Albemarle County Planning Commission
December 9, 2008

The Albemarle County Planning Commission held a meeting, work session and public hearing on Tuesday, December 9, 2008, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

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

Other officials present were Eryn Brennan, Senior Planner; Summer Frederick, Senior Planner; Elaine Echols, Principal Planner; Wayne Cilimberg, Director of Planning 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.

Committee Reports:

Mr. Morris invited committee reports.

- Mr. Edgerton reported that there were no new developments on the ACE Committee. The Joint Affordable Housing Task Force Committee was almost at a point where they can release their final report. This morning the committee worked on the specific language and hopefully the report will come out within the next couple of weeks.
- Mr. Loach reported that the CHART committee voted to support the development of a regional transit authority. The Crozet Library Committee will continue to work with the architects on the design aspects. Because of the financial situation the county is saying that there may be some delay in getting the library built.
- Ms. Porterfield reported that the Historic Preservation Committee continues working on the proposed ordinance to submit to the Board of Supervisors. The committee will be reconfiguring in February to elect officers.
- Mr. Strucko reported that the Capital Improvement Program Review Committee met and came up with a recommendation for a Five-Year Capital Plan that will comply with some of the spending plans that the Board of Supervisors were considering. The proposal will be reviewed by the Planning Commission before it goes to the Board of Supervisors. The Commission can discuss the details at that time.
- Mr. Cilimberg noted that he attended the Master Planning Council of which Mr. Edgerton was a member. He reported that their grounds plan is now complete and on line and he would provide the link to the site to the Commission. They are going to be undertaking precinct planning in their grounds areas and working on a bike sharing plan. The Capital Facilities Plan will be coming to the Commission. The Board of Supervisors is meeting on the five-year financial plan and the consideration of capital funding is in that plan. There is a tie into ultimately what can be funded and what they will see. As Mr. Loach mentioned the Library in Crozet is an example of one of those projects.

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

Other Matters Not Listed on the Agenda from the Public:

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

Review of Board of Supervisors Meeting – December 3, 2008.

Mr. Cilimberg summarized the actions taken by the Board of Supervisors on December 3, 2008.

Consent Agenda:

Approval of Minutes: December 8, 2007, August 26, 2008, October 7, 2008, October 28, 2008 and November 29, 2008
Mr. Morris asked if any Commissioner would like to pull this item from the consent agenda.

Mr. Morris asked for a separate action on the approval of the minutes of December 8, 2007 noting that two Commissioners would abstain because they were not present.

Motion: Mr. Strucko moved and Mr. Edgerton seconded for approval of the consent agenda for the minutes of December 8, 2007. (*December 18, 2007)

The motion passed by a vote of 5:0:2. (Porterfield and Loach abstained.)

Mr. Morris noted that the minutes of December 8, 2007 were approved. (*December 18, 2007)

Motion: Mr. Strucko moved and Ms. Porterfield seconded for approval of the consent agenda for the minutes of August 26, 2008, October 7, 2008, October 28, 2008 and November 29, 2008. (* November 19, 2008)

The motion passed by a vote of 6:0.

Mr. Morris noted that the minutes of August 26, 2008, October 7, 2008, October 28, 2008 and November 29, 2008 were approved. (* November 19, 2008)

Presentation:

StreamWatch Presentation – Brief review of the recently released 2006 StreamWatch Report. (Mr. John Murphy)

The Planning Commission held a work session to receive an update on the newly released 2006 StreamWatch Report from John Murphy, Ecologist and Director of StreamWatch. The report was released in July.

John Murphy, Ecologist and Director of StreamWatch distributed a handout entitled "Biological Health of Rivanna Basin Streams", which was a summary distilled from a comprehensive report available at their website: www.streamwatch.org/reports. (See Attachment) He presented a power point presentation and explained the process and outcomes.

- The report given was based on three years of biological data gathered between 2005 and 2007. There is some discussion in the presentation that pulls from data and information before and after the window. StreamWatch is an ecological monitoring program that is governed and funded by eight partners. They constraint their activity to collecting data, developing information and interpreting the data, but don't get involved in advocacy, planning and management. They hope that their data can be used by all sectors of the community to promote the best possible management and stewardship practices.
- Stream Watch's role is to provide the community with science based information. They are an environmental monitoring program. They don't do any advocacy or planning recommendations. They have made a lot of stream awareness about stream conditions in general and a lot of the factors that seem to be associated with stream conditions. The bad news is only three-quarters of the represented sites in the watershed don't meet that biological standard. The good news is

that only a small percentage of 13 percent of those sites are badly impaired or in that very poor condition that they represent as significant impairment. A lot of the sites are in a border line condition. Over the course of five years of stream watch monitoring at the end of 2007 they can't see any general trend of degradation across the watershed as a whole. It does not mean that degradation is not occurring, but it has not occurred to a degree that they detect. There is a strong correlation between land use and stream degradation.

There being no public comment, Mr. Morris invited input from the Commission.

Mr. Edgerton suggested that recommendations be made to the Board in the future on land use issues about further protection of buffers to protect the streams.

Mr. Cannon said that nation wide agricultural run off is identified as the predominant source of stream degradation. In a great majority of the cases it is primarily because of agricultural runoff.
He encouraged him to keep doing what he was doing and perhaps solidify some of the conclusions which would be helpful for them in the long run.

The Commission asked questions and made comments and suggestions.

- The Commission was interested in other independent variables that come into play.
- The Commission was interested in further evaluation of the impact from agricultural practices on streams.
- The Commission was interested in further exploration of the relationship between density and stream quality and if it can be moderated through the use of buffers, etc, for possible recommendations to the Board of Supervisors for protection of the health of the water shed and water supply.
- The Planning Commission took no formal action.

Any further questions will be answered by Mr. Murphy through email sent directly to streamwater@cstone.net or telephone number is listed on the summary.

Public Hearing Items:

SP-2008-00049 Pine Ridge Church of the Brethren
PROPOSED: Bring existing church into conformance with the zoning ordinance and allow an expansion for a general purpose room
ZONING CATEGORY/GENERAL USAGE: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots)
SECTION: 10.2.2.35 Church building and adjunct cemetery
COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/ acre in development lots)
ENTRANCE CORRIDOR: No
LOCATION: 5990 Buffalo River Road (Rt. 604) at the intersection of Vintage Road; approx. 525 feet northeast of Roach Ridge (Rt. 817)
TAX MAP/PARCEL: 01900000004500
MAGISTERIAL DISTRICT: Rivanna
(Eryn Brennan)

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

- This is a request for a special use permit for Pine Ridge Church of the Brethren to add an 18' x 24' addition on the rear northeast corner of the building. The expansion will accommodate a multi-purpose area for a community gathering space after services. No additional seating or parking is requested. The on-site parking is sufficient to accommodate the 88-seat sanctuary. It was determined that 22 parking spaces located in the current parking area could accommodate the 30 vehicles. The current congregation consists of 22 to 28 people. The addition would not be visible from adjacent residences.
- Staff has identified the following factors favorable to this application:

1. The addition to the church supports the continuing use of an historic building, encouraging its long term protection.
2. The addition will help sustain the continuing presence of a vibrant community church, enhancing the quality of life of its rural congregation.
3. The church addition addresses the needs of rural residents.
4. No impacts on adjacent property resulting from the proposed addition.
5. The addition will minimally impact the existing character of the church building.

