Albemarle County Planning Commission
January 28, 2014

The Albemarle County Planning Commission held a regular meeting on Tuesday, January 28, 2014, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Cal Morris, Chair; Karen Firehock, Richard Randolph, Thomas Loach, Bruce Dotson, and Mac Lafferty, Vice Chair. The At-large Commissioner has not been appointed at this time. Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia was present.

Other officials present were Trevor Henry, Director of Facilities Development; Lindsay Harris, Budget Analyst of Office of Management and Budget; Sarah Baldwin, Senior Planner; Bill Fritz, Manager of Special Projects; David Benish, Chief of Planning; Wayne Cilimberg, Director of Planning; Sharon Taylor, Clerk to Planning Commission and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

Mr. Morris, Chair, 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 including consent agenda items. There being none, the meeting moved to the next item.

Consent Agenda:

Approval of Minutes: October 15, 2013

Mr. Morris asked if any Commissioner would like to pull an item from the consent agenda for further review.

Motion: Mr. Lafferty moved and Mr. Loach seconded for approval of the consent agenda.

The motion carried by a vote of (6:0).

Mr. Morris said the consent agenda was approved.

Capital Improvement Program Presentation:

Trevor Henry, Director of Facilities Development and Lindsay Harris, Budget Analyst of Office of Management and Budget presented a Power-Point presentation to summarize the FY 15 CIP - Capital Improvement Program; FY15-19 CIP & FY20-24 CNA dated January 28, 2014 for informational purposes. (Attachment A – Presentation on file with the printed minutes in the office of the clerk)

At the conclusion of the presentation Mr. Henry invited questions and input from the Planning Commission.

The Planning Commission discussed the Capital Improvement Program Presentation recommendations with staff, asked questions and made the following comments and suggestions:

- Due to a concern a Commissioner requested the Facilities Development Department to work with GIS to provide a map or graphic representation along with project data on the web so the public can easily see where the projects are from a funding perspective. (Mr. Henry agreed and offered to provide that information back to the Planning Commission once it was available at a future date.)

- Provide project description information link on website to the public in future memos to make it easier to find.

- Work on process on how community organizations submit requests to the Office of Facilities Development (OFD), such as the CCAC, Places29, Pantops, etc.

- There was a question about the timeline diagram at the beginning of the process. It indicates the process begins in early summer. Where would a group like the community advisory committees, such as Crozet, Places29 or Pantops, submit ideas and who would they submit them to. Would that happen in early summer so they were factored into the process?

Mr. Morris invited public comment. There being no public comment, he thanked staff for their excellent presentation.

No formal action was taken. The Commission looks forward to seeing what happens when the proposal goes to the Board of Supervisors.

Public Hearing Items

a. ZMA-2013-000015 Northfield Green

PROPOSAL: Rezone 2.62 acres from R-2 zoning district which allows residential uses at a density of 2 units per acre to NMD-Neighborhood Model District - residential (3 – 34 units/acre) mixed with commercial, service and industrial uses. Proposed 13 maximum single family (attached/detached) dwelling units for a density of 4.9 units/acre.
PURPOSE OF NOTICE AND HEARING: Intention of the Planning Commission to make recommendation on the Proposal to the Board of Supervisors
ENTRANCE CORRIDOR: No
AIRPORT IMPACT AREA: Yes
PROFFERS: Yes
COMPREHENSIVE PLAN: Neighborhood 2-Places 29- Neighborhood Density Residential – residential (3 – 6 units/acre) supporting uses such as religious institutions, schools and other small-scale non-residential uses.
LOCATION: Old Brook Road, approximately 200 feet from intersection of Redington Lane.
TAX MAP/PARCEL: 06100-00-00-12600
MAGISTERIAL DISTRICT: Rio
(Sarah Baldwin)

Ms. Baldwin summarized the rezoning request in a PowerPoint presentation. (Attachment B – Staff Report on file with the printed minutes in the office of the clerk)

The Comprehensive Plan designation for this area is Neighborhood Density Residential 3 – 6 units per acre, which is in line with this proposal. However, one of the master plan guiding principles for the Northern Development Area is to preserve the character of the existing neighborhoods. The surrounding area contains existing neighborhoods which are single family detached units at 2 units per acre.

Master Plan Guiding Principles
6. Preserving the character of existing neighborhoods while improving the quality, diversity, and affordability of new housing is important. Housing, including workforce housing, located close to employment centers, shopping areas, transportation and recreation is important for the Northern Development Areas. The Board of Supervisors specifically adopted this principle because of concerns expressed from existing established neighborhoods. While there is no further guidance in the Plan, staff determined that major elements need to be preserved to include land use, unit type, density and form characteristics.

The applicant is proposing a block plan that will contain between 10 - 13 single family attached and detached units at a density of 4.9 units per acre. The plan also provides for a community lawn and garden area. A community meeting was held and both attendees as well as neighbors have since contacted staff to express a concern about the number and type of dwelling units proposed. Staff handed out additional emails, some of which the Commission received and some of which came after 4:00 p.m. today. Those were included in the packet. Additional concerns include increased traffic and storm water management issues that may result from this proposal. (Attachment C - Emails received on file with the printed minutes in the office of the clerk)

Out of the 12 Neighborhood Model principles 4 have not been addressed.
1. **Neighborhood Friendly Streets/Paths**
   Proposed 14' wide private street is not recommended by engineering.
2. **Buildings and Spaces of Human Scale**
   Homes on Old Brook Road to have appearance of fronting on street, but no standards are established.
3. **Mixture of Uses**
   Non residential uses are not proposed.
4. **Mixture of Housing Types/Affordability**
   Affordable housing not addressed on plan or in proffers.

Engineering has recommended a 24-foot wide road to accommodate parallel parking. A waiver is necessary to approve at a lesser standard. The applicant has stated that units fronting on Old Brook Road will contain elements to appear that they are facing the street and will have Architectural Review Board review, but no other standards on how the buildings will be consistent with the area was included in the plan. The Neighborhood Model recommends residential and non residential uses. This plan only addresses residential uses and a waiver must be approved for that as well. Additionally, affordable housing has not been addressed.

The proposed density is 4.9 acres and is inconsistent with the surrounding areas. Additionally, no cash proffers or other in-kind improvements for public facilities or infrastructure have been received. According to the cash proffer policy $139,182 to $265,000 would be anticipated. It is

staff opinion that a density of 3 units per acre, which is at the lower end of the Comp Plan recommendation, containing all single family units with those on Old Brook Road facing the road would be more consistent with the surrounding neighborhoods.

Factors Favorable:
1. The rezoning request remains consistent with the Places 29 Master Plan land use and density recommendation.
2. This rezoning request will provide infill, which is encouraged in the Comp Plan.
3. The rezoning provides for a mix of residential unit types.

Factors Unfavorable:
1. The proposal does not meet the guiding principle of Places 29 to preserve the existing character of the surrounding neighborhoods.
2. The applicant has not addressed the proposal's impacts on public services or infrastructure.
3. The applicant has not provided for affordable housing consistent with County policy.
4. Proposed internal roads do not meet the County Engineer's recommended design standards.

RECOMMENDATION:
Staff recommends denial of ZMA-2013-00015, Northfield Green based on the unfavorable factors noted.

Mr. Morris invited questions for staff.

Mr. Randolph asked staff to provide details about the community meeting such as the date, location and the number of people that participated.

Ms. Baldwin replied the meeting was held on August 22 in the Lane Auditorium at the County Office Building on McIntire Road. It is her understanding approximately 30 people attended the meeting, which included Rodney Thomas. Since she did not attend the meeting she referred specific questions to David Benish who did attend the meeting.

Mr. Randolph asked if in summary the people were enthusiastic and embraced the introduction of this zoning change in their community or did they seem to express some reservations.

Mr. Benish replied, as indicated in the report, the major issues were the consistency of the unit type and the density of development. Other issues expressed included potential issues with traffic impacts; some observations of off-site storm water problems in the neighboring development, and questions about whether this development would exacerbate those issues. The majority that spoke were opposed to the proposal.

Mr. Randolph asked if that meeting was held in August.

Mr. Benish replied this particular community meeting was held before the application was submitted to help the applicant frame what his possible submittal would be.

Mr. Randolph asked if staff has seen any changes in the proposal based on the input of the members of the community to the application, and Ms. Baldwin replied no.

Ms. Firehock pointed out staff noted in the presentation that the drawing provided with the application was just for illustrious purposes. Therefore, the applicant is not making a particular commitment to any style of building except that it is a duplex for residential use.

Ms. Baldwin replied that was correct.

Mr. Loach asked if Fire Rescue weighed in on the street width and what was their opinion.

Ms. Baldwin replied there is an area at the far end of the development that has guest parking spaces that Fire Rescue thought they would be okay with.

Ms. Firehock pointed out in some of the public email comments received this afternoon people mentioned concerns with sight lines for ingress and egress to the property. She read about the issues with the one-way street. However, she was curious as to what extent staff had looked at the sight line issue and if they felt that was a problem.

Ms. Baldwin replied that VDOT did not note it as an issue when they looked at it.

Mr. Benish highlighted that in the approval of a commercial entrance on that road they will have to meet sight distance. He explained the grade is much higher since from the midpoint it becomes pretty steep. Therefore, the frontage will have to be cut down and the sight distance will have to be met for a commercial entrance to be constructed.

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

Justin Shimp, project engineer, explained the changes they have made to the plan as a result of issues brought up at the neighborhood meeting. In response to the issues raised they pushed the units in the lots back from Old Brook Road; created a required landscaping area along the frontage; and provided the required buffer between the backs of the proposed and existing units in the neighborhood. Those items have been added to the plan and are part of the application plan to be proffered.

Mr. Shimp explained there are architectural guidelines in the Code of Development that do not specify exactly how the houses will look, but gives a range of things that are required. For example, the porches have to come out ahead of the garage doors and the garage door cannot be the most forward item on the house. That is something staff asked for and they agree is a good idea. It also includes other things such as requiring certain materials. For example, it says vinyl siding is permitted on certain faces of the building. In general, it is flexible in some ways and relates to the application plan being proffered. The colored plan is an illustrious plan, which if attached becomes part of the application plan that becomes proffers and the houses have to be built exactly for that location and number. Therefore, they have shown on that plan the maximum of 13. There could be less in theory, but there could not be more with their zoning as a site plan. He just wanted to point those things out quickly before starting his presentation.

In the PowerPoint presentation Mr. Shimp highlighted some of the features in the plan on the back of the lots adjacent to the existing homes. There are about 3 or a portion of 4 lots with a 20' buffer and landscaping with a required screening of trees and tall evergreens. A large area to landscape was included in the front. The site is an existing wooded area amongst this neighborhood, which was part of the decision not to front view houses on the street directly.

Obviously, while that is not consistent with the neighborhood as it is built, it is consistent with the existing neighborhood, which was part of the rationale for not fronting the units directly on the street and leaving the landscape buffer there.

Mr. Shimp stated their product is a 32' unit, which is the style of house that will be the attached product with 2 units side by side and not a townhome. There are 3 blocks that can be developed in a range of 10 to 13 units. They have over an acre of open space. An important part is the community green center, which is block 4a. The various hatches shown on the plan are different required elements. For example, there is guest parking at the end that will be pervious pavement. The area in the center will be the community green, which is about 70' X 140'. The shaded area in the front is all required landscaping across the front. There is a minimum building set back line across the front as well.

