Albemarle County Planning Commission
October 18, 2016

The Albemarle County Planning Commission held a regular meeting on Tuesday, October 18, 2016, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Mac Lafferty, Jennie More, Pam Riley, Bruce Dotson, Daphne Spain, Tim Keller, Chair; Karen Firehock, Vice Chair and Bill Palmer, UVA representative.

Other officials present were Rachael Falkenstein, Senior Planner; Margaret Maliszewski, Principal Planner; Elaine Echols, Acting Chief of Planning; Sharon Taylor, Clerk to Planning Commission; Andrew Bast-Gray, Assistant Director CDD & Director of Planning and John Blair, Senior Assistant County Attorney.

Call to Order and Establish Quorum:

Mr. Keller, Chair, called the meeting to order at 6:00 p.m. and established a quorum. He welcomed the students present that are here to watch this process in person.

Committee Reports

Mr. Keller invited committee reports.

Pam Riley reported on the following committees:
Historic Preservation Committee.

- On September 26 discussed cemeteries and preservation of burial sites, etc.; to pursue a cemetery overlay through GIS; and to reconsider Historic Preservation Ordinance in the County.
- On August 22 discussed ZTA for expansion of historic buildings with staff; received applicant presentation; discussed several aspects of the proposed ordinance and passed a motion unanimously recommending items to be addressed as discussed during the meeting and summarized by Elaine Echols, which included increased involvement of the HPC in the process.

5th Street and Avon Street CAC.

- On September 15 received bond referendum update by Kate Acuff and a report by the Southern Area Library Committee.
- The next meeting will be held this Thursday at Southwood to receive update by habitat about Southwood project and Boys and Girls Club expansion.

Village of Rivanna CAC. There was no meeting.

Bruce Dotson reported on the following committees:

- University of Virginia Master Planning Council. Presented a new master plan for Brandon Avenue with a new student health center in the city and the University's plan for the Ivy Road Improvements. Since both projects in Monticello View Shed he encouraged UVA to speak with Monticello about that in accord with the comp plan.

- Capital Improvement Program (CIP). CIP Oversight Committee will hold 3 meetings with the first on November 14 with report at November 15 PC meeting for PC feedback regarding changes in timing or cost estimates due to limited review.

Daphne Spain reported the following committees:

- Places29 North Community Advisory Committee Meeting met last night, Emily Kilroy distributed the notes from the joint CAC meeting several weeks ago, and the emphasis was on understanding the proffer policy. In addition, they were updated on the suggestions that developers present their plans at a separate meeting; and their community meeting should be held separately from the regular CAC meeting to give participants longer to comment. David Mitchell discussed plans for North Pointe.
- On Thursday, October 20, another meeting will be held with the Forest Hills Group about Brookhill.

Forest Hills Homeowner's Associations wants to talk further about the planned parking at the Trailhead at Brookhill right at Ashwood Blvd. and Route 29 at the Forest Lakes North Clubhouse at 6:30 p.m.

The meeting moved to the next item.

Other Matters Not Listed on the Agenda from the Public:

Mr. Keller invited comment from the public on other matters not listed on the agenda.

Neil Williamson, with the Free Enterprise Forum discussed his reasons for disagreement of the unelected Albemarle Historic Preservation Committee being the lead agency for reviewing applications that are on historical sites. Regarding Ms. Spain's comments with regard to the trailhead, he was hopeful that at that meeting you will have county employees. He said it was my understanding that specific request came from Parks and Recreation. Often times we have these community meetings and he knows the staff has a great deal to do; but, if the meetings are not properly staffed so the people can explain why there is a road that the developer may or may not want but because it is in the master plan it needs to be in there. Those are things that the community needs to hear from the folks that are reviewing the applications that won't approve them unless those items are in there and know that there is a reason for them and it is part of a county wide plan for interconnectivity. As Mr. Werner stated many weeks ago we have not done a very good job of selling interconnectivity, and that interconnectivity sf multi-modal including the trailheads. He was hopeful that county staff will be dedicated to keeping the community up to date as he heard from the Places29 meeting where we had county staff there speaking directly. We need to be there at most of those meetings so that the right people can hear from the right people what the issues are rather having to rely on the confidence that a developer may say well the county wants this. He pointed out that maybe they do and maybe they do not; shouldn't the county be at the table.

There being no further public comment, the meeting moved to the first public hearing item.

Public Hearing Items.

SP-2016-00011 Malloy Ford Outdoor Storage & Display
MAGISTERIAL DISTRICT: Rio
TAX MAP/PARCEL: 045000000068C1
LOCATION: 2070 Seminole Trail
PROPOSAL: Establish outdoor sales/storage/display of vehicles on 5.19 acres
PETITION: Outdoor storage, display and/or sales serving or associated with a permitted use within the Entrance Corridor Overlay under Section 30.6.3 of zoning ordinance. No dwelling units proposed.
ZONING: HC Highway Commercial – commercial and service; residential by special use permit (15 units/acre); EC Entrance Corridor Overlay District – overlay to protect properties of historic, architectural or cultural significance from visual impacts of development along routes of tourist access.
AIA Airport Impact Area: Yes
COMPREHENSIVE PLAN: Commercial Mixed Use – commercial, retail, employment uses, with supporting residential, office, or institutional uses in Neighborhood 1 – Places 29.

AND

SP-2016-00018 Malloy Ford Body Shop
MAGISTERIAL DISTRICT: Rio
TAX MAP/PARCEL: 045000000068C1
LOCATION: 2070 Seminole Trail
PROPOSAL: Establish body shop on 5.19 acres
PETITION: Body shop under Section 24.2.2.17 of the Zoning Ordinance which allows body shops by special use permit. No dwelling units proposed.
ZONING: HC Highway Commercial – commercial and service; residential by special use permit (15 units/acre); EC Entrance Corridor Overlay District – overlay to protect properties of historic, architectural or cultural significance from visual impacts of development along routes of tourist access.
AIA Airport Impact Area: Yes
COMPREHENSIVE PLAN: Commercial Mixed Use – commercial, retail, employment uses, with supporting residential, office, or institutional uses in Neighborhood 1 – Places 29. (Margaret Maliszewski)

Ms. Maliszewski summarized the staff report for SP-2016-00011 Malloy Ford Outdoor Storage and Display and SP-2016-00018 Malloy Ford Body Shop **i**n a PowerPoint presentation.

- This is a request for two special use permits. One is for the outdoor sales, storage and display in the Entrance Corridor and the other is for the body shop use. The parcel in question as highlighted in the slide is the Better Living Building Supply site that fronts on the Route 29 Entrance Corridor and extends all the way west to Berkmar Drive. It is not readily visible at this time from Berkmar Drive due to the wooded area on site and on adjacent parcels. However, there is a clear view from Route 29 all the way back to the Berkmar end of the parcel.
- The next slide is the applicant's proposed concept plan. The existing showroom building would be converted to the new Ford showroom. The area shown in pink along Route 29 is the area proposed for vehicle display. The other structures that are shown in light gray would be converted to service buildings. The building all the way at the back is the structure that would be converted to the body shop. The proposed vehicle storage area is shown in light brown and the area for vehicles awaiting repair is shown in the darker brown.
- Next is a detail of the area along the Route 29 side of the site that shows the striped display parking spaces at the 29 side. There is landscaping shown around the perimeter of that display parking area and trees at the interior of the parking area. There are also customer spaces along the front of the building and a row to the side of the pink rectangle, which is the proposed addition to the showroom building that would be the service drop off area.
- The vehicle display and customer parking spaces would occupy what is now already a parking lot in front of the building. The next slide is another view of part of that parking lot. With this proposal, as you saw on the concept plan, the parking within the lot will be reconfigured and there would be landscaping added around and in that paved area.
- The special use permit for outdoor sales, storage and display is required specifically because this site falls within the Entrance Corridor Overlay District. Although the special use permit is required for the sales, storage and display, the use is considered accessory to motor vehicle sales, which is one of the commercial uses that is permitted by right within the Highway Commercial (HC) District. Therefore, you are not considering the general motor vehicle sales use today; it is the outdoor display aspect that is under consideration. The purpose for requiring a special use permit for the outdoor sales, storage and display is to allow for review of the potential visual impacts of the outdoor storage on the Entrance Corridor. The intent of the Entrance Corridor Overlay District is to ensure quality development that is compatible with the county's important scenic, cultural, historical and architectural resources; and Entrance Corridor Design Guidelines have been adopted to help meet that intent. The Architectural Review Board (ARB) has applied the Entrance Corridor Design Guidelines to their review of this request; and, the ARB had no objection to the request for the special use permit with conditions. Those conditions are related primarily to the location of parking and the method of screening, which are typical conditions for this type of proposal.
- The next slide is a detail of the west part of the concept plan where the body shop would be located. The supplemental regulations in the ordinance require that body shop services be performed within an enclosed building and that all parts, materials and equipment will be stored in an enclosed building. So, the westernmost building would be converted for the body shop use and would be enclosed to meet those requirements. The next photo shows the westernmost building all the way at the back. This photo was taken from about halfway into the site facing the west; and Berkmar Drive is beyond. That building, again, would be converted and enclosed to meet the supplemental regulations.
- The supplemental regulations also require that the vehicles awaiting repair in the body shop be located so that they won't be visible from any public street or any residential property. The structure shown straight ahead in the photo is the one that would be removed to create the parking area for those vehicles awaiting repair. Currently, you can see that there is wooded area nearby and that wooded area does currently screen the storage area; but much of that wooded area is on the adjacent site. Since the wooded area is not on the site in question, the screening plants would be added onsite to ensure that vehicles won't be visible even if the wooded nature of that adjacent parcel changes. The details on the number and kind of plants to be used can be handled with the future site plan submittals.
- Staff recommends approval of both special use permits with the conditions listed in the staff report as listed on the screen. The Commission will be taking two actions today for each of the special use permit requests.