- Staff has not identified any factors unfavorable to this application.
- Based on the findings contained in this staff report, staff recommends approval of Special Use Permit 2008-49 Pine Ridge Church of the Brethren with the conditions listed in the staff report with the following change - The fourth recommendation regarding the 0.3 foot candles should be changed to 0.5 foot candles. - Zoning has suggested in response to a question by Ms. Joseph that a tree preservation provision should be included as a condition of approval since the application does not require a site plan. Condition 5 is an attempt in putting that language together. Mr. Kamptner suggested adding language to tie it to the existing conditions.

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

Stephen Shifflett, representative for Pine Ridge Church, noted that no public presentation was desired.

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

Mr. Loach moved to approve SP-2008-00049 Pine Ridge Church of the Brethren subject to the conditions crafted by staff. He asked the applicant if condition 5 was acceptable regarding no tree removal and keeping the existing tree cover.

Stephen Shifflett, representative for the church, noted that condition 5 was acceptable.

Mr. Cilimberg noted that condition 5 would probably have a little more refinement before it gets to the Board of Supervisors. Also, staff would make the correction in condition 4.

Motion: Mr. Loach moved and Mr. Strucko seconded to approve SP-2008-00049, Pine Ridge Church of the Brethren with the conditions as recommended by staff, as modified.

1. The church's improvements and the scale and location of the improvements shall be developed in general accord with the conceptual plan provided by the applicant and received September 12, 2008;

2. The area of assembly shall be limited to a maximum of an 88-seat sanctuary;

3. There shall be no day care center or private school on site without approval of a separate special use permit.

4. All outdoor lighting shall be arranged or shielded to reflect light away from all abutting properties. A lighting plan limiting light levels at all property lines to no greater than 0.5 foot candles shall be subject to approval by the Planning Director.

5. No grading, disturbance or tree removal shall take place within the drip lines of the trees unless a "Tree Protection Plan" in accord with section 32.7.9.4 of the Zoning Ordinance is submitted to the county for review and approval prior to any disturbance.

The motion passed by a vote of 6:0.

Mr. Morris said that SP-2008-00049, Pine Church of the Brethren would go to the Board of Supervisors on January 14, 2009 with a recommendation for approval.

SP-2008-00052 Forest Lakes Office Park
PROPOSED: Special use permit request off-site parking and dumpster pad.
ZONING CATEGORY/GENERAL USAGE: R15-Residential: compact, high-density residential (15du/acre).
SECTION: 18.2.2.16 Stand alone parking and parking structures (reference 4.12, 5.1.41). (Added 11-7-84; Amended 2-5-03)
COMPREHENSIVE PLAN LAND USE/DENSITY: Transitional in the Hollymead Community
ENTRANCE CORRIDOR: Yes
LOCATION: Southeast corner at intersection of Timberwood Boulevard (SR 1721) and Worth Crossing (SR 1722).
TAX MAP/PARCEL: Tax Map 46B4 Parcels 7B and 7CMAGISTERIAL DISTRICT: Rivanna
(Summer Frederick)

Mr. Strucko disclosed that he was an employee of the Health Services Foundation that has a financial interest in one office on the site. He recused himself and left the room at 6:57 p.m. (Attachment: Disclosure Form)

Ms. Frederick presented a PowerPoint presentation and summarized the staff report.

The request is for approval of existing parking spaces on a lot where the primary use is not located (stand alone parking). The applicant requests approval of the special use permit in order to abate an existing zoning violation.

- There was some confusion through email about the history of the site. SP1994-16 – Health Services Foundation's request to approve professional office use in a R15-Residential zoning district was approved on August 1, 1994. The application plan approved at this time is before the Commission.
- SDP1995-48 – Forest Lakes Medical Offices-Final was approved on May 11, 1995 for construction of 24,715 square feet of medical office space in a two-story building with associated required parking. .
- SUB2003-248 - Forest Lakes FLN Commercial Lots-Final Plat was approved June 7, 2004 to create three (3) new lots on TMP046B4-007 for a total of four (4) lots.

The subdivision plat showed three bollards that were to be placed just outside the new lot line in order to block off existing parking. The site plan was approved and then the subdivision plat was approved with the understanding that these bollards would be put into place, therefore not allowing access to the parking located on the newly created parcel where the primary use is not located. The bollards were not put into place by the applicant. There was a zoning violation brought against the site specifically because the parking was still being utilized. The dumpster pad is required to be on the site with the primary use. Various roundabouts of the violation happened. The applicant decided to do a minor amendment to the site plan to officially place the bollards on the site plan and relocate the dumpster to the portion of the island in the parking.

- The minor amendment was approved under SDP2006-123 on February 7, 2007 to relocate the dumpster pad and close access to off-site parking spaces.

The improvements shown on the minor amendment have not been put into place by the applicant. The applicant has since come in with a site plan for parcel X. The County's position was that the site plan would not be reviewed nor approved until the outstanding zoning violations on the remainder of the parcels were taken care of. Because there is anticipated future development on the remainder of parcel Y as was shown and approved in the original special use permit the applicant has submitted this request for approval of a special use permit for stand alone parking. She pointed out the site plan that has been submitted and the location of the parking that the special use permit addresses that is in two locations with the dumpster pad in the corner.

Mr. Morris invited questions.

Mr. Edgerton noted in looking at the final site plan there is one piece of history missing. He could not relate because the preliminary is so different from what was built. He asked how that happened.

Ms. Frederick replied that this was the application plan that was approved with the special use permit.

Mr. Edgerton asked if it came back before the Planning Commission the site plan. He felt that it was a significant change. He noted that he liked what was built better than what was approved in 1994, but at the same time he was overwhelmed at how significant the major difference is.

Ms. Frederick noted that the major difference is that the parking is no longer up against Timberwood Boulevard and the building that is there now is one instead of two. From review of the history there will be additional buildings built on the remaining property and the square footage and parking build out will be similar to what is represented here. That is the history as she understands it.

Mr. Edgerton said that if there are going to be additional buildings maybe they ought to be looking at how that will impact this as well.

Mr. Cilimberg noted that from the zoning history on May 11, 1995 there was an approval for the site plan that does approve the building that is there now and the parking that is associated with that building. That is the plan. He could not recall whether that came before the Commission or not. Obviously it was viewed at a staff that at a level superior to what they got out of the special use permit plan. He felt that they got a better result and that future development would probably get a better result.

Mr. Edgerton said that he was thrown when he saw how it does not remotely resemble what the special use permit was granted for. It is not even close. It was a pretty big jump. If there is nobody that can tell us how it happened he guessed that it does not matter. He was a little troubled that additional buildings are going to be built behind here because apparently there is a lot of land left, which does not appear on the final plat that they are asking for approval on.