Mr. Shimp pointed out in the staff report there are some positive and negative findings. The folks on the ones negative share our perspectives on that, which include the density of the proffers; cash proffer policy and the roads. Two of them, the cash proffer policy and affordable housing, will be easy to address. The cash proffer policy was in a little bit of limbo with the Board of Supervisors when they submitted this proposal on September 2. However, that has since been settled. They have their proffers drafted and will comply with what is required. On the affordable housing side, this neighborhood is primarily owner-occupied units. While they might look at doing on-site affordable housing with the accessory unit type of thing, they thought in this case that would not be consistent with the neighborhood. Therefore, they are going to have a cash proffer to the affordable housing fund to let that money be spent elsewhere. In this case it will not be for affordable housing on site.

Mr. Shimp said he spoke to engineering staff yesterday about the road. What they propose is acceptable by Code, but is not recommended. Staff feels there is not enough room for parking and they don't disagree with that. The recommendation of going to the 24' wide road in the staff report actually can't be done because they are required to have a 20' clear zone for the fire marshal. They have created a mountable curve on one side that gives them the 14' plus 6' of area for the fire truck to go on. Therefore, they keep a very nice little narrow street in front of these houses and preserve a maximum green space, which is why they think the road needs to stay like it is to keep the green space in the center a usable space. An early comment or example from staff on how to revise the road to have the full circulation was done with a 40' green and 60' of asphalt between the two neighboring houses, which is more akin to a major highway as a median than green space. That is really why they feel it is important to stick to what they have. It is doable, meets Code and the fire marshal accepts it. So they think for a maximum of 13 houses it is sufficient.

The trickier item is dealing with the character of the existing neighborhood and the density unit type. Mr. Shimp questioned what these things are and how it would be interpreted since there is no clear definition of that in the Comprehensive Plan. The exhibit of their lots to scale among the rest of the neighborhood, which has thousands of lots around it, is very much an infill project. He agreed these lots are a little smaller. However, that meets several criteria of the Comprehensive Plan in being a little more of a variety of housing and on the higher side of density in an infill situation. Therefore, he thinks those should not be discarded because they have this concept of the existing neighborhood only.

In reviewing the existing houses going down the street on the plan Mr. Shimp noted there is some consistency in the garage doors that are kind of prominent, which they proffered out

specifically. He pointed out the house right across the street noting there is not a consistent style of any of these homes. Therefore, it is hard to pin down a particular element of how the architecture would match from the plan to those. So they looked into that and could not find a specific thing that made sense. Therefore, they went with what they presented tonight.

Related to this, again, Mr. Shimp noted they dealt with the staff on this all along and cannot say it has to all be attached because then they are throwing out the other principles they try to adhere to that make a good neighborhood. Therefore, their perspective is you can have all three of these things together. Again, it is not so much just what has been built before, but what the lot is now. They can preserve some of that with a little different design keeping that as no street front, no garages, and no driveways right off Old Brook Road. They would throw some landscaping in and then it would be consistent with what is there. Those are the sort of things that balances out the difference in density. Just for reference, the attached buildings or the two buildings 64' wide are not substantially wider than a house in that neighborhood. Those houses are 40' to 50' wide. So it is not like they are building the proposed structures twice the size of an existing house.

With those things said, Mr. Shimp said the design in the neighborhood is what has got to be important, which they think meets many of the criteria of the Comprehensive Plan. However, it would be up for some determination whether it meets the character of the existing neighborhood. He questioned what the character of the existing neighborhood was. They feel confident they will build a quality neighborhood that won't be a detriment to the existing neighborhood and would be consistent with many of the principles that they try to adhere to in planning in Albemarle County. They feel that is what makes this a good project and hope the Commission agrees.

Mr. Morris invited questions for the applicant.

Mr., Dotson asked what he anticipates the sale price to be of the units.

Mr. Shimp deferred the question to the developer.

Jess Ackerman, with the development company, replied the sales prices are predicted to be in the mid $400,000 to $500,000 range.

Mr. Dotson asked what the square footage would be.

Mr. Ackerman replied the square footage would range from 2,300 to 3,300 square feet with double garages and two-story houses.

Mr. Randolph said in the first page of the report it lists two factors unfavorable. Staff noted the applicant has not addressed the proposal's impacts on public services and infrastructure and has not provided for affordable housing consistent with County policy. The applicant had previously appeared before the Commission and been asked twice for a traffic study and analysis. He was curious why he did not address both of those issues and not take advantage of staff's recommendation to come before the Commission to troubleshoot this before the public hearing.

Mr. Shimp replied in regards to the first two questions if they look at the staff report further VDOT reviewed this and commented the traffic report was not necessary. So that is why it is not

done. However, he would let staff clarify this if he was not right. The comment about public service's infrastructure is the cash proffer policy, which they will comply with. They will put up some amount of money between $100,000 and $200,000 depending on the final layout, which will go to address those impacts.

Mr. Randolph asked when they will see that.

Mr. Shimp replied they would submit that as soon as tomorrow since the proffers are done. However, at the time when they had to submit for this meeting there was no certainty as to how that was going to be interpreted by the Board. That is why the Commission does not have that information now.

Mr. Randolph asked if Mr. Shimp would like the Commission to make a decision where he is promising tomorrow that he is going to flush out what the proffer looks like. He asked if the Commission should trust him on that and just waive the expectation that a proffer would be consistent with County expectations.

Mr. Shimp replied that they would certainly expect any motion from the Commission, if favorable, to say provided the applicant includes the proffers to address items 2 and 3 in the staff report.

Mr. Randolph said Mr. Shimp cited in his statement that Mr. Shimp thinks the style of what they are proposing to build is roughly similar to other houses in the community. He gathers that what Mr. Shimp was extrapolating when he used the word style is Mr. Shimp was trying to submit that thereby the houses he was proposing to build are going to be of similar character. He asked if he thinks the character of a single family neighborhood is affected in any way by suddenly increased density in one small portion of that neighborhood.

Mr. Shimp replied he thinks if it was done correctly it would not be.

Mr. Randolph asked if he thinks that such a neighborhood would increase density or could have an impact on property values of other members of the neighborhood.

Mr. Shimp replied that one of the things about the County Neighborhood Model process that Albemarle County does right is when going through this process and looking at the ordinances that are required to be developed today it is very difficult not to build a quality development. They see that in all of the new developments. Looking at the home prices of new construction in Albemarle County there is a reason it is expensive. It is because of the site work and the creation of new neighborhoods is very expensive. In this time in his mind the way Albemarle County works is it would not be possible to go in and not build a nice neighborhood in this location. Density is a matter of impacts to, say, traffic. If you go in here and build five 4,000 square foot homes that were 35' tall the homes would be seen from the entire neighborhood. Maybe some folks would like that and some would not. But, that would have its own impact in its own sense. To say just because of the density itself, he did not believe they could say it would cause an impact in this case. The design could, which is why they try to focus on the buffers and landscaping to preserve the feel of what is there. However, it would provide for housing in the development area which is a goal in the urban area.

Mr. Randolph asked whether the owners Michael, Warren T; Jarrett Michael Stephens & Victoria Von Der Au Michael have lived on this property.

Mr. Shimp replied that he did not know exactly. However, there is an old house site on the property that a family has owned for a long time. He did not know if they ever lived there in that house.

Mr. Randolph noted apparently they currently don't live there because there is no house on the site and their residence is identified as Irvington, Virginia. He asked if Mr. Shimp was familiar with the site and if it would be a surprise if he suggested there could be two cemeteries on this site.

Mr. Shimp replied yes that it would be a surprise.

Mr. Randolph pointed out there is actual mention in the Albemarle County Deed Book 61-199 that the deed conveying the property to Mr. William Early, who was probably a relative of John Early for whom Earlysville is named, mentions there was a family cemetery that was owned by the previous owner Joel Terrell. He was on the site today with the president of the Historical Society and they found potential evidence of two cemeteries on the site. One of them is actually adjacent to where Mr. Shimp plans to put the driveway into the site. If Mr. Shimp was to go through with his proposal and he was authorized to do so, what would he plan to do in construction if suddenly he found two cemeteries on the site?

Mr. Shimp replied that was very complicated. He would say for one thing going back to the reference in Deed Book 61 he knows that was a much larger parcel. The Deed Book would be something like 1920 there about. So this property is the parent track of all the neighborhoods around it. So there have been some cemeteries at some time. He has been on the site and not seen that. There are required steps that must be taken if they run across a cemetery. There are regulations that dictate that and certainly they would have to follow those if that came to be.

Mr. Randolph said on that site if in fact there are those two cemeteries one of them may hold the remains of a Mr. William Early who was married to Elizabeth Garth Michie and Michie Tavern was at that point located in Earlysville. So there is a very good possibility that Mr. Early is related to John Early for whom Earlysville is named. There could be quite a bit of history on that site which might be worth looking into. He just thought he would bring that up for Mr. Shimp to be aware of.

Ms. Firehock said he mentioned the importance of preserving that lawn area in the center as part of the reason he did not want to have the wide road to meet County subdivision standards. She would like to hear a little bit more about what his intended use of that is since it says community lawn. She asked if that was to be improved in any way. She asked if he anticipates people using it and if they are going to do any kind of safety improvements. She imagined children running back and forth from their house to play on this lot and asked him to tell the Commission a little bit more about the design and intention for that.

Mr. Shimp replied that the intention certainly is to make it a very flat usable lawn space. There is a garden element, which would be a community garden. It may not be a vegetable garden per say, but a place where folks can pool together if they want to make a nice rose or boxwood garden. The community garden could be within a portion of this space for the neighborhood association. Part of the benefit of a 14' wide road is someone would not feel inclined to speed on it and people would feel safer crossing a narrow street. One of the things they found may be seen in this neighborhood is a very wide street, which someone would feel very comfortable to

go down. However, that is not in our mind appropriate for 13 lots. He clarified the road does meet Code, but it is just not what staff recommends. Under the ordinance it can be built this way. However, staff is just suggesting that it should be wider and have more parking. He reiterated the down side of that is they would lose some of the functionality of this important civic space and also create a less safe road if it was wider rather than being narrower.

Ms. Firehock said he won't find her making a case for wider roads personally. However, she has a follow up question about the trees indicated on the plan. Since this development necessitates taking down some mature trees and the plan shows some new trees in the circles in front of the houses, she asked what types of species of trees he plans to replace such as large shade or small ornamental trees. She asked if thought has been given to that at this stage.

Mr. Shimp replied yes, they would do large shade trees around the perimeter circle. The frontage would have a mixture of large shade trees and probably ornamental trees, which would be something that is larger and bushier to be decorative and provide a separation from the road, somewhat to the side lots of Old Brook Road.

Mr. Loach said in the staff report it mentions the potential worsening of storm water drainage impacts from that and asked that Mr. Shimp address the issue and any planned mitigation factors.

Mr. Shimp pointed out the largest thing they took away from the neighborhood meeting was their concern about storm water drainage impacts. From his experience in Albemarle County storm water drainage impacts is a concern that everyone takes seriously and rightfully so because neighborhoods, like the ones around them, were not given as much attention as it should have so they have drainage problems. It is noted on the plan and should be proffered as such that everything will be graded to drain out towards Old Brook Road as a storm sewer system. Currently the lot somewhat slopes and goes up very steeply and then goes from Old Brook Road back. The water from the site flows into a little ditch that goes down to a house in the cul-de-sac right behind us. The proffered plan requires essentially flipping that grade back towards Old Brooks Road. The little open space in the top corner remains wooded and the drainage would go that way. It is about one-half or a quarter acre draining back that way versus about two acres now. So they will be reducing the runoff in that direction.

