Albemarle County Planning Commission
August 26, 2008

The Albemarle County Planning Commission held a meeting and public hearing on Tuesday, August 26, 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, Thomas Loach, Linda Porterfield, Eric Strucko, Jon Cannon, Vice Chairman, Bill Edgerton and Calvin Morris, Chairman. Julia Monteith, AICP, non-voting representative for the University of Virginia was absent.

Other officials present were Summer Frederick, Senior Planner; Rebecca Ragsdale, Senior Planner; Mark Graham, Director of Community Development, Amelia McCulley, Director of Zoning/Zoning Administrator; Ron Higgins, Chief of Zoning; Wayne Cilimberg, Director of Planning; Bill Fritz, Chief of Current Development and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

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

Other Matters Not Listed on the Agenda from the Public:

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

Public Hearing Items:

SP-2008-00020 Airport Office Center
PROPOSED: Special use permit request for stand alone parking.
ZONING CATEGORY/GENERAL USAGE: CO - Commercial Office: offices, supporting commercial and service uses; and residential use by special use permit (15 units/ acre); EC Entrance Corridor - Overlay to protect properties of historic, architectural or cultural significance from visual impacts of development along routes of tourist access
SECTION: 23.2.2(4) Stand alone parking and parking structures (reference 4.12, 5.1.41)
COMPREHENSIVE PLAN LAND USE/DENSITY: Neighborhood Density - 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: TAX MAP/PARCEL: Tax Map 32 Parcel 48
MAGISTERIAL DISTRICT: Rio
CONCURRENT PROJECT: SUB20080092

Ms. Frederick presented a power-point presentation and summarized the staff report. (See staff report)

- Staff recommends approval of the special use permit for stand alone parking in accord with Section 18-4.12.11.

Mr. Morris invited questions for staff.

Ms. Joseph asked if Section 18-4.12.11 included a requirement for a maintenance agreement.

Ms. Frederick replied yes, that it required a maintenance agreement.

Mr. Edgerton noted that the site plan shows a second building. He asked when the second building was built if it would no longer be stand alone parking.

Ms. Frederick replied that was correct. She pointed out that the reason that they need a special use permit at this point is because they want to subdivide off the section where the second building would go

before building the second building, which creates a situation staff defines as stand alone parking. It means that there is no a primary use on the parcel other than parking.

Mr. Edgerton noted that some day what they see on the site plan will exist there theoretically unless a subsequent owner decides to come back and ask for a change.

Ms. Porterfield questioned if all the buildings that could be built in the future will have enough parking so they won't end up with any parcel that does not have enough parking.

Ms. Frederick replied that was correct.

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

Virginia Hahn, property owner, said that the request was made because she could no longer keep the property up. She was a senior citizen with severe health issues and had moved to another location in the state. Since there were no buyers that wanted to buy the entire parcel, she would like to divide the property so that other buildings could eventually be built if someone else would like to do that. They have owned the property since 1978 and have always maintained it. To remove the existing parking for the proposed division would be somewhat costly as well as it would tear up the underground drainage, the curbs and everything that was put in. They had plans to build the second building, but interest rates have gotten so high that they decided against it.

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

Motion: Ms. Joseph moved and Mr. Strucko seconded to approve SP-2008-00020, Airport Office Center.

The motion passed by a vote of 7:0.

Mr. Morris said that SP-2008-00020, Airport Office Center was approved as recommended by staff for stand alone parking in accord with Section 18-4.12.11. It will be heard by the Board of Supervisors at a date to be determined.

ZTA-2005-00007 Contractor's Storage Yard

Amend Sections 3.1, Definitions, 24.2.1, By right, 24.2.2, By special use permit, 25.2.1, By right, 25.2.2, By special use permit, 25A.2.1, By right, 25A.2.2, By special use permit, 27.2.1, By right, 27.2.2, By special use permit, 28.2.1, By right, 28.2.2, By special use permit, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 3.1 by defining "storage yard," "heavy equipment," "heavy vehicles," and "heavy equipment and heavy vehicle parking and storage yard"; Sec. 24.2.1 by adding "storage yards" as a by right use; Sec. 24.2.2 by deleting "contractor's office and equipment storage yard" as a special use; Sec. 25.2.1 by clarifying the C-1, CO and HC uses permitted by right in the PD-SC district and excepting "storage yards"; Sec. 25.2.2 by adding "storage yards" as a special use; Sec. 25A.2.1 by clarifying the C-1, CO and HC uses permitted by right in the PD-MC district and excepting "storage yards"; Sec. 27.2.1 by amending the "contractor's office and equipment storage yard" use classification to "storage yards"; Sec. 27.2.2 by adding "heavy equipment and heavy vehicle parking and storage yards" as a special use; Sec. 28.2.1 by amending the "contractor's office and equipment storage yard" use classification to "storage yards"; Sec. 28.2.2 by deleting "storage yards not elsewhere classified, excluding storage of nuclear products, by-products or wastes," as a special use. The introductory text of Sec. 25A.2.2 and all other sections cited above other than Sec. 3.1 was also amended to standardize the text and to correct a typographical error. A copy of the full text of the ordinance is on file in the office of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia. (Wayne Cilimberg)

Mr. Cilimberg pointed out Ms. McCulley passed out a couple of modifications. One is an oversight from what was in the original staff report and what was in the actual amendment language received. The other

is a correction at the end of one of the definitions and some simplified language that will make it easier to administer and understand how this would apply. Staff is trying to bring the storage yard aspect of businesses more in line with what would be considered to be the scale and intensity that needs to be differentiated, defined and listed as either by-right or special use permit depending on how intensive the operation is at the particular storage yard. In those districts where it would only be allowed by special use permit the amendment allows the use to be assessed on a project by project basis and appropriate conditions to be included when approved.

There are two types of storage yards being proposed to replace what had been referred to as contractor's office and equipment storage yard. Essentially the amendment is intended to separate the very heavy contractor operations from the more typical contractors based on the nature of the equipment and vehicles that come to and from the contractor's office. The storage yard is intended for the parking, storing and maintaining of equipment or vehicles that is not classified as heavy equipment or heavy vehicles and does not include storing explosives or other types of very intensive activities. The heavy equipment and vehicle parking and storage yard would be for maintaining, storing and parking heavy equipment and heavy vehicles that are used off-site, but may be maintained or just parked at the facility. It also would allow storage of explosives. It would not include the storing of things like nuclear products, by products or waste, storage of kerosene or other volatile materials other than what is reasonably necessary to maintain equipment and vehicles.

In the definitions staff originally gave the Commission they made reference to permitting by the Virginia Department of Transportation. In actuality it is the Virginia Department of Motor Vehicles that does the permitting. Heavy equipment would be equipment that requires an oversize overweight permit from the Department of Motor Vehicles to be transported over public highways. Staff thinks that heavy vehicles might better be described as vehicles that have more than five (5) axles or haul heavy equipment being able to obtain overweight permits from the Virginia Department of Motor Vehicles for weights in excess of 80,000 pounds. That was a definition that upon second thought seemed to be less easy to administer. A very direct definition is based on the number of axles or the fact that it is hauling heavy equipment, which is defined in the first bullet. Overweight vehicles and equipment have gross weights that exceed weight limits that are set out in the standards by the Department of Motor Vehicles. Oversize has width, length or height that exceeds certain standards. Staff tried to get pictures of the types of equipment that would fall under heavy vehicle parking and storage yard, which was presented in the Power-point presentation.

The whole idea was where the Light Industrial zoning is located in the County and where some of our other zones are located that these particular kinds of vehicles and equipment would not be appropriate in typical situations for the roads that lead to and from those sites. He noted photographs of examples of more standard less intense equipment and vehicle transport that would not be regulated under the same definition.

He explained the existing and proposed provisions for Contractor's Office & Equipment Storage Yard as shown in the chart below, which was Attachment B.

ATTACHMENT B.