Mr. Keller invited questions for staff. There being no questions, Mr. Keller opened the public hearing and invited

the applicant to address the Commission.

Valerie Long, with the law firm of Williams Mullen representing the applicant Malloy Properties, said Justin Shimp, civil engineer for the project with Shimp Engineering, and Nicole Shrubs, a colleague, were also present. First, she wanted to thank Margaret Maliszewski for all of her assistance and guidance throughout this process. We started back in March with our pre-application meeting and are happy to have these issues before the Commission today. She pointed out these are pretty non-controversial requests that Margaret has covered a lot of. She said since many of my slides are duplicates that she will be very quick. She reminded the Commission, as noted in the staff report, that the property that is outlined and marked is under the comprehensive plan in the Places29 plan designated for a commercial and mixed use; and, an automobile sales and service facility is a primary use under that designation. The next slide is an aerial of the site that gives you a good feel for it; but again you saw some of these in a close up. She thinks there are a number of benefits of this site; but in particular, it is an opportunity for the adaptive reuse of an existing commercial site and the retention of the local business. As many of you may know, Malloy Ford currently operates out of a facility at Pantops on Route 250 and they are proposing to relocate their dealership here. The other good news is that Better Living is proposing to redevelop the majority of its business on an adjacent site actually to the south. It is right next to it, and she can show you where that is. She said it would provide the opportunity for two local businesses to be in this area, which we think is great.

Ms. Long pointed out as you can see from the aerial photo and some of the photos that staff showed that there is not a lot of landscaping on the site now because this site was developed prior to all of the current standards in the Entrance Corridor Review Guidelines. The redevelopment of this site will result in a much more attractive facility along the county's Entrance Corridor. The next slide is another view showing the site in its current condition and the sort of absence of landscaping and screening from the Entrance Corridor. She pointed out in a blow up of the concept plan that they were slightly reducing the amount of impervious area, and it is an increase by a very small amount of 3,600 square feet that we are pleased to see. The Commission saw the blow-up of the body shop area and the way that we propose to comply with the supplemental regulations that require that the vehicles awaiting repair be screened from all adjacent properties and roads. Next, is a close-up shot of the display area along Route 29. As you can see, the proposed addition to the building will be for a service drop off, which will help screen some of the parking areas in the back from the Entrance Corridor. Ms. Long said originally the County Service Authority wanted us to make certain there was sufficient space to plant the proposed additional landscaping without impacting the water line. Therefore, we wanted to show that in case anyone was concerned about it.

Ms. Long said we are agreeable to the staff recommended conditions of approval with one fairly minor change. She noted that condition 6e talks about having a row of planting along the full southern side of this vehicle storage area. So that is just a parking lot and the area as shown in pink are the display areas along the Entrance Corridor. Those have to be striped and there are more intense landscaping requirements for that area given its proximity to the Entrance Corridor. This area in the tan and the other area here are where they will have additional storage. Obviously, a car dealership's inventory would be their vehicles for sale, and so they are anxious to have as much storage space for their vehicles as possible while also meeting the requirements of the Entrance Corridor on landscaping. The Architectural Review Board conditions asked for trees along this entire perimeter. We are asking for relief so that we can just avoid having them in this one area so that we do not lose any additional parking spaces as a result. We are hopeful that you might agree given the significant amount of additional landscaping that is being provided in the display area when there is none now with the addition of these trees on this side and the added landscaping to screen this.

Ms. Long pointed out that the storm water management facility is existing, but right now, there is no landscaping around it. Therefore, we are proposing to add some in the areas shown that will help further screen this display area, employee parking area and the rest of the service buildings in the body shop area. We think that given the very brief views into the site that the addition of the landscaping in these areas will be sufficient to screen the rest of this vehicle display area. Therefore, if you are agreeable to that we are proposing a minor modification to that condition to just say screening a portion of that southern border in the areas shown on the concept plan. With that change, we are agreeable to the conditions and she would be happy to answer any questions or address any comments from the public.

There being no questions for the applicant, Mr. Keller invited public comment.

Mr. Keller invited questions for the applicant. There being none, he invited public comment. Hearing none, he invited the applicant back for further discussion.

Ms. Long said she did not have any further comments other than to perhaps respond to any questions, issues or concerns that may come up. She would appreciate the opportunity to address them if so.

Mr. Dotson said he had a question and a comment; but the question is just a matter of curiosity. He asked would the entire Malloy operation move from its current operation to this site for both autos and trucks. He pointed out that it looks bigger where it is now than this looks.

Ms. Long replied that it is bigger at its current location on Pantops. She pointed out there is a lot more space there than you might realize, which she realized when doing a site visit with Mr. Malloy. However, she was not sure about all of the trucks. She knows they are planning to retain that space on Pantops and perhaps have another dealership of some kind; but they are certainly moving the Ford area over here but did not know the full extent of it. She said the point of our request is that every space for every vehicle is critical for them and is vital from their perspective.

Mr. Dotson said he attended the Community Advisory Committee (CAC) Meeting when this was aired and the one concern was from Woodbrook and Carrsbrook residents who live across the street. He said being on an elevated topography their concern was with lighting, not just specifically with this property, but from all the commercial uses there. So he thinks that one of the things with respect to this property is it is sort of in a nitch, if you will, that makes it a little further away from the residences than some of the other commercial areas. Also, given the topographic distance and with the county requirement that lights be directed down that people would be looking at the shields of the lights rather than from beneath were this an elevated site; but in fact this is below. He pointed out there was concern with lighting.

There being no further questions Mr. Keller closed the public hearing to bring the matter before the Commission for discussion and action.

Mr. Keller invited other questions for staff. There being none, he asked for a motion.

Mr. Dotson said since the project is in his district, he would make the motion. Mr. Dotson moved to recommend approval of SP-2016-11 Malloy Ford Outdoor Sales, Storage and Display with conditions outlined in the staff report. He was not being clear about Ms. Long's comment about some adjustment and the landscaping; and, he just wants to make sure if that is acceptable to the staff with that being part of the motion.

Ms. Maliszewski pointed out the landscaping that was recommended would meet one of the Entrance Corridor Design Guidelines. She said there is a guideline that says there should be trees planted 40' on center at 2 ½" caliper along the perimeter of the parking area so that is where that came from. She said it certainly is an improvement to what is shown there, you may feel like that is enough; but it does not fully meet the Entrance Corridor guideline.

Mr. Dotson asked if the motion would include that.

Ms. Maliszewski asked Mr. Dotson to be clear if the motion would include that or be as it is.

Mr. Dotson replied he believed the motion was what he described as enhanced landscaping and, asked if he was correct. He pointed out that is why we need to get it clear.

Ms. Long explained we have significantly enhanced landscaping in the display areas closest to Route 29 where it will obviously be the most visible. Those display vehicles will be the most visible to the most people. There is no landscaping there now and obviously substantial for what is proposed to be added. We are proposing landscaping along the southern perimeter of this vehicle storage area, which is just a slight distinction from the display area, and is a parking lot for the cars that are to be sold. As Margaret Maliszewski indicated the Architectural Review Board conditions were to have landscaping along the entire southern perimeter and we are asking for relief. Our concept plan, as you can see, shows trees on about one-half of the perimeter. We are asking for just modest relief so we do not have to add additional trees in this area because when you add the trees in that location you lose 2 to 3 parking

spaces, which may not seem like much, but to the business it is a significant impact. Given the amount of landscaping that we are adding in this area we were hoping that the Commission might agree that would be a fairly modest departure from the standard guidelines in recognition of the substantial increase in landscaping that is being provided throughout the entire site; but particularly here against the Entrance Corridor where it is so important. Further, that given the views into the site, the distance involved, the most important portion of this lot to screen is the portion closet to the Entrance Corridor; and, that the absence of a few more trees in this location would not deter from the beauty of the Entrance Corridor. She said they might not add that much extra particularly when you also have the additional screening here that helps kind of break up that area and provide some screening of the facilities in the back and those additional lots.