Mr. Lafferty asked how long they have been aware of the objections of the Planning Department.

Mr. Shimp replied since their pre-application meeting staff brought attention to conflicting items in that there is a density of 3 to 6 units an acre, a desire for infill developments to be on the higher side of that, and then a discussion about the character of existing neighborhoods being preserved. So that is something staff has brought to their attention.

Mr. Lafferty asked when it was brought to their attention.

Mr. Shimp replied it has been months since sometime back in August. They have had an understanding that they simply disagree and say that there is a plan that can work for this. It is a higher density that works and it does not take away from the character of the neighborhood. That is largely how they have gotten to this point. They feel that at this point they need an

action by the Planning Commission to say what the right way to approach this is. They have known that all along, had discussions about that and just looked to the Commission to weigh in.

Mr. Lafferty asked about the mixed use since they are using the Neighborhood Model.

Mr. Shimp replied they were in agreement with staff on that. First, it does not always require the Neighborhood Model and certainly it would be out of character with what exists. Therefore, they have excluded that.

Mr. Lafferty commented that it bothers him a great deal that he has come to the Commission with no proffers and has not addressed many of the concerns of the Planning Department. He almost feels like it is not even a valid application.

Mr. Shimp responded that he must respectfully disagree with that and say it relates to proffers. They think these are not negotiable because they are going to follow the policy and it has got to be done.

Mr. Lafferty asked why he has not done it before this meeting.

Mr. Shimp replied when the application was submitted in December for the January meeting there was discussion by the Board about amending how the policy was enforced relating to existing density. That was not resolved until around the end of December. It has not been 100 percent resolved yet. However, there has been a series of actions taken consistent. So they now feel they know what the expectation of the Board is and intend to provide that.

Mr. Lafferty asked if he could have written in the plans that they would do whatever the expectations were instead of saying he will do it tomorrow.

Mr. Shimp replied their expectation is if they get past this meeting tonight and do not provide the cash proffers our plan would be denied by the Board of Supervisors. They have complete confidence in this Commission to make that recommendation one way or the other and the Board of Supervisors to adhere to it.

Ms. Monteith commented that Mr. Randolph had a good point that if an application is not complete then perhaps it should come to the Commission in a work session format. It seems like it uses up a lot of times for staff, the community and Commission. Therefore, she thinks that should be considered in the future.

Mr. Shimp said that he did not think the application in any way was incomplete from the standpoint of what is required. There is an element of a disagreement perhaps or it is a different look at how the Comprehensive Plan could be interpreted for this property. But, that is not a matter of they have heard what they said and ignored it. It is a matter of they have discussed it all along and said the Planning Commission and Board of Supervisors will sort this out. That is why they are here.

Mr. Lafferty asked if he was implying the Planning Department is wrong.

Mr. Shimp replied if the Planning Department's position is that anything over the existing density is not compatible and completely void in relation to the Comprehensive Plan, he thinks that is wrong and would encourage them to speak. He thinks what staff is saying is they review their

taking on this because it is not defined or absolute on how to interrupt what the character is and that ours is a little too far away perhaps from what is there to be consistent.

Mr. Lafferty asked how long did had he known that the Planning Department recommended denial.

Mr. Shimp replied they had always assumed they would and have always told them that. Again, this is not a matter this is not safe or it does not meet Codes. It is a matter of this is not something that has come up before. There has to be an interpretation of what is the relationship between existing neighborhoods and infill development in these places. That is what needs to be decided.

Mr. Morris invited public comment.

C. Murphy Moss, resident of 1657 Old Brook Road, said his property was four doors toward Rio Road from the applicant's property and on the same side of the street. They strongly oppose this application and support staff's recommendations to deny it. First, our subdivision Rain Tree is a stable pleasant community of entirely single-family detached homes each facing the street at a density of roughly 2 acres per unit considering the lots of common areas provided. It has operated successfully for around 30 years under R-2 zoning. It provides a Neighborhood Model that fosters joggers, strollers, pet walkers visiting and other amenities. Its arrangement encourages attention to each property's appearance and care. Many properties abut common areas, which not only afford privacy and views but also abound with wild life pleasing to residents. The character of our existing neighborhood would not be preserved under this application as required by the Places29 Master Plan. Second, ours is not a new development anticipating the various combinations of dwellings and farms contemplated under (NMD) Neighborhood Model regulations sought by the applicant here. The application covers 2.6 acres of which the applicant intends to use only 1.6 acres for construction of dwellings. The applicant proposes 13 dwellings which according to staff results in a density of only 4.9 acre per dwelling. Clearly the density of the existing neighborhood would not be preserved under this application as required by the Places29 Plan. Third, granting this application would tax our area with at least 130 more vehicle trips per day not to mention the trips of all the construction vehicles required and what the applicant said would optimistically take three years to complete. He would assure that our neighbors expressed major concerns about such traffic additions, adding to traffic the dust and noise associated with substantial tree removal, serious grading of the site and years of internal street and dwelling construction. They would anticipate substantial disturbance of normal living conditions for our residents for years. For these and other reasons they urge the Commission to follow the recommendations of staff and deny the pending applications.

Grant Webster, resident of 1681 Old Brook Road, said his house borders the requested rezoning property to the south. He commented on the following six items of concern. One, he thoroughly endorsed the Planning staff's recommendation to deny the rezoning of this parcel of land. He believes their insight on the character of our neighborhood is very accurate. Two, this parcel is located in Neighborhood II of Places29. "Residential neighborhoods of predominately single-family homes are located north of Rio Road including Dunlora, Rain Tree, Westmoreland, Woodbrook and Carrsbrook." He would add Field Brook and Still Meadows to this. All these except Dunlora are west of the railroad tracks. Development east of the railroad tracks includes neighborhoods of both Neighborhood and Urban Density levels, Stonehenge and Riverrun. He would have Belvedere added to that list. This proposal by Red Dirt Developments belongs east

of the railroad tracks and not west. There are not duplexes in our area or this type of density. Three, the guiding principles of vision statements list the importance of preserving the character of existing neighborhoods. The proposed project does not meet this goal. Developing this lot while preserving the character of the neighborhood would consist of 3 to 4 single-family homes oriented with driveways entering onto Old Brook Road similar to all the existing homes in Rain tree. Four, on a personal note he has lived in his house for 18.5 years and was the first house built in this last section of Raintree. He expected to hear construction while the remaining 8 houses are being built. Now retired, he has relished the quiet enjoyment of his property. The developer says that his project will take 2 to 3 years to complete. This will start with chain saws to cut down existing trees followed by bulldozers to change the grading including lots of dust and of course hammering and nail guns. After all of this he will be able to walk out into his backyard and see a variable wall of 5 houses 30' high, 20' from the property line blocking out everything to his left. He might as well be in an apartment complex. Five, recently there was a topography study to check the line of sight for traffic coming in and out of the proposed development. It told him he might be requested to cut down trees and shrubbery on his property that Snow's Garden Center planted 17 years ago and even a possibility the bank in front of his house may be requested to be cut down. Six, why rezone only to suit one developer? Look at an aerial view and you will see this project does not belong here. He has not heard a single person from our neighborhood that is in favor of this project. What good is the Comprehensive Plan if a small plot in the middle of a huge R-2 zoned area can be changed for a developer request so he can make money and then leave the area worse off than before? There are plenty of other places in Albemarle County for Red Dirt Development to succeed without alienating a neighborhood. Staff lists a number of issues with this project that his 3 minutes do not allow him to address. In conclusion, he asked the Commission to follow the recommendation of the staff and deny this rezoning request.

Jerry Rainey, of 1673 Old Brook Road, said he was in opposition to the proposal. His leading question: is why here? Why come into a community with hundreds of homes that have been established for 30 plus years with one lot per home facing the street and take 2.6 acres and put 13 homes there? Simple math tells him if they are going to use one acre for common area that leaves 1.6 acres for 13 homes. That is 10 homes per acre, which is just not acceptable. The engineer speaking showed slides of different communities with duplex homes. But, they are designed for that. There was never an intention to put duplex homes in this community. They can look at all the surrounding communities and they are all single-family homes. He had no idea what the infrastructure problems might amount to. A little history in terms of this meeting and the meeting with the developer; he remembers an old saying that you don't get a second chance at a first impression. They met here in August with the developer with 30 plus people. They were pretty much unanimously against this project and expressed the reasons why. The developer was adamant that he did not want to come into a community where he was not wanted. They thought that meeting pretty much solved the problem. The developer came back a couple of months later and said he had changed the plan. All he did was move the homes back. He took a couple of the duplexes off and replaced them with single-family homes. So they are still with 13 families trying to come into this community, bringing in a lot of traffic and a product that no one really wants. In addition to that no one has mentioned that they have no product history. This company is less than a year old. They have never done this before. They don't have anything to look at. They don't have any assurance that this is what they have done over here or go look at this community. There is none of that. He would say again, why here? It is simply to make money. If it is making the community better or not making it worse, then fine. But, he did not see it.

Jim Tierney, of 1650 Old Brook Road, said he represents his family who has lived there for eight years. This plan from our considerations really excluded not only the staff's recommendations but also the community's. Therefore, he was opposed to this for several reasons. One, it breaks up the character of the neighborhood for reasons that have already been described here. Two, there was an impact brought up about the housing values. The suggested price the properties were going to be listed for was $425,000. He would be thrilled if those houses were able to get that kind of amount of money in this market in that neighborhood. Unfortunately, he thinks that is an unrealistic representation of what those houses will go for. Three, he has concerns about the overall safety. He has two children who play in the neighborhood. They live off Old Brook Road. His concerns are the impacts from the additional traffic. On that section of Old Brook Road there is a line of sight on that bend, which may be in compliance but is dangerous. The way that the layout is presented right now they will have additional parking on Old Brook Road, which will further restrict the line of sight for drivers. Four, he also has concerns about the plan to put a cross walk across Old Brook Road to get to the sidewalk. There is only one sidewalk on Old Brook Road, which was on the opposite side of the road. So those residents would have to cross the road right now and he thinks that especially at that bend represents a safety concern. Five, the other impact he would ask to be considered is the impact on Woodbrook Elementary School. The school is currently overcrowded by 60 children. That was partially because of the redistricting from Agnor Hurt, but also because of the large influx of families that came in from the new housing that was placed right off Rio Road. There are no requests for the County to make any expansions to Woodbrook right now. Therefore, he does have a concern about that. Six, there are lots of new houses right now attached and detached houses similar to this plan that are right down the road that have not yet been filled. The construction has not been completed there. Why do they need to place more houses on this location? He would be very interested to see the fill rate in the new developments by Penn Park.