Existing and Proposed Provisions for Contractor's Office & Equipment Storage Yard

Existing category of use: Contractor's office and equipment storage yard
Proposed categories of use: a) Storage yard; and b) Heavy equipment and heavy vehicle parking and storage yard

	By Right	**By Special Use Permit**
Existing Regulations – contractor's office & equipment storage yard	*Light Industry, Heavy Industry, Planned Development Industrial Park I and II*	*Highway Commercial, Planned Development Mixed Commercial*
Proposed Regulations a) storage yard	*Highway Commercial, Light Industry,*	*Planned Development Shopping*

	Heavy Industry, Planned Development Industrial Park I and II	*Center, Planned Development Mixed Commercial*
b) heavy equipment and heavy vehicle parking and storage yard	*Heavy Industry, Planned Development Industrial Park II*	*Light Industry, Planned Development Industrial Park I*

Staff's recommendation is for the Planning Commission to recommend adoption of the draft ordinance as passed out tonight, which reflects the two modifications in definition as noted. It also reflects one of the elements that staff missed in the original language for the Planned Development – Mixed Commercial to have storage yards by special use permit. Ms. McCulley and Mark Graham are also present to answer questions.

Mr. Morris asked if there were any questions.

Ms. Joseph questioned the photographs shown with more than five axles.

Mr. Cilimberg noted that the heavy vehicle is defined as having five axles or less and not carrying heavy equipment.

Ms. Porterfield noted concern with including those types of vehicles in a Planned Development Shopping Center. She asked if they have this happening right now, and if so where.

Mr. Cilimberg replied that he did not think that they have it for this degree of vehicle, but they do have vehicles associated with contractors or businesses in shopping centers.

Ms. McCulley said that as far as she knows there are none this large. There is a contractor staff is dealing with in a shopping center on the Route 29 Corridor with smaller trucks. What staff is proposing by this definition would actually give them more leverage than they had in dealing with that contractor in that shopping center because now it would require a special use permit very clearly in a PD-SC.

Ms. Porterfield voiced concern with allowing such a big vehicle to drive through a shopping center.

Mr. Cilimberg replied that is why storage yards would require a special use permit in shopping center.

Ms. Porterfield questioned if they really want to encourage people to ask for vehicles this big. She felt that the vehicles were too big.

Mr. Cilimberg said that they have to make that judgment in deciding what the Planning Commission wants to recommend to the Board of Supervisors. He offered that by having the use allowed by special use permit they have that chance in that case for a shopping center to not recommend approval of the special use permit.

Ms. Porterfield noted that personally she found it hard to visualize why anyone would want to encourage this in a Planned Development Shopping Center. It is one addition made to the list.

Mr. Kamptner noted that the PD-SC Shopping Center is pretty wide open and can be an intensive use not limited to stores, but open to a lot of other uses atypical to a shopping center, such as warehousing. The use classification allows a real broad range of uses. PD-SC Shopping Center zoning allows uses such as automobile and truck repair shops, service station, building materials sales, factory outlet sales, furniture, homes, light warehousing, machinery and equipment sales, service and rental, mobile home and trailer sales and service, modular building sales, motor vehicle sales, newspaper publishing, wholesale distribution, etc.

Ms. McCulley pointed out that some of these uses are pretty intensive and can involve pretty heavy trucking. The fact that it is by special use permit means that the use might not be appropriate in all locations. The Commission and Board would have to make positive findings that on that particular

property it is appropriate. So they are not really saying that the door is open and it is appropriate in all shopping center zoning.

Mr. Cilimberg said that the special use permit requirement allows the request to be assessed on a project by project basis.

Ms. Porterfield asked if there are current situations where this exists at shopping centers in the County.

Ms. McCulley replied that she could not definitely answer that question because she has not been everywhere and they really respond to complaints. She noted that staff has been receiving concerns from the smaller contractors who are having difficulties finding a place to park their trucks. They may have a home location in the country, but may need a place to park their equipment closer to where they do their work.

Ms. Porterfield asked if those contactors were working their businesses out of those shopping centers as or as not their office location.

Ms. McCulley replied that she had not studied it and could not speak very knowledgeably about it.

Ms. Joseph questioned the text in 25.2.1 where it says by right and then it specifically has excluded except for storage yards and then under special use permit storage yards has been added again.

Ms. McCulley said that storage yards are to be by-right in the Highway Commercial. Since the by-right PD-SC includes the by-right in the HC staff wanted to make sure it was clear that storage yards, which is a by-right use in HC, is excluded and made subject to a special use permit in PD-SC because it might not be appropriate.

Mr. Cilimberg said that an important feature is under the industrial districts. Right now you can have any type of contractor's use storage yard for any type of equipment or so forth in the Light Industrial by right. Now they are differentiating between the scales of those uses and saying to a certain level it could be by-right, but beyond that it has to be by special use permit in the LI.

Mr. Cannon said that the five axle truck shown was big, but the more than five axle truck was bigger. He asked what the basis was for drawing that line between the two.

Mr. Cilimberg asked that Mr. Graham speak to that issue.

Mark Graham said the real distinction with the five-axle truck seen in the photography is that is a truck you would see at any shopping center or delivering to a grocery store. Trucks delivering to a grocery store would be like this and would be licensed to carry up to 80,000 pounds. One really would have trouble making a distinction when you get to the five axles and below and the 80,000 pounds. That really includes almost every truck coming down the highway. Essentially that would not allow trucks into the development at all unless you recognized the trucks going into an oversize or overweight category.

Ms. Porterfield noted that explosives are not allowed. She asked about the storage of ammunition. Would ammunition be included under explosives?

Ms. McCulley replied that ammunition is regulated through the regulations of Fire Code and Fire/Rescue, who would have to permit it.

Ms. Porterfield asked if those regulations would take care of ammunition, and it would not have to be mentioned in this. She noted that there have been a lot of problems with ammunition storage across the country.

Ms. McCulley replied that staff would work with them because they would want to make certain that whatever they approved would be consistent with any local and state requirements specifically for explosives.

Mr. Cilimberg said that there would be a need to categorize ammunition as explosives under this definition. If it were ammunition for firearms, for example, that is not going to fall under an allowance under this district.

Ms. Porterfield questioned if it should be put in even though it was not mentioned specifically.

Mr. Kamptner pointed out that the explosives would have to be used as part of the off-site activity that the heavy equipment or heavy vehicles are used for. Unless ammunition is used as an accessory component of the primary use, it would not be allowed under these district regulations. To the extent that explosives are allowed, it would have to meet any Fire Code requirements and federal and state laws.

Mr. Edgerton said that in the staff report on page 3, second paragraph, it talks about one impact of this change would be that the existing by-right contractor office storage yards in the Light Industry District would become classified as Heavy Equipment and Heavy Vehicle Parking and Storage Yards would be non conforming. He asked what would be the implications of that.

Ms. McCulley replied that they would not be able to expand or get a building permit to expand any of the structures. There would be limitations on how they could expand their activities on the property even separate from a building permit for a structure.

Mr. Cilimberg noted that would be without a special use permit.

Mr. Edgerton said that they could continue what they are currently doing, but if they wanted to make any kind of adjustment they would have to get a special use permit.

Ms. McCulley pointed out if the adjustment was an expansion they would need a special use permit because of their vested rights under the State Code.

Mr. Edgerton asked if this had not come before the Planning Commission in a work session.

Mr. Cilimberg replied that the Board had asked for this to be done.

Mr. Edgerton noted that the Commission had a lot of questions and it was hard to take all of this information in at once.

Mr. Loach assumed that the bulk storage of gas or diesel fuel on the site would not be allowed, which would include any other kind of gas or propone.

Ms. McCulley replied that is correct if the bulk storage of petroleum products is what the entire use is and not accessory to a building contractor, as an example. That is called out as a separate use in the zoning ordinance and extremely limited to where it can be.

Mr. Morris opened the public hearing and invited public comment.

Phillips Marx, resident of Ivy, thanked the Planning Commission for considering this. This is something that the residents of Ivy have been requesting for 10 to 12 years in relationship to the Ivy Industrial Park and specifically Faulconer Construction. He had several questions since the text he had reviewed had been changed. He asked about the non-conforming portion and how it affects sites that are not yet built but have a construction permit. From a layman's perspective it seems trucks with more than five axles is two vehicles put together. There is a five axle truck and a three axle trailer on some of those things, which he felt was a loop hole. He suggested they might want to look at the definition because even if it is simpler to deal with it might be putting them in a box. Regarding explosive he saw a specific mention of blasting caps. That could leave it open to a different interpretation in allowing other explosive and not allowing blasting caps. They went though this with the Ivy Industrial Park and in determining that any explosive use even for a short period of time really came under homeland security. Staff at one time permitted the applicant to store explosive there for a certain period of time. Therefore, staff should be

careful what they put in that regulation. He felt that the Commission had their interest in heart by the questions raised, which he felt might result in it being more restricted that he supported. In the Ivy area there was an industrial park approved and later a buffer put in that was deemed to help the community. A subsequent rezoning, which was a mistake, took away the buffer. Now they have an industrial park in the middle of a residential neighborhood. Everybody agreed that the use was not appropropriate, but there was nothing in the zoning text to disallow it. This proposal gives the teeth to encourage that. He encourages the Planning Commission to support the request to help protect their homes and community.