Mr. Dotson asked did the Architectural Review Board (ARB) consider the landscaping shown on this graphic.

Ms. Maliszewski replied this was a plan that the ARB looked at; but the condition was to continue it along.

Ms. Long said when the ARB saw this she did not think these trees were there. So after the ARB recommendation was made to have the screening along the entire perimeter, we submitted the revised plan to add this landscaping and a cover letter explaining that we were showing it halfway and that we had hoped that there could be minor relief from that.

Mr. Dotson stated that we do not have benefit of a comment from the ARB on this proposal, and Ms. Maliszewski agreed that was correct.

Ms. Long said to be frank they certainly prefer it; and, we understand that. If we have to do that, then we will live with it. We would ask for modest relief, again, in exchange for the significant enhancement improvement to the area up front.

Mr. Dotson said in terms of the depth of the Entrance Corridor do the trees that are shown along that parking area come back to sort of a bright line where you could say well beyond that is outside the Entrance Corridor.

Ms. Maliszewski replied no, the entire parcel falls within the Entrance Corridor Overlay because it is adjacent to the Entrance Corridor street. She thinks when reviewing it and when the ARB looked at it that there was another vehicle storage area further back and that perimeter-landscaping requirement was not applied to one that was further back because it is much further back.

Mr. Dotson asked if the circular landscaped area around that detention basin was shown to the ARB or has that been proposed since then.

Ms. Maliszewski replied that she did not remember if that was on the first plan or not. She said the ARB did not have concerns about landscaping of that because it already existed; but it is certainly an improvement to add landscaping there.

Ms. Long said she did not believe that was on the plans, but asked to be able to consult the cover letter that we sent.

Mr. Dotson said it sort of sounds to be confirmed by your cover letter that maybe this is a trade, and you are saying with this landscaping around the detention basin that might substitute and perform some of the functions in terms of use and to the rear of the site.

Ms. Long pointed out in my cover letter sent in late July it mentions that landscaping was added to the storm water management facility to provide additional screening.

Mr. Dotson said the motion would be for support of the concept plan as shown here.

Mr. Keller asked for a second. There being none, Mr. Keller seconded the motion. He invited further discussion and suggested the discussion would be around the proposed change.

Ms. More asked if you are able to clarify when we talk about it being a modest change what that change means like in the number of trees that are shown here.

Ms. Maliszewski replied it would probably be additional four or five trees that would be added to satisfy the ARB condition.

Ms. Firehock commented that she understands the site is definitely being improved in terms of how it looks now, and so that is a wonderful thing on the frontage. But, she has not heard a compelling case for why we can't have the other 4 trees. She understands you would lose a few sites, trees need attention and maintenance and they suck up many thousands of gallons of storm water per year. This is a highly impervious site. She also appreciates that a few percentages of additional perviousness have been added, but she just has not heard a compelling hardship reason. It is not as if it is dramatically blocking the view of a business sign or taking away an entrance or something. Therefore, she just does not feel that a compelling case was made to go against what our ARB Board has already recommended. Therefore, she was not in support of the change, but would like to accept the staff recommendations exactly as proposed.

Mr. Keller asked if she offered that as a friendly amendment and Ms. Firehock suggested that they can discuss it some more.

Mr. Lafferty asked if it was an amendment from what Mr. Dotson said.

Ms. Firehock replied yes, because she would not like to change condition 6e.

Mr. Lafferty said he thought Mr. Dotson left that in.

Ms. Firehock replied no, this says large shade trees spaced 40' on center shall be provided. New planting beds are added along the south perimeter of the middle vehicle storage area, Ms. Long is asking for just a portion of those trees to be provided, and it appears to be in the drawing that would be four.

Mr. Keller asked Mr. Blair to comment.

Mr. Blair pointed out the parliamentary procedure here was Mr. Dotson made the motion and the motion included the conceptual plan as displayed on the screen. He said the conceptual plan appears to have approximately one-half of the southern perimeter with trees and one-half without trees. He would not call it a friendly amendment; but you can obviously ask for an amendment to reinstate the language of 6e if you wish, which if passed would amend Mr. Dotson's original motion.

Ms. Firehock said she did not know if anyone else would like to comment on that or discuss it.

Mr. Keller invited further discussion.

Mr. Lafferty pointed out that he was confused with Mr. Dotson's motion, but he did not think he was any longer.

Ms. Firehock offered a friendly amendment for 6e to remain as it is in the staff report that large shade trees spaced 40' on center shall be provided and that new planting beds are added along the south perimeter of the middle vehicle storage area.

Mr. Keller asked if we need to vote on that.

Mr. Blair pointed out there would need to be a second.

Ms. More seconded Ms. Firehock's friendly amendment.

Mr. Blair said they need to vote on the amendment first to see if it amends the original motion. Then, depending on that, you would vote on the original motion as amended or in its original form.

Mr. Keller asked for a roll call.

The motion failed by a vote of 2:5. (Lafferty, Spain, Keller, Riley, Dotson nay)

Mr. Keller said now we go back to the original motion.

Mr. Blair said the original motion, which would include all of the conditions in the special use permit except for 6e, which would be modified as shown on the conceptual plan.

Mr. Keller invited further discussion. There being none, he asked for a roll call vote on the motion.

The motion passed unanimously by a vote of 7:0.

Mr. Keller thanked the Commission and asked for a motion on the second item.

Mr. Dotson moved to recommend approval of SP-2016-18 Malloy Ford Body Shop with conditions as outlined in the staff report.

Mr. Lafferty seconded the motion.

The motion passed unanimously by a vote of 7:0.

Mr. Keller said both of the requests carry and will be moving on to the Board of Supervisors in the near future.

The meeting moved to the next agenda item.

ZMA-2016-00009 Wood Von Storch
MAGISTERIAL DISTRICT: Rio
TAX MAP/PARCEL: 04500000011200, 045000000112E0
LOCATION: 3400 Berkmar Drive
PROPOSAL: Request to rezone parcels from R-6 Residential to HC Highway Commercial
PETITION: Rezone 4.428 acres from R-6 Residential zoning district which allows residential uses at a density of 6 units per acre, to HC Highway Commercial which allows commercial and service, residential by special use permit (15 units/ acre)
OVERLAY DISTRICT: Airport Impact Area; Managed Steep Slopes
PROFFERS: Yes
COMPREHENSIVE PLAN: Office/R&D/Flex/Light Industrial – commercial, professional office; research and development, design, testing of prototypes; manufacturing, assembly, packaging in the Places29 development area.
(Rachel Falkenstein)

Ms. Falkenstein summarized the staff report for ZMA-2016-00009 Wood Von Storch in a PowerPoint presentation. The purpose of this public hearing tonight is a rezoning request to rezone about 4.4 acres from R-6 Residential to HC Highway Commercial. The property is located on Berkmar Drive. It is actually two parcels about 4.4 acres. There is an existing house on the property. The property is mostly wooded right now with an existing house on the property, which looks a little bit dilapidated and she does not think it is occupied currently. The adjacent parcels are mostly zoned commercial. As you can see by the zoning map the bright red is Highway Commercial property; the pink is C-1, Commercial and then the orange is R-6, Residential. There are a few properties across the street zoned for R-6; one is for daycare and the other one is vacant currently.

The proposed concept plan as shown in the slide is a little bit bare bones. They are not committing at this time to any uses or the form of the development. There a few commitments that they are making with this concept plan. One is for reservation of area along Berkmar Drive for a potential future widening. The Places29 Master Plan actually recommends this section of Berkmar be widened to four lanes. We are hoping to have a little bit more detailed plan with the small area plan currently under review for this streetscape here. However, what they are reserving is 44' measured from the centerline, and that would be sufficient space for an additional travel lane, bike lane and sidewalk. They are also making a commitment to what they are calling their frontage zone, a 35%

minimum building at frontage; and, this will help reduce the amount of parking that could be along the frontage of the site. They are showing a potential entrance location on the center of the site. As you probably read in the staff report this has not been approved yet by VDOT. VDOT is actually requesting a shared entrance with the property to the north that is being redeveloped by Berkmar/Better Living for their building supply site. Therefore, that is yet to be determined whether this entrance will be approved by VDOT. There is also a cemetery on site that they are proposing to reserve.

In terms of uses, they are not proposing any specific uses; but they are proffering out some uses and restricting some of the uses on site. They are proffering out uses such as beauty shops, laundromats, hospitals, drive-thru restaurants and then some restrictions to uses such as storage. They are limiting storage to either upper floors of multi-story buildings or the secondary development zone. Going back to the concept plan the secondary development zone is the back half of the parcel. They limiting retail to no more than 25,000 square feet, which based on the size of the parcel they estimate to be about 25% of the developable building area of the site. Eating establishments shall be no more than 1,500 square feet; and, then residential uses should they be permitted in the future would be limited to upper floors. They are reserving the area along Berkmar Drive for the future widening. There is also a proffer about relegated parking. Parking will not be allowed any closer to the street than the proposed buildings. The concept plan is also proffered.

