the entrance of the park and easily accessible by foot. The WAHS rowing club currently has permission to launch into the Reservoir through the private property of the Gerard Brikkenaarvandijk at 1714 Browns Gap Turnpike.

The applicant would like to construct a small boat house to house their shells or boats. That would be close to the entrance road where the little bait shop was located in the past. There is currently an existing fixed pier or boat ramp further upstream.

Mr. Edgerton asked what is going to happen to the existing dock.

Ms. Ambler replied that it is proposed to remain. She noted that it may be a question of activity around the ramp that might preclude launching there. The existing dock is owned by the county.

Ms. Ambler noted that there use to be a floating dock further upstream. That was taken out by some big storms. They have a desire to replace the dock that was there. From her conversations with Parks and Rec there is enough demand for two boat docks. The replacement of the dock would not lead to a proliferation of docks on the reservoir because this is managed differently and is county owned. The same safeguards for gasoline, pathogens and evasive species that protect the South Fork Rivanna Reservoir are in effect here for the Beaver Creek Reservoir.

Staff has identified the following factors which are favorable to this request:
1. No direct impact to the water supply or neighboring properties is expected as a result of this special use permit
2. No increase in flood levels will result from installation of a dock.
3. The proposed dock is supported by the County Parks and Recreation Department

Staff has not identified any factors which are unfavorable to this request.

Staff recommends approval of the request with the following conditions:
1. There shall be no removal of vegetation or earth disturbance with the 200-foot stream buffer associated with the installation of the boat dock. The stream buffer is measured from the edge of the floodplain, which is approximated to be Elevation 545 (North American Vertical Datum of 1988).
2. There shall be no other structures, such as decking or stairs, constructed in the 200-foot stream buffer.

Mr. Morris asked if there were any questions for staff. He noted that staff mentioned putting in a future facility to store their boat. He asked if that has nothing to do with this.

Ms. Ambler replied that has nothing to do with this because it will be well outside the floodplain. The reason this is before the Commission is that it is in the floodplain.

Mr. Loach asked if the county would own this dock.

Ms. Ambler replied that the dock would be county owned. What is proposed to happen is that the club has raised funds and they are handling all of the expenses and maintenance. They will be purchasing the dock and maintaining it. The property would be county property and become part of the public park.

Mr. Edgerton asked if the drawing in the packet has option one and two. Those were their two choices and staff has decided that option one is the preferred.

Ms. Ambler replied that either one of those options would be acceptable. The applicant preferred the location closer to where the boat house would be constructed. Provided that it was outside of the

emergency spill way, staff was able to say that they could locate it in the location proposed in option one. That is what staff decided to present to the Commission as to where the proposed dock would go.

Mr. Edgerton asked where they are currently accessing there is no boat dock, and Ms. Ambler replied that there is not.

Mr. Edgerton asked if option 2 has nothing to do with this application.

Ms. Ambler replied yes, that is correct.

Mr. Edgerton asked if the conditions should specify the location.

Ms. Ambler noted that attachment C references the proposed location, which could be added to the condition.

Mr. Edgerton said that would be appropriate.

Ms. Porterfield noted that the access getting down to the sites is very steep. What is going to happen is the people who are going to try to access these docks are going to start making inroads into this steep hill. That is a concern with this dock because it is going to be hard to access. She was not against the dock, but the location and the way it was being built. On the website it did not indicate the depth from the top of the dock down to the bottom of the floaters. She asked that they make sure that the dock was safe and secure for all public use by possibly attaching it to the right hand side of the dock with a gangway.

There being no further questions, Mr. Morris opened the public hearing and invited public comment.

Roberta Mixad, property owner on Beaver Creek Reservoir, supported high school sports. Beaver Creek is utilized a lot by fishermen and families. She voiced three concerns being the speed, noise and numbers. The purpose of going in a shell is going fast. She asked they were going to make sure it was safe for the fishermen who want it to be quiet and slow and families and canoeists. The number issue is who would get to use this for shells. She asked if private clubs and Waynesboro High School could use it. She asked how many shells would be out there at once and how would they regulate the number. The third point is noise. The way the coach communicates with the kids is through a mega phone. Across water a mega phone would carry. She asked if they could restrict the noise in some manner. She supported Ms. Porterfield's idea of attaching to the current dock for two additional reasons. One is that when coming across the dam it is just a magnificent view of unspoiled water. The dock cannot be seen coming across the bridge. But, the dock in the new proposed area would be visible. For other users this dock is close to the parking lot. People park on the grass up at the proposed site. She asked why they would want to encourage that.

Julie Cox, parent of a member of the rowing club members, said that she had been asked to provide the information that if necessary this dock can be removed within 20 minutes. If need be the dock would be placed in the dock house during the winter and off-season so there would not be a lot of traffic going up and down from this dock. The students do practice from Monday through Thursday. Fridays they are loading the docks getting ready for a Saturday event.