Ms. Frederick replied that was correct. She provided photographs of the dumpster pad and standing at the back of the parcel looking towards the existing building. She pointed out the meadow where the future development will occur.

Mr. Edgerton asked if the future development will be tied to the original special use permit in any way.

Ms. Frederick replied that it would be. There is a specific square footage that is allowed on the special use permit. While the building site locations may not align with what is on the application plan the amount of square footage allowed by the special use permit will be imposed on the future site plans come in for this as well as parking and conditions regarding landscaping, access and foot paths. Those items are listed in the staff report package.

Ms. Porterfield asked when counting the parking for this parcel was staff counting it for all the potential buildings or just for the one building already built.

Ms. Frederick replied that when a future site plan comes in staff will make sure that there is enough parking and that the parking tied to the existing building will remain tied to the existing building. The parking that is there now is tied to the building that is there now. Future development or future buildings will require additional parking.

Ms. Porterfield asked how they can make sure if they do this off site parking that it does not get counted twice. In other words, that there will be one space for this building and not the same space for the other building.

Ms. Frederick replied that when future site plans comes in staff will make sure there is adequate parking, that the parking tied to the existing building remains tied to the existing building and they either provide the minimum number of parking spaces for future development or provide an adequate acceptable and approvable shared parking agreement between the two uses. So there is potential depending on the type of use that goes in on the remainder of the parcel for some parking spaces to be counted for both uses.

Ms. Porterfield asked if these two areas will open up into the parking for those two parcels or at least for parcel Y.

Ms. Frederick replied that it was her understanding that the parking lots will be connected and not be separate. It was her understanding from the applicant that this was to be viewed as one site when an additional building or more than one building is placed on the site. It will be viewed as one site with the existing building after final construction.

Ms. Porterfield asked if it would be worthwhile in this application to indicate that unless there is a special circumstance that these parking spaces are for this building.

Ms. Frederick noted that is a requirement the applicant would have to do that anyway.

Mr. Cilimberg pointed out that is a requirement of a zoning clearance. For any new buildings there has to be adequate parking. The parking has to be provided either physically through new parking areas associated with the new building or through shared parking arrangements which are an agreement that the county would get between owners.

Ms. Porterfield noted that it indicates in the staff report that it is understood that future development of adjacent parcels will utilize and expand existing parking.

Ms. Frederick replied that is correct. She apologized if that is unclear when she says utilize existing parking. One aspect of the special use permit application plan that staff would require for a future site plans would be the interconnecting of the parking lot as shown on the approved application plan. So another building could not come in with a separated parking lot. She meant that the parking for future uses would need to be tied to the existing parking lot.

Ms. Porterfield asked since they were doing off site parking that she wanted to make sure they were not creating a situation where they are not going to have adequate parking.

Mr. Cilimberg noted that the next parcel could not create buildings that would create that circumstance.

Ms. Porterfield asked if the applicant might have to reduce the size of their building.

Mr. Cilimberg replied that they might have to reduce the building size or do a shared parking arrangement.

Ms. Frederick noted that would part of any standard review that might come in.

Mr. Cannon said that this is to abate an existing zoning violation. He asked what exactly the zoning violation is.

Ms. Frederick noted that the zoning violation is that the bollards were never put into place.

Mr. Cannon asked how they have been required.

Ms. Frederick replied that the violation had been since June 7, 2004.

Mr. Cannon noted that there had been four years of zoning violation. He asked if the violation has been resolved.

Ms. Frederick replied that this request is to resolve that violation.

Mr. Kamptner noted that there have been warrants and debt filed in the General District Court. The owner has paid some civil penalties. They did amend the site plan in 2007.

Ms. Frederick said that was correct, but that was never put into place. The reason this request came back was the applicant was changing the avenue to abate the violation and they now have submitted a site plan for parcel X in the corner. So the additional parking is needed and these spaces will be needed. The applicant would like to keep the dumpster in the current location and have decided this is a better solution than going with the minor site plan amendment.

Ms. Porterfield asked regarding the photograph of the dumpster why they have all the trash cans on site since they have a dumpster.

Ms. Frederick replied that some of them medical offices have specific pick ups. She was not 100 percent sure.

Ms. Porterfield asked if it was okay to have the trash cans lined up and not contained in anything like a dumpster.

Ms. Frederick noted from her discussion with the zoning inspector that is acceptable.

Mr. Morris opened the public hearing and invited the applicant to come forward.

Ms. Frederick noted that the applicant or his representative was not present.

There being no questions, Mr. Morris invited public comment. There being none, the public hearing was closed and the matter before the Commission.

Mr. Cannon said he would like to ask the applicant about the bollards.

Ms. Porterfield asked if there was a reason why the applicant decided not to show up.

Ms. Frederick replied that she did not know.

Mr. Cannon noted that this puts it back to staff. He asked if staff was recommending approval and that this meets the requirements of county ordinances.

Ms. Frederick replied that was correct.

Mr. Cannon asked if that states her full extent of views about this application.

Ms. Frederick replied yes that it does.

Mr. Cannon asked if this is in the public's interest as opposed to the status quo.

Ms. Frederick said that in her conversations with the applicant they have indicated that the tenants do use this parking frequently for staff parking whereas the remainder of the parking is for patient and visitor parking. That would be the only outlook she would have on the public good.

Mr. Cannon asked if there is a down side to this in terms of the public interest in terms of what is beneficial for the county generally in this. He asked what would be the better thing here.

Ms. Frederick replied that the applicant is planning on future use and that these would be areas that would open up for connected parking for allowing the vehicular circulation within a new expanded parking lot.

Mr. Cannon asked if the applicant was proposing any particular new development at this point.

Ms. Frederick replied not for parcel X. They are proposing development on parcel 46B4-7A. There is a site plan in for that. For that site plan the spaces that are in question are needed to meet their minimum requirement.

Mr. Cannon said that rather than just excusing a zoning violation there is actually some reason based on what is going on or what is proposed to go on the site to do this thing.

Ms. Frederick replied yes.

Mr. Edgerton said that he was really having a hard time with this. He noted that their right to do any of this work was based on the special use permit that was granted in 1994 revision and there was significant revision of what was being proposed. Now they are coming back asking to subdivide a piece of that property.

Ms. Frederick noted that subdivision has already happened.

Mr. Edgerton asked if the subdivision was judged by staff to be consistent with the original special use permit.

Ms. Frederick replied that the subdivision was not reviewed with the special use permit.

Mr. Cilimberg said that the subdivision would not necessarily be based on the compliance with the special use permit because it is just creating lines. It is really the site plans that get reviewed for their consistency.

Mr. Edgerton said that if they take a significant chunk out of a piece of property that has a previously approved special use permit it is not longer the same piece of property. He was having trouble making that jump.

Mr. Kamptner said that what happened is that the subdivision created a line. They are dealing with the parking issue and dumpster. By creating the line it meant that under our definition of an accessory use that those parking areas and the dumpster location no longer were on same parcel, which made it a zoning violation because any accessory use has to be on the same parcel. Also until 2003 the county zoning regulations did not allow stand alone parking lot as a separate use. The parking lot was established well before 2003. Therefore, nothing has changed.