The changes that staff would like to see are:

1. A commitment to keep an area measured 40 feet from the northern property line free from impediments for a potential future roadway. It is currently classified as a driveway. To access the site through the graveled drive is a private access easement right now. However, staff thinks it might make sense for a future interconnection between Berkmar and Route 29 because of where it connects to 29 there is a signalized crossing. The Places29 Master Plan does not provide a detailed transportation plan for the interconnectivity in this area. There is a connection shown in this general vicinity; but the exact alignment is not shown in that plan. We hope that the small area plan will have a more detailed transportation plan and we will know whether a connection here will be recommended. In the meantime, we would like to see the area along the northern property line be kept free from any buildings or structures to prohibit a future connection here. The applicant has said he will be willing to do so in the narrative that he submitted; but, it has not been proffered or shown on the concept plan.
2. A commitment to providing pedestrian entrances on buildings fronting along Berkmar Drive and pedestrian access. It is difficult to analysis the site for some of our Neighborhood Model principles without uses or forms. But, at the very least, we would like some commitment to pedestrian accessibility to the site.
3. In terms of the entrance, we would either like written approval from VDOT for the proposed entrance before it moves forward or at the very least a note on the concept plan stating that this entrance is not guaranteed.
4. A commitment to major elements of the concept plan in a written proffer as described in the staff report.
5. Technical revisions to the proffers and concept plan as described in staff report.

Factors Favorable

1. The uses allowed within the proposed HC zoning are consistent with uses recommended within Places29 for Office/R&D/Flex/Light Industrial.
2. The applicant has proffered restrictions of the allowable uses to bring the HC zoning into closer compliance with the Office/R&D/Flex Light Industrial Land Use designation, including limiting the square footage of allowable retail use on the site.
3. The applicant is proffering reservation of right-of-way for a future expansion of Berkmar Drive.

Factors Unfavorable

1. The applicant has made minimal commitments regarding the use of the site and the form of the development making it difficult to assess for potential impacts and compatibility with the Neighborhood Model.
2. No commitment has been made to reserve an area for a future connector road between Berkmar and Route 29.
3. It is still unknown if VDOT will allow an entrance location for this site or if a shared entrance will be required.

4. No commitment is being made to pedestrian orientation.

Staff Recommendation
Staff recommends approval of ZMA-2016-00009 Wood Von Storch, provided that the applicant make the following commitments and changes to the proffers and concept plan prior to the Board of Supervisors meeting:

1. A commitment to keep an area measured 40 feet from the northern property line free from impediments for a potential future roadway.
2. A commitment to providing pedestrian entrances and access from Berkmar Drive.
3. Either written approval from VDOT for the proposed entrance or a note on the concept plan stating that the entrance location is subject VDOT approval and a shared entrance with adjacent properties may be required.
4. A commitment to major elements of the concept plan in a written proffer as described in the proffers section above.
5. Technical revisions to the proffers and concept plan as described above.

Mr. Keller invited questions for staff.

Mr. Lafferty asked will the 44' allow for the sidewalk and bike lane, and Ms. Falkenstein replied yes, it would be enough right-of-way for additional travel lane, sidewalk, street trees and bike lane.

Mr. Lafferty asked if we put a connector road on the north side will that go into the cemetery part of the plan.

Ms. Falkenstein replied that she did not know if we have a boundary yet established exactly from where that cemetery is. She said it looks like there would be enough space; however, without a survey of the cemetery we do not know that for sure.

Mr. Lafferty said it seems to me there are many questions about what the use is going to be and what is going on with this property. He noted it sort of reminds me of when they wanted to rezone the Yancey Mills property and did not know what was going to go there, where the roads were going to go and things like that. He thinks quite frankly it is premature.

There being no further questions for staff, Mr. Keller opened the public hearing and invited the applicant to come forward.

Frank Stoner, with Milestone Partners representing owners Robin Wood, Steve Von Storch and his partner Brian McMann, said he appreciates your consideration of our application this evening and really just wanted to touch on a couple of points that came up in Rachel's presentation and perhaps address Mr. Lafferty's concern. With respect to the unfavorable factors that were mentioned he wanted to speak first to the VDOT connector road on the north side of the property. The north side of the property abuts the Better Living property, which you just reviewed. He has worked in and around this property since 1987 when we built the Kegler's Bowling Facility. We have been trying to get a connector road through literally since 1987. There is actually an access point from Kegler's to a joint access road. Mr. Nunnally has been very clear about the fact that he will not support a connector road in that location because if he did he would likely lose his service road that runs in front of the Better Living Furniture Store. Right now, that is his only access to the Better Living Building Supply Facility and the Furniture Store. He can't tell you how many times we have met on site; we have looked at different schemes for signalizing the intersections and in Mr. Nunnally's latest site plan he thinks he has made it clear by providing his entrance on the north end of his property. That is a by right use and a by right entrance which has now been approved by VDOT. There is no way that we are going to get this connector road built. He wished there was; however, VDOT now no longer supports the connector road. So we have in our plan left that area void of any buildings; but, we have not proffered a connection because we do not believe it is ever going to happen. Certainly if VDOT does not support it, then it is not going to happen. That is the connector road issue.

Mr. Stoner said with regard to the pedestrian commitment, absolutely we are committed to pedestrian access from Berkmar Drive so he does not see that as being an issue. He wanted to talk to you about the use. We have collectively marketed this property for about eight years trying to find a buyer who could use the two parcels together, the two fit nicely together, it is a nice site so there are not topographic issues, and there are not access

issues. The single greatest obstacle to development in this property is the fact that it takes a year and a half to get through a rezoning process and another 9 to 12 months to get through a site plan process. He pointed out that everybody who has had an interest in this property as a commercial property is not willing to wait that long. He said that Robin Wood is the daughter of Bobby Wood who died less than 6 months ago. He and I worked together for many years with a sole goal of trying to sell this property so that he could clean up his estate for his kids. That did not happen and he is here before you tonight to ask that you proactively rezone this property so that it can be utilized as it was intended because the alternative for these owners is to build townhouses, which he did not think you want or anybody else wants. So he would encourage you please to give us serious consideration. He said he was here to answer any questions if you have any.

Mr. Keller invited questions for the applicant.

Mr. Dotson said he was a little confused on the road linking at Berkmar and 29. He thought he heard that the applicant was willing to keep buildings out of that area and keep it open, which is what the staff is looking for. He thinks he also heard that you are reluctant to proffer it.

Mr. Stoner agreed that was correct.

Mr. Dotson said the staff indicates that possibly a note on the concept plan would achieve the same objective. He asked do you object to that.

Mr. Stoner replied as long as there is not a permanent prohibition against buildings in that area; we just do not want to hold out for a road that we do not think is ever going to happen.

Mr. Dotson suggested that perhaps the staff could comment on what we just heard.

Ms. Falkenstein said we actually had a similar situation with Colonial Auto Center; and, some of you may remember that in the extension Meyers Drive. The way we handled that was he made it a temporary commitment until the small area plan was complete and could make a recommendation whether or not the roadway would be recommended. So we could work out some language to accomplish that.

Ms. Spain asked if there is a list of uses that you would not allow, and Mr. Stoner replied yes.

Ms. Spain asked about the height of the buildings since we talked about the height of the Malloy Buildings being limited to two even though that building was on the Entrance Corridor and this parcel is not. She asked if he had given any thought to that.

Mr. Stoner replied that he thinks the current code is 48' maximum.

Ms. Falkenstein noted the height was 45' and you would have to step it back at 45'.

Mr. Stoner said he did not envision any more than three stories on that site just because he thinks most of the people who are interested on the properties on Berkmar are not looking at high-rise office buildings. He said that tends to be a more service district for whatever reason so.

Ms. Spain thanked him and asked if he could say something about how you plan to preserve this cemetery. What is going to happen exactly.

Mr. Stoner replied that the cemetery is very small and it is up in the upper right hand corner of Mr. Von Storch's property. He pointed out Mr. Von Storch is here this evening and would be happy to answer questions. As near as we can tell there are two to three grave sites in that cemetery. He thinks that the expectation is that the cemetery would be preserved in its current location as part of a front setback to whatever use is on that portion of the property. It is outside of the potential Berkmar right-of-way expansion, but not far, because the expansion would take the sidewalk very close to the existing site. However, we are confident that we can work around it.

Mr. Lafferty asked would you be fencing in the cemetery.

Mr. Stoner replied that it has a grove of bamboo around it now; and, he thinks a fence is probably a more appropriate solution long term. Actually there is only one grave and it is not a grave marker in the sense that it is not a headstone; but, it is kind of a stone in the ground there. So it is not visible unless you are looking for it. However, he would think a fence is an appropriate treatment.