Mr. Strucko asked if she knew if the high school is planning to hold competitions here.

Ms. Cox replied that her understanding was not at this moment. They just need it for practice. The practice starts at 4:30 p.m. and end at 6:00 p.m. On the weekends they would just unload and put their boats from the trailer to the boat house. The season starts at the end of March and goes through the end of the school year.

Brian Wheeler, Chairman of the Albemarle County School Board, said that the Albemarle County School Board as the applicant is supporting this request. They considered this last fall and the School Board supported it. Obviously, in cooperation with Parks and Rec they had a good conversation with Bob Crickenberger in Parks and Rec on how this facility would come into being and how it would be

maintained. There were lots of questions by the School Board about ownership and why they needed to be involved. But, it turns out that they were involved because it is a public park and because the school division was the interested party with their club of students and that Beaver Creek is in the back yard of western Albemarle It was more convenient than South Fork, which had other issues as far as scheduling. They felt that it was a win/win situation. They had parents and boosters coming forth and saying that they would pay for this facility. It would become a public facility. Parks and Rec was supporting it. There would be no tax payer expense. They talked about having a memorandum of understanding between the club at the school and the county to ensure that any details that Parks and Rec were concerned about or the school division was concerned about in the future could be covered in that memorandum of understanding. As seen in the pictures, they are using this facility. So this was about improving public safety and making it more convenience for them. Staff identified a number of favorable factors. This is a low dock, as pointed out, and it is easier to get into the water. He has been to this site and the existing dock would not be suitable for the rowers. If they keep it separate that would allow the school division in the memorandum of understanding to set certain access requirements. He believed that Mr. Davis, County Attorney, pointed out that the school division could regulate access to that facility like any other school facility. So if there was a concern about other entities using by keeping this in a public park that by keeping it separate from that existing dock it would make that a little easier to put up the appropriate signage or bar there to discourage other users if that was a concern. He would be happy to answer questions. Again, the School supports this request and hopes the Commission will support us.

John Cann said that 15 years ago he took up rowing and could speak to some of the questions about portable docks. The reason they can't use the other dock is that a shell is a vessel with large outriggers. When it is brought down and put on a dock it has to be very low in the water. This particular floating dock is designed to accommodate this sort of boat. A typical eight man shell is 57' in length and weighs about 250 to 300 pounds. When it goes out on the floating dock the dock has to be about 15" to 18" floatation to support this type of water weight onto it. Attaching to it to a dock similar to this it might work, but he had not seen the dock or been to the facility. As seen in the diagrams it goes straight out into the water. That is probably the easiest way for the youngsters to launch it. They have been walking it into the water and climb into it, which is messy. The coach tends to use a bull horn so to be heard. The speed can go up to 20 miles per hour, but with a high school team it would be 10 miles per hour at most. It is a wonderful recreational opportunity for them. As a citizen he would certainly support it.

Mr. Loach said that he had some safety concerns and wondered if they would have to set up lanes.

Mr. Cann replied not for just practicing. They might want to set up a couple of buoys or markers on the shore for the 1,000 or 1,500 meters that they would be practicing over as a course. But, they don't have to necessarily set up lanes. It might be a good idea to set up a buoy system for people to stay out of the path of it.

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

Ms. Joseph said that this is a great request and it is a wonderful activity for the children in the community.

Mr. Loach agreed. But, he also agreed with Ms. Porterfield that it is fairly steep getting down to the dock. He was more concerned that they were going to have access to this, not only for the team but for the public, and if there was going to be any erosion of the banks in getting down there. He was more concerned just about the site and questioned if it would be better, as Ms. Porterfield said, to attach the proposed dock onto the other dock in getting access from there.

Ms. Joseph said that what they were hearing was that the public would only use the one dock. The proposed dock would give the kids the ability to even pick up that dock within 20 minutes so that they would have complete access when they needed it. If the practice time was from 4:30 to 6:00 p.m. it would only be one hour and a half.

Mr. Loach noted that if they put that dock there it is going to be there and they are saying that it is open to the public. So there are going to be other people who are going to be accessing that dock at the times

the high school is not using it. He was concerned about that and questioned what type of traffic that Parks and Rec was anticipating getting down to the dock.

Ms. Ambler noted that Mary Pitts, who was with the high school and also was the rowing coach, made several site visits with Bob Crickenberger.

Ms. Porterfield asked if the motion could be amended to give Parks and Rec the ability to move this dock to the best location possible for its usage in case this area does not work.

Mr. Cilimberg noted that actually Parks and Rec selected this location.

Ms. Porterfield pointed out that the proposal was not a dock that could be moved in 20 minutes.

Mr. Edgerton said the points raised were well taken. They need to figure out a way to make this work the best way possible. Mr. Wheeler, who is the Chairman of the School Board, indicated that through the memorandum of understanding that they would be able to control the use of the property. So they could put up barricades to make it less convenient for the public to use the dock at other times. He suggested adding a condition that the memorandum of understanding restricts the use of this dock just to the school. If the school actually has the authority to do that, then that should solve the problem that it won't become yet again another access to the water?