Mr. Cilimberg said that it is the same as it has always been. The effect of not granting a special use permit is they are simply going to leave black top area that they can't use. He did not know if that was accomplishing a lot.

Mr. Edgerton agreed, but noted that he was having a lot of trouble with this. He asked if this was one parcel of land in the original special use permit.

Ms. Frederick replied that it was.

Mr. Edgerton said that it was going to be developed as one parcel. Now they are looking at three separate parcels or actually four parcels because there is another piece that they have not declared what they are going to do with it. He was trying to figure out where the process was followed.

Ms. Frederick pointed out that her understanding from the applicant was that it was subdivided for financial reasons. One reason presented to staff in that they can't simply do a boundary line adjustment to adjust this parking on site is that they have separate financial institutions tied to the separate parcels.

Mr. Cilimberg said that almost every application plan and concept plan that is part of a special use permit for this kind of development the parcels change after those plans are approved. The zoning and the special use permits apply to the original piece of land and any subsequent subdivision falls under that approval. So it is not an unusual case that they would see a commercial property divided into parcels after an approval such as this. This is not unusual at all.

Mr. Edgerton said that the obvious question that comes back to him is why bother to have a special use permit originally if it is going to be totally ignored.

Mr. Cilimberg felt that the question being raised regards what was allowed to be developed under the site plan in the first phase, which put a building in a different location than what this special use permit shows. That is not what is before the Commission tonight. That decision was made for whatever reason. He could not recall why. He felt that they got a better result because of it. Sometimes practicality means something. But, he thought that his issue is a fair one and that is they have a building in a location that a

special use permit did not show a building. But, that has happened already and the building has been built and the parking is in place. About the only thing that can happen now is either the Board does not approve the special use permit that keeps the physical development there and just requires that they go and put the bollards in with the dumpster. Or, they allow them to use it for parking. That is what it really boils down to.

Ms. Porterfield asked if the plan for parcel X is coming in and they need this parking to make that plan. Therefore, they are going to have to have a shared parking agreement.

Ms. Frederick replied yes.

Ms. Porterfield asked if there is any chance that they are better off to have them put the bollards in and deal with that now and then bring the whole thing in. She asked if parcel X would come before the Commission.

Ms. Frederick replied that parcel X will not be seen by pc unless it was called up. The shared parking agreement is approved by the zoning administrator.

Ms. Porterfield pointed out what bothered her is that staff is defending the applicant and the applicant should be here. If the applicant knew that he could not be here they could have asked to defer it to a later meeting. She noted that was why they had the ability to defer. She asked where they were in the timeframe and if they were at the last meeting they could deal with this.

Mr. Kamptner noted that the deadline was 90 days from the submittal.

Mr. Cilimberg asked if the applicant did not come to the public hearing in which the decision was asked to be made is there an obligation to take an action for the applicant.

Mr. Kamptner said that the applicant's failure to attend does not excuse the time in which the Planning Commission is required to act under the ordinance. There is nothing that requires an applicant to be present in order to take action.

Mr. Morris said that the applicant is not here and the special use permit is before the Commission. He suggested that they either have to have a motion for approval or denial.

Mr. Loach felt like they were approving a zoning violation that they previously have ignored.

Mr. Kamptner noted that it would help if the applicant could explain some of the reasons, for example, why they want the dumpster where it is. He had heard a reason given as opposed to the other location which the county had been pushing for. But, they are not here to explain that.

Mr. Cannon noted that he was prepared to make a motion of denial. The reason for that would be that this proposal might be in the public interest, but there are questions about it that he would need to have answered by the applicant. He was not able to have those questions answered, and therefore the presumption is for denial.

Motion: Mr. Cannon moved and Mr. Edgerton seconded to deny SP-2008-00052, Forest Lakes Office Park.

Mr. Kamptner noted that the reason for denial had been stated. The additional thing he would add, which is implied in the motion, is that there are some questions regarding the justification for this special use permit that requires some information from the applicant who is not here to provide.

Mr. Cannon agreed that was correct.

The motion passed by a vote of 5:0:1. (Strucko abstained)

Mr. Morris said that the motion for denial is accepted and there is no set date at this particular time for SP-2008-00052, Forest Lakes Office Park to go to the Board of Supervisors if the applicant so chooses.

The Planning Commission took a five minute break at 7:26 p.m.

The meeting reconvened at 7:36 p.m.

Mr. Strucko returned to the meeting at 7:36 p.m.

Work Session:

ZTA-2008-00002 Amendment to PD & NMD Regulations

The request is to amend regulations for Planned Districts and Neighborhood Model Districts, to modify grandfather clause, provide clarification on requirements, update titles in accord with County reorganization, and change architectural and parking requirements. (Elaine Echols)

Ms. Echols presented a PowerPoint presentation and gave an overview of the previous discussion regarding ZTA-2008-2, Amendments to the Planned Districts and Neighborhood Model Districts. (See PowerPoint presentation and staff report)

- In the spring the Commission expressed some initial interest in dealing with mainly old zonings that were coming in and using old zoning regulations. It was a concern to the Commission. The Commission asked staff to draft a resolution of intent, which was approved on April 22, 2008, to amend the zoning ordinance as it related to the old regulations as part of the Planned Districts.
- On July 29, 2008 the Commission had a work session to provide comments and asked staff to set up a Round Table. The Round Table Discussion was held on September 30, 2008. At the Round Table the Commission received a lot of public comment from members of the development community who were concerned about the regulations applying to more current developments and that what was originally proposed was too onerous. The Commission asked staff to look into that to see what other types of options might be available and come back, which was what staff is doing tonight.
- Staff discussed and reviewed their recommendations on the outstanding issues from the work session, which included vesting, signage, architecture and parking as outlined in the staff report and PowerPoint presentation. Staff asked the Commission to review the proposed changes and suggest modification where necessary. Staff will then write the proposed ordinance language and hold a public hearing before sending the Commission's recommendation on to the Board of Supervisors.

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

Don Franco, of KG Associates, provided input, as follows.

- He noted that at Rivanna Village there is a large range of architecture that could be applied from Williamsburg to Downtown Mall architecture. One of the problems with trying to pin that down at the time of the rezoning has been what is it going to look like. They want the density, but are years from getting that development to start coming out of the ground. If they get to 100,000 square feet there are probably going to be two or three story buildings. . It is hard to make Williamsburg style look good at four stories.
- The way the Code of Development is written they have a very broad range of what is going to happen. By the time things start coming out of the ground they will have that pinned down. He thought that having the ability to commit to massing aspects but not to the kind of materials and specific architecture at rezoning is going to be important. That will help the developers.
- If they had elements like Crozet he would consider that as an infill and materials become more important in that particular setting. But, if they take potentially larger projects like Albemarle Place and Rivanna Village that might have constraints on the outside their approach has been to hide it with a buffer. He was not sure if the public should be really involved at the rezoning stage of what the inside looks like as long as they can create the Neighborhood Model feel on the inside.
- They are committed to Rivanna Village's concept and are confident that they can live within that broad range. The style will affect other elements. If they don't have shared parking they may not

be able to create four story buildings. Some of that is not talked about at the rezoning stage. He questioned what kind of architecture they want to commit to. He was not sure if he liked the Downtown Mall as a one-story or two-story so much as he liked it slightly taller. He asked if flat roofs were appropriate at that height for a Neighborhood Model District. He felt that they have to find the right balance of how do they commit to the neighbors. But his real focus would be similar to the Entrance Corridor in focusing on the perimeter. The smaller the project gets, such as potential projects in Downtown Crozet, the more that will infiltrate into the center of the site.