Ira Kreisman, six year resident of 413 Westmoreland Court, said they just learned about this request yesterday. He was in agreement with staff about the change to the character of the neighborhood. He has been speaking to neighbors and friends all day by making phone calls and emails for residents along Westmoreland Court and the other end of the neighborhood. Everyone he has spoken with is in strong opposition to the plan mainly for the reasons that it does change the characteristics of the neighborhood. He was not sure if there is a definition for what the characteristic of the neighborhood would be and what that means as to the density. However, he believes that any reasonable person would say that a change of 2 houses per acre to 4.9 or more, depending on how you look at the acreage used, is indeed a change in the characteristic of the neighborhood. The duplexes alone are a change in the characteristic of the neighborhood. He just wanted to share that with the Commission. His neighbors have been emailing throughout the day sharing their opinions about the proposal. He wanted to make sure that was heard tonight since many residents could not be present. Some of the residents raised concerns about the Comprehensive Plan including the mixed non-residential units. Although that does not seem to be involved in the plan, they are all confused as to why the commercial service and industrial use is in there to begin with. They are concerned about the precedent that might set for other empty lots along Carrsbrook if this were to be approved. All of his other concerns have been addressed by the previous speakers.

Ronnie Roberts said he was a resident of 1095 Ramblewood Place, which is on the corner of Old Brook Road just a short distance from where this proposed subdivision has been planned. He was not in favor of it being placed in this particular area. It does impact the character of the neighborhood as well as the other issues that obviously have been done by the Department of Transportation by reducing the speed limit from a 35 to a 30 mile an hour zone through that

area and also reducing the speed limit on Carrsbrook Drive from a 35 to a 25 mile per hour zone. Traffic conditions are a concern. Also whether what is proposed here involves a private entity to go in and out to the property, which then forces someone else to come to plow the roads other than VDOT. That will then make it difficult for them to get out. Then parking onto the roadway itself will make it more difficult for the plows to be able to push Old Brook Road during inclement weather. The other side, too, is the increased traffic during the summer months when a lot of the children are out moving about in that area. It also pulls the resources from the law enforcement community to be able to come into that area and place whether it is mobile patrols or stationary patrols to be able to deal with some of the speeding motorists coming through there. It is currently a cut through roadway to get back over to 29 when traffic backs up on Rio Road. He is totally opposed to the proposal and supports the Commission's denial of this subdivision.

John Guillot, resident of Berwick Circle in Westmoreland, said he has lived quietly a couple blocks north of the proposed site for more 20 years. There have been so many good points raised already about the harmony of the neighborhood being affected, etc. He would like to address a couple of things particularly that might not have been said. This site sits on a stretch of Old Brook Road which is a main though fare for the entire neighborhood north of Rio. That particular site has perhaps some of the worse sight lines on that road. Through the lower parts of the road towards Rio they have a flat straight, very easily seen, and he was not even sure if they would need a 30 miles an hour zone except there are a million kids that get off school buses there. However, right there the road bends and coming from either direction there is not a good sight line because of the lay of the land.

Mr. Guillot said he was bothered by the drawing of the proposed community. As drawn it seems like an enclave more urban than suburban. It would make these new neighbors experience the neighborhood unlike most of the rest experience it. He thinks they might as well put up a gate fronting on Old Brook Road. There will be two years or more of dirt, noise and heavy vehicle traffic. What is the payoff for the rest of the neighborhood? He thinks the payoff is if it is not there. He is very concerned about water runoff. On another map there was a small pond across Old Brook Road. It is all part of an unbuildable ravine and stream system that is part of the Rivanna Water Shed. There is currently a real problem with standing water at the low point of Old Brook Road just north of this. They are talking about grading the property so that more water would flow into Old Brook. The existing storm drains there can't handle the present flow. This would make it much worse. The ice in the winter makes it terrible there. He concluded that there is a Joni Mitchell song they might be guided by. She sings of seeing a fancy license plate on a car in Hollywood. The plate reads "just ice". She reflects that if not enough people care or unless people holding power in positions of public trust there then justice can become "just ice". The strong doing what they will and the weak suffering what they must. Please give us justice tonight and deny this petition

Donald Layne, President of the Rain tree Homeowners Association, introduced John McDowell, the Vice-President. A lot of good points have been brought up of which he will not be redundant and say again. They strongly support staff's recommendation to deny this rezoning. They have a number of concerns, which he will address. The development is not consistent with the character of the existing neighborhood and it will have a negative effect within the community, especially the homes bordering this development. The 130 trips a day coming out of this development they already know will have a negative impact on Old Brook Road. Left hand turns come to mind. It is not really adequate because when one comes out there it is a blind curve. So left hand turns coming in and out of that subdivision are going to be problematic.

Regarding drainage issues, the residents in Rain tree have been plagued by runoff problems ever since Hauser Homes developed Old Brook Road. They have a 60' or more drop off behind Old Brook Road where the subdivision is going to be built. Now the runoff is substantial. By adding more homes with roofs and hard top surfaces they are going to increase that run off even more. It cost him $10,000 already to try to alleviate the water problems coming off that hill. It filled his pool up with mud. He did not know how they are going to regrade that towards Old Brook Road since that is a lot of dirt. He invites the Commissioners to come to his home to view the problems in the drop off from Old Brook Road to Robin Hill Court and to Brightfield Place directly behind the site. So the developer requested an easement, which he shall read. "Our current plan for the overgrowth project accesses the public septic system by tying into the manhold located on Hartfield Lane. Because tying into that location will require us to disturb Old Brook Road and Hartsfield Lane, the Albemarle County Service Authority has asked us to explore getting an easement from Rain tree Homeowner's Association to tie into our sewer lines coming down to Brightfield Place." They are not going to support or entertain an easement for tying into our septic systems coming through our property.

John McDowell, the Vice-President of the Raintree Homeowners Association, said he has lived in Raintree for 26 years and has been in that area when he walked his dog. He will be quite honest that he had no idea how they are going to be able to grade that area because there is a 20' to 25' drop, a tremendous amount of earth. The other thing is part of a zoning issue in it was a farm and the old lady who lived there sold the rest of the farm to Raintree under the proviso that she would live there until she died. After she died it became the most predominant part of Raintree and was unzoned. He wished he could buy and build a house up there.

Kathy Joseph, President of the Fieldbrook Homeowners Association, said all of her concerns have pretty much been addressed by her predecessors. However, she has a major concern with fire and rescue getting through that area since it is very tight with the narrow roads. They have that same problem in their neighborhood with people parking on the streets. Fire and Rescue cannot get through. They had an incident just recently with the ice storm that Fire and Rescue did have a problem with getting through. She would strongly support the denial of this request.

There being no further public comment the public hearing was closed and the matter before the Planning Commission for discussion and action.

Mr. Morris invited the applicant for rebuttal.

Mr. Shimp replied that he would wait until after the questions.

Mr. Morris invited questions or further discussion from the Commission.

Mr. Dotson asked if there anyone from the Engineering Department present tonight to address questions about the roadway design in any depth beyond what they have.

Ms. Baldwin responded the engineer that reviewed it is not here. But, her recommendation was exactly what she reiterated in the staff report.

Mr. Benish pointed out that he wanted to clarify one thing and make sure the facts are straight. A couple people mentioned unzoned property. The property is zoned R-2 and at 2.6 acres it

allows 5 units by right without a zoning action. He just wanted to be clear there is some by right development potential on the property.

Mr. Loach said a number of people brought up the potential for additional developments of this nature in and around that neighborhood. Are you aware of what that potential is?

Mr. Benish responded that across the street there are a couple other parcels that are of similar size. As some people have mentioned there is pretty gnarly topography. So staff has not accessed what their development potential is. However, they are theoretically lots that are 2 to 4 or 5 acres he believed that are across the street and ones that have a single house on them. There are those lots. In the next neighborhood over there are a couple of small 4 or 5 acre parcels that they potentially under the current ordinance they could do additional lots.

Mr. Morris closed the public hearing to bring the matter before the Planning Commission for discussion and action. He invited the applicant to make a rebuttal.

Justin Shimp asked to address a couple of items quickly. Currently it is a little hard to see around that curve. However, they will take that hill down from 15' to 20' high to being flat. The survey crew was out to figure out what the nature of that would be to ensure they have the right site distance, which they do. With this entrance that is going to look a lot different in the development than it does today. So those things have been verified and it is a technical requirement. They are found to be satisfactory. When doing a project like this he did not think they expect the neighbors to come out and be terribly excited about it. It has been an undeveloped parcel for quite a long time in fairly established neighborhoods. They understand that and try to be as respectful of our designs as they can to something that works. They looked at the guidance of the County and the Comprehensive Plan for a lot of those things. Development is always going to be in somebody's yard. This is a unique neighborhood. One of the important things to remember here is that the principles about the infill development encouraging that to be higher density because putting people in development areas is a goal of the County. Yes, it does cause a temporary disturbance of a mature neighborhood. But, they have to look past this one parcel and this one spot onto the bigger picture. That is the basis of this kind of design in this location to put people where there are existing services and infrastructure for them. There was a question about the value of homes. That is from a very experienced builder in this area. It was not made up. It has been looked at and they felt it was realistic based on similar products in the area, which there are several neighborhoods of. Yes, there are some lots on the ground now. But, they have been at this for a few months now and it will be many more before it gets approved if it were to be approved. There is a site plan to do, which can take a year. The initial site work and construction, such as the cutting of trees and things, may take 4 to 6 months. There is going to be some disturbance at that time. Then, it is a smaller scale of construction after it, which will take a little time to build all of the houses. But, by the time they get to that point he envisions the need for lots, which is why they are doing this project.

Regarding the storm water system on Old Brook Road, Mr. Shimp noted they are not dumping it directly across the street. It is going to go through a pipe system out. They have talked with VDOT about that. If it has to be upsized and repaired, they will have to make those repairs. One of the problems is there is a long stretch of downhill without any storm inlets on that one side, which probably contributes to the ponding of water. They are going to add another storm inlet in there, which should take that risk away. He thinks that covers the items that he heard that he can comment to. Again, he certainly would not have expected from the beginning that

folks would be excited about an attached product or something different in their neighborhood. They don't think just because someone lives in an attached product it makes them a bad neighbor. It is a different kind of product and provides a different option and efficiency of land use in an area that is convenient to goods and services. Therefore, that is why this is a good plan. He thanked the Commission for the opportunity for the rebuttal.

Mr. Morris invited further discussion.

Mr. Dotson said the staff report was very straight forward and balanced. It states some favorable and unfavorable factors. The weights of them are sort of indicated. It seems that there are some real fatal errors here in this proposal. As submitted it is not ripe. He would ask for further discussion, but he would be prepared to move for denial.

Mr. Randolph said the Commission's role is to basically take change and growth and broker it in a responsible manner. After they have spent the investment of time in revising the Comp Plan he did not hear tonight a compelling need to waive residential zoning to a Neighborhood Model. He has not heard the case to do that. Certainly there is an adequacy that many people in the audience have talked about concerning the existing stock on the market or being constructed within this area yet alone within the count to provide housing similar to what is proposed here. So that is the philosophical level. The specific level and why he will feel compelled to vote against this is that he feels that being on site today that the traffic exit is problematic from the crown of Old Brook Road. He questioned VDOT's analysis and why there was no proffer provided for the Planning Commission this evening. The road for a fire truck is not 22' wide, which is what the county engineer recommended. He, too, agrees with Ms. Firehock that he hates to see wide roads, but when it comes to safety he thinks that trumps aesthetics. He thinks 22' would be critical. This project is inconsistent with the character of the community and incongruous with the character of the community. The storm water management plan is not spelled out here, which is a critical component. Finally, there is the potential of two historically significant cemeteries on the site. The engineer has indicated they would plan to raise and level the slope that is right on Old Brook Road, which is where one of the cemeteries may well be. For several reasons he cited, he would be voting against this proposal.