Mr. Loach agreed, but noted that the staff report says that the boat dock will be placed within the public access area and will be utilized by Western Albemarle High School Rowing Club and the public.

Mr. Edgerton pointed out that he was suggesting this as an additional condition to the approval. The other concern was the steepness. He suggested adding a condition for the installation of the same sort of walkway as shown on the Cann property. If they added those two conditions that would address the concerns being brought up.

Mr. Morris suggested that they amend it so that under the memorandum of agreement that the school may determine who uses the ramp rather than restrict it.

Motion: Mr. Strucko moved and Ms. Joseph seconded, for approval of SP-2007-061, Western Albemarle High School Rowing Club Dock, with the conditions recommended by staff, as amended and modified.

1. There shall be no removal of vegetation or earth disturbance within the 200-foot stream buffer associated with the installation of the boat dock. The stream buffer is measured from the edge of the floodplain, which is approximated to be Elevation 545 (North American Vertical Datum of 1988).
2. There shall be no other structures, such as decking or stairs, constructed in the 200-foot stream buffer.
3. There shall be a memorandum of understanding or agreement between the Albemarle County Parks and Recreation Department and the Albemarle County School Board that addresses public use of the boat dock.
4. A stable and pervious pedestrian access reviewed and approved by the Director of the Department of Parks and Recreation shall be constructed and maintained from the closest paved parking area to the new boat dock.

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

Mr. Morris stated that SP-2007-0061, Western Albemarle High School Rowing Club will go before the Board of Supervisors on May 14 with a recommendation for approval.

The Planning Commission took a break at 9:02 p.m.

The meeting reconvened at 9:08 p.m.

SP-2007-00063 5th Street Development (Sign # 27)

PROPOSED: special use permit for fill in the floodplain, no residential units proposed.
ZONING CATEGORY/GENERAL USAGE: HC Highway Commercial - commercial and service uses; and residential use by special use permit (15 units/ acre); LI - Light Industrial - industrial, office, and limited commercial uses (no residential use); AIA Airport Impact Area - Overlay to minimize adverse impacts to both the airport and the surrounding land; and FH Flood Hazard - Overlay to provide safety and protection from flooding
SECTION: 30.3.05.2.2 (3), which allows filling of land in the floodway
COMPREHENSIVE PLAN LAND USE/DENSITY: Regional Service - regional-scale retail, wholesale, business and/or employment centers, and residential (6.01-34 units/acre); Community Service - community-scale retail wholesale, business and medical offices, mixed use core communities and/or employment services, and residential (6.01-34 units/acre); Parks and Greenways - parks, greenways, playgrounds, pedestrian and bicycle paths in Development Area 5.
ENTRANCE CORRIDOR: Yes
LOCATION: approximately 1100 feet north of I-64 on the east side of 5th Street, north and east of the Holiday Inn.
TAX MAP/PARCEL: 76-55A, 76M1-1
MAGISTERIAL DISTRICT: Scottsville
(Judy Wiegand)

Ms. Wiegand presented a Power-point presentation and summarized the staff report. (See Staff Report) The purpose of this special use permit is for fill in the floodplain. It is related to an earlier zoning map amendment and an earlier special use permit. Both requests were approved in 2002. The request is back before the Commission this evening because the prior special use permit has expired.

The application for the first zoning text amendment and special use permit was made in 1999. At that time the 1980 Flood Insurance Rate Maps were in effect. Shortly after that the applicant obtained a letter of map revision from the Federal Emergency Management Association. It indicates that FEMA is prepared to adjust the floodplain boundaries to accommodate development should the county approve. In 2000 the County Engineer signed off on the letter of map revision. In 2001 the application went back and forth between the applicant and staff several times while it was discussed. In 2001 staff and Planning Commission recommended denial of both the zoning map amendment and special use permit.

Staff recommended denial of the requested ZMA and SP with the conditions recommended in the staff report primarily due to lack of sufficient information at that time (2001). When the application went to the Board both applications were referred back to the Commission. In 2002 after resubmission and continued review and discussion, the staff and the Commission recommended approval of the applicant's resubmission and the Board approved both the zoning map amendment and the first special use permit. In 2004 the special use permit expired. In 2005 FEMA issued a whole new set of flood insurance rate maps. Normally when new flood insurance rate maps are issued, they supersede all existing letters of map revision. Realizing that they had invalidated a several letters of map revision, FEMA sent out a letter to the county revalidating a whole series of letters of map revision. However, the list did not include the letter of map revision for this property. In 2007 the applicant requested this new special use permit.