Mr. Loach asked when the developer should have to show the neighborhood something that they can judge besides just a square on a piece of paper showing how many stories it is.

Mr. Franco replied that it was a hard line to draw. He thought that in Crozet where he was could stand on an existing street and see the building that it becomes more important to him. If he cannot stand in Glenmore Way and see the center of this town at some point in the future for Rivanna Village he was not sure that it was as important. In his mind the line is drawn in how visible it is to the outside community. There are a lot of projects around the community that have different architectural styles. If the project is self contained he felt that it would be okay to let that detail happen a lot later on by the people going there such as the purchasers and residents of the new village. The question is how visible it is to the outside community.

Mr. Loach felt it was a reasonable approach. He did not know how they would codify it as far as where that line would be drawn, but they would have to do their best. In Crozet he felt that the community was sacrificed for the greater good and then they started to hear about the Neighborhood Model and density. It has to be compatible. He thought that the Neighborhood Model has been a net plus in Crozet. But he also worried that taken to its extremes it might be a negative if there is no way for the community to get input.

Cliff Fox, resident of Crozet, said that there are a lot of other components of land development that impact the pedestrian orientation such as street design. An example is the Downtown Mall that is such an enclosure that comes from the tree canopy three-quarters of the year. There is a lot of architectural differentiation there, but it still can be sewed together. The Downtown Mall works because of that canopy regardless of the building size. There are plenty of different forms. It is important to not only look at the architecture of the buildings, but the street design. The new Crozet Main Street is being designed so that one walks into a retaining wall. That is not ADA compliant. There are long term components that are outside of the building form that they need to look at. Flexibility with the building form can actually help with some of the other components.

Valerie Long, representative for a number of owners of large planned district zoning projects, noted that she has been particularly interested in this. She thanked the Commission and staff for a very productive work session in late September. They had a large number of representatives of the development community in attendance. They were very concerned and felt like the Commission and staff listened and heard them. They are grateful for that and hoped that they could continue that process both on this initiative as well as others.

- Personally, she liked the direction staff is going in the sense of using the 1980 date as a cut off. She understands that the original reason for this initiative was to address the concerns the Commission had with one or two projects that had pre-1980 zoning. She felt that was a good way to address those issues without having very dire negative impacts. But they are still concerned about it. By having to prove a vesting case on other issues like landscaping, parking, lighting and so forth they are not completely free of the concerns that they have.
- The vesting criterion that is in the Virginia Code is very subjective and is subject to significant interpretation. As Mr. Kamptner said at the work session there is little to no case law that exists that provides guidance to anyone about what it means to diligently pursue a project or to rely on a governmental approval or act. She was concerned that even though it has been scaled back significantly that by having to still make a vesting argument that landscaping, lighting or something like that it could make it impossible. One, they could spend a tremendous amount of time with the applicant and the staff trying to determine if they have a vested right to do the landscaping the way they want to do it. That will eat up everybody's time in trying to deal with

those subjective standards. Also, they could create situations where they have an approved zoning application plan, the standards change dramatically and all of a sudden they could no longer build the project the way it was approved after going through the long zoning process which they spent a lot of time and effort on. They still have a lot of concerns about that vesting.

- She thought that if the issue was to address those pre-1980 projects then they could just start with the threshold and just leave it at that, which solves the problem without causing any of the adverse impacts. Continuing the vesting argument for post 1980 projects on some of these other issues, although it might seem minor, raised many concerns that it will continue to have some of those same adverse impacts. She supports the staff's proposals to provide greater flexibility on the architectural standards. She thinks the dialogue has been very helpful. It makes sense after having worked on a number of these Codes of Development and spelling out architectural requirements, details and orientation that it makes sense not having them be too detailed due to the enforcement issues. It is a very difficult line to walk. She thought that moving away from that and focusing on what really matters is a great approach.
- Finally she wanted to raise the question and make sure that some of the other minor housekeeping matters that were discussed over the last year with regard to this zoning text amendment will still be considered as they move forth. Staff has talked about that under the bullet for removing redundancies, making clarifications and making things consistent. The chart that staff attached to the July 29 work session walked through a lot of other housekeeping revisions to the language that were all logical and very productive for everybody. She wanted to make sure that those don't fall through the cracks because they made a lot of sense.

Ms. Porterfield noted that what staff is suggesting are just specific areas such as the landscaping, entrance corridor and things like that. She asked are there so many problems in those that they could not just be updated. In other words is that going to cause a huge problem to a developer who has not started a project since 1980? She asked if it is going to be so tough to put in lights that are up to the standard at the time as opposed to what happened in 1980.

Ms. Long replied that it is hard to say because it is hard to predict what changes might occur with those regulations and how those changes would affect an approved zoning project.

Ms. Porterfield asked are those big limiting factors compared to other things that would be worth the fight to find out whether they were vested or not.

Ms. Long replied that compared to other things they are not as significant. But, again without being able to predict what changes might take place and how they might affect a project with the level of detail that is required for an application plan these days it is hard to tell. The application plan required is so detailed that it is essentially a site plan.

- With lighting it is harder to conceive of a regulation that would make it difficult other than saying no lighting in this area at all when they might have a retail tenant for instance that insists on having lighting. Landscaping is an example that is easier to use as an illustration. If on an approved application plan there is an area shown that is going to be landscaped along the entrance corridor and all of a sudden the landscaping regulations were to double along the entrance corridor because that is what the Board and Commission deemed appropriate it could be a problem.
- Another problem would be if an approved application plan that no longer worked because the landscaping was designed for a particular tenant that was lost and then they no longer had enough room for parking or access roads as shown on the plan. It would take a lot of time to proof that they had a good case to show they had a right to use the landscaping regulations in effect in 2007 instead of those in 2010. She questioned how one proves that they have a vested right. They have to demonstrate essentially for three or four criteria that they have relied on a substantial governmental act and diligently pursued the approvals. How does one prove that they have diligently pursued it? Who is to say what diligently pursued really is? Those are the issues that she worries about.
- She questioned whether they really need to go through this exercise to address it when the original reason this all got started was one or two pre-1977 projects, which she felt they were appropriately to be concerned with. The Commission seemed to agree in late September that they did not want to undo all of the time and efforts that went into these recent planned district

application plans. She asked that they just focus on the ones from pre-1980 where there are concerns and let everybody from 1980 on, particularly those in the last few years that have so much detail, just move forward and use the current regulations.