Ms. Riley said she would like to ask another couple of questions about that. She was trying to get clear on what you are actually proffering. She thought the proffer was that there would not be an expansion of the cemetery; but can you specify again, what you would be proffering for that.

Mr. Stone replied there is no an expansion of the cemetery. We would preserve the graves that are there; but there would be no ability to bury more people in that location.

Ms. Riley said her question was what survey or research has been done to establish what the actual perimeters of the cemetery are and how many graves are there.

Mr. Stoner asked Steve if he wanted to speak to that or have any more detail. We have done some detailed research with regard to the family members that are buried there and who their descendants are. As of 2007 when we last tried to plan and rezone this property there was only one surviving heir to the folks who are buried in this location. At that point, we were actually considering moving the graves. Since then he did not know if that single heir has passed away or not. But, Steve Von Storch can speak more to the specific boundaries because they have been identified.

Steve Von Storch, one of the property owners, said our lines essentially have just been traced from the plat when we purchased the land over 30 years ago from the other owner, the Wood family. So when that plat was created there must have been some indication that there is a cemetery appropriately there. The shape on that plat seems a bit of an odd fit for what you actually see there, which there use to be a very large Oak Tree with the gravestone at the base of it. The antidotal stories were there was an adult and maybe a few children buried there. In talking to Rivanna Historical Resources in the interim when they were looking into these gravesites, essentially as points of discussion for the bypass conversation, this grave was on the list that survey produced. They suspect that there are no human remains left there. But, certainly at this point having sort of lost track of family legacy that would be required for a move and the expense and the complications with, it just seemed easier to do our site planning around that site. It is quite a bit of a knoll about 6' to 8' tall above Berkmar. So if the connector road does not go through, which would be another sort of pulling down of the grade, we can leave that knoll completely intact and if there is a survey that is required to verify what those actual boundaries may or may not be now our expectation in the way we are marketing it is there is a cemetery there and it will remain.

Mr. Keller invited public comment.

Jeff Werner, with Piedmont Environmental Council, said he knows Mr. Stoner and Mr. Von Storch very well so he does not want to impugn them in any way here; but he would guess he needs to say what needs to be said. He has talked with the Commission, staff and the Board of Supervisors a lot and we certainly have talked a lot about the burial sites in this area over the last several years so first and foremost he has to express he is really disappointed in how poorly that issue is represented in the staff report. He pointed out it is barely mentioned. It does not matter when folks were buried or what race; it is someone's family and we should respect that. The applicant has stated that this is a speculative rezoning and so really, this is the county's opportunity to have some oversight of the future treatment of that cemetery. He trusts the individuals when they say they are going to do the right thing; but this is your opportunity to make sure that is codified. This parcel will be sold and someone is going to take what they have put on that plat and use that to say that is where the cemetery is. Now he knows that because this cemetery was discussed at length during the bypass and they do not know how many people are buried there. There are human remains; and he believed there is one marked grave of Mr. Jackson. He does not have time to get into the facts and figures and all of that; and, my understanding is that there has not been a delineation of the extent of the burial site. So what he would like to see, and he was a builder for over a decade and can tell you that orange tape does not stop anything. Therefore, to say protect the site or keep people from going to it he understands the bamboo is there; but, once that site work is done or someone else gets in there, there should be a fence or something to keep folks out of the area that has been identified. But, he thinks also what needs to be made clear on drawings or the site plan is that

this is the presumed location of the cemetery, this is not an official delineation. As he said, it is all about doing the right thing. He is concerned a little bit with the sidewalk and the buffer; we do not know whether the burial site extends out into what has been offered. He thinks it needs to be said what is going to be done. That needs to be codified and recorded so that whoever the next owner is does the right thing and that there is more that needs to be done to understand the full extent of that burial site. Thank you very much.

Morgan Butler, with the Southern Environmental Law Center, thanked the Commission for the chance to speak tonight. The zoning request before you tonight strike us as premature for a number of reasons. First, the application provides very little information about what uses would be built here and what form the development would take. As the applicant acknowledges it is a request for a speculative rezoning to make the parcel more attractive for commercial users. As a result, the application leaves things extremely vague. The problem this presents is evident in the section of the staff report that tries to analyze how well the proposal meets the Neighborhood Model principles. It is full of phrases like those that no information was provided; staff is unable to ascertain and not enough detail. Staff is ultimately able to recommend approval subject to a number of recommended changes; but the problem is that even with those changes we have only the vaguest outline of what is being proposed. The second reason it is premature is that this parcel falls within the boundary of the Rio Small Area Plan. As the staff report notes the small area plan will provide a detailed land use plan and make recommendations about urban form. We think it makes sense to try to avoid approving rezoning, especially speculative ones, before the land use component of the small area plan is complete. The plan should shape rezoning's rather than rezoning's shaping the plan. Third, it is premature because the county is in the middle of figuring out how best to address concerns about a shortage of developable industrial land. They say if you find yourself in a hole, the first thing you should do is stop digging. Here we have a 4.4-acre parcel designated as Office/R&D/Flex/Light Industrial in the comprehensive plan and clearly, it is developable yet this request would convert it over to Highway Commercial zoning. The applicant has suggested a Highway Commercial zoning district when combined with the combined proffers would be consistent with the comp plan designation for this parcel. However, the Place29 Master Plan makes clear that on parcels like this one that are designated as Office/R&D/Flex/Light Industrial retail and commercial uses are meant to be secondary. As the name would suggest the primary uses in this designation are Office/R&D/Flex Businesses/Light Industrial. Unfortunately, the applicant's proposal for Highway Commercial zoning would turn those primary and secondary uses on their heads. In other words, under the Highway Commercial zoning, and even with the proposed proffers, the entire site could be developed with retail and commercial uses by right with no Office, R&D or Light Industrial component being built at all. That result would clearly be inconsistent with the comprehensive plan; Light Industrial zoning would make much more sense here. In sum, we urge you to recommend the Board deny this vague application in its present form or at least delay consideration until after the land use component of the Rio Small Area Plan is complete. Thank you for your attention.

Neil Williamson, with the Free Enterprise Forum, said as you know the Free Enterprise Forum does not take positons on projects; we focus on policy. He said he would appreciate an understanding from your legal counsel on what level of detail can be mandated at a rezoning level. We have seen plans go from what one time was bubble maps to now down right architectural renderings for a rezoning. He thinks that the simpler the better, especially in cases where you are trying to move economic development forward. But, if you could get that clarification, he would appreciate it.

Mr. Keller invited further public comment. There being none, he invited the applicant back up for rebuttal.

Mr. Stoner said he would address several things he heard. One, with regard to small area plan master plan, he would note that this proposal does have the support of the Economic Development Department, Faith McClinton. It is completely consistent with the adjoining land uses, and the alternative move for these property owners is to build townhouses by right. So if that is what you want, then leave it the way it is because the pain and agony of going through a rezoning and then a site plan in Albemarle County is more than most users can stomach. This property may be designated for Light Industrial in some form; but Light Industrial on Berkmar Drive is not competitive with Light Industrial in most other areas that are nearby. So if you go to the valley or you go to Zoning Crossroads you can buy Light Industrial property at prices that make sense. Not a single user has come forward since 1987 and said they had an interest in this property as Light Industrial. That should tell you something. Therefore, we cannot force plans to conform to things that do not make any sense in the market place, and prices in Albemarle County and particularly this corridor will never justify Light Industrial, Flex, Office and some combination of retail all of which are supported under the Highway Commercial (HC) zone that we have requested are viable options. One of the

options that was declined by us during the last sort or purchase negotiation was an assisted living facility, which the county did not feel was an appropriate use for the site even though the potential user was absolutely committed to it as a viable site. So he thinks we recognize that commercial is what is needed here; but, to tie our hands and say we are going to force you to keep this property as R-6, Residential land until you have a specific use is really counterproductive to the county's comprehensive plan. If we want to attract users, in the words of my friend at the Southern Environmental Law Center, we need property that is zoned properly and could be utilized in a way that the market sees fit, and that is exactly what we are asking for.

Mr. Keller invited questions for Mr. Stoner.

Ms. Riley asked that he explain the special exception request.

Mr. Stoner replied that the special exception request was really filed in response to the county's request if we allowed for that because the limit is currently 4,000 square feet. The likelihood is that we could need more than 4,000 square feet given that the site is 4½ acres. Therefore, Rachel Falkenstein actually suggested that we apply for the special exception because, again, it was consistent with the size of the parcel and the likely density that would end up on the parcel.

Ms. Riley asked if he could address 47, 48 and 49 the particular uses that you are suggesting the special exception would be in accord with.

Mr. Stoner replied those are, again, in the code.

Ms. Falkenstein pointed out those are on the screen right now.