The reason that special use permit expires in 24 months is to allow any subsequent change in circumstance to be considered and also any ordinance changes should any extension or reapproval be requested. Staff has looked into this and determined that there have been no significant changes in circumstance or ordinance changes since the special use permit for fill in the floodplain was approved in 2002. The special use permit is for fill in the floodplain so that the applicant can sell or develop the property as a convenience store with gas pumps, a sit down restaurant, and associated parking.

Factors favorable:

1. There are no significant changes in circumstance since the 1999 special use permit was approved by the Board of Supervisors in 2002.
2. The applicant has shown that fill in the floodplain is possible without raising the flood elevation or having an impact on neighboring properties.

Factors Unfavorable:

1. The county engineer does not support this request based on his concerns regarding good practice and policy, proximity of flood waters to occupants, integrity of fill slopes in the long term and the precedent this kind of fill in the floodplain set. His comments are attached to the staff report.

Staff and the Planning Commission did not recommend approval of the original rezoning and special use permit back in 2001 due in part to the impacts to the floodplain. However, the Board after additional information, review, and consideration of these factors approved both the rezoning with proffers, including the proffered plan that establishes use of the property, and the special use permit for fill in the floodplain. Since there have been no changes in the development proposal for this property since the original special use permit and rezoning were approved by the Board, although they have changed the FEMA floodplain map, they have not materially changed the floodplain boundary as it existed at that time. Therefore, staff finds no change in circumstance since the Board's prior approval of this special use permit that would change the basis of that decision and therefore recommends approval of the special use permit with the conditions listed in the staff report.

Mr. Morris invited questions for staff.

Mr. Edgerton said that staff said that FEMA came back and revalidated other parcels, but not this one. He asked if staff has been able to follow up on why FEMA did not revalidate this one.

Ms. Wiegand replied that staff has not received that information. Staff's understanding is that the applicant was going to look into that issue. The applicant has to address that issue as part of one of the conditions proposed for this new special use permit; either determine that the existing permit is still valid or obtain a new one.

Mr. Edgerton said that as proposed tonight all of the buildings are being proposed in the floodplain. They are being asked to approve the fill in the floodplain from the hotel all the way out. He asked if that was the fill that they were being asked to authorize.

Ms. Wiegand replied that was correct.

Mr. Cilimberg noted that it was essentially the same floodplain as existed back when the original approval occurred and the same fill that was requested.

Mr. Edgerton said that the significant difference is that they had a reinterpretation by FEMA, which has not occurred for whatever reason.

Mr. Cilimberg said that they had a letter of map revision that was not reapproved or revalidated for the same fill in the floodplain area basically. That is a condition of the special use permit.

Mr. Loach noted that staff in their unfavorable factors said that the current county engineer does not support this request based on good practices and policies, yet was recommending approval of this with conditions two and three requiring county engineer approval. He asked if that was paradoxical.

Ms. Wiegand noted that the county engineer was not able to attend this evening due to illness. Basically, he does not think it is appropriate to do this, but if the Planning Commission and Board decide he would be the one to approve those conditions to make sure the plan complied with county and FEMA regulations.

Mr. Cilimberg said that one of the things Mr. Brooks raised was that he would not be in support of this in any situation where they have this level of fill. They have a rezoning and proffered plan that established the zoning of the project with a special use permit approval and they need to look at what is changed since then. The only change is the lack of the lomar, which would be a condition of the approval if granted by the Board of Supervisors.

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

Katurah Roell, with Dominion Development Resources, represented the owner and applicant. In addressing the letter of map revision (LOMR), a new letter was issued on July 5, 2000. It was after the map revision was issued by FEMA. That will be implemented into it. The reason the LOMR was not revalidated is that the fill was not put into place during since 2000. The owner was in the process of getting site plan approval and ran into some trouble with the ARB over a building design. The site plan fell through and the special use permit expired. They are asking to have it renewed again. The blue lines that show the floodway on the current 2005 map are slightly off. In the new 2005 new floodway maps it lists the elevation as 383, which is 10' below the Holiday Inn parking lot. Additionally, the floodplain line does not cross the road. The road is 2' higher than that. The 2005 map actually lowered the 1980 flood elevation from 384 to 383 feet. So, in conjunction with the zoning map amendment previously approved, they see it has no negative impact on the floodplain volume or the upstream properties at all. They have met with Dan Mahon and continue to work with the greenway access. Mr. Roell gave a power-point presentation of the site showing the existing conditions. They feel the conditions of the site would be improved with their proposal and would not have a negative impact on the floodplain conditions.

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

Ms. Joseph said she could understand why the Commission denied this in the first place. It is really hard to think that the floodplain should be filled to that extent. Therefore, she could not support the request.

Mr. Edgerton said that he took issue with one statement made by staff that there have been no significant changes. Since there is a new board it may be significant, but he could not speak as to how they will respond. He felt uncomfortable when the county engineer says it is a bad idea and staff says ignore it and approve it. He wished that the county engineer were present to explain it. He would trust that the Commission would be allowed to use the county engineer's recommendation that it is not good practice to fill in the floodplain for purposes of adding development capacity. Most significantly it sets a precedent to fill in the floodplain where it is not strictly needed for access of utilities or reasonable use of a parcel.