Mr. Strucko asked if it was a business risk in terms of the timing. If he was a developer that laid out a plan, got it approved and sat on it for 20 years and in the meantime community standards have changed through the elected representatives of the community, the business risk he assumes by not acting in that time is now that he had to comply with standards that now meet the new community demands. Whereas, if he acted earlier he would have had his plan completed. Community standards will adjust and change to meet the opinions of the time through elected representatives through a legislative act. If he was doing business in that environment he has to know that there is a risk and he will face some changes if he does not act in a timely enough fashion.

Ms. Long said that his point was a good one. But, it may not be that the developer has just sat around and failed to develop it. It may be that especially with a lot of these project that are large significant projects with 10 and 15 year build outs that phase 5 of the project was not done because the developer had spent the last 10 or 15 years working on phases 1 through 4. Now at phase 5 the developer may find that the regulations are all different.

Mr. Strucko questioned if that would be a vested right, and Ms. Long replied perhaps.

Mr. Strucko pointed out that they could not control the way the term vested is interpreted in the Commonwealth of Virginia.

Mr. Kamptner noted that they can't be more restricted. He noted that everything that they are talking about the county is being more generous to the development community than is the minimum required by state law. What they have right now in place and what is proposed is grandfathering for the most part for these projects that were approved many years ago.

Mr. Loach agreed with Mr. Strucko that one has to assume that new regulations and requirements were put in at the request of the public in association with its elected officials. What he is hearing tonight is that they really look at the lowest common denominator and that is what he was arguing against before. He thought that the community has a right to expect that the regulations they feel is necessary be carried out. But that is not what he is hearing.

Mr. Kamptner replied certainly what the draft is saying right now is that any project that has been approved since 1980 they will grandfather everything that was approved with limited exceptions, such as the outdoor lighting, landscaping and features like that. In those cases they can proceed under the regulations in effect at the time they were approved if they can show that they have vested. There are actually two ways in which they can establish vesting. One is under the significant governmental act with the diligent pursuit and all of that. The other is that if they had proffered substantial cash, substantial land or substantial improvements. That throws in some additional protections for them. There is no requirement for diligent pursuit. There is not even a requirement of spending money in the interim as long as they can meet the other tests outlined in the materials. It protects them under that standard as to uses, density and floor area ratio. For example, if the landscaping standards change and they somehow doubled in size or if they had substantial cash proffers and met the other requirements, then the new landscaping requirements could not be imposed in a way that would reduce their density, reduce their floor area ratio or change any of the uses that are in place.

Mr. Strucko asked what about a standard that impacts public safety and if a new regulation came into effect that substantially improves public safety and has some impact. He asked if that circumstance was covered outside of the entrance corridor exceptions.

Mr. Loach noted that VDOT's driveway standards might be applied now as versus then.

Mr. Strucko asked if they did not have a vesting in the project would they be required to comply with new standards that enhance public safety.

Mr. Kamptner noted that today he reviewed the draft VDOT Entrance Regulations. Even in matters of public safety they do realize that rights will vest. In their proposed regulations they have a cut off date. If the project existed before a certain date they are allowed to proceed under prior regulations. This particular regulation was dealing with entrance spacing requirements. Those requirements are going to change if and when these regulations take effect. In any matter of public safety it is recognized that rights will vest and protect the owner's financial interest.

Mr. Cilimberg said that they did include one public safety regulation for the flood hazard overlay, which changes over the years.

Mr. Strucko said that was a very specific one in a targeted area. He asked about broader language. He was trying to keep in mind the spirit of what initiated this whole process, which was started by Mr. Edgerton. They had parcels that were under old regulations that were coming before the Commission over 30 years later and they were saying this does not comply with anything they have and if there was something that they could do.

Mr. Edgerton said that staff has come up with a reasonable compromise and drawn a line in 1980. They have picked things in the current regulations that the community has declared a concern for and the new regulations were developed. A specific example is lighting. If a project was approved in 1981 and there was no Dark Sky Ordinance and that was not applied under this it could undo all of the good in the surrounding neighborhood. A line is being drawn. Certainly from the development community perspective the best answer from all of them would be let's forget about zoning and do anything that they want to do. Ms. Echols pictures are very informative. The picture of the little one story house next to the four stories is Houston, Texas. That is an example given in architectural school of a community that was allowed to develop without any zoning at all. From a development perspective that is the ultimate dream. But there is no concern for the community there. That is why they have zoning and are here.

Mr. Strucko noted that he gets uneasy when they start talking about specific architectural features. That is a matter of style and taste. He really gets concerned with something like the Dark Sky Ordinance or a stream buffer.

Mr. Edgerton opposed having an architectural style in an ordinance. Staff has tried to speak to the ambiance of the Neighborhood Model. A good architect will respond to that in an appropriate way. He had his own selfish styles that he liked better, but there are differences of opinions. A lot of the historic styles that have been represented as being more appropriate for the Neighborhood Model he sees more as a fashion statement. But a good architect and a good designer will respond to scale and massing. Ms. Echols has done a marvelous job in explaining that.

Ms. Porterfield said that if a project was phased out over a long period of time and was being done in phases she was assuming that starting the first phase would indicate vesting.

Mr. Kamptner replied that it depends on the significant governmental approval that they are relying on or if it is the proffered rezoning. The rezoning action is going to have the proffers, the Code of Development and all of the cash offered. That is going to be the significant governmental act and if they find vesting then it is going to apply to the entire rezoning. The significant governmental act may just be a site plan or a site plan that pertains to a specific piece of property. He thought that here in almost all of the cases the action that will determine what is vested is going to be the rezoning action. So once they find vesting then it is going to apply to everything.

Ms. Porterfield questioned if it was regardless of what phase they were in, and Mr. Kamptner replied yes.

Neil Williamson, with The Free Enterprise Forum, said that one question Mr. Kamptner brought to mind was the change in ownership of phase 5 or that they have multiple owners in these options and how that moves in. He noted the following points.

- First and foremost they continue to be concerned about the signage issue and look forward to working with staff when that comes forward. Mixed use communities require mixed uses that have an opportunity to succeed, which he felt was the goal of everyone on the Commission.

- With regard to parking it is important to recognize staff's contention that the uses are not always known. There is less need for more parking. There are probably more opportunists for shared parking and less impervious surface if they delay that to the site plan for review.
- He remains concerned with the vesting issue that this is not a legal employment act. The level of case law that is available and where the county is headed does not seem very clear. While he could see some points with the first point of vesting with regards to the 1980 line in the sand he really thinks that there is a question with vesting and what is involved there.
- In regards to Mr. Strucko's point, he felt that the adoption of this would add a new risk. Since this did not exist today it was a new business risk. Just knowing what they are doing is important.
- He was of the opinion that members of the business community work within the framework that they have. There are some really nice projects out there that are the benefit of zoning, this Commission and the development community that put them forward.

Mr. Morris invited further public comments.

Don Franco asked to respond to Mr. Williamson's comments.