Ms. Firehock asked to begin by noting if this development were an island not in the context where it is currently situated she did not have any particular objections to it. She has no problem with duplexes or townhouses or density that they seek to protect in the rural areas. However, she is inclined to vote against this. She will wait to hear the opinions of the rest of the Commissioners. The concerns raised were storm water management, the lack of consistency with current neighborhood character in terms of the lot alignment, safety concerns that have been raised, and also the lack of a proffer relating to affordability. Those are the main objections.

Mr. Loach agreed with Ms. Firehock that he did not see the development itself as being problematic. He did not see 13 homes and 130 car trips a day as something that would be totally detrimental for the neighborhood. That said he thinks the applicant really answered it for him when he said to look at the bigger picture. He thinks the deciding factor, as Mr. Benish pointed out, is the number of other parcels that are similar to this that could be developed. It is not the one development that changes the character, but multiple developments that could occur that would change the character of the neighborhood drastically. He lives on a block that has a range of density from one house per acre to densities higher than that in Crozet, which they planned since they knew it was coming. It was part of the parcel of our design whereas he

has heard from many persons today that the way the area has been developed, as somebody mentioned between the east and west, is the intensity of development that in another area is absorbing that density. So again, he would go back and agree with Ms. Firehock that he does not think the development itself is bad. He was more worried about the precedent it would set and if he was allowed to, as a Planning Commissioner, look at in the Neighborhood Model if a development is within the character of the community that is what he is worried about. So he did not think he would be supporting this request.

Mr. Lafferty said he did not want to reiterate what everybody else has said. However, it just appears this application is incomplete since it did not address the storm water and a lot of things. He was also concerned there may be a cemetery on the site. It was almost like it was being designed tonight with some of the things that were brought up. Therefore, he cannot support it.

Ms. Monteith noted she had already made her comment.

Mr. Morris supported all of his fellow Commissioners on what they have said. One of the things he is very concerned with is the width of the road for emergency vehicles to get in to turn around and actually protect the people who would be living in these 13 units as well as the storm water and the nature of the neighborhood. Therefore, he cannot support this. He noted there were three items the Commission would be voting on. He suggested the Commission take them in reverse order.

Mr. Lafferty agreed about taking the requests in reverse order.

Mr. Morris invited a motion on the private street request.

Motion: Mr. Dotson moved and Mr. Randolph seconded for denial of the private street waiver for ZMA-2013-00015, Northfield Green for all of the reasons stated in the staff report as unfavorable factors.

The motion passed by a vote of 6:0.

Mr. Morris noted the next item was a waiver of the mix of use in the Neighborhood Model District (NMD).

Mr. Kamptner noted as a reminder that this is just a recommendation to the Board of Supervisors.

Mr. Dotson noted this was an odd one since he did not think they would want to propose mixed uses in this development. He assumed the appropriate action would be to recommend approval of the waiver of mixed uses because it is not appropriate to have mixed uses on this site.

Mr. Morris asked if the motion makes sense.

Mr. Kamptner noted it was under the assumption that if the Board were to decide to rezone the property to Neighborhood Model the Commission recommends the mixture of uses waiver be approved. That is ultimately the Board's decision when they consider the zoning map amendment.

Mr. Lafferty asked Mr. Dotson if that was his motion, and Mr. Dotson replied yes.

Motion: Mr. Dotson moved and Mr. Lafferty seconded that if the Board were to decide to rezone the property to Neighborhood Model in ZMA-2013-15 Northfield Green the Commission recommends approval of the waiver of Mix of Uses in NMD.

The motion passed by a vote of 6:0.

Mr. Morris noted the last item was the zoning map amendment.

Motion: Mr. Dotson moved and Mr. Lafferty seconded to recommend denial of ZMA-2013-15, Northfield Green for the reasons as cited in the staff report as unfavorable factors and identified by the Commission in its discussion.

The motion passed by a vote of 6:0.

Mr. Morris noted the matters will be forwarded to the Board of Supervisors to be heard on a date to be determined with a recommendation for denial of ZMA-2013-15, Northfield Green.

The Planning Commission took a recess at 8:00 p.m. and the meeting reconvened at 8:08 p.m.

b. **ZTA-2012-00012 Steep Slopes**
The Planning Commission will hold a public hearing to receive comments on its intent to adopt an ordinance to amend Chapter 18, Zoning, of the Albemarle County Code by establishing a steep slopes overlay district and regulations pertaining thereto. This ordinance would amend Sec. 18-3.1, Definitions, by adding definitions of two classes of steep slopes of 25% or greater – managed slopes and preserved slopes, and amending the definition of critical slopes; add Sec. 18-37.1 through 18-37.6 to establish the district, establish standards and procedures for disturbing and preserving managed and preserved slopes; amend Sec. 35.1, Fees, to provide that no fees are required for certain applications pertaining to steep slopes; and amend Secs. 18-4.2, Critical slopes, 18-4.2.1, Building site required, 18-4.2.3, Location of structures and improvements, 18-4.2.5, Modification or waiver, 18-4.7, Open space, 18-5.1.39, Off-site employee parking for industrial use, 18-5.1.44, Farm worker housing, 18-32.4.1.3, Contents of preapplication plan, 18-32.5.2, Contents of an initial site plan, 18-32.7.5.2, Location of utilities above and below ground, and 18-33.4, Uniform procedures for owner-initiated zoning map amendments and special use permits, to add references to managed or preserved slopes where critical slopes are already referenced, as appropriate. 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. (Bill Fritz)

AND

c. **STA-2014-00001 Steep Slopes**
The Planning Commission will hold a public hearing to receive comments on its intent to recommend adoption of an ordinance to amend Chapter 14, Subdivision of Land, of the Albemarle County Code, by amending Secs. 14-216, Contents of preapplication schematic plat, 14-302, Contents of preliminary plat, 14-304, Request to disturb critical slopes, 14-404, Lot location to allow access from lot onto street or shared driveway, 14-410, Standards for all streets and alleys, 14-420, Location of utilities above- and underground, 14-422, Sidewalks and

planting strips, to add references to steep, managed or preserved slopes where critical or steep slopes are already referenced. 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. (Bill Fritz)
AND

d. **ZMA-2014-00001 Steep Slopes**
The Planning Commission will hold a public hearing to receive comments on its intent to recommend adoption of an amendment to the zoning map adopted under Sec. 18-1.7, Zoning Map, contained in Chapter 18, Zoning, of the Albemarle County Code by adding one or more maps delineating the boundaries of the steep slopes overlay district and depicting managed and preserved slopes of 25% or greater therein. A copy of the map and its adopting ordinance are 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. (Bill Fritz)

Mr. Morris said the Planning Commission would be briefed on all three items, but an action would be needed on each item separately.

Bill Fritz presented a PowerPoint presentation to provide information and recommendations for ZTA-2012-12 Steep Slopes, STA-2014-1 Steep Slopes, and ZMA-2014-1 Steep Slopes.

In January 2009 the Board of Supervisors approved a zoning text amendment (ZTA) allowing administrative approval of development on critical slopes in the development area if the slopes had been created by an approved plan and to allow replacement of structures. That ZTA has now been largely undone by the "Sinclair Decision". It now has to go the Board of Supervisors for a special exception. Additional Resolutions of Intent were adopted to implement additional changes to how development on slopes is addressed. To develop an ordinance the County has worked with the public by holding two Roundtables, a work session with the Board of Supervisor appointed advisory committees, and mailed approximately 5,000 notices directly to affected property owners. Other work has included a work session with the Board of Supervisors in November, 2012 and the Planning Commission in August, 2013. Staff considered all of the comments made as a result of the public outreach or work sessions, reviewed the Comprehensive Plan, studied how other localities regulated critical slopes, and applied our own County experiences in processing a large number of waivers to determine the most important issues to the community. That led staff to develop some key concepts in developing a new ordinance.

Current Situation
All slopes of 25% or greater are defined as Critical Slopes.
Disturbance of Critical Slopes requires a special exception.
Certain activities are exempt from critical slopes regulations.

Twenty-five percent slopes are slopes that rise or fall 1 foot over a 4 foot run or put another way a slope of approximately 14 degrees. The ordinance sets out the criteria for reviewing a special exception.
The review of a critical slopes exception addresses the potential adverse impacts caused by the movement of soil and rock, storm water run-off, siltation, loss of aesthetic resources, and, possible septic system failure.

Not all activity on critical slopes requires a special exception. For example, for lots that existed prior to the adoption of the critical slope regulations the establishment of the first single family dwelling unit is exempt provided that no alternatives are available. Access ways, public utility lines and appurtenances, storm water management facilities, and any other public facilities necessary to allow the use of the parcel would not be subject to the critical slopes requirements provided that no reasonable alternative location or alignment exists.

In developing the ordinance that is before the Commission tonight staff with the direction of the Board wishes to stress some key concepts:
Ordinance is only for the development areas.
No expansion of areas designated as critical/steep slopes.
All critical/steep slopes retain protection.
Protection is tiered.
Creation of an overlay district designating "Preserved" and "Managed" slopes.
"Preserved" slopes may not be disturbed except for a limited number of permitted activities.
"Managed" slopes may be disturbed by right, subject to applicable performance standards.

Criteria used to designate areas as Preserved or Managed:

Preserved Areas
The slopes are part of a system of slopes associated with a water feature.
The slopes are part of a hillside system.
The slopes are identified as a resource in the Open Space Plan.
The slopes are identified as a resource in the Comprehensive Plan.
The slopes may be of significant value to the Entrance Corridor District.
The slopes are a contiguous area of 10,000 square feet or more or a close grouping of slopes less than 10,000 square feet.
The slopes are shown to be preserved by a prior County action.

Managed Areas
The contiguous area of critical slopes is limited or fragmented.
The slopes are not associated with a water feature.
The slopes are not natural.
The slopes have been significantly disturbed prior to June 1, 2012.
The slopes are located within previously approved single family residential lots.
The slopes are shown to be disturbed by a prior County action.

These criteria are not absolute and sometimes conflict. Staff prepared maps using these criteria, as included in the executive summary.

The first map labeled Steep Slopes Overlay District – Pantops shows in green all of the "Preserved" slopes and all of the "Managed" slopes in orange. Together "Preserved" and "Managed" slopes show all existing critical slopes shown on the first map.

In the Piney Mountain Neighborhood Steep Slopes Overlay Map green areas are preserved slopes and orange slopes are managed. This area shows some slopes which exhibit mixed characteristics. The area near the river behind the former Badger Powhatan site is manufactured which would tend to make them managed. However, due to their size and location near the floodplain of the river we have proposed them to be managed. Other slopes

near the entrance to Briarwood are fairly contiguous large areas. However, due to prior approvals they are marked as Managed to reflect prior actions.

The map also shows things that are taken care of in the ordinance. He pointed out large areas which are on lots. Those areas would be marked as Managed because they are on existing lots. The way the mapping is done it creates large polygons. It is pretty problematic to crop these. Staff spent a lot of time preparing these maps.

Managed slopes may be disturbed. Staff is recommending development standards to address the potential impact generated by developing these slopes. When cut and fill occur slopes steeper that the creation of a flat area can result in the creation of slopes greater than previously existed.