Mr. Strucko noted that the most compelling document is the last page of the staff report. Therefore, he agreed with Mr. Edgerton.

Ms. Monteith noted that in terms of how the natural process works, floodplains have a role and, if filled to raise them up enough for development, they certainly can't play that role.

Ms. Porterfield said that her concern, having walked through this area, was that it is an awful mess and how could they make it productive.

Ms. Joseph noted that it would depend on how one defines productive, because there were a lot of animals that feel that it is a great place to live.

Motion: Mr. Strucko moved and Mr. Edgerton seconded, denial of SP-2007-00063 5th Street Development based on the county engineer's recommendation that the use is not in harmony with the purpose and intent of the ordinance.

The motion for denial passed by a vote of 4:2. (Ms. Joseph, Mr. Edgerton, Mr. Strucko and Mr. Loach voted aye.) (Ms. Porterfield and Mr. Morris voted nay.) (Mr. Cannon was absent.)

Mr. Morris stated that SP-2007-00063, 5th Street Development would go before the Board of Supervisors on May 14 with the recommendation for denial.

SP-2007-00062 Southwood Community Center Expansion (Sign # 24 & 26)
PROPOSED: The Boys and Girls Club will use the former store space for up to 80 youth members. Improve basketball court, play field/yard, surface of lot in front of building and the façade of existing building.
ZONING CATEGORY/GENERAL USAGE: R-2 Residential (2 units/acre)

SECTIONS: 14.2.2 .1 and 5.1.04 Community center.
COMPREHENSIVE PLAN LAND USE/DENSITY: Neighborhood Density Residential-residential (3-6 units/acre) and supporting uses such as religious institutions and schools and other small-scale non-residential uses.
ENTRANCE CORRIDOR: Yes
LOCATION: Southwood Mobile Home Park. Northeast corner of the intersection of Hickory Street and Bitternut Lane. Hickory Street approximately 2,100 feet from the intersection of Old Lynchburg Road and Hickory Street.
TAX MAP/PARCEL: 90A1-1D
MAGISTERIAL DISTRICT: Scottsville

Ms. Joseph stated that she provides services to Habitat for Humanity of Greater Charlottesville, the applicant, and therefore would not be participating in this matter. She left the room.

Ms. Grant presented a Power-point presentation and summarized the staff report. (See Staff Report)

The Southwood Mobile Home Park is currently developed primarily with mobile homes. The applicant is requesting a special use permit to expand the existing Boys and Girls Club into the former neighborhood store space for up to 80 youth members, improve the existing basketball court, play field/yard, surface of lot in front of building and the façade of the existing building. The applicant anticipates increasing membership at the Boys and Girls club from 20 members to 80 members. The applicant is also requesting this special use permit in order to abate the violation of the Zoning Ordinance from the current use of the property as a community center without a special permit.

VDOT suggested a right-of-way (ROW) dedication along the southern part of the property on Route 631 could accommodate a future safety improvement to Route 631. This comment is primarily suggested should this special use permit directly impact Route 631. Since the special use request does not impact Route 631, staff and VDOT did not pursue the comment further.

The applicant submitted a critical slopes waiver request which has been reviewed by staff and is recommended for approval. Staff believes the 675 square foot area, as shown on the plan, for disturbance of the critical slopes is insignificant. Staff does not see any issues with its disturbance and recommends approval of this waiver request.

Staff has identified the following factors favorable to this application:
1. This proposal will provide a much needed comprehensive youth development service for more youth who live in the Southwood community.
2. The proposal will provide a community center/meeting place for the entire Southwood community.
3. The renovations to the building and facilities will enhance the site.

Staff has not identified any factors unfavorable to this application.

Recommended Action:
Staff recommends approval of SP 2007-62, Southwood Community Center Expansion with the conditions listed in the staff report.

Staff also recommends approval of the critical slopes waiver.

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

Mr. Edgerton asked if all of the work would be within the confines of the existing building.

Ms. Grant replied yes, that it was the renovation of the existing building.

Mr. Morris noted that having visited the site that the expansion was greatly needed due to the number of children. There being no further questions for staff, he opened the public hearing and invited the applicant to address the Commission.

Overton McGee, of Habitat of Humanity for Greater Charlottesville, said that they own Southwood Mobile Home Park and Southwood LLC, which is the applicant. The club would serve children from Southwood and the surrounding area. The expansion of the community center will be a huge community service. Mr. Gathright, of Daggett and Gregg and Tim Sinatra and Paul Humminston, from the boys and girls club, are present to answer questions.

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

Motion on SP-2007-00062:

Motion: Mr. Edgerton moved and Mr. Strucko seconded for approval of SP-2007-00062, Southwood Community Center Expansion, with the conditions as recommended by staff.