Mr. Stoner replied it was laboratories, research, development, experimental testing, manufacturing, processing, assembly, fabrication, recycling, storage, warehousing, distribution, and transportation. So all of those uses would normally be restricted to 4,000 square feet. The special exception would allow more area, again, because the site would justify a larger facility than 4,000 square feet would support. Again, the special exception request was really at the county's suggestion that look if this property is going to be developed these are uses that are consistent with our comp plan and right now you would be restricted under those use categories to 4,000 square feet and that does not make any sense on a 4 ½ acre parcel.

Ms. Firehock said we also heard more comments about the cemetery whether we know exactly how big it is and exactly where it is. We have a shape that is shown; but, we do not have an archeological study; and, she was not suggesting something exhaustive. She asked would you be willing to do a more careful study of a proper examination of the ground to figure out what area might be fenced off and then you would be willing to install some sort of fence and make that a condition of sale that not be disturbed because obviously you can put a fence up and someone else could take it down.

Mr. Stoner said he understands and respects that concern, and thinks it is a valid concern. We have done a lot of research on this, and they will have to dig up the notebook. It is not as if this issue has not been noted and researched in detail. He thinks if we don't move those grades, which may not be a realistic solution at this point, he thinks it is absolute appropriate to preserve them and make sure that any subsequent buyer preserves them. Therefore, he does not have any issue with that.

Ms. More said she had a question going back to the special exception request. She said some of the uses that are listed here are LI uses but she thought she heard you say that this property may not be attractive for those uses. She asked if he could explain because she felt like she was getting a little bit of a mixed message.

Mr. Von Stock pointed out that those are the uses the county wants; and, they are allowed within Highway Commercial. However, there is a limit put on what the square footage of those uses can be. If this user does show up, which so far they have not, and want to build a 10,000 square foot research facility on this site we would then have to come back to get a special use permit to allow that area to increase to over 4,000 square feet. So this was our nod to expand the definition of Highway Commercial to bring it as much in line with the Light Industrial/research zoning category. But, that whole list of uses up there is not; it is future. So as an owner, let me

be clear, this is two property owners one of whom just passed around and has heirs who are interested in selling. He pointed out that he has a majority partner that lives out of state. He is interested in selling and I am interested in selling. This process has been a cooperative process with the county to try to bring both owners together in a way that can achieve zoning that exists today and accommodate the greatest number of uses the county is interested in having. However, if this all falls apart he can assure you that the various parties would break up and you will see townhouses. We have had this property under contract of various owners since 2006 or 2007 and it has just been one hurdle after the next. All of the owners are frustrated, and we need to find a way to move forward. To me imposing the zoning on this other than Highway Commercial feels like spot zoning because all of the properties around us are Highway Commercial so he thinks it is a bad precedent on just about every level to put that on us.

Mr. Stoner pointed out there is no zoning code that corresponds to the comp plan designation for this property, which is why we are asking for HC, Highway Commercial zoning and these special exceptions. We have tried to get as close as we can to the comp plan designation that the county is asking for; but, there is no zoning code designation for what is in the comp plan.

Ms. Spain said since this is a mostly wooded site is there any plan or would this be under your preview to make plans to preserve any of that tree cover/

Mr. Stoner replied that he thinks it depends on the use. To the extent that you could preserve some of the woods particularly along the back border of the property that buffers up against the Kegler's site, he thinks that would be ideal. However, he thinks in advance of having a use, it is hard to say, and we certainly would not want to proffer preservation of woodland in an otherwise commercial district.

Mr. Keller invited further questions. There being none, Mr. Keller closed the public hearing. He noted something that came up from the public was a question that he had this afternoon and he actually asked for a clarification from council, Mr. Blair, and he was going to read a response and then ask him to respond to that. He would encourage you all to think about this. My question was regarding requiring specific site planning. He thinks from the course that we have all taken we all know what the answer to this is. A planning commission may not require a specific site plan or plan of development before acting on a rezoning unless the proposed rezoning has an application requirement for such a plan, such as a planned unit development or neighborhood model. There is no mandatory middle ground in a rezoning application; however, the commission may ask the applicant for a more detailed site plan or plan of development. If the commission recommends denial of the rezoning the commission may suggest that a more detailed concept/site plan might assist the Board of Supervisors in evaluating the applicant's request.

Mr. Blair said the conceptual plan for zoning map amendments actually is found in the County Code in chapter 33 and it specifically is section 33.4c.7 and this would be conceptual plans for zoning map amendments for conventional districts special use permits. It is an applicable standard and it lists out nine different aspects of a conceptual plan. So that is in the ordinance as to what would be required for a conceptual plan; but beyond that there is not. Those aspects are things such as streetscapes, bicycle facilities, building envelopes if applicable; but if there does not seem to be any building envelope proposed right now. That would be what would control as far as conceptual plans that are presented by the applicant.

Mr. Keller asked if there are any follow-up questions before we move on this.

Mr. Lafferty asked would you say this plan meets that requirement.

Mr. Blair replied that he would say it is as applicable as what is written into the ordinance. Right now, there does not seem to be a building envelope obviously proposed. He would say that what is there seems to apply to the as applicable standard. Obviously, if they were proposing a factory or retail side or something of that nature the conceptual plan would at least need to show the building, parking envelopes and things of that nature. But, he thinks they have the minimum criteria as spelled out in the ordinance.

Mr. Keller invited discussion.

Mr. Dotson said he had a few questions of staff. Right now, he was looking at the staff recommendation, there is sort of five stipulations, and he just wanted to walk through those and make sure we understood them. The first one

is keeping the 40' on the northern property line free from impediments. He thinks from the conversation here at the podium the sort of some variation of the Carter Meyers approach that is not in perpetuity sounds like it would be acceptable to both the applicant and the staff. He asked is that correct.

Ms. Falkenstein replied that is correct.

Mr. Dotson said on points two and three would those be addressable during site plan review or not.

Ms. Falkenstein replied the pedestrian entrances and faces of building to Berkmar would not be a site plan requirement so we would want that either as a note on the concept plan or a proffer. The sidewalk along Berkmar will be a requirement with the site plan.

Mr. Dotson said #3 pertains to VDOT and he thinks this is stating the obvious in a sense that VDOT will have to approve any access points. So he would assume that would be normally taken care of during site plan.

Ms. Falkenstein replied that is correct. Since this is a speculative rezoning we would just like any future purchaser to be on notice that this entrance location is not necessarily approved because they are showing an entrance location on the site plan and VDOT has asked for a shared entrance with the neighboring property and that issue has not been worked out yet. A neighboring property owner has applied for a special exception from VDOT from that requirement, and, it has not been approved yet. Therefore, it is yet to be determined where the entrance will be. However, yes that would be something we go through typically with site plan.

Mr. Dotson pointed out that Mr. Stoner had said that VDOT no longer supported a connector in this location between 29 and Berkmar. Do we have anything to corroborate his statement?

Ms. Falkenstein replied the conversation she has had with VDOT is that they are not opposed to a connection there; some site work would definitely need to be done. That frontage road in front of Better Living would need to be closed. Some grading would need to be done towards 29. Therefore, some significant improvements would need to happen in order for them to be supportive of that; but they did not say they were opposed to that in theory.

Mr. Dotson said point #4 is a little general, not just as stated, a commitment to major elements of the concept plan in a written proffer as described in the proffer section above. Is a key piece of that the cemetery given the conversations that have taken place here tonight that a little more specificity about identifying and protecting and possibly even fencing that cemetery? He asked is that part of what point #4 would cover.

Ms. Falkenstein replied yes, it could and she thinks we could even go into more detail than just preserving the cemetery. It sounds like there is some desire and the applicant is willing to do some additional survey work and potentially a treatment plan as to how that cemetery will be preserved and, that can be done in a proffer.

Mr. Dotson said that #5 technical revisions is business as usual and that happens every time we get proffers.

Ms. More said she had just a follow up on the proffer about the cemetery. It seemed that there was an indication that there was a willingness to do a little more survey to learn a little more about that property. If we were to expect that language to be added prior to this going to the Board if it were to move forward, then will the proffers be written in a way that if the property sales that the new owner would be required to still fulfill those proffers.

Ms. Falkenstein replied if that was a recommendation of the Planning Commission that could be a proffer that we have written. She knows we have done similar proffers with Brookhill recently so we could definitely work some language out so that the applicant would agree upon, and then the proffer runs with the property so if it changes hands it still would be required.

Ms. Riley asked Margaret in terms of this discussion on delineating the cemetery and preserving it; is there anything else that you think would be appropriate for us to be asking for at this point.

Ms. Maliszewski replied that a treatment plan would be appropriate. She said that could cover a number of things including to make sure that there is continued maintenance, which she thinks is important. She thinks the

delineation is obviously important and certainly, the fencing is very appropriate to the site and cemetery. However, she thinks that a maintenance treatment plan would also be very important. She pointed out something we have done in some other situations is to install a historical market to identify the site that might be something you would consider appropriate.

Mr. Keller said so if there is a more comprehensive interpretation of land, that there would be a location allowed for that, and Ms. Maliszewski agreed.