In the presentation it shows graphically the kind of development standards staff has proposed. This is a result of all the research staff did. Staff did extensive research in communities all over the United States and outside of the country in Canada, Australia and New Zealand.
One of the questions raised by Ms. Joseph is the diagram, Land Form/Graded Slopes, and whether the ordinance mandates that sort of curvature. It does not. What it is getting to is the rounded components. Staff certainly encouraged the natural land forms, but it is virtually impossible to draft an ordinance that would mandate that kind of curvature.

Activities Permitted in Preservation Areas –
Expansion of an existing single family dwelling.
Construction of the first dwelling on an existing lot. The construction of the first dwelling may occur in Preservation Areas only if sufficient area outside of preservation areas is not available. This is virtually identical to the existing ordinance dealing with critical slopes.
Necessary public facilities.
Trails
Accessory uses and structures to a dwelling unit.
Distribution facilities for water, sewer, energy and communications.
Any activity authorized by an approved legislative action.
- Any use allowed by right in the underlying district if new topographic information is submitted to show the slopes are less than 25%

The ordinance includes criteria to determine if public facilities are necessary. Staff added those to the ordinance. There is nothing like that in the ordinance now. So it is somewhat problematic to administer:
Insufficient area outside of preserved slopes.
Avoids impacting other resources such as floodplain.
Consistent with comp plan.
Necessary to provide interconnection
Creates an unnecessary hardship

The last provision was added based on the last work session of the Planning Commission. This provision allows development on slopes of less that 25% without requiring the developer to seek a rezoning of the overlay district. This is an acknowledgment of the maps staff was working from were developed in July, 2012. Activities have occurred since those maps were done. Therefore, the maps may show them as critical slopes right now. If new mapping is prepared either by the county or by field run topo, but of superior quality to what they have, then that would trump this and the activities are now permitted on there. That was a way of

administratively addressing all of those changes without having to go through a big effort, which was something the Planning Commission pointed out before.
This also addresses some of the concerns that Marcia Joseph has brought up in her letter. It asks what if there is a particular stream or pond shown on a property and that has gone away? Well it is gone away and the new topo will reflect that and allow the use then to occur. For the particular property about which Ms. Joseph has raised concerns, it is very likely that in the next round of County mapping those features will go away as they update the mapping. That is going to happen potentially this summer.

Mr. Cilimberg pointed out the new state maps have already been done, and Mr. Fritz noted staff would be adding that to the layers.

Mr. Fritz continued the presentation.

If the Board of Supervisors adopts the maps as recommended by staff it is only the designated Preserved and Managed areas that are being adopted. All the underlying data is just that. The roads are potentially going to move. Lot lines are going to move. Streams may move because of approved development or other things. Again, it is the designated areas that are being adopted.

The next map in the presentation shows houses with critical slopes surrounding them. Under the current ordinance any disturbance of these slopes to construct a deck, shed or terraced garden involving a 2 foot retaining wall would not be permitted unless a special exception was applied for and obtained. This requires an application, fee and hearing by the Board of Supervisors. These factors may tend to result in the homeowner either not undertaking the improvements or simply installing the improvements without a building permit. Under the proposed ordinance the owner would need only apply for the appropriate type of building permit and verify that the design standards are being met. For most residential development types adherence to the design standards will be a very simple matter likely not requiring any special plans or on site design.

One of the other questions that arose is what if the property shows that the slopes are somewhat close to the property line. If they wanted to regrade the property so that the toe was closer to the adjacent property than the ordinance states there are two provisions in the ordinance that allow modification of that. One is the zoning administrator can do it. The second is if the applicant gets an easement from the adjoining property they can do it. Therefore, there are two safety valves there that would allow development to occur at the toe or top of a slope to be closer to the property line. There is a provision in the ordinance to address that concern.

Some of the benefits of the Steep Slopes Overlay District are:
Increases protection for the most important slopes.
Allows reasonable use of the County's development area.
Provides certainty in development.
Decreases applicant cost and County review costs.
Addresses the decision of the Virginia Supreme court in the *Town of Occoquan v. Elm Street Development, Inc.* case.

Staff recommends that the Planning Commission support the three actions for the zoning text amendment, zoning map amendment and subdivision text amendment and recommend approval to the Board of Supervisors.

Mr. Morris invited questions for staff.

Ms. Firehock asked what the decision in the Town of Occoquan case was that they are trying to meet.

Mr. Fritz replied it was an unpublished decision of the Virginia Supreme Court (April 6, 2012), where the Court held that Virginia Code §15.2-2288.1 prohibited the town from requiring a special exception to allow the disturbance of steep slopes for a proposed townhouse development that was otherwise permitted by right. To reach that conclusion, the Court characterized the special exception as a density related permit which was therefore prohibited by the statute.

Mr. Randolph noted on page 2 it says the slopes are part of a system of slopes associated with a water feature. He asked staff to define a water feature and if that includes a wetland?

Mr. Fritz replied it includes a wetland, a pond, and a stream and in some cases it even included storm water detention facilities. In the Pantops area there was a storm water management facility. It is another example where slopes and water features were manufactured, but they have the slopes around it designated as preserved. It is based on the extensive amount of steep slopes that are there and the prior action of the county to say those areas should not be further developed. It could be all those things. They even looked in some cases at swales that they were just not sure of whether or not they constitute a headwater.

Mr. Randolph asked under this proposed system if someone has a property in the development area which is defined as managed, whether that homeowner could exercise a by right permit even if there was a water feature, a hillside system or a wetland in the back yard contributing to a stream.

Mr. Fritz replied no if there are other overlays. For example, if there was a WPO, which is not a buildable area, you cannot build in a Water Protection Area. Even if the slope were marked as Managed or it is a Preserved slope but there is an existing house and they want to build a deck and extend into the WPO area, the WPO regulations would then say no. The ordinance has a clause that says you have to meet all other applicable regulations.

Mr. Randolph said he raised the question because he observed in Glenmore that a house went in with a significant slope in the back yard. He commented at the time to the bull dozer operator that he was surprised in Albemarle County they could do that with the degree of wetlands in the back yard. The bull dozer operator said he lived in Virginia Beach and they can't do that in Virginia Beach. He was concerned how this is going to work because he knew it was wetlands and observed it as wetlands before it all got bull dozed over. When it is wet during the winter and there is runoff there is significant water. However, they have changed the ecosystem and therefore affected the tributary that goes into the Rivanna. Since the County is now expected to be much more sensitive to water features, how can the County be certain that this new managed slopes approach will not result in an open season on developing slopes?

Mr. Fritz replied if those slopes were critical that were being disturbed they should not have been disturbed under the prior ordinance without getting a special exception unless the activity was an exempt action. He would somewhat doubt it if it was within the Glenmore Subdivision because it would not have been a lot existing prior to the ordinance. The WPO has provisions

that do allow for some disturbance within the WPO. However, he would not pretend to be an expert on the WPO. The answer to the specific question is if those slopes were critical a year ago when he saw that action occurring it should not have been happening. If those slopes were critical and they are now being marked as Managed or Preserved but associated with an existing residential development, they would still have to go through the WPO to ensure that they are not violating that WPO. He did not know any of the details of that particular lot. Therefore, he did not know if they did all of those things.

Mr. Randolph said he did not know either. He was concerned with the implication of increased slope alteration to erosion, runoff and storm water management. He asked what kind of protections are they seeing built into this policy in the developed area as they move over to two categories of definition of slopes to ensure that if Managed slopes do become subject to alteration that there really are strong erosion and storm water management controls in place.

Mr. Fritz replied he would suspect there are probably individuals regrading their yards, putting in sheds and terracing their lawns right now without getting the appropriate building permits. It is in part because it is a hassle to go and get. This should encourage them to get the permit because it is not as hard to get, which means they now can really analyze those things that are going on. Also, they have performance standards that never existed that are in addition to any other erosion and control measures that ever existed before. The reason he can't say is because we are a complaint driven organization in terms of the violations. If your neighbor goes and terraces their yard and you don't have a problem with it, then you are not going to turn them in. It is possible that you might want to do yours in the future. He is sure that happens. Hopefully by making the ordinance easier to comply with people will comply with it and they have the performance standards that are designed to provide better assurances to minimize impacts.

Mr. Randolph said he understands that staff is a scarce commodity, especially their time. With this dual level slope management approach will there be increased staff attention to managed slopes to ensure that it is easier for people to do this, but ensure compliance?

Mr. Fritz noted it was actually easier for staff to do it this way because they won't be processing waivers which are very time consuming. Instead, staff can focus on actually reviewing the projects. They have performance standards, which have been worked on by other staff including the county engineer and Ms. Echols. They pulled best management practices from a wide variety of locals to try to come up with something. They questioned whether these things are going to be workable and are they really going to improve the protections of those soils in the area and make it relatively easier to review. Staff believes the answer is yes. Staff will actually have additional provisions in the ordinance to point to and say no, since they really do need to round those slopes and put in reverse slopes, which don't necessarily exist now.

Mr. Dotson commented staff said he had changed something to reflect the very bottom item and asked where in the text he would find the words that achieve that.

Mr. Kamptner replied it was in section 30.7.4.b.1.h.

Mr. Dotson commented he was a little confused because this is a zoning overlay and it sort of jumps ahead actually to another point. They talk about amending the district boundaries and taking land out, which is one remedy. However, they also have this.

Mr. Fritz replied that was the previous remedy they had. Staff decided to go ahead and leave that in case someone really wants to go through the whole process of amending it, or if they are doing some other rezoning at the same time and they want to tack on an amendment to the overlay district. For example, if you are rezoning from residential to commercial and then want to say the topo is wrong and the overlay district ought to be amended. They would be updating all the maps simultaneously. Therefore, they left in the rezoning option.

Mr. Dotson said this is sort of like the 1040 EZ or one could go the long form.

Mr. Fritz replied that was a good analogy.

Mr. Dotson asked if at any point he considered a deminimis size. He looked at these maps with a magnifying glass and some of them were a size similar to if he took a pen and made a dot. They seem tiny and don't seem like they are worthy of anybody's concern since they are so small.

Mr. Fritz replied in some cases they would mark those as Managed. When they went through the maps it was very time consuming since it goes down to about 60 square feet, which is the smallest pixel that it will pick up in a critical slope area. Many of those would be marked. However, one of the factors they found in some cases is it was a block here and there that was associated with a larger piece. So they went ahead and said that is a system and that area should be protected. Therefore, it was sometimes yes and sometimes no. There is not a deminimis.

Mr. Dotson pointed out that he looked at a couple of the maps and could find sites where there were like two dots that were not near each other, which were colored as Managed as opposed to Preserved.

Mr. Fritz said to answer his question: did the Commission talk about that? No. However, that topic did come up in the many layers of conversations, but staff did not sense any great support for that kind of concept. The support staff felt the best way to proceed was to go ahead and map these as systems. If they have a little tiny area, but it is part of a larger system, mark it as Preserved. Otherwise, mark it as Managed. It was brought up at various points. There was not a lot of support for that concept and staff did not propose it.

Mr. Dotson said as a landowner if he had one of these little dots that is labeled as Managed and it was smaller than this carpeted area how would that constrain his behavior to have it left labeled as Managed?

Mr. Fritz replied if it was labeled as Managed he would be able to develop it, but just meet the performance standards. He could not wind up with a retaining wall that was 10' tall since it would have to be tiered. If the slope was over 2:1 for a distance of more than 20' in elevation he would have to put a reverse slope in to slow the water down. But, they could develop the property.

Mr. Dotson asked if he just wanted to wipe out the slope he could do that, and Mr. Fritz replied yes as long as he meets the design standards.