1. Development shall be in general accord with the concept plan dated February 26, 2008.
2. The parking study is based on a maximum of 80 children. There shall be no more than 80 children served at this location of the Boys and Girls Club.

The motion passed by a vote of 5:0:1. (Mr. Cannon was absent.) (Ms. Joseph abstained.)

Mr. Morris said that SP-2007-00062, Southwood Community Center Expansion would go to the Board of Supervisors on May 14 with a recommendation for approval.

Motion on Critical Slopes Waiver:

Motion: Mr. Edgerton moved and Mr. Strucko seconded, to approve the critical slopes waiver for SP-2007-00062, Southwood Community Center Expansion.

The motion passed by a vote of 5:0:1. (Mr. Cannon was absent.) (Ms. Joseph abstained.)

Mr. Morris said that the critical slopes waiver was approved.

Ms. Joseph returned to the meeting at 9:44 p.m.

ZMA-2007-23 Montalto (Sign # 87 & 90)
PROPOSAL: Rezone 329.68 acres from RA Rural Areas zoning district which allows RA -- Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre) to MHD Monticello Historic District zoning district, a planned historic district to permit the restoration, preservation, education, programs, research and business activities related to the operation of a historic house museum and historic site at Monticello; residential density (1 unit / 21 acres)
PROFFERS: Yes
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__No____
LOCATION: 1400 Montalto Loop Road, Route 53 at the entrance to Monticello
TAX MAP/PARCEL: TMP 77-31; TMP 77-31B; TMP 78-25A
MAGISTERIAL DISTRICT: Scottsville

AND

ZTA-2007-06 - Monticello Historic District (MHD) - Monticello Scholar Residence
Zoning text amendment to amend the MHD regulations by adding Section 11.3.1(24) to allow "Monticello Scholar Residence" as a use permitted by right. The existing density for new residential development authorized in the MHD is one dwelling unit per twenty-one acres, and the proposed zoning text amendment would not change that density. (Joan McDowell)

Ms. McDowell presented a power-point presentation and summarized the staff report for both items. Separate actions will be taken. (See Staff Report)

The proposal is for a zoning map amendment and zoning text amendment for Montalto. The proposal is to rezone 329 acres for Montalto from Rural Areas to the Monticello Historic District and add in the zoning text amendment a Monticello Scholar Residences to the by-right uses in the Monticello Historic District (MHD). Montalto is proposing to create a center for Jefferson studies by renovating the three existing buildings and the grounds on top of Montalto, creating up to 15 residences, creating offices for scholars, have seminars, conferences, lectures and other special programs, have outdoor events, gatherings, meetings, offices, a teleconference center and catered dining for scholars and guests.

The issues are the Rural Areas District has 29 potential development rights and would have a potential of 15 development rights in the Monticello Historic District. Shared parking with Monticello has been established along with controlled access at Montalto. A conservation easement has been approved and recorded for 150 acres on the side of Montalto facing Monticello.

The applicant has offered to give the county three proffers as the results of the previous work session discussions with the Planning Commission. The proffers read as follows:

> "This Proffer Statement shall relate to the two-page application plan entitled "Application Plan - Montalto Zoning Map Amendment," prepared by Draper Aden Associates, dated March 27, 2008 (the "Application Plan").
>
> 1. All outdoor lighting shall be arranged or shielded to reflect light away from the abutting properties.
> 2. Vehicular access to the Property shall be controlled during peak events that require off-site parking.
> 3. No more than three (3) Monticello Scholar Residences shall be occupied as an accessory use at one time, except during the semi-annual meetings of the Board of Directors of the Thomas Jefferson Foundation, Inc."

To further address concerns regarding vehicular access and shared parking with Monticello, the applicant has submitted the following comments:

> "Most of the guests who will attend events at Montalto will be transported to the property by shuttle bus. These guests would park their personal vehicles in the Monticello Visitors Center lot and catch the shuttle bus there. This is how guest transportation has been efficiently handled at Monticello for many years, including transportation of guests for evening events at Monticello. There are approximately 400 parking spaces at the visitor's center lot.
>
> The larger events, such as those involving the Monticello Cabinet, will nearly always take place in the evening when the visitor's center lot is essentially empty. In the unlikely event that additional spaces were needed, the Foundation would utilize parking areas at Kenwood and Tufton Farm, other nearby Foundation properties.
>
> But for all events, although the vast majority of the guests will be brought by shuttle bus, there will be a need for some individuals to drive personal vehicles to the property. This would include catering staff (which could include 8-12 people for larger events), Foundation staff and some who are just not able to take the shuttle bus (such as those in wheelchairs and needing extra assistance). These personal vehicles would be accommodated by the approximately 37 spaces shown south of the main house on the Application Plan. Other parking spaces shown on the Plan would be used by visiting scholars and fellows and a caretaker.
>
> The Foundation has significant experience handling parking for large events and with complicated logistics. Each year on the Fourth of July, an average of 2,000 visitors attend the Naturalization ceremony. In 1999 when Colin Powell was the featured speaker, they managed over 3,500 visitors. They have also handled the inauguration festivities for President Clinton in 1992, and President George Bush's Education Summit at UVA in 1989, the latter of which included the Governors from all 50 states, the President and the Cabinet all at once (plus each person's staff and security detail and

the Secret Service!). The Foundation will be able to internally coordinate the logistics of all of its programming and parking using its experience and personnel."