Mr. Donnie Foster asked if they know how many contractor yards are approved in the County now.

Ms. McCulley replied no.

Mr. Foster pointed out that there was one on Avon Street Extended, but he was not sure there were any other. He had a meeting about 18 months ago at the County to talk about building a contractor's storage yard and parking facility. The staff he met with thought it was a wonderful idea because there is a real need for a place for people to park their equipment. He was even told that they were sending 15 to 20 letter per month to people who were in violation of parking equipment such as big dump trucks, front end loader, etc. in non-approved areas. He felt that there was a need for contractors to have a place to park equipment in the County. He gets 3 to 10 calls per month from people asking to park vehicles and equipment. A contractor's storage yard is important to the County.

Morgan Butler, representative for the Southern Environmental Law Center, noted that he had one question for clarification by Mr. Kamptner. He questioned allowing even allowing by-right the smaller contractor storage yards in the Highway Commercial because many Highway Commercial districts have been grandfathered along Entrance Corridors. One thing that gives him some relief is that a special use permit is required for outdoor storage that will be visible from the Entrance Corridor. He questioned if outdoor storage visible from the Entrance Corridor in the Highway Commercial District would continue to require a special use permit.

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

Mr. Kamptner replied yes to Mr. Butler's question. The special use permit would be required for outside storage in the Highway Commercial District on the Entrance Corridor. Regarding Mr. Marx's comment regarding what happens to storage yards that have obtained some type of governmental approval and not operational, staff will have to look at each one on a case by case basis to determine if their rights have been vested. If they have spent money, entered into contracts or pursued the development diligently most likely those would be found to be vested and be able to proceed under the existing regulations.

Mr. Cannon asked if there was nothing they could do with the ordinance to change that outcome.

Mr. Kamptner replied no, because that was a principal that operated independently that they are doing by ordinance here.

Mr. Strucko said he was concerned about Mr. Marx's comment with respect to a potential loop hole for axle counts. He asked if VDOT looks at the cab or trailer or a combination.

Mr. Cilimberg noted that their intention was the total axles with trailer and tractor.

Mark Graham, Director of Community Development, said that they need to make sure that the ordinance defines the vehicle as the sum of the parts including the tractor, the trailer and whatever extensions they have, especially for overweight loads.

Mr. Cilimberg said that staff would make sure that is clear.

Mr. Morris noted that was an excellent point.

Mr. Cilimberg said that staff will make sure that is clear.

Mr. Loach asked if there is anything that precludes them from having a storage yard in a commercial district in a Neighborhood Model District. He wanted to make sure that a storage yard could not be right in the middle of the Neighborhood Model neighborhood.

Mr. Cilimberg replied that staff would have to look into that. It was not the intention of the Neighborhood Model District to incorporate storage yards.

Mr. Morris asked that it be clear in the motion what attachment they were talking about being either Attachment E or the new information distributed tonight.

Mr. Strucko said that he generally was in favor of making these clarifications and distinctions between the zoning categories.

Ms. Joseph noted there were other things Mr. Marx talked about regarding what can be controlled or not with explosives. She suggested that staff do more research so they were very clear on what the regulations are.

Mr. Cilimberg said that blasting caps are included under explosives in the definition. In storage yards if they can't have explosives they can't have blasting caps. In the Heavy Equipment and Heavy Vehicle Storage Yard they can have explosives so they can have blasting caps.

Motion: Mr. Strucko moved and Ms. Porterfield seconded to approve ZTA-2005-00007, Contractor's Storage Yard, as recommended by staff in the materials distributed August 26, 2008 referencing the ordinance language with additional language clarifying if ammunition is considered part of explosives (and if not, add to text) and clarification that reference to number of axles is the **total** for both truck and trailer.

The motion passed by a vote of 7:0.

Mr. Morris said that ZTA-2005-00007, Contractor's Storage Yard will go before the Board of Supervisors with a recommendation for approval at a date to be determined.

STA-2008-00001 RA 2 Lot Road Standard/SPOA

Amend Sections 14-404, Lot location to allow access from lot onto street or shared driveway, 14-412, Standards for private streets only, and 14-434, Completion of on-site improvements required prior to plat approval, of Chapter 14, Subdivision of Land, of the Albemarle County Code. This ordinance would amend Sec. 14-404 by requiring that the first subdivision plat approved for a parcel after the effective date of this ordinance (the "parent parcel") must establish a single public or private access from an existing public or private street outside of the parent parcel to the lots within the subdivision, and would require that the proposed street provide such access for all future subdivisions within the parent parcel, and would delete the requirement that all subsequent divisions of the residue enter only onto such streets shown on the approved final plat and have no immediate access onto any public street; Sec. 14-412 by deleting the standard for residential private streets serving 2 lots and requiring such streets to meet the standard currently required for streets serving 3 to 5 lots; Sec. 14-434 by deleting the exception for certain private streets from the requirement that all on-site improvements be completed prior to approval of the final plat where surety in lieu of completion of the improvements is not authorized. A copy of the full text of the ordinance is on file in the office of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia. (Amelia McCulley)

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

This is a Subdivision Ordinance amendment that achieves two things:

The first is to establish a road standard for a private road serving two (2) lots. This shall be the same as the existing standard for a private road serving 3 to 5 lots. Therefore, the new road standard would become a 2 to 5 lot private road standard.

- This is being proposed to improve emergency access to these properties.
- To improve routine access to these properties because it just has to be passable.
- Planning for roads that may be extended in the future to serve other properties, which they want to meet the County standards.

The second is to require that all subdivision of property (from the effective date forward) to share the same access road / entrance onto any public street.

- Reducing the number of entrances onto a public road - Each entrance onto a public road is a conflict point and an opportunity for accidents for the traveling public. It is common for local zoning and subdivision regulation to reduce and limit the numbers of entrances available to property.
- Reduce the number of access roads that serve property. The resulting roads would meet a higher construction standard and private road maintenance would be shared among more properties.
- Establishing a road standard for a private street serving two (2) lots -
  The current Albemarle Subdivision regulations do not have a specific construction standard for a private street serving two lots. It only requires a "travelway passable by ordinary passenger vehicles in all but temporary extreme weather conditions."
- Establishing a road standard for these streets will establish and effectively increase the minimum design and construction standards for private streets serving two lots. In addition, it will result in improved emergency access to these properties.
- Family divisions are not reviewed under this regulation. They are reviewed under other regulations and not these two provisions proposed for amendment.
- There are shared driveways in the development area that serve the Neighborhood Model. They don't want to jeopardize that. This amendment does not affect shared driveways in the development area.

- Staff recommends adoption of the draft ordinance found in Attachment C.

Mr. Morris opened the public hearing and invited public comment.

Katherine Russell, resident of North Garden, felt that the changes were unnecessary. Currently a surveyor can determine when a lot is requested to be filed if an emergency vehicle can get to the lot. There is already a sight distance requirement that is sufficient. She did not think that they need to increase the bureaucracy of the county and increase their control for things that have not presented big problems. It will restrict what people can do with their land even further. It will mean that a lot of people who may want to do something won't be able to afford to do it. Unfortunately, the county continues to find ways to infringe upon on the owner's ability to utilize their property. Property owners have vested interest in their properties. Every time another regulation is adopted that does not serve the public as a whole they are trampling on people's interest. She opposed the amendments since it would allow the county to continue to infringe upon the property owner rights to use their property. She felt that the general public does not understand the proposal. The county should work on its current responsibilities and does not need more control.

Gorky Shackelford said that he had a farm in Stony Point in the Rivanna district. He was asked by other directors of the Albemarle Farm Bureau to come and represent them tonight. He would like to use his own situation as an example. Some time ago they had their property divided out on paper in case they had to sell a lot or two in order to keep the rest of the farm, which he hopes does not happen. The picture shows one 5-acre lot, two 10-acre lots and the others 21 to 30 acres. He tried to make the lots fit into the terrain and not interfere with the appearance of the farm as a whole. With this ordinance, if it is passed, it

would look very differently. The county would effectively be taking away every division right that they have with the sight distance requirement on the country road, which they don't have, and the stream crossing regulations that has already been passed. He wondered if it was worth it because there is a great deal of loss in it. There are already a lot of private entrances on the country roads, which can't be changed, and a lot of people are going to have to use the same entrance anyway. He did not think that all situations would allow the lots to come out on one road as presented. He did not think that one or two commercial entrances were going to improve the safety. If safety is the purpose of this proposal he did not think that it would accomplish much. If down zoning is the purpose of it, then it is a very effective ordinance.