Mr. Lafferty said given the notion of the ordinance he would certainly see that this complies with that by advice of council. He understands that in trying to market this to a specific firm in the future would be very hard to do if you did not know what the zoning would be, and the zoning around there certainly matches the request of the applicant. Although he finds it a little premature because of all of the questions about the entrance, the cemetery and what is going to go there, he thinks with the advice of council he would have to support it.

Ms. Firehock echoed those comments because that was about what she was going to say. She generally does not like to see proposals like this with such vague information and she underlined all the places in the staff report where they say the information was inadequate to make a judgement. However, she is also sympathetic to the fact that the county has a number of properties that probably should be rezoned and because we have not undertaken a comprehensive rezoning for some time we force people to come forward and try to get the zoning that actually we probably want. She knows we get proffers and other conditions because of that; but it puts people through a lot of extra pain that he referenced. Anyway, it was the time, money and all of that. Therefore, that is one reason why she would be more in support of this proposal vague as it is. She thinks it actually advances what the county wants to see for that site. She would just leave it at that.

Mr. Dotson commented that what he sees here is some creative cobbling trying to make something work out of the pieces that are there with the Highway Commercial, the proffers, and so forth. He thinks that is a good practical approach. However, at the same time there are a number of loose ends that are here. He is looking at Mr. Roell in the audience who has had experience with the Board sending an item back to the Commission to get it a little bit tied up. Therefore, he was wondering if we could see this again at our meeting on November 1 since it does not sound like it requires any additional study. We are not sending it back for a traffic study. It does not sound like it requires more than having heard what the commissioners have said tonight maybe a meeting he was guessing with the applicant and the staff and we could bring it back November 1 and send it on to the Board of Supervisors with fewer loose ends. However, he obviously cannot commit either applicant or staff to that date; but that is my thought.

Ms. More asked for clarification for loose ends meaning something in the proffer language that you would like to have cleaned up and the issue with the cemetery. She asked are those the things you would see.

Mr. Dotson replied it was the things that we have talked about here that seem like they are agreements; but, they need to be memorialized in some way such as a note on a plan, a revised proffer, some additional language or some approach.

Mr. Keller added an explanation of the connector, yes or no and why.

Ms. Echols said the idea that this would come back that the Commission would either be tabling this or deferring this to provide the applicant to get some more information together with the staff and then bring it back is not problematic. She said the schedule might be because a number of staff members have to be able to comment on it, sit down with the applicant, and work through these things. She did not know that the first meeting in November would give us sufficient time; but maybe later in November but as soon as we can possibly get it back to you like within a month from now. We send our staff reports out a week in advance and so that would give us about 3 weeks to work it out and write a report and have them put together their proffers. Therefore, she would ask if the Commission wants the applicant to do that to give us at least a month so that we can have the time we need.

Mr. Keller pointed out we would have to ask the applicant, Mr. Stoner, if they are willing to request a deferral.

Mr. Frank Stoner said he would guess he would ask this. If we understand, we have five items on the Board and he thinks we have agreement on most of these items. These issues would be addressed before now and the time this

goes to the Board. Staff obviously would be charged with the responsibility of making sure they are addressed to their and your satisfaction. If that is adequate he thinks that certainly would be our preference to keep this process moving if we could not because we disagree with anything you are saying but just because we are hoping to keep this process efficient if we can. Therefore, with that, we would ask you to consider approving it with conditions this evening and we will work hard to get those conditions addressed before we go to the Board.

Mr. Keller said we would have this discussion right now for you; but where we have found ourselves is that we have passed items like this along and the supervisors have said that they want us to do more due diligence on it and it ends up making the process take even longer. He pointed out we have an example individual in the audience and that is really what Mr. Dotson is speaking to.

Mr. Von Storch apologized that he had to leave to go to a meeting in the city. He left the meeting at 7:35 p.m.

Mr. Stoner said he would ask staff, Rachel and Elaine, if we think that the issues we have are ones that the Board is likely to kick back.

Ms. Falkenstein replied that she did not feel comfortable saying one way or the other because it is hard to judge that.

Mr. Lafferty said he would think that as a minimum you would want VDOT to certify an entrance to this property before you go to the Board of Supervisors.

Mr. Stoner asked to give them an update on the VDOT situation that Rachael was not aware. He said John Nunnaly has filed an exception request; and VDOT has agreed to Mr. Nunnally's request for an entrance on the north side of his property. That will be a joint entrance with Malloy Ford. Our entrance meets the VDOT spacing criteria as designed so we do not have to ask for any exception to VDOT. Our entrance is already in conformance. Therefore, the letter that was written to the county ten days ago he thinks is in the process of being retracted so he does not really see VDOT as an issue at this point. However, he also knows we have not gotten the retraction letter.

Mr. Lafferty asked Mr. Stone if he would not mind this being a condition, and Mr. Stoner replied that he would not mind this being a condition at all.

Ms. Falkenstein asked if she could clarify quickly about the last time she spoke to VDOT. She said the time she spoke to VDOT was last week so there could not be new updates; but they said they will not be retracting their comment and an exception would be required for the joint entrance requirement with Better Living. She said you might meet the spacing requirements; but there is still a joint entrance requirement that they are going to require an exception.

Mr. Stoner said yes, he thinks they will require an exception of Mr. Nunnally. He said what Joel DeNunzio has indicated to me is they have agreed to a joint entrance at the north end of Mr. Nunnally's property, which will serve Mr. Nunnally and Malloy Ford should Malloy Ford decide that they want an access point on Berkmar. We would have a joint entrance with potentially Kegler's to our east. He understands the exception has not been granted; but he thinks there is an agreement within VDOT over the approach that has been taken. Therefore, if we want the letter or the approved exception he guessed we would have to wait. He pointed out and the engineer for Mr. Nunnally is here, Justin Shimp.

Mr. Keller said he had a question for our council. He asked in a case like this is it appropriate or inappropriate to be able to take a straw vote so that the applicant know where they are standing for their decision to make a deferral or not.

Mr. John Blair requested a recess.

After a request for a recess by Mr. Blair, the Planning Commission recessed at 7:38 p.m. and the meeting reconvened at 7:46 p.m. for further discussion.

Mr. Keller called meeting back to order at 7:46 p.m.

Mr. Blair said the students do get to see something because he has never heard of this and it is a fairly novel request for a straw vote. He said a couple of things come to mind. Number one, as you know Virginia is a Dillion's rule state and he did not see any enabling authority for a straw vote by the planning commission in the Code of Virginal. The second thing is without such an enabling authority even if you termed it a straw vote he would be very circumspect in saying to go forward, and my advice would be without any enabling authority he did not think a straw vote would be appropriate at this time.

Mr. Keller said so what could be appropriate is for the chair to call on each individual to say how he or she feel about this.

Mr. Blair replied that was what he was going to suggest, perhaps not a straw vote, but you certainly ask each member to state how they feel just in general terms, not whether they would vote to recommend or not recommend but just if they have concerns or not about the applicant if they are ready to vote.

Mr. Keller asked Mr. Dotson his thoughts since they need to move forward.

Mr. Dotson said he did not sense a desire on the part of any commissioner, including myself, to hold this up. He would rather it be worked out enough that he felt confident with it going forward. He had described it before and he would say it again as creative cobbling, he is very concerned that the Board has once sent an application back to us and they might do that again if we leave the loose ends. On the other hand, if the applicant and staff really work diligently between now and the Board of Supervisors having heard the Commission then it could well be tidy when it gets to the board.

Ms. More said she was sensitive to the issue of the time that it takes for the process and the applicant and the owner losing interest in the property to the intent of what is trying to be accomplished here. She feels that there are many loose ends and many unknowns. She is trying to sort out what those things are that we need to let go of; understand we will not know at this stage; and what things staff are recommending that are proffers and changes that can be made prior to the Board. She feels that these changes in the proffers with the addition of the cemetery language are things that staff have made a commitment to have addressed prior to this moving forward to the Board if it were to do so this evening.

Ms. Riley said she did not feel like we would need to defer this. She thinks we have had enough discussion this evening and hope they have given enough guidance to the staff so the language would be able to be written. Specifically, my concern is that we do get very clear language about what is being proffered for the delineation, the preservation, the treatment of the cemetery.

Ms. Firehock said she stands by her earlier comments and agree with what my fellow commissioners have just stated.

Ms. Spain agreed with the other commissioner's comments and she also think it is important that if all the surrounding property is zoned HC, then it would make sense for this property to fall into that general category as well.

Mr. Lafferty agreed with that and asked to make some recommendations. He suggested before the request goes to the Board that the entrance be locked down as best as possible; the verbiage on the cemetery be more defined about how they are going to protect it, and how they are going to protect that if the road on the north side is in fact approved. That would be the minimum questions he hoped the Board of Supervisors would not bounce back to the Commission. Therefore, he would recommend approval with those conditions.

Mr. Keller said it was time for the Commission to take an action since he assumed Mr. Stoner was standing by what he said he wanted to do after hearing where we are.