Staff believes the proffers addresses the issues discussed at the Planning Commission work session and recommends approval.

The zoning text amendment establishes the parameters for the Monticello scholar residences.

The applicant has also requested waivers of critical slopes next to the travel ways and courtyards. The diagram is in the staff report in Attachment E. The county engineer has determined that these are very minor disturbances and recommends approval without any conditions.

Staff recommends approval of these applications based on the following findings.

1. The Monticello Historic District is consistent with the Comprehensive Plan;
2. The primary remodeling of the historic buildings will be on the interior;
3. The exterior elevations will be maintained;
4. The MHD would reduce the number of potential residential divisions; and
5. Shared parking with Monticello will reduce the amount of vehicles on the mountaintop.

Based on the findings contained in this staff report:

1. Staff recommends approval of ZMA 2007-23 Montalto, inclusive of the applicant's proffers (Attachment D).
2. Staff recommends approval of ZTA 2007-06 Monticello Historic District (Attachment B)
3. Staff recommends approval of a Waiver of Section 4.2.5 Critical Slopes, with no conditions.

Mr. Morris asked if there were questions for staff.

Ms. Porterfield asked why they are they limiting them to only using three of the scholar residences at any one time except for the two big meetings.

Ms. McDowell replied that is what the applicant is asking for. It was discussed and determined that uses in the MHD supported that historic house. It was not the intent that these units could be sublet as apartments or that just anyone could live up there. It really has to be tied with the Monticello Historic District.

Ms. Porterfield said that they could fill the units if they had persons studying Jefferson or Monticello, and Ms. McDowell replied that was correct and they wanted the option to have some of the units available for visiting dignitaries, board members, etc.

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

Mike Mathews, with Mathews Development Company, introduced Anne Taylor, Executive Vice President of Monticello; Mike Merriam, Director of Facilities and Valerie Long. He presented a power-point presentation and discussed the key points of change since they were last here.

- The biggest change from their plan is Monticello's commitment to preservation and education as part of their mission. That was with partnering with PEC with protecting 150 acres of the mountain, which is the most visible part to the community now protected forever. That was a remarkable achievement. What came out of work session with the Commission were some suggestions about how best to handle parking on the mountain top. In working with their design team they are extraordinarily pleased with the concepts.
- What they have seen is a parking lot with a small lot below the ring road, as seen on the plan, below the view of both the community and the house. It is tucked in very nicely. If needed, they have a respectful and appropriate place for parking on the mountain top. As Ms. McDowell mentioned, they have plenty of other provisions for parking that will be very suitable. They are asking for approval of the zoning map amendment, zoning text amendment and of the critical slopes waiver.
- He asked the Commission to comment on one issue that is not mentioned. They will need the central well and septic system authority at some point in this project. They are still working

through this with staff to actually understand what they need. There are already existing approvals for a central well system that was part of the old apartment complex. How they got that without a septic system approval at the same time they are not sure. They understand that there is probably a process they have to go through to enable them to actually affect this master plan. If there are any comments or questions concerning that they would like to know about that now. Otherwise, they will determine what process they need to follow. It may come back to the Planning Commission and/or the Board at some point. But, it is a critical part of their process. They have engaged their engineer, Draper Aden, to do the well studies. They have found that there is adequate water on the mountain in the existing wells and they have also designed drain fields. They are prepared to submit whatever they need once it is figured out.

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

Mr. Cilimberg asked to speak to the issue regarding the central utilities for central sewer and central well. The normal process is a Board approval of any central utilities under one section of the ordinance. What they have done in the past when that moves forward is that they also brought it through for a finding of compliance with the Comprehensive Plan. Likely that will be the process that they would see in the future once the details are pinned down as to what is required and if what they will be pursuing will require Board approval of is central utilities.

There being no public comment, Mr. Morris closed the public hearing to bring the matter before the Commission.

Motion on ZMA-2007-23 Montalto:

Motion: Mr. Strucko moved and Mr. Edgerton seconded to approve ZMA-2007-23, Montalto, with the proffers.

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

Motion on ZTA-2007-06 Monticello Historic District (MHD) – Monticello Scholar Residence:

Motion: Mr. Strucko moved and Ms. Porterfield seconded to approve ZTA-2007-06, Monticello Historic District – Monticello Scholar Residence.

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

Motion on Critical Slopes Waiver:

Motion: Mr. Edgerton moved and Mr. Strucko seconded to approve the critical slopes waiver.