Clara Belle Wheeler, resident of Stony Point Rd, objected to the proposed amendments. We live in a world where our property rights in Albemarle County, as have already been stated, are being restricted on a daily basis by ordinance being passed by elected and non-elected bodies. They live in an area, which is the bedrock and foundation of this country, where personal freedoms were fought and died for. Choices and consequences should be the standards by which each of us lives. If should be her choice if she wants to live at an end of a dirt road that she can only get to in a four-wheel drive vehicle. . If she has a heart attack in the middle of the night and an ambulance cannot get to her, then that is her choice and she will die with the consequences. It is not up to any one else to decide where she can or cannot live because she can't spend $100,000 to build a road that meets some arbitrary standard. Property rights are personal and are important and they are trying to restrict them. The people in the community are tired of being told what they can and cannot do with their property. She is an environmentalist and a farmer who felt that they would do less damage by putting in a little road to their house as opposed a huge asphalt covered road. She objected to the proposal for many reasons, but the cost alone would prohibit people from being able to build on their property. She felt that this was a sneaky underhanded way by going around the back door to restrict property owner rights. She asked that they not pass this amendment because building two houses on a piece of property should not require the Planning Commission or Board to restrict them.

Kathy Rash, farmer and owner of two pieces of property in the White Hall District and southern Albemarle, pointed out like many others she just found out about this meeting. She was taken back by the rules and regulations imposed. It seems that more and more regulations are being added to small farmers and people in the rural area. Most of the other farms in her area have 50 to 60 acres. Every time she turns around the county is taking more rights and putting more restrictions on them. If their intention is to prevent them from building on their land by taking away their property rights, then the county should just say so. The small farmers feel that they are being imposed upon. She stressed that they need to have the same goals and be able to work together to keep the county beautiful and the way it is now.

Rose Scarlet Myers, owner of a farm in Earlysville, said she came to this area in 1994. When they moved here it was a very rural area. There has been a lot of development in the area, which has taken the quality down in the county. The quality of the streams has been affected by the added asphalt and not taking care of the land. Every time they continue to cut up the land in that way they are creating more havoc in the streams. She asked the Commission to defeat this motion

Sarah Henley, resident in the Crozet area, said her husband and family had a farm in this area since 1900. This land that the bureaucrats and Albemarle County are talking about is very dear to the people who live on the land that they are talking about. She asked that they consider their heritage and life style. They have made a lot of sacrifices. She has been involved recently with people involved with developers and real estate who feel that they have more of a vested interest in the property than the people who live on it. It is important that they are able to continue to farm this land. She looked at it as an investment that they have held onto for their families. People in this county may have $100,000 in the bank in case someone gets sick, but they have made sacrifices and their $100,000 is in a little parcel of land on the end of their farm. They need to be able to sell that if it is necessary. There is no one that wants to do it. The restrictions being placed on their farm land is making it impossible for farmers to manage their investment. She opposed the additional regulations being adopted. She questioned if others would like to have their investments put on the line for the county to decide what they can keep.

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

Mr. Strucko said that from listening to the speakers and reading the staff report and looking at some of the information that he has several questions. He wrestles with the notion of Albemarle County maintaining its rural character and to allow folks to farm and use their land as they see fit. But, as soon as the land is subdivided and that lot is put on the market he was also considering that consumer and what rights he should have. That parcel's consumer should have some guarantees that protect their public health, safety and welfare. As he reads the resolution that was unanimously adopted by the Board of Supervisors that is how it starts. So he was wrestling with the County continuing to impose restrictions, which he felt were standards that the purchaser of the lot should expect when the lot was placed on the market. He asked if this road requirement that minimum standard. He asked if the standard includes impervious surface.

Mr., Fritz replied that the standard for 2 to 5 lots proposed would be a 14' travel way and would only be paved if the grade exceeded 7 percent. It would be gravel otherwise.

Ms. Joseph asked if family divisions can be done without any restrictions.

Mr. Fritz replied that the proposal has no effect on family division. It would still require reasonable passage by a passenger vehicle as currently required in the ordinance.

Ms. Joseph asked if the farmer needed the $100,000 he could subdivide the land as a family division and sell it to a family member.

Mr. Fritz replied that was correct.

Ms. Porterfield said that the Commission heard from some County residents that this will truly affect their ability to sell off land. She asked staff to address that issue.

Mr. Fritz replied that this does not affect development rights. This is a design standard and does not affect the utilization of development rights. Currently for 3 to 5 lots, the road has to meet X standard. What is being proposed is for 2 to 5 lots to meet that standard.

Mr. Cannon noticed that the elected officials made a unanimous decision to bring forth this resolution. He assumed that there was a set of facts and concerns that gave rise to this resolution. He asked staff to summarize or explain that information. He assumed it has to do with the purpose and intent to provide for orderly subdivision, minimize the points of access on public roads and to bring roads that are going to be used to open up land to develop to meet a standard. He asked what other things lead to this proposal.

Mr. Fritz replied that the Board asked staff to come before them and explain how three separate provisions of the ordinance were applied on a day to day basis and what the resulting developments were. The first was the two-step process where there were two large lots and further division of those lots. The other was what the road standards were. The other provision had to do with frontage for the rear lot. Staff is only bringing two of the three before the Commission tonight. The Board asked staff to explain how the ordinance allows development to occur in the County. That is the resolution that staff has brought before the Planning Commission tonight.

Ms. Porterfield asked if there was consideration of safety for fire department and police access to these lots.

Mr. Fritz replied that Board acknowledged that the road standard is a higher standard to provide improved access. But, he was not sure of the particulars on it.

Ms. Joseph asked for comments from Mr. Loach and Mr. Strucko from their experience in their volunteer fire/rescue service. She noted that the County does spend money on rescue squads and the equipment. She would like to hear about the conditions of these roads.

Mr. Strucko said that as a volunteer fire fighter at Earlysville Fire Department and member of Western Albemarle Rescue Square that he has experienced many situations on rural roads where they don't know that a road is substandard until they are actually confronted with a very narrow access point or driveway. There are many safety issues involved. Occasionally they have to abandon some of the bigger vehicles. There have been instances when response time has been delayed due to substandard road. It is more of a safety issue particularly for larger vehicles such as pumper trucks.

Mr. Loach said that he was a volunteer fire fighter with Crozet Fire Department. When someone calls 911 they expect someone to show up. He voiced concerns about the safety of the consumer and the members risking their lives in the trucks from substandard roads. Not only are they risking the lives of the fire fighters, but the cost of the trucks is enormous. It is a problem. So if they are setting a standard for safety for the consumer, then he supported the notions presented.

Mr. Kamptner noted that the one thing this text amendment does is close an inconsistency. Several months ago the Board adopted the ordinance that establishes driveway standards. One of the things that drove that was to have standards to ensure that emergency vehicles could reach houses on driveways. The standard that exists right now for two-lot subdivisions is not a standard that requires access by emergency vehicles. So there is an inconsistency between the existing and the current driveway standards. What came out of the driveway text amendment was the example given by fire/rescue and it touches on one of the issues that a speaker raised if they want to die because an emergency vehicle can't reach then that it is their right. Fire/rescue pointed out that the house that is not accessible might catch on fire and that fire might spread if the emergency vehicle can't reach that house. That was one of the public concerns that Fire/rescue had in supporting the driveway standards.

Motion: Mr. Cannon moved and Mr. Edgerton seconded for approval of the resolution of intent put forward in STA-2008-0001 RA 2 Lot Road Standards/SPOA as presented.

Ms. Joseph noted that it was the actual text that they were talking about.

Mr. Morris replied that it was the zoning text in Attachment C.

Ms. Joseph pointed out that this action affects her because she has five development rights. Therefore, she was not sitting here imposing regulations on people that she was not imposing on herself.

The motion passed by vote of 7:0.