Mr. Loach commented that on the opening page in the middle paragraph under discussion it states that Preserved areas of development will not be permitted with the exception of uses to

allow reasonable use of the property to ensure that a taking has not occurred. He thinks in the future staff is probably going to have to better define exactly what that statement means. He thinks they are going to have to expand it to satisfy some of the questions that will come up.

Mr. Fritz replied that as they were developing the maps staff looked at a couple of things. In looking at the maps there were some cases where they saw all of the property is going to be marked as Preserved. Staff looked to see if they could crop it in such a way as to leave a reasonable portion of this property so as to be developed. In some cases they said no, there really was a significant system or something like that. However, in the ordinance a list of permitted uses on preserved slopes are included to ensure that reasonable use of the property can occur including construction of the first dwelling, as an example.

Mr. Loach suggested defining what that threshold is since it needs to be very precise because some people are going to make sure the County is not overstepping its bounds as far as a taking. The Commission has heard it in the past. If they look at tonight, it is a classic example in they heard the concern of the public talking about the steep slopes in this. Then another gentleman comes up and said he spent $10,000 to correct a problem in drainage that he had probably as a result. They have seen the disasters in the past. However, he thinks it is a great step forward in dealing with steep slopes. The Planning Commission has always dealt with this. They have had a couple cases where there were 100 percent steep slopes. The way it is worded they need to make sure they can define a threshold for that, which is just a caveat.

Mr. Lafferty noted on page 5, section 30.7.2 it says all land in the county. He asked if it should say development area of County.

Mr. Fritz replied it would take care of itself because it says within the boundaries of it.

Mr. Lafferty said on page 6 of 30.7.4.b does he mean at the end of the sentence to say Preserved slopes where it says use permit on Managed slopes.

Mr. Fritz replied yes, it should say on Preserved slopes.

Mr. Randolph questioned on page 2 in section 4.2.1.a and **(i)** he used the term in Critical or Preserved slopes. If they turn over to page 3 in **b.** at the top it says, "No structure, improvement, or land disturbing activity to establish the structure or improvement shall be located on critical slopes." Should it also say Critical or Preserved slopes just to be consistent in that section?

Mr. Fritz replied that he would have to go back and look at his notes on that. However, he thinks they addressed it by adding section 30.7.4. However, he will have to double check it. He pointed out they had to maintain the term Critical slopes. He wanted to reemphasize that the Steep slopes is only in the Development Areas. So Critical slopes still exist in the Rural Areas, which is why they had to retain references to Critical slopes. That is why both terms are in there.

Mr. Dotson commented on the definition of steep slopes; he could not read it and make sense out of it. He suggested that it needs to be a sentence. The others are where it says slopes where such and such happens. So it seems like it could be slopes on lands outside of the overlay district that continue to be Critical slopes and there needs to be a sentence.

Mr. Fritz replied that staff can take another look at that.

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

Ms. Marcia Joseph, representing Blake Hurt, said she was concerned about the map showing the ponds on map on tax map 32, parcels 22 and 22M as shown in the information distributed. (Attachment D on file with the printed minutes in the office of the clerk) In the photographs it shows there are erosion and sediment control ponds. However, there is no creek on the property. She was concerned in the future development of the site staff would look at this map and see the pond and creek and say they are not going to be able to do anything on the site. Therefore, to avoid confusion in the future they would really like to see these things removed.

Ms. Joseph agreed with staff's changes since the last time. It is making some sense and also helping with predictability. However, the design standards themselves are depicted in the Code, which means they can't change since once they are there they are there. She questioned if these regulations could be modified if site specific things come up. If the answer is no since it is Code and that is the way it goes, then she guessed that is the answer. However, sometimes when looking at sites different things happen. The one she was most concerned about was the diversion above or below the slope itself. If she was collecting all the water in drainage structures in a parking lot on the top of the slope and there is a curb with no water coming down, does she still have to do this diversion? She is trying to figure out what is the point. If they are dealing with erosion and sediment control in that and trying to keep the waters clean are they accomplishing that by either one of these if there are some things that they do on the site itself that cause them to collect the water.

Morgan Butler, with the Southern Environmental Law Center, thanked the Commission for the chance to speak tonight. He thinks the Commission knows that SELC supports the County's long standing policy of guiding development to our development areas while ensuring that the development respects the important natural resources located there. These proposed changes seek to further both ends of that project by changing how they regulate critical slopes through development areas. He made the following comments:

- Rather than treating all slopes the same as the current ordinance does the idea is to ratchet down the protection for the less valuable slopes making those easier to develop and to ratchet up the protection for the more valuable slopes making those harder to develop. This concept makes sense. But, unfortunately the balance this draft ordinance strikes seems out of whack. Compared to the current critical slopes ordinance it appears that both groups of slopes, Managed and Preserved, would actually be easier to disturb. As he reads it they can do more things by right on a protected slope under this proposed ordinance than by right on any critical slope under the current ordinance.
- There is one example that stands out. Under the current ordinance in nearly every case in order for a use to be exempted from the critical slopes provisions the applicant has to demonstrate that there is no other reasonable location for that use on the parcel. Yet in the proposed ordinance looking at the list of uses that would be allowed by right on preserved slopes most of them such as trails, accessory uses and structures and distribution facilities are allowed regardless of whether there is another reasonable location for them on the parcel. Along the same lines the new ordinance would allow roads and other public facilities to be built across Preserved slopes in five different situations. Then for those five different situations it is showing as not required that there be another reasonable location for the disturbance. Please keep in mind that they are talking about Preserved slopes or those slopes that are supposed to get the strongest

protection. To address this issue, they recommend that at least these by right categories be strengthen to require it showing that no reasonable alternative location for the use exists - the trails, the accessory uses and structures, the distribution facilities and most if not all of the five public facilities categories.

- They have the same recommendation regarding the uses that would be allowed on Preserved slopes by special use permit. They recommend that those uses not be allowed on Preserved slopes unless a special use permitting process requires the showing that there is no other reasonable location for those uses on the parcel.
- Finally, he would like to raise a quick concern about the by right use **g**, legislative zoning actions. They are concerned that a number of rezonings may have been approved over the years in which it was understood by the public and the Board of Supervisors that the applicant would still need to come in at a future date to get a critical slopes waiver if they proposed to disturb critical slopes. They would be going too far to now give all previously approved rezonings blanket permission to disturb critical slopes unless the Board very clearly and explicitly demonstrated that intent when they approved the rezoning. They think it is important to make absolutely certain that the language in this provision would not open that loophole.
- Mr. Butler reiterated they support the goals behind this effort. However, it is just they are concerned that the uses allowed on Preserved slopes in this draft are too expansive. They believe the by right uses on Preserved slopes in particular need to be tightened up if this ordinance is to strike the reasonable balance that is needed here.

There being no further public comment, Mr. Morris closed the public hearing to bring the matter back to the Planning Commission for discussion and recommendation.

Mr. Loach asked staff to respond to Mr. Butler's suggestion on the Preserved slopes.

Mr. Fritz replied the trails and accessory uses are new uses on critical slopes. The reason they added those is they have had a few instances where expansion of an existing use or an accessory use was taken to the Planning Commission and they were all approved. Frequently staff sees trails cross over critical slopes. He was not aware of any case that required a waiver or special exception. Those were also added to make sure they were clearly permitted. He noted the roads that can be built on slopes are actually decreased since it only now allows public whereas previously it also allowed private roads to go in. So that is actually a decrease in the things that can be done. In the legislative zoning actions staff added that because it was one of the things that came out of the various work sessions and Roundtables as something that people were interested in. They have seen a number of cases where projects have had critical slopes being disturbed and they have come back for critical slope waivers to allow it. He was not aware of any cases where a critical slopes waiver was not approved at the time of the rezoning and ultimately that critical slopes waiver was denied. There are a number of cases where it was approved. In the staff report it was noted this was shown and discussed at the rezoning. That is one of the favorable factors of granting the waiver. That is an expansion of uses permitted on steep slopes. However, it was something that came out of the Roundtables and other meetings and why it was added.

Mr. Loach asked if he would disagree with Mr. Butler that essentially in some respects that under the new language there is less protection.

Mr. Fritz replied that he would not disagree with him. In some respects under the proposed ordinance you can do more things on some steep slopes by right than by right now. However,

there are other things they can't do by right or have to get a special use permit for, which is a higher bar than a special exception, or they simply can't do it all. They can't ask for a special exception like someone can right now. A way to do something that is not a permitted use on Preserved slopes is to either rezone the property or request a variance. However, in some cases it is somewhat easier, but in most cases staff thinks that it is not because it actually more preserving.

Mr. Kamptner recalled the effect of the state legislation in the Town of Occoquan case in that it severely limits how they can regulate critical slopes for residential buildings. These regulations by establishing performance standards eliminate the need for some kind of discretionary approval that the state statutes no longer allow. So that is part of the balancing act they are doing in these draft regulations.

Mr. Fritz pointed out the accessory uses are limited only to single-family dwellings, attached and detached dwellings, and not commercial or industrial.

Mr. Lafferty commended staff for getting all this information together and putting it down on paper.

Mr. Dotson said in picking up on Mr. Loach's question and Mr. Butler's comment, again as he saw this list of things that were permitted in protected areas he kept thinking these were sort of public projects and not being held to the same standards that private projects would be. He asked if there is some way of saying they should try to avoid this if there are alternative locations available. This is sort of carving out and giving a privileged position to public projects.

Mr. Fritz replied that staff did not put anything like that in there since staff sees that not only for ourselves but the Albemarle County Service Authority and others as one of our duties whenever we are doing a project. They are supposed to be considering those things already and not forwarding that proposal unless they have looked at the other viable options. Staff already saw that as something they are inherently doing already and did not need to write it into the ordinance. They have an obligation as public servants to be looking at all of those things in the Comp Plan with sound planning and engineering practices. That is why they did not include it.

Mr. Dotson said if that is the case, then no harm is done by writing that in.

Mr. Fritz agreed that no harm is done to say something that in public projects or in locating public facilities. Staff could put that into the intent of the ordinance in the very beginning.

Mr. Dotson said it seems like something that would be useful to have in there.

Mr. Kamptner asked if it would be practical to change the "or" before Roman numeral V to "and", or, does that limit the ability to provide. The overarching use class here is that there are public facilities necessary to allow the use of the lot. So in and of it the public facilities have to be determined to be essential. He asked if the "and" would tighten that up to a point. He suggested putting in "and" right before Roman numeral V so that these five things are all requirements rather than just any one of them.

Mr. Fritz said he would want to take a look at that. He understands where they are going, but did not want to do it on the fly. He understands what he is saying and it does not take anything away to add it.

Mr. Dotson noted again he was trying to clarify the flexibility dimension. On page 9 it is talking about amending district boundaries. It says that if they provide the data they can take a designated area out of the overlay. On page 11 when they are talking about fees it also talks about changing the slopes designation from Preserved to Managed. He asked would that also need to be mentioned under amending the district. He did not know if it was amending the boundaries or not, but it is reclassifying property from Preserved to Managed.

Mr. Fritz said he would let Mr. Kamptner comment on the nuance of amending a designation within the district. They knew there might be cases where someone is not in critical slopes, which they talked about before. However, there also may be cases where someone wants to say yes it is a steep slope, but it should be moved from one category to the other.

Mr. Dotson noted they have a fee for it, but they don't have a provision for it.