Ms. Joseph noted that they have made an incredible attempt to minimize the impact and keep it as close to the disturbed area as they possible can.

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

Mr. Morris stated that all three items ZMA-2007-23 Montalto, the critical slopes waiver and ZTA-2007-06 Monticello Historic District (MHD) – Monticello Scholar Residence would go before the Board of Supervisors on May 7 with the recommendation for approval.

Old Business:

Mr. Morris asked if there was any old business.

Mr. Kamptner said that a question came up during the rezoning for Wavertree Hall about the applicants owning about 145 acres under conservation easement that were being fully taxed. He went back and looked at the tax laws. Even though the land was under conservation easement, the tax laws require that

in order to be eligible for land use valuation the land must otherwise qualify. One of those qualifications is that the lands have an agricultural zoning designation. So that is why that land is currently taxed at its full market value and the applicant sought rezoning to RA.

Mr. Loach noted that the question was that since the easement was there and it was under agricultural use why the assessment would be any different than the land use assessment.

Mr. Kamptner said that without that zoning it is just not recognized. It may have affected the valuation a little bit, but it did not appear to be affected.

Mr. Loach asked if there was any way that the county could say if someone puts their land in easement it falls in the category of valuation of land use rather than give it a stipulation of land use.

Mr. Kamptner said that state law requires the land to have a particular zoning designation in order to qualify for land use valuation. He was not sure if they have any discretion to establish a different standard on that issue.

Mr. Loach said that the county could not value its taxation based on land use. He asked if an easement is one of those land uses.

Mr. Kamptner said that he had not talked with the assessor about this specific valuation and whether or not its valuation was affected by the land being under easement. It is not recognized as being eligible for land use.

Mr. Cilimberg said that Board of Supervisors is having a work session on the subject of use value taxation tomorrow. He suggested that anyone interested in the history of land use valuation review the report which is available on-line at the board's agenda page.

Mr. Strucko said that he had an issue to bring before the Commission regarding Wavertree. He believed that he should have not participated in the Commission's consideration of that project, but he did not put two and two together that evening. The applicant was Joseph Gladden. He had recognized his face and name, but it was not until two days later when the Health Services Foundation Board of Directors met that he realized Mr. Gladden sits on his board. Their board meets quarterly. Since this is his first year of employment he had only attended one board meeting. Now he has attended two board meetings. When he saw Mr. Gladden at the meeting he realized Mr. Gladden is a member of the Health Services Foundation Board for which Mr. Strucko serves as Chief Financial Officer.

Mr. Kamptner said that he would do some research and contact him.

Mr. Strucko said that he wanted to disclose this information for the public record.

Mr. Cilimberg said that staff, at the Commission's request, has on a list for various work changes to the provisions regarding planned developments and what ordinance can be used in review of planned developments.

Mr. Edgerton said that he was going to bring it up under new business. He wanted to initiate a motion from the Commission to initiate a zoning text amendment for section 8.5.5.2 to remove the "choice loophole" that provides encouragement to the development community to utilize stale zoning. He did not think that they should be wasting time over reviewing any zoning that is 31 years old. They should amend the zoning ordinance as the law will allow making sure that the best zoning is applied.

Mr. Morris noted that he wanted to get that process moving.

Mr. Edgerton agreed. He noted that the Commission had asked for it once, but wanted to ask for it again.

Mr. Kamptner noted that he had some draft ordinance language that he had not as yet shared that would make properties subject to the current regulations unless they can establish a vested right under state

law. He had been thinking about the request because the situation keeps coming back. These properties will be subject to the current regulations unless they can establish a vested right under state law that has certain requirements. He said that the ordinance will have to include a safety valve for the situation when a planned development will not be able to comply with the current regulations and stay true to the approved application plan. He will shared the proposed language with planning staff shortly after he makes the rest of the changes.

Motion: Mr. Edgerton moved and Mr. Strucko seconded, to initiate a zoning text amendment for section 8.5.5.2 to remove the "choice loophole" that provides encouragement to the development community to utilize stale zoning.

Mr. Cilimberg noted that normally this is handled through a resolution of intent that they give the Planning Commission to act on. He asked if this motion is suitable to initiate this process formally.

Mr. Kamptner replied that by law yes, but by custom and practice no. He said that the Commission has always initiated a text amendment by resolution, but it is not required.

Amended Motion: Mr. Edgerton moved and Mr. Strucko seconded, that the Planning Commission receive as soon as possible a resolution of intent to move ahead with this.

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

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

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

New Business:

Mr. Morris asked if there was any new business.

- On April 22 the Commission will be discussing the Personal Wireless Towers and the zero lot lines.
- There will be no meeting next week, April 15.

Adjournment:

With no further items, the meeting adjourned at 10:09 p.m. to the Tuesday, April 22, 2008 meeting at 6:00 p.m. at the County Office Building, Room 241, 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)