Mr. Morris said that STA-2008-0001, RA 2 Lot Road Standards/SPOA will go to the Board of Supervisors with a recommendation for approval at a time to be determined with the following proposed ordinance language set out in materials distributed on 8/26/08 as Attachment C for STA-2008-00001 RA 2 Lot Road Standard/SPOA

ORDINANCE NO. 08-14

AN ORDINANCE TO AMEND CHAPTER 14, SUBDIVISION OF LAND, ARTICLE IV, ON-SITE IMPROVEMENTS AND DESIGN, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 14, Subdivision of Land, Article IV, On-Site Improvements and Design, is hereby amended and reordained as follows:

By Amending:

Sec. 14-404 Lot location to allow access from lot onto street or shared driveway
Sec. 14-412 Standards for private streets only
Sec. 14-434 Completion of on-site improvements required prior to plat approval

Chapter 14. Subdivision of Land

Article IV. On-Site Improvements and Design

Sec. 14-404 Lot location to allow access from lot onto street or shared driveway.

Each lot within a subdivision shall be located as follows:

A. The first subdivision plat approved for a parcel on and after [insert effective date] (hereinafter, the "parent parcel") shall establish a single public or private street to provide access from an existing public or private street outside of or adjacent to the parent parcel to the lots within the subdivision. The street shall also provide such access for all future subdivisions within the boundaries of the parent parcel as it existed on [insert effective date]. The requirement of a single access street shall not apply to any subdivision whose streets and access are subject to section 14-409.

~~A~~B. Each lot, other than a corner lot within the development areas, shall have reasonable access to the building site from only one street, shared driveway or alley established at the same time as the subdivision or the subdivision of the parent parcel as provided in subsection (A); provided that a lot may be located so that its driveway enters only onto a public street abutting the subdivision if: (i) the commission grants a waiver under subsection (C); (ii) the subdivider obtains an entrance permit from the Virginia Department of Transportation for the access; (iii) the entrance complies with the design standards set forth in sections 14-410(F) and 14-410(G); and (iv) the subdivider demonstrates to the agent prior to approval of the final plat that the waiver does not violate any covenants to be recorded for the subdivision. For purposes of this section, the term "reasonable access" means a location for a driveway or, if a driveway location is not provided, a location for a suitable foot path from the parking spaces required by the zoning ordinance to the building site; the term "within the subdivision" means within the exterior boundary lines of the lands being divided.

~~B. If the subdivision is within the rural areas, all subsequent divisions of the residue shall enter only onto such street(s) shown on the approved final plat and shall have no immediate access onto to any public street.~~

C. The requirements of this section may be waived by the commission as provided in section 14-225.1. In reviewing a waiver request, the commission shall determine whether: (i) the county engineer recommends an alternative standard; or (ii) because of unusual size, topography, shape of the property, location of the property or other unusual conditions, excluding the proprietary interests of the subdivider, strict application of the applicable requirements would result in significant degradation of the property or to the land adjacent thereto. In approving a waiver, the commission shall find that requiring the standard would not forward the purposes of this chapter or otherwise serve the public interest; and granting the waiver would not be detrimental to the public health, safety or welfare, to the orderly development of the area, to sound engineering practices, and to the land adjacent thereto. In reviewing a waiver request, the commission may allow a substitute design of comparable quality, but differing from that required, if it finds that the subdivider would achieve results which substantially satisfy the overall purposes of this chapter in a manner equal to or exceeding the desired effects of the requirement.

(§ 18-36 (part), 9-5-96, 8-28-74; § 18-39 (part), 9-5-96, 10-19-77, 5-10-77, 8-28-74; 1988 Code, §§ 18-36, 18-39; Ord. 98-A(1), 8-5-98, §§ 14-500(C), 14-505; Ord. 05-14(1), 4-20-05, effective 6-20-05)

State law reference--Va. Code § 15.2-2241(5).

Sec. 14-412 Standards for private streets only.

In addition to the minimum design requirements set forth in section 14-410, the following minimum design requirements shall apply to private streets authorized by this chapter:

A. *Residential private streets*. Each private street serving detached residential uses authorized under sections 14-232 or 14-233 shall satisfy the following:

~~1. *Streets serving two lots.* Each private street serving two (2) lots shall satisfy the following: (i) easement or right-of-way widths shall be thirty (30) feet minimum; (ii) the required materials and minimum depth of base shall satisfy the minimum requirements described in the design standards manual; and (iii) the surveyor shall include the following wording on the final plat: "The existing and/or proposed right-of-way is of adequate width and horizontal and vertical alignment to accommodate a travelway passable by ordinary passenger vehicles in all but temporary extreme weather conditions, together with area adequate for maintenance of the travelway, as required by section 14-412 of the Albemarle County Code."~~

~~2~~1. *Streets serving ~~three~~ two to five lots.* Each private street serving ~~three (3)~~ two (2) to five (5) lots shall satisfy the following: (i) vertical centerline curvature shall meet a minimum design K value of five (5) for crest curves and fifteen (15) for sag curves; (ii) sight distances shall not be less than one hundred (100) feet; (iii) turnarounds shall be provided at the end of each street per American Association of State Highway and Transportation Officials guidelines; (iv) street easements or right-of-way widths shall be thirty (30) feet minimum; and (v) the radius for horizontal curvature shall be forty (40) feet or greater, unless otherwise authorized by this chapter~~. Any standard in this paragraph (2) may be reduced to the standard for streets serving two (2) lots where a driveway departs from the street and two lots remain to be served, and a turnaround is provided.~~ In addition, the following shall also apply:

(a) *Private streets in the rural areas*. For such private streets in the rural areas: (i) travelway widths shall be fourteen (14) feet minimum, with three (3) feet minimum shoulder widths, and a minimum of four (4) feet from the edge of the shoulder to the ditch centerline; (ii) if any portion of the street exceeds seven (7) percent in grade, the entire street shall be surfaced as required by Virginia Department of Transportation standards; streets of lesser grade may use a gravel surface.

(b) *Private streets in the development areas*. For such private streets in the development areas: (i) an urban cross-section street design shall be provided, with a minimum width of twenty (20) feet measured from the curb faces or such alternative design, including a street easement or right-of-way width, deemed adequate by the county engineer to be equivalent to or greater than the applicable standard in the design standards manual, so as to adequately protect the public health, safety or welfare; additional widths shall be provided for gutters to control drainage at the discretion of the county engineer; and (ii) the entire street shall be surfaced as required by Virginia Department of Transportation standards.

~~3~~2. *Streets serving six lots or more.* Each private street serving six (6) or more lots shall satisfy Virginia Department of Transportation standards, provided:

(a) *Private streets in the rural areas*. For such private streets in the rural areas, the commission may approve Virginia Department of Transportation standards for mountainous terrain if the subdivider demonstrates, for a specific, identifiable reason, the general welfare, as opposed to the proprietary interests of the subdivider, would be better served by the application of those standards.

(b) *Private streets in the development areas*. For such private streets in the development areas, the agent may approve Virginia Department of Transportation standards for mountainous terrain or an alternative standard deemed adequate by the county engineer to be equivalent to or greater than the applicable standard in the design standards manual, so as to adequately protect the public health, safety or welfare.

~~4~~3. *Streets serving family ~~or two-lot~~ subdivisions*. Each private street authorized to serve a family subdivision under section 14-232(B)(1) ~~or a two-lot subdivision under section 14-232(B)(2)~~ shall satisfy the following: (i) easement or right-of-way widths shall be ten (10) feet minimum; and (ii) the surveyor shall include the following wording on the plat: "The existing and/or proposed right-of-way is of adequate width and horizontal and vertical alignment to accommodate a travelway passable by ordinary passenger vehicles in all but temporary extreme weather conditions, together with area adequate for maintenance of the travelway, as required by section 14-412 of the Albemarle County Code."

B. *Private streets serving non-residential, non-agricultural, attached residential, multi-unit residential and combined residential and non-residential uses.* Each private street authorized to serve non-residential, non-agricultural, attached residential, multi-unit residential and combined residential and non-residential uses under sections 14-232 or 14-233 shall satisfy Virginia Department of Transportation standards or an alternative standard deemed adequate by the agent, upon the recommendation of the county engineer, to be equivalent to or greater than the applicable standard in the design standards manual, so as to adequately protect the public health, safety or welfare. The agent may require minimum travelway widths to provide for on-street parking upon a determination that the provisions for off-street parking may be inadequate to reasonably preclude unauthorized on-street parking.

C. *Clearing land for improvements.* A private street constructed to Virginia Department of Transportation standards shall not be subject to that department's clear zone requirements.