- He noted that a lot of the developers are the larger landowners in the community, too. They are protected by the zoning around us. Therefore, he personally supports zoning. If they can play within the rules, then it is good for everybody. He agreed, but did not know how to draw the line. Health and safety is not really the magic line. He felt that outdoor lighting and Dark Skies is important, but was not sure about signs.
- He was trying to figure out how parking would be something that could hurt him. The only way it might hurt him is if they double the parking requirements increasing the impervious surface and maybe there should be an out not to have to do that.
- An entrance corridor would not hurt him unless it was increased in size or restrict what can be done in it. So again that was something that he would probably want to be protected in. It is not just the phasing of the project, but Rivanna Village is now going through the state and federal permitting. So it may be a number of years before they get to a site plan level, before they actually pay a proffer and they may be spending a million dollar to get to that phase. He was still not sure if they were vested yet. So if the entrance corridor was to double in size that could be a real problem for them. That vesting aspect is still a problem that needs to be worked out.
- Regarding the comment on the ARB, he felt that being managed by the development is fine, but they need to make sure the language is created correctly. From their perspective the language would be at the sale of a property or at concept level with the site plan and it may have conceptual architecture. He would not necessarily say final approval. That final approval will come with the building permit. If they make them the regulator of this do they need to include issuance of a certificate of compliance at the end. He questioned if that needs to be added to the CO process as well. Those would be the steps they would look at. It would be conceptually what kind of architecture and what it is generally going to look at. If they all agree on that then they proceed with the site plan. Then when they get to the building permit they get to that level of detail. At the end they certify that what they build was consistent to what they all agreed to.

There being no further public comment, Mr. Morris closed the public comment and bring it back to the Commission for discussion.

Mr. Kamptner noted there were some questions by Mr. Williamson that he would like to address.

- The first issue was in response to the change in ownership question. Earlier this year in Hollymead Town Center they determined that they needed all of the signatures within one of the developments for an application. Under the current regulations they determined that they needed to have the signatures of all of the owners to sign. Staff is going to address that issue in the text amendment. That was in relation to a use and the increase in intensification. What they are looking at doing is that there are certain cases where there is not an increased intensification of the use but generally there was some kind of an amendment required it would require that only the owner of that lot within the planned development sign the application. That was the issue here of who signs the application. Notice would be required to be given to everybody else within the planned development. But at least for the application to go forward only the owner of the lot

that was affected would be required to sign the application. One of the reasons for that shift that is going to become essential, particularly as time goes on, is because as these developments get established and become denser the boundaries between one development and another are going to blur. The development community is going to be hamstrung if everybody's consent to simply filing the application is required. One owner may have a lot of control over another owner where they don't really have an interest at stake. They will get notice and be entitled to voice their objections at the public hearing. But this at least gets the applicant in the process. Staff is going to deal with that.

- Regarding the signage and parking issues, those are becoming more flexible. The current sign regulations will be up for amendment soon. Over the last decade the sign regulations have been amended several times. The way the current regulations operate is that the owner cannot pick and choose which ordinance they want to have applied. If they have a 1985 development they may be stuck with the 1985 sign ordinance that allows only certain types of signs. There is a movement to allow the LED type of signs. They currently allow signs with what is called rare gas or neon in certain districts. They would not have that option to do that. It is wrong just to assume that regulations are always in the future going to become more and more restrictive. They are trying to deal with current situations and address them.
- The last question was regarding vesting. He reviewed the four cases outlined in the slide presentation. One is a Virginia Supreme Court case, the Suffock case. Two of the other cases, the Robertson case and the Salem Fields case are trial court cases. The Medical Structures case is an old Virginia Supreme Court case before vested rights were codified in Virginia Code. They have a very limited pool from which to determine what diligent pursuit means. They have one case that the owner acted within a year. There is one case where they started acting within five years. In the third case the owners did not begin acting until 50 years after the date of the decision. So it does not really help define what the perimeters are. From the cases they have a pretty good understanding of what it means to rely on the approval. The cases are simply outlined and once approved the owner starts hiring consultants to do various types of activities. Then with the amount of money that needs to be expended to establish extensive obligations or substantial expenses the cases are very limited. They have the Suffock case, the Medical Structures case and one other case. The range of money spent is between about $35,000 up to the Suffock case, which was $115,000. The Suffock case dealt with a rezoning of a few hundred acres. It is a lot of money, but in the context of several hundred acres not necessarily a tremendous amount.

Ms. Echols asked the Planning Commission to go through each one and decide whether to move on or if they need further discussion what they want to do.

Mr. Strucko reiterated that his concern is entrance corridor, flood hazard overlay, outdoor lighting and signs and the public safety concerns in whether it is pollution, effluents or spacing. He asked if they were covered, if not in here, by other law.

Mr. Kamptner noted that the vesting issues they were dealing with here are really dealing with what is addressed in the zoning ordinance. There is a separate provision that applies to subdivision which really vests for a limited period of time. Regulations that are beyond the zoning ordinance are not vested. So the applicant needs to deal with the regulations in place at the time of the development.

Mr. Cilimberg pointed out that the Water Protection Ordinance, as an example, is in a different Code section and has to be applied.

Mr. Strucko noted that they were going to postpone discussion on signs. He asked what the concern is about the landscaping.

Ms. Echols replied that it is something that generally does not seem to affect the site plan so much, but it is a standard adopted several years back for appearance sake. They have a percentage requirement of canopy coverage and those have not changed in many years. Staff is not thinking that will be an onerous thing for someone to have to deal with. If they were doubling the amount it could. But if somebody did not have a plan and they did not have proffers that might not make a huge difference. If they met their

vesting and have a detailed plan with proffers, which most of the recent projects do, staff does not think it will affect them that much.

Mr. Strucko asked what the pressing landscape issue is that allowed it to make the short list, and Ms. Echols replied the appearance.

Mr. Edgerton pointed out that speaks quite directly to the Neighborhood Model and the scale of the effects.

Ms. Echols asked if the Planning Commission is okay with what staff has proposed, including the architectural standards.

Mr. Loach asked to see more specificity.

Mr. Morris felt this would be covered more in the planning stage and not in the Code.

Mr. Edgerton pointed out that he agreed with staff's recommendation. He felt that the massing, scale and getting away from the non-pedestrian feeling are what they should focus on as opposed to style.

Ms. Porterfield noted that there were only two Commissioners involved with master plans present and they were trying to say that there is a lot of community involvement in the master plan concept. She asked if there was any chance the others could go back and just think about it to see if there was any way to try to do what the community of the area is looking for as a concept.

Mr. Cilimberg noted that he was not sure if the master plans have defined architectural style specifically. That is all they were talking about here. They don't have in their master plans anything dictating the architectural styles. They would be removing the requirement in the Code of Development to specify which styles they were going to use. That is all they were saying. The rest of it is exactly what they have said that they want to see. It is at a level of specificity that staff does not think was intended.

Mr. Loach noted that he would like to go back and discuss it with the Crozet Advisory Committee and get some input. He agreed with Ms. Porterfield that there were only two Commissioners who are going to have to live with this. Therefore, they would like this to be looked at further.