Mr. Fritz replied the intent was that it was covered by that. However, he would have to rely on Mr. Kamptner.

Mr. Kamptner said they may need to backtrack and clean up Section 30.7.6 to make sure. They will link those two sections together so that they are consistent with one another.

Mr. Randolph asked Mr. Fritz regarding Mr. Butler's second point if there is a way to ensure that the new slope standards would not be retroactive by adding some clarification. He knows that is ultimately a decision of the Board of Supervisors. He did not think the intent here is to allow anyone to use this new status of Managed versus Preserved slopes to work around what previously was expected by the Community Development Department to satisfy an approval process to be followed. He thinks that there needs to be some way of ensuring this is not retroactive, applies to all future applications from the time of acceptance, and does not apply to anything that precedes it.

Mr. Fritz replied that one of the things they also had a conversation about is if they had a planned development that was coming in they have the choice of coming in and having their site plan or subdivision plat processed under either the ordinance in effect at the time of the establishment of the planned development, which would allow them to go through the waiver process for critical slopes, or the ordinance in effect at the time of the filing of the site plan or subdivision. So that is really the saving answer that he is looking for there.

Mr. Kamptner noted the other thing is they can further narrow the effect of this because if it was a legislative zoning action that was dealing with residential buildings, then they were going to be by right anyway. Therefore, they have to allow them. They are really now just focusing on non-residential building or commercial and industrial or mixed.

Mr. Randolph said in terms of Ms. Joseph's remarks is there some way of clarifying that the slopes policy is not applicable to previously approved storm water management structures or devices.

Mr. Fritz noted that in some cases it is. However, on the particular property she is talking about her concern is that the stream and ponds may represent some problem in development in the future. The action the Board will be taking has no impact on that. That is an underlying data layer that has nothing to do with the steep slopes ordinance. If the new topo obtained from the

state shows those things as going away, they will go away. That is a base data layer that is different and apart from the steep slopes ordinance. There is no connection there just like the property lines have no connection to the steep slopes ordinance.

Mr. Dotson questioned if it is needed.

Mr. Fritz replied he could have turned that layer off on these maps, but it provides a convenient point of reference in most cases so they can find properties and so forth. They may remember that the initial maps staff brought to the Commission actually had the WPO shown on them. The only reason they turned that layer on was to try to emphasize how the steep slopes were related to those stream valleys and buffer. But, it was completely separate and apart from the WPO. There is no direct relationship between the two. So obviously when staff brought the Commission the final maps they turned that WPO layer off because they had already talked about it is no longer relevant. They left the water features on in this case because it provides a convenient point of reference when one is looking for a particular property. In most cases he was on the left or right side of the stream. If the stream is not shown on the map, it is hard to find the property. However, it could very well go away in the next round of mapping.

Mr. Randolph asked if the Commission might find out from Ms. Joseph whether that satisfies her concern.

Mr. Morris invited Ms. Joseph to address the question.

Ms. Joseph replied it did not really address her concern. She did not know what the next round is going to show. They saw from the photographs that the property was flat. There is no stream showing where this stream goes down through. It is just confusing, particularly if the property sells. It is confusing if a development comes in because this is Light Industrial property. Hopefully, at some point in time some development will come in here. She did not know if staff would see the stream on the map and say there needs to be a 100' buffer on either side of this stream.

Mr. Fritz noted that could happen whether the stream is shown on this map or not and whether the layer was turned on or not. If a field visit is done and determined that there is a stream there even though there is none shown on the map there is a WPO. If a field visit is done and there is a stream marked on the map, but there is no stream there, there is no WPO. That happens today. He can work with our GIS people to see if they can modify the map. He did not know that they can separate it because they don't have any new topo to work with to show what really is there. But, again he would point out it is the base map and not the map they are adopting for purposes of enforcing the steep slopes ordinance. He would also point out if they were not doing this and they were talking about a critical slopes request, those areas would be showing as shaded with a WPO on them. That is the map that they would be showing them right now with a stream and a pond.

Ms. Joseph noted that it does not exist.

Mr. Fritz pointed out they would go through that analysis just like they will go through it when they bring the project in with their site plan. So nothing has changed on this property.

Mr. Kamptner said in looking at this and not focusing on this parcel, they are showing a stream here and noting that it may trigger the stream buffer requirements under the Water Protection

Ordinance. But, any other body of water now may trigger the Flood Hazard Overlay District and the 100-year flood plan limits. As the Commission recalls they adopted a dam break inundation zone set of regulations. They now have those areas mapped. Therefore, it might make sense to keep each of those discreet from one another to eliminate errors. He realized that the water ways do provide points of reference on maps, but there are all these different overlays and requirements that apply. He suggested that maybe having some of these shown here is creating confusion.

Mr. Fritz said if they want staff to turn off the stream layers when they take it to the Board of Supervisors they can do that. It is just a layer they can turn off. They can't turn it off for portions. It is an all on or all off option.

Mr. Cilimberg said he thinks the reality is whether they turn it off or keep it on it still exists in the mapping of the County.

Mr. Kamptner suggested just adding a note to the maps that just reflects it.

Mr. Cilimberg pointed out in reality there are probably other places in the County that things are being shown on the maps that may not exist. It is just the way it is through the years of the aerials and getting the mapping. They hope the next time they get an aerial they will get the mapping to be more accurate. So the zoning change here is to show the slopes and not to incorporate the natural features, which exist as part of the base map.

Ms. Monteith asked if the property owner requests a field verification the County will go out and do that.

Mr. Fritz replied that for field verification for the purposes of enforcing the WPO Ordinance: yes, they would do that.

Ms. Monteith asked if something comes up on the map that is not there that indicates that something has to be planned differently, then how do you resolve that issue.

Mr. Fritz replied frankly he did not know what our GIS people do when somebody comes along and says no that road or stream is not here and is actually over here. He has no idea of how they deal with that.

Ms. Firehock said there were other errors on County maps that need correcting, but they won't do that tonight. Her question was under permitted uses on page 7 where it talks about accessory uses of any kind. There are accessory uses that pertain to existing single-family dwelling units or existing lot of record. However, she cannot find the definition of an accessory use except that it pertains to the dwelling. She is concerned about the size. It can be a tool shed that could be 1,000 square feet. She asked what the limitation is on that, if any.

Mr. Fritz replied there is not one. That was actually discussed at length at the Board of Supervisors work session about whether or not to add a maximum area. They did not receive direction to do that and staff did not go forward with that. Therefore, staff was carrying forward the results of that work session. However, it was discussed whether it should be limited to X number of square feet or they could not disturb more than X number of square feet of the Managed or Preserved slopes. Both those options were discussed and they received no direction to do that. Therefore, staff did not do it. However, the zoning administrator answers

the question about what an accessory use is all the time. But, it is normal and customarily accessory.

Mr. Kamptner pointed out the term accessory is defined in the zoning ordinance. The two key concepts are that the accessory use has to be subordinate and customarily incidental to the primary use. So it is a factually intensive determination on anything that is out on the fringes. However, there is no requirement that the accessory use take up less area than the primary use. For example, all the gardening activities that may take place on a one acre lot are going to be accessory to the primary residential use. But, the area consumed is more. The same would be with a horse stable or a barn.

Ms. Firehock agreed noting she was familiar with that. She was just concerned that when they are talking about Preserved slopes that they may indeed have a concern about the size of the intense scale of that accessory use. She apologized that she was the new kid on the block because she was not at any of these work sessions. She was not prepared to make a motion tonight because she has not had the time to digest this. However, she thinks that is something that needs to be revisited.

Mr. Morris asked if anyone would like to make a recommendation that this go forward.

Mr. Dotson asked if one action could be taken on the ZMA, STA and ZTA.

Mr. Kamptner replied there needs to be three separate actions if the Commission is going to make a recommendation to send on to the Board tonight. If there is an inclination to ask staff to bring it back addressing some of the concerns that have been expressed here, then that could be addressed in a single motion.

Mr. Morris asked if staff had a recommended motion.

Mr. Fritz said it would be a motion to recommend approval of the ZTA, STA and ZMA individually.

Mr. Morris pointed out the staff report indicates staff recommends the Planning Commission support the zoning text amendment, zoning map amendment, and the subdivision text amendment and recommends approval to the Board of Supervisors.

Mr. Dotson seconded the motion.

Mr. Morris noted that was his motion.

Mr. Lafferty asked if each item needed to be taken separately, and Mr. Kamptner replied yes that each item should have a separate motion.

Mr. Loach asked if they wanted a motion to approve the ZTA-2012-12 with the conditions.

Mr. Kamptner replied yes with the direction to staff that all of the issues that have been discussed the Commission would like to see addressed should be included.

Motion on ZTA-2012-12

Motion: Mr. Loach moved and Mr. Lafferty seconded to recommend approval of ZTA-2012-12 Steep Slopes to include all the changes directed to staff from the Planning Commission.

The motion passed by a vote of 6:0.

Motion on ZMA-2014-1

Motion: Mr. Loach moved and Mr. Lafferty seconded to recommend approval of ZMA-2014-1 Steep Slopes with the same provisos as the previous motion to include all the changes directed to staff from the Planning Commission.

The motion passed by a vote of 6:0.

Motion on STA-2014-1

Motion: Mr. Loach moved and Mr. Randolph seconded to recommend approval of STA-2014-1 Steep Slopes with the same provisos as the previous motions to include all the changes directed to staff from the Planning Commission.

The motion passed by a vote of 6:0.

Mr. Morris noted that ZTA-2012-12, ZMA-2014-1 and STA-2014-1 would be forwarded to the Board of Supervisors with a recommendation for approval to a date to be determined.

Old Business

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

New Business

Mr. Morris asked if there was any new business.

- Roundtable to be held on Thursday, January 30, 2014 at 4:00 p.m. in Room 241 to review upcoming changes to Albemarle County's floodplain regulations.
- Committee Reports
    - Ms. Monteith reported the MPO met with the meeting focus on introducing the new members of the Board of Supervisors and going over the different actions they have been working on.
    - Mr. Lafferty reported PACTECH met with the meeting focus on going over the in synch project for traffic lights going up 29 North.
    - Mr. Lafferty noted CTAC would meet next week to go over the fiscal constraint projects for the Long Range Transportation Plan.
    - Mr. Cilimberg asked other Commissioners to be prepared to report on committees at their meeting on the first Tuesday of the month.
- Version of Comp Plan draft going to Board of Supervisors available on line or by request.

- Mr. Dotson made three recommendations regarding project descriptions and information.
    - Can staff flip the legal description so people see the actual proposal? *(Mr. Kamptner responded there is an additional advertising requirement for zoning map amendments which will require by statute to include the general description of the usage and the Comp Plan's density range. It is required for the Board notice for the public hearing and is just included for the Planning Commission public hearing as well.)*
    - In application numbers eliminate the zeros and add dashes so the motion is easier to make. It would also be helpful in the tax map/parcel to eliminate the zeros.
    - Neighborhood Model – Can staff create examples from our communities visualizing the density? It would be helpful especially for the public to be able to visualize what is coming.

There being no further new business, the meeting proceeded.

Adjournment

With no further items, the meeting adjourned at 9:27 p.m. to the Tuesday, February 4, 2014 Albemarle County Planning Commission meeting at 6:00 p.m., Auditorium, Second Floor, County Office Building, 401 McIntire Road, Charlottesville, Virginia.

V. Wayne Cilimberg, Secretary

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