D. *Landscaping and other improvements permitted.* Subsequent to construction of a private street, a subdivider may install ornamental plantings and any other improvements provided that they do not conflict with sight distance, drainage facilities or other required improvements.

E. *Waiver.* The requirements of section ~~14-412(A)(2)(a)~~ 14-412(A)(1)(a) relating to street easement or right-of-way widths may be waived by the commission as provided in section 14-225.1. In reviewing a waiver request for a lesser street easement or right-of-way width, the commission shall consider whether: (i) the subdivision will be served by an existing easement or right-of-way of fixed width that cannot be widened by the subdivider after documented good faith effort to acquire additional width; and (ii) the existing easement or right-of-way width is adequate to accommodate the required travelway and its maintenance. If the waiver pertains to minimum street easement or right-of-way widths over an existing bridge, dam or other structure, the commission shall consider whether: (i) the long-term environmental impacts resulting from not widening the bridge, dam or other structure outweigh complying with the minimum width requirements, as determined by the county engineer; or (ii) whether the bridge, dam or other structure is a historical structure. In approving a waiver, the commission shall find that requiring the standard street easement or right-of-way widths would not forward the purposes of this chapter or otherwise serve the public interest; and granting the waiver would not be detrimental to the public health, safety or welfare, to the orderly development of the area, to sound engineering practices, and to the land adjacent thereto.

(§ 18-36, 9-5-96, 8-28-74; § 18-37, 9-5-96, 11-21-79, 3-29-78, 8-28-74(part); 1988 Code, §§ 18-36, 18-37, 18-38; Ord. 98-A(1), 8-5-98, § 14-514; Ord. 02-14(1), 2-6-02; Ord. 05-14(1), 4-20-05, effective 6-20-05)

State law reference--Va. Code § 15.2-2242(3).

Sec. 14-434 Completion of on-site improvements required prior to plat approval.

Except as provided in section 14-435, all on-site improvements required by this chapter~~, other than a private street authorized under section 14-232(B)(1), 14-232(B)(2), 14-233(A)(2) or 14-433(B)(2) serving less than three (3) lots,~~ shall be completed prior to approval of the final plat. Prior to approval of the final plat:

A. The subdivider shall submit to the agent a certificate of completion of all of the improvements prepared by a professional engineer or a land surveyor, to the limits of his license; and

B. The subdivider shall certify to the agent that all of the construction costs for the improvements, including those for materials and labor, have been paid to the person constructing the improvements.

9-5-96, 12-15-82, 4-21-76, 2-19-76, 8-28-74 (§ 3); 1988 Code, § 18-18; Ord. 98-A(1), 8-5-98, § 14-412; Ord. 05-14(1), 4-20-05, effective 6-20-05)

State law reference--Va. Code § 15.2-2241(9).

I, Ella W. Jordan, do hereby certify that the foregoing writing is a true, correct copy of an Ordinance duly adopted by the Board of Supervisors of Albemarle County, Virginia, by a vote of _____ to _____, as recorded below, at a regular meeting held on _____.

_____
Clerk, Board of County Supervisors

	Aye	Nay
Mr. Boyd	____	____
Mr. Dorrier	____	____
Ms. Mallek	____	____
Mr. Rooker	____	____
Mr. Slutzky	____	____
Ms. Thomas	____	____

The Planning Commission took a break at 7:25 p.m.

The meeting reconvened at 7:33 p.m.

Work Sessions:

Administrative Waivers (Ron Higgins)
Background

Mr. Higgins presented a Power-point presentation and summarized the staff report.

- The Planning Commission has held two work sessions. The Development Review Task Force made many recommendations, which included looking at the waiver process. This was recommendation #4 that had to do with reviewing our processes to simplify them for some administrative waivers. They expressed the need to honor the public participation process. The Board of Supervisors brought forth that recommendation that focused on the development areas.
- That particular Task Force Report recommended some waivers on private roads, critical slopes and buffers. In reviewing the report and looking at other ordinance standards staff also saw some room for possibilities in the open space dedication, which happens frequently on a subdivision plat in Planned Developments. There were also some limited 404 waivers and site plan waivers.
- The Planning Commission had a work session on November 20, 2007 and talked about a resolution of intent. The resolutions of intent for subdivision and zoning text amendments were reviewed and approved in February, 2008. In March, 2008 the Planning Commission looked at the criteria staff developed. The Planning Commission focused mainly on the concern of honoring the public process and about being able to call it up. The desire was expressed to allow the Planning Commission to call it up. The Planning Commission agreed to a formal site plan waiver, a very limited 404 waiver for a lot split by the road, open space dedication and buffer disturbance.
- The Planning Commission asked for another work session and that staff make sure to provide the draft ordinance to review prior to going to public hearing. They also wanted to make sure that there were procedures in it for the public notice. That process is outlined in the proposed ordinance in Section 2-5 in paragraph b. It is similar to our other notification processes. Staff sends a letter out explaining what the request is and what step they can take, which is done no later than five days prior to the meeting. The letter usually goes out earlier than that in the cycle. The ability to call the review up to the Planning Commission was not clear in the materials at the last meeting about how that was done and whether there was a particular limitation on calling it up. In Section 2-5 in paragraph c, it talks about adjacent owners and that any Commissioner can file a written request for calling it up. It allows staff to have an understanding of the purpose of calling it up and what issues are involved in the review.
- The Commission also talked about critical slopes, but did not have much time at the March meeting to get into some of the detail or concerns they had about critical slope. Therefore, the Commission asked staff to draft the ordinance language, but asked for more time to talk about it. That language is included in the proposed text.
- The Commission requested examples of the different types of waivers. It was difficult to provide

examples because all waivers are embedded in something else. Staff was not able to get all of that information pulled out. Staff has some fairly recent examples of things that have come to the Commission, which were referred to as being a good candidate for an administrative waiver. Examples during the past year of existing structures being replaced on critical slopes included Emerald Ridge and the Keith Curtain Subdivision, which are good examples where one or more of those criteria were met. On the Curtain item, there was an existing structure on critical slopes that was being replaced. Such a tiny piece of the footprint was actually critical slopes compared to what they were actually constructing on that site. It was very little disturbance required in order to accomplish the footprint. It was also an example of mitigation.

- Open space dedication involves staff and the Commission matching the application plan with the plat. Now they have a subdivision plat to be recorded and they are going to dedicate open space to the public or County. We ask does it match what was approved in a public hearing process. Staff can do that. Staff has actually sent some to the Commission that did not jive with the application plan.
- A buffer disturbance example includes Earlysville Business Park. That was a case where the applicant was trying to put the access road in the area where it would do the least damage. They also asked for a buffer waiver to create a buffer where no plantings existed on two different sides of the site. Actually the Commission made those conditions of the approval. That was a buffer received, which if they had honored the buffer they would not have much to show for it.
- Site plan waivers are done on wineries all of the time. Applicants come in to restripe their parking lots. They might have done it with the old standard and now the new standard requires 9' instead of 10'. A site plan waiver is required to restripe the parking lot. That seems like something suitable for an administrative waiver. The 404 exemption would be for lots split by an existing public road.
- Staff recommends that the Planning Commission allow staff to take the ordinance text amendment to public hearing and vet them before the public to help simply some of these processes. All of the criteria discussed at previous work sessions are embedded in one way or another as a standard, exemption or as a criteria for even requesting a wavier. The section was rewritten to include both processes.

Mr. Edgerton thanked staff for responding so clearly to all of their previous work session concerns. He personally thinks this is right on target.

Mr. Morris opened the public hearing and invited comments and questions.

Ms. Joseph said that when they looked at critical slopes at one point they talked about adding some sort of administrative approval if the area was a minimal amount. She asked if staff had talked about that.

Mr. Higgins replied that staff thinks it is a good idea, but nobody could quite agree on what the minimal amount should be. In general, they have looked at it as a small amount or a percentage. It is a judgment call on each one, which is discussed in the staff report. It is such a small percentage of the total critical slopes, but staff has not come up with a number. Staff played with everything from a minimal square footage to a minimal slope of no more than X number of feet of drop over a certain square footage area. But, staff could not agree. He suggested that Mr. Kamptner might elaborate on that. It is discussed on the second page.

Ms. McCulley noted that staff is very open to pursuing that.

Mr. Higgins noted that they get some extremely minor ones, but it is a judgment call on what is minor. It would be easier if it was defined.

Ms. Joseph asked Mr. Kamptner if there is a way to define something minor that would give the latitude to staff.