Mr. Cilimberg suggested that they consider an option in deciding whether architectural styles are being appropriately reflected.

- He was not sure that master plans go to this detail on dictating architectural style. But if they did and in a master plan they decided that a particular area was only to have certain styles that would actually govern the review of the rezoning. A rezoning that comes in would need to meet those styles, which is part of the work that staff would have to do. It would not be an option that they would suggest to the Commission as acceptable as part of that development to the extent that architectural styles are dictated through a master plan and projects that come in that master plan area are going to meet those styles. Staff would let the Commission know what they are and say that they should make sure that the project achieves those styles. In terms of translating the master plan to the actual development of the property that is the way it would happen. So staff would certainly capture that in staff review.
- In Crozet for an infill project staff would want to make sure that a new project coming in under the Neighborhood Model zoning would reflect styles in Downtown. Staff would have to specify what those are in that case. Comparatively what they are also saying is if specific styles are not otherwise determined for a particular master plan area and that project comes in they are not going to worry so much about the internal styles. There will be external considerations if it is on an Entrance Corridor. But internally they are not going to worry about them and say that is up to the developer to self enforce it so to speak unless the master plan said that there needs to be certain styles. Nothing prevents a development from taking suggestions from the community on architectural styles and that would be put into the style. Staff would say that they know what that is and it would be self enforcing. That is the approach staff is trying to take with this. If that works for the Commission, then he thought that they were all on the same page and were accomplishing what they were interested in accomplishing. If the Crozet Advisory Council has

comments on Downtown Crozet it can be addressed in the upcoming five year Master Plan update.

Mr. Loach said that it sounded reasonable and he would get feedback from the Crozet Advisory Council.

Mr. Cannon noted that he liked the way staff framed it here in the sense of eliminating attention to more focused projects that are going to be established in existing settings where architectural conflict would be most acute. For the rest he agreed that they should let it go unless it was addressed in the master plan. There are some risks here if they do something like this that they are going to over determine everything and end up with landscapes and developments that are not very interesting.

Ms. Echols asked if there was a consensus about that.

Ms. Porterfield asked that it be looked at further. Staff is talking about that infill being different and it was brand new in an area. They have numerous acres that are being looked at this point. She suggested that Mr. Franco converse with Ms. Echols since he had some good ideas about the outside and inside. She suggested that they try to get that into the master plan so that it does not pigeon hole them but provides some direction in the master plan that makes the community that has been working close with him for numerous years feel more comfortable.

Ms. Echols asked if there was agreement on allowing a parking study with rezoning or the site plan level.

Mr. Morris replied yes.

Ms. Echols noted that the rest of the items the Commission agreed to last time. The other changes in the table referred to by Ms. Long will be brought back to the Commission and made available to the public for further review to make sure everything is in there. Also, it includes bringing the staff titles in line with what is current, cleaning up the requirements to be consistent and putting the special use permit as an option in the Code of Development where an applicant might not be able to anticipate the conditions now.

Mr. Morris thanked the public for their participation.

In summary, the Planning Commission held a work session as a follow-up to previous discussion on the options available for the proposed changes to the Planned Development regulations. The Planning Commission reviewed and discussed the proposed changes, and took public comment. It was the consensus of the Commission to move forward with staff's recommendations.

The Planning Commission agreed with staff's recommendation to make the following changes to the proposed text for ZTA-2008-00002 and set the public hearing.

- Set parameters for new regulations on old zonings
- Remove/add some architectural requirements
- Allow parking study with rezoning or at site plan
- Bring staff titles in-line with current Community Development staff titles, where staff has decision-making authority
- Remove redundancy, make clarifications, make consistency in requirements
- Add "special use" option for Code of Development where applicant may not be able to anticipate conditions
- Postpone signage changes. The Zoning Division will bring back a set of signage changes that will include the Neighborhood Model district.

Staff will draft the proposed amendment language and set the public hearing.

Reconsideration of SP-2008-00052 Forest Lakes Office Park:

Mr. Morris noted that before they went to old business he asked the Commission to entertain reopening the item on SP-2008-00052 Forest Lakes Office Park and possibly entertaining a deferral request from the applicant.

Mr. Strucko disclosed that he was an employee of the Health Services Foundation that has a financial interest in one office on the site. He recused himself from consideration. (Attachment: Disclosure Form)

Mr. Kamptner noted that the first item to consider would be a motion to reconsider, which would simply put the matter back on the table if the motion is approved.

Ms. Porterfield questioned where they were on the time table. She asked if this does anything to the time table.

Mr. Cilimberg replied that a request for deferral from the applicant automatically extends the clock.

Mr. Morris noted that the applicant was present.

Motion: Ms. Porterfield moved and Mr. Loach seconded for reconsideration of SP-2008-00052 Forest Lakes Office Park.

The motion passed by a vote of 5:0:1. (Strucko abstained)

Mr. Morris said that the Planning Commission was now reconsidering SP-2008-00052 Forest Lakes Office Park. He invited the applicant to come forward and address the Commission.

Benton Downer, managing partner and one of the partners on the application, noted that he was also a life long realtor. He set up his house to close on December 5th. But for reasons beyond his control it closed on the afternoon of December 8th. He had been frantically moving his personal residence across town in the last 24 hours and walked into dinner and Valerie Long was nice enough to call him to say he had missed the meeting. He also received an email from Brian Smith and his secretary Lisa and completely did not respond because he was trying to finish the project that was in front of him. He apologized for not being here when this item came in front of the Planning Commission. He noted that the request is simply to clean up a matter that they have been working on for almost two years.

Mr. Morris asked if he would like to defer this to the next available date.

Mr. Downer said that the request seemed pretty simple and he did not know what questions they had.

Mr. Morris said that he did not know if the Commission wanted to reopen for discussion because there were extensive questions about this.

Ms. Porterfield suggested a deferral that would put them into January.

Mr. Cannon supported a deferral.

Mr. Downer asked if that would put him in violation.

Mr. Morris replied that it would not.

Mr. Downer said that if it did not put him in violation then he would request a deferral.

Mr. Kamptner asked Mr. Cilimberg to provide a date for deferral.

Mr. Cilimberg noted that it could be heard at the first meeting in January.

Motion: Ms. Porterfield moved and Mr. Loach seconded to accept the applicant's request for deferral of SP-2008-00052 Forest Lakes Office Park to the earliest possible date in January.

The motion passed by a vote of 5:0:1. (Strucko abstained)

Mr. Morris said that SP-2008-00052 Forest Lakes Office Park is deferred to the earliest possible date in January.

Old Business:

Mr. Morris invited old business.

- The Planning Commission Retreat will be held next week, December 18, 2008 from 6:00 to 8:00 p.m. in room 241.

New Business:

Mr. Morris invited new business. There being none, the meeting moved to the next item.

Adjournment

With no further items, the meeting adjourned at 9:13 p.m. to the Tuesday, December 18, 2008 Planning Commission Retreat at 6:00 p.m. at the County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

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V. Wayne Cilimberg, Secretary

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