Ms. McCulley pointed out that at the November 20 work session staff's recommendation was to use 10,000 square feet since that is currently the E & S threshold. She thought there was a sense that maybe that was too much. That was one thing staff gave as a recommendation.

Mr. Kamptner said that a minor type of critical slopes waiver could be defined and authorized to be granted by the director or agent under different standards.

Mr. Higgins noted that they were talking about development area. Staff discussion focused clearly on that given the erosion control threshold of 10,000. If that were not limited to the development area it might serve as well. The WPO has things in it that help staff deal with issues that might come up with some critical slope disturbance.

Ms. Joseph noted that 10,000 is almost a quarter of an acre. She felt that is a large amount.

Mr. Higgins said that it seemed large to a number of people in the discussion. That is why staff does not have it in this draft.

Ms. Joseph said that the notice is referenced to the Commission and abutting owners. Then in section d it talks about review of a waiver by the Commission is timely requested as provided in subsection b. She asked if it can be assumed that when the notification goes out that there will be a date.

Mr. Kamptner replied yes, that is a requirement of the notice.

Mr. Higgins said that staff has to give a time that they can respond. The Planning Commission would be kept in that loop, also.

Ms. Joseph noted that it says the date by which the agent will act on the request. She assumed that date would also include you must respond by.

Ms. Higgins replied that must be included.

Mr. Porterfield noted that the notice says "five before." She asked if that meant five days before the action date by staff. Mr. Higgins replied that it has to be at least five days prior to the date on which the agent will act. That means that staff has to get the notice out by that date. It is rare that staff gets the notice out just five days before.

Ms. Porterfield asked if this is what is required by law in Virginia. She felt that it seemed almost like no notice. Something could be mailed this Friday and with the weekend and holiday on Monday the person might get the letter on Tuesday. Then the action would be taken on Wednesday. She was concerned that they were cutting the notice very short.

Mr. Kamptner noted that it was the minimum individual notice that is required by State law for rezoning and special use permits.

Ms. Porterfield said that she had problems with it. If they are trying to make sure that people have the ability to appeal this, they have to give them enough time to actually get the notice, read it and understand it. She could see that there will be times that the public will not get the notice within the five days.

Ms. McCulley said that maybe the number of days should be longer. She pointed out that there is no State Code requirement for notice on site plan and subdivisions. Staff has chosen as a community to provide public notice way beyond any mandated requirement.

Mr. Higgins said that staff chose to use the same thing that the law requires for public hearing items such as rezoning and special use permits.

Ms. Porterfield suggested that they increase it and do it in business days, such as within ten days.

Mr. Higgins said that they would have administrative waiver notice that is larger than the public hearing item notice.

Ms. Porterfield said that she was just trying to let people get the notice so that they can actually be part of the process if they want to. Then they talk about the action of the Commission within 30 days of the date of the request for review. She asked if it can actually be scheduled that quickly. She wondered if that could be painting the staff in a corner if they can't actually get it on the agenda.

Mr. Higgins replied that he thought that they could, but it could be relatively tight.

Mr. Fritz said that staff tries to spread out the requests. With the filing schedules it is generally the second and fourth Mondays for these types of projects. Staff tries to spread out the items to avoid stacking items on an agenda.

Ms. Porterfield asked if staff feels that if someone calls something up, then staff could get it on the Commission's agenda within 30 days.

Mr. Fritz replied that generally yes. If for any reason they could not do that because the agendas were booked, then the hearing date might be more than 30 days out. There are times when the review is more than 30 days out. Generally staff would talk to the applicant and say yes they can get them on the agenda, but they are going to be the fifteenth item or could go to the next week. The applicant generally would ask to be heard the following week.

Ms. Porterfield suggested that staff could give themselves a little more time such as 45 days.

Mr. Higgins said that her point was well taken that staff could bind themselves and not be able to get the item on the agenda.

Mr. Loach agreed with Ms. Porterfield in using business days on the written notification. It said written notification. He asked if email is sufficient to get back to staff as written notification.

Mr. Kamptner replied yes, that to request the review by email is fine.

Mr. Cannon asked how notice is handled on in other context, such as in zoning map amendments or other proceedings.

Mr. Cilimberg replied that zoning map amendments and special use permits are handled under a different set of notification requirements with Virginia law. Staff typically is sending out the letter to adjacent owners at the same time they are advertising in the newspaper before the first advertisement. It ends up being about three weeks before the meeting. There is actually a first notification on these projects, which is more comparable to what they are talking about now. That is the notification that goes out when an application is made that gives people notice that they can request it to be reviewed by the Planning Commission. The second Friday after applications are made staff sends that notice out notifying people of the site review committee meeting and the opportunity to request review by the Planning Commission. They would have to count the days that ends up being before the request for the Commission's review can be made, but that is the system staff works under.

Mr. Cannon said that Ms. Porterfield's comment is well made. He asked what kind of adjustment would be consistent with the kinds of lead times staff has in other contexts so they don't create a crazy quilt of notification requirements here.

Mr. Fritz noted that the reality of most of these types of waivers, if they are associated with something that is going through the site review committee was that notice is sent prior to the site review committee meeting. It also has an appeal time-frame. So the notice is going out well in advance of some other action that is occurring. There is an additional time frame of 10 or 11 days after that meeting for an appeal to come in.

Mr. Cannon asked if that was notice just for the actual site review meeting.

Mr. Fritz pointed out that it would be applicable for most of these requests, but not all. By the very nature of the types of changes they were looking at in the ordinance they would be waivers and modifications that are somehow tied in with a project that is otherwise going through the site review committee and would only come to the Commission if that waiver had to be reviewed by the Commission or if it were appealed by the Commission or a member of the public. The fact of the matter is that staff would be notifying and telling people here is a site plan for X, which also includes a waiver of whatever and if they want that to go before the Planning Commission they need to let staff know by the same date for the site review. There will be some that will be eligible from some sort of administrative review. But, that would be the minority.

Ms. Porterfield said that it is obvious that it is more than five days. She asked if staff could give the Commission a number.

Ms. McCulley pointed out that staff could give them a number. Staff would propose that they would be consistent with what they currently do for site plan and subdivisions. As an example, for items that they send out the mailing on July 25 the deadline for somebody to appeal that wanted it to come before the Planning Commission was August 18. That ends up being just over 3 weeks or about 24 days. Staff would suggest that they follow the same timeline and same process for this.

Ms. Porterfield asked that staff change the wording in the amendment to take care of that.

Mr. Morris invited public comment.

Valerie Long, attorney, voiced her support for the proposed ordinance amendments. She was one of the two representatives from the development community to the Task Force along with Ms. Joseph and Mr. Strucko. They worked long and hard and met for about a year and a half. They were very pleased and proud as a group to unanimously recommend these proposed changes in addition to a number of others. This is obviously scaled back somewhat from what their original proposal is based on some of the Commission's work sessions. But, she felt that it was a very modest proposal and very reasonable. By giving the professional staff the discretion and authority to act on a number of waivers administratively they will free staff up to focus and spend their precious and scarce time on more controversial issues that have broader reaching effect and so forth on critical slopes in the rural areas or those that are of larger magnitude. It is a very reasonable approach. The drafting is very helpful and provides lots of clear guidance for applicants, which make everyone's job easier in the long run. She encouraged the Commission to at least consider trying to continue working with staff on finding a number or a size of a critical slopes waiver that could be a threshold. If it is in the development areas and the project is otherwise complying with the Comprehensive Plan, all of the zoning ordinances, master planning and things like that, it seems to be reasonable that most critical slopes could be reviewed administratively. Some may not qualify for approval. The staff will still conduct the same rigorous analysis. Staff will not have to prepare a staff report and it won't have to come before the Commission in most cases. That will help everybody in the long run and save the staff time. She did not know if 10,000 is the appropriate number. It might be half of that. But, that will help and probably cut down significantly on the number of waiver requests that come to the Commission, which staff would have to write staff reports for. Finally, there are a couple of waivers that could now be granted administratively that have to do with disturbing buffer areas on projects that are adjacent to residential or rural parcels. That is a very helpful change. The way the ordinance is written notification of that proposed waiver would go to all the adjacent property owners. One suggestion she had was that perhaps it might only need to go to the adjacent owner who is affected or who is adjacent to where the buffer is proposed for disturbance. It is not a major detail, but it might narrow down those to whom the proposal would actually affect. If it is a large parcel and the waiver request is on the far side maybe they don't need to notify all of the adjacent owners.

Morgan Butler, representative for the Southern Environmental Law Center, said that he had several questions. He acknowledged that the critical slopes portion of the draft ordinance is only put together for purposes of discussion tonight. But, considering that there are a few points and a few questions outstanding he felt that if they don't raise them tonight this could come back in this form for public hearing. Therefore, he would put the questions out for the Commission to decide whether they warrant further discussion.

- First, staff has been clear on some occasions that the Development Review Task Force recommendations for more administrative waivers were limited to the development areas. As he reads the section of the proposed ordinance that deals with the critical slopes waivers he did not see any language where it limits it. Indeed these waivers seem to apply to any waiver requests for disturbance to a critical slope. He questioned if that was the intent or if he was perhaps missing the language. But, he did not see that language in several readings.
- Second, in Section 4.2.5 on page 4 where it talks about the administrative waiver, the first sentence of the section has conditions i. and ii. Where staff can grant administrative waivers to critical slopes basically man-made under i. or if the critical slopes are being disturbed to replace the existing structure on the ii. The last sentence goes on to page 5, says that the agent may grant a waiver if he or she finds that and then there are three items set forth. It is unclear whether these three conditions modify the two former waiver situations or this is in fact an altogether new and separate waiver different from those. If it is a new waiver, he had a concern here that they are basically opening up an entirely new route whereby the critical slopes ordinance can be by-passed.
- The third question goes back to page 4 where it talks about having the administrative waiver for disturbance to replace an existing structure. Just from some prior experience he suggested that it might be wise to somehow define the term replace or limit it in some respect. He saw the potential there for manipulating it. For example, it might be wise to say replacement cannot exceed more than a 5 percent increase in either the footprint of the structure or the overall square footage of the structure. Otherwise, someone could come in and say he was just replacing it and basically be what amounts to an entirely different structure. On the bottom of page 4 under that same waiver for the replacement of an existing structure, one of the requirements was to submit a stream buffer mitigation plan under Section 17.3.22. He was a little confused on how that particular requirement would be relevant if the disturbance is taking place on a parcel of land that does not have a stream or does not have a stream buffer. It seems that an erosion and sedimentation control plan might be the more relevant requirement there.

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

Ms. Joseph asked about the open space on page 7 where it says uses permitted. At one point they looked at an open space and were allowing retaining walls. She wanted to make sure that they were not allowing retaining walls in the uses permitted in the open space.

Ms. McCulley replied that staff made no changes to uses permitted. She noted that Mr. Kamptner was just changing the format of the existing regulations.

Mr. Kamptner agreed that was the purpose.

Mr. Morris suggested that staff make it clearer that this is the development area for critical slopes if that is the case.

Ms. McCulley noted that it was very possible that under ii. that the critical slopes will be disturbed to replace an existing structure. That could potentially be a structure on rural areas property. That is in fact what the Keith Curtain subdivision was. It was a shed replacing a shed. She thinks that it does make sense to have language that restricts the size of replacement because they know what potentially they could be faced with if they don't do that.

Mr. Morris agreed that is a good point.

Mr. Higgins agreed that could be helpful.

Mr. Cannon said that Mr. Butler brought up a question about the phrasing of that section B on the bottom of 4. He was assuming that he understood the intent here, which is that the sentence beginning, the agent may grant a waiver if he/she finds that, and so forth. That all refers back to the waiver by the agent in the earlier information. He asked if there was anything that they need to do to make it clearer that this is not an independent authorization for a grant of waiver.

Ms. Porterfield suggested using the word this in that the agent would grant this or such a waiver.

Mr. Cannon agreed that the word this or such a waiver would be help.

Ms. McCulley noted that the action is seeking the Commission's permission that they set this for public hearing.

Mr. Morris asked if the Commission needs to vote on that.

Mr. Kamptner pointed out that the Planning Commission did not need to vote on the matter.

It was the consensus of the Planning Commission to ask staff to prepare the draft ordinance language regarding administrative waivers and set a Planning Commission public hearing.

Ms. Joseph commented that the Task Force had a lot of discussion and this was a compromise position.

Ms. Porterfield provided staff with some editorial comments to clean the document up.

Ms. McCulley thanked the Planning Commission for their input.

Work Session:

ZMA-2007-00024 Riverside Village (Concurrent SP 2007-057)
PROPOSAL: Rezone 18.6 acres from R1 (1 unit/acre) to NMD Neighborhood Model District - residential (3 - 34 units/acre) mixed with commercial, service and industrial uses. Proposed use is 56 multifamily units and up to 46 single family attached/detached units for a gross density of 5.8 units/acre and 30,000 square feet of commercial office and 5,000 square feet of retail uses.
PROFFERS: No
EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Neighborhood Density (3-6 units per acre), some supporting non-residential uses; Greenspace; and Rivanna River Corridor in the Pantops Master Plan.
ENTRANCE CORRIDOR: Yes
LOCATION: Located on the west side of Stony Pointe Road/Route 20 and the east side of Free Bridge Lane/Route 1421, approximately 350 feet south of the intersection of Route 20/Elks Drive.
TAX MAP/PARCEL: Tax Map 78, Parcel 58
MAGISTERIAL DISTRICT: Rivanna
(Rebecca Ragsdale)

Ms. Ragsdale presented a Power point presentation and summarized the staff report.

- This is a work session on a rezoning that was submitted in the fall of last year. The Commission had a work session on this project in December, 2007. The applicant submitted their initial proposal, staff reviewed it and it went to a work session. Now the applicant has come back with a significantly revised proposal, which staff has reviewed and suggested that feedback be obtained from the Commission in a work session before the applicant resubmits any revisions. Staff has several questions for the Commission to review, discuss and provide comments on.

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

Kelly Strickland, of Dominion Development Resources, presented a Power-point presentation and explained the proposal. He pointed out that the applicant Rich Carter, of Southland Homes, was also present. He explained the changes to the proposal since the last work session. Basically, they have turned the project around and now are looking at it from the river.

In summary, the Planning Commission discussed the request, made comments, took public comment and responded to staff's four questions. No formal action was taken. The Commission reviewed and provided comments on the following four questions posed by staff.

1. **Is the maximum square footage of non-residential land uses appropriate for this site, including 30,000 square feet of commercial/office space proposed in Block 1, or should the maximum allowed be reduced?**

The Commission had no concerns and felt the square footage per building was appropriate for the site.

2. **Should additional land dedicated for the public park and amenities be required, in addition to park proffer?**

The Commission did not recommend that additional park land or amenities be dedicated. The Commission recommended that the applicant provide for urban amenities internal to the development, such as small pocket parks that may have seating.

3. **Are the scale and massing of the mixed use buildings in Block 3 appropriate?**

Generally the Planning Commission liked the relationship of the buildings to the Rivanna River and did not have concerns about the proposed height of four stories. However, they recommended breaking up the massing of the buildings in Block 3.

4. **Are the roof rain gardens approximately located adjacent to Route 20 or should they be relocated?**

The Commission believed that the rain gardens were a beneficial feature that should remain, but recommended they be relocated and not be placed adjacent to Route 20 and that pedestrian orientation of the buildings to the street should be improved. The Commission also felt that providing for green roofs and Low Impact Development (LID) in the development was positive.

Other Commission comments:

- Some Commissioners were concerned that the applicant's proposed plans would still impact the flood plain and recommended that the plans be revised to eliminate impacts into the flood plain.
- The Commission noted that future submittals and review of this proposal should address the proffer policy and provide adequate proffers to address all impacts of the proposed development, including schools, libraries, and fire rescue and police.
- Some concern was expressed about making sure that the parking was adequate for residential/commercial, no matter what entities went into the commercial spaces.

Old Business:

- Ms. Porterfield thanked Ms. Mallory for the quick turn around on adding the district name to the Planning Commission future schedule.

New Business:

- There will be no Planning Commission meeting on Tuesday, September 2, 2008. The next regular meeting will be Tuesday, September 9, 2008.

- The joint ARB/PC/Board of Supervisors meeting will be held on September 10, 2008.

Adjournment

With no further items, the meeting adjourned at 9:17 p.m. to the Tuesday, September 9, 2008 Planning Commission Meeting at 6:00 p.m. at the County Office Building, Second Floor, Auditorium, 401 McIntire Road, Charlottesville, Virginia.

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V. Wayne Cilimberg, Secretary

(Recorded and Transcribed by Sharon Claytor Taylor, Clerk to Planning Commission and Planning Boards and Stephanie Mallory, Planning Assistant)