Ms. More moved to recommend of ZMA-2016-00009 with revisions as recommended by staff and adding a revision regarding proffers about the cemetery to include a treatment plan and a marker.

Mr. Lafferty asked about the entrance, and Ms. More replied that she thought that in #3 that was covered because the entrance location is subject to VDOT approval.

Mr. Dotson seconded the motion.

Mr. Keller invited discussion.

Ms. More said two of the points made was about the entrance and she had thought that had been addressed in staff's recommendation. Then the other was the possibility of the future connector road; and, she cannot imagine that in a small area plan that is going to guide us as to whether or not that road is something in the future the small area plan would recommend to destroy an historic cemetery. Therefore, she thought the language in there about protecting the cemetery; the treatment plan and the marker would be in consideration of this project in any future road connections that would be sought on that property. However, if there is language that needs to be there to make that very clear she was happy to make it; but she assumed that a small area plan would not recommend a road to be put over top of a cemetery.

Ms. Falkenstein said she thinks that is correct and that would be taken into consideration. She said if a road were recommended there would be steps that would have to be taken to relocate the cemetery if that was the case.

Mr. Keller asked if the Commission was ready to take a vote on this. He asked for a roll call vote.

The motion passed by a vote of 7:0.

Mr. Keller thanked everyone and wished the applicant well in working this through quickly so that it can move on to the Board of Supervisors in a timely manner.

The meeting moved to the next agenda item.

ZTA-2015-00013 Inns & Taverns (Clifton Inn)
The Planning Commission held a public hearing to receive comments on its intent to recommend adoption of an ordinance amending Secs. 18-3.1, Definitions, and 18-10.2.2, By special use permit (RA), and adding Sec. 18-5.1.61, Historic restaurants and inns, to Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 18-3.1 by amending the definition of Historic District; add Sec. 18-5.1.61 by establishing regulations applicable to historic restaurants and inns by delineating the requirements for establishing and expanding allowable uses, including a requirement that proposed additions, new structures, and structure modifications be complementary and proportionate to the existing structures and site and must not adversely impact the historic character or significance of the structure or site or result in de-listing of the structure or site from the National Register of Historic Places and/or Virginia Landmarks Register; and amend Sec. 18-10.2.2 by amending the requirements of what constitutes an allowable use after the effective date of this ordinance, if adopted, including a requirement that any additions or new structures to a historic structure or site shall serve an existing and operating restaurant, tavern, or inn. 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. (Elaine Echols)

Ms. Echols summarized the staff report for ZTA-2015-00013 Historic Inns & Restaurants (Clifton Inn ZTA) in a PowerPoint presentation. She said this was a potential amendment for historic inns, restaurants and taverns. She noted that the Planning Commission held a work session on this in July, 2016 and staff raised a number of issues about the importance of the expansions being proportionate to their setting. The Commission was very interested in the impacts to the historic structures as well. Ms. Echols said that were many questions and the Commission decided to answer many of those questions and resolve issues by breaking the ZTA into two phases.

Ms. Echols noted that the Commission asked that Phase 1 be expedited and it would affect only the historic restaurants and inns currently in operation. The Commission asked staff to obtain input from the Historic Preservation Committee, which they did in August, 2016. Ms. Echols also said that the Commission asked staff to set the public hearing at the earliest possible date, which staff has done. She said that the draft ordinance could be found in the Commission's packet along with some analysis.

Ms. Echols said that Phase 2 would affect other potential special use permits for historic restaurants and inns where an addition or an expansion would be requested or desired. That project is not currently in the Community Development Department (CDD) work program; but staff expects to go to the Board of Supervisors in November to talk about the work program. If it is the Commission's desire that this should be higher on their priority list, Ms. Echols suggested that Commissioners ask their Board member for help so that staff gets the direction it needs from the Board of Supervisors.

Ms. Echols noted that the Commission is probably familiar with the current ordinance, which staff brought to the Commission at its last work session At that meeting the County Attorney, Greg Kamptner, suggested some language for staff to begin with which would potentially help to expedite this particular project. He suggested adding something about the importance of maintaining the status on the National Register or the State Register and that the changes would only apply to those restaurants, taverns and inns that currently operate under a special use permit.

Ms. Echols said that staff received an email today about the need for a definition. She said that as staff discussed this in a meeting earlier in the day, they realized that the definition of a tavern is not well known – the term means different things to different people. The Google dictionary talks about it being an establishment for the sale of beer and other drinks to be consumed on the premises sometimes serving food, a bar, a pub, a place for alcoholic libations primarily. Ms. Echols said that when one thinks of inns, restaurants and taverns historically, we assume that if the facility were operating as an inn or available for lodging it would have had some food service with it.

Ms. Echols further explained that the Historic Preservation Committee had a look at what was proposed by the Commission and worked on a little more by staff. She apologized that the Historic Preservation Committee minutes might not be in everyone's packet. They were not online, she said, so she sent them late this afternoon in case the Commission did not receive them. Before providing any comments on the proposed ordinance, the Historic Preservation Committee said they felt very strongly that they should be asked to provide an opinion on any request for a special use permit and that the HPC staff should take a lead as part of writing any staff report for a special use permit for this particular use. Ms. Echols said she explained to the HPC that this item is part of the work that would need to be done in Phase 2.

Ms. Echols reminded the Commission of its last meeting and their desire to have a joint meeting of the Planning Commission, Historic Preservation Committee and the ARB to talk through how to deal with future requests. Ms. Echols noted that this would like be part of Phase 2 because there are different ways in which these kinds of decisions can be made. The City's BAR operates differently than our ARB. She said that the County's Historic Preservation Committee is not enabled right now through the County Code to make decisions about historic properties because we do not have any Historic District regulations or Historic Landmark regulations. So figuring out to whom such a request should be referred is something that should be worked out in Phase 2.

Ms. Echols said that the Historic Preservation Committee provided very valuable comment on the proposed ordinance. They wanted to make sure that:

- Archaeological resources should be a consideration.
- The "if available" language should be better clarified, better defined.
- The terms buildings and structures should be consistently used throughout.
- Ordinance language should use "shall" not "will".
- The "shall restore" language should be revised to clarify that additions or new separate buildings do not require that the historic resource itself be restored.
- The text language should be clarified to state that the special use permit (SP) is potentially available for structures that have <u>historically</u> been used as restaurants, taverns or inns.

With this information, staff refined the recommendation. Ms. Echols noted that there are several changes in the staff report staff has recommended to keep this particular request moving. There is no change to the historic structure or site definition. She said staff recommended that the historic district definition become more current with what it really is: districts and landmarks that are on the National Register of Historic Places or the Virginia Landmarks Register. The current ordinance refers to structures listed as historic in Comprehensive Plan, but the comprehensive plan is not updated every time a new structure or district is added.

Ms. Echols said that within the ordinance itself, the Commission will note there are a number of strikethroughs, and she hopes the staff report is clear. Staff clarified that the properties being discussed for the amendment are sites containing a structure or a historic site that are defined in section 3.1of the Zoning Ordinance. To satisfy the concerns of the HPC, the term, "was historically used" was added that a prior tavern use had been established in the past. Staff noted that at least one of the three facilities to potentially be affected by the ordinance, Clifton, was not historically used as a restaurant, tavern or inn. Its historical period of significance was not as one of these items; but it is lawfully licensed because when it received its special use permit, it was operating as a restaurant in the rural area.

Staff added the phrase that renovations or the restoration needs to restore the structure to the architectural character of the period of its significance. She noted that the third provision was very similar to what Greg Kamptner recommended for facilities that are in operation on the date of adoption of the ordinance.

In addition, staff wanted to provide some guidance on topics to be considered when a special use permit is requested. Ms. Echols said that, as was said at the last meeting, there I s more than just the historic character of a structure that is in play here; it is also the appropriateness of the use in the rural area. So staff added these particular items to be clear that the use should also be consistent with the rural area goals listed in the comprehensive plan.

Ms. Echols noted that both the HPC and staff believe that new buildings or additions be complimentary, proportionate and subordinate to the historic resource. She said that the county has a role in making this determination, especially if the DHR is not available to provide any comment on National Register listings or State Register Listings. Right now Margaret Maliszewski is the Design Planner who would probably be the designee of the Planning Director to make evaluations. She would do this until Phase 2 and maybe a different body, process or procedure would be set to determine the impact on a particular location and/or scale of the proposed structures. She said that ultimately, a staff recommendation goes to the Planning Commission and then to the Board of Supervisors so it is only a recommendation and it is only a determination.

Ms. Echols said that number 3 on the proposed amendment was what the Commission was had been most concerned about – a building not losing its listing on the National Register or State Register if additions were made. Staff said that if they were unable to get any comments from DHR, then staff would get the information from the County's Design Planner. Finally, the preservation of the archaeological features is included in the draft ordinance in keeping with what the HPC recommended.

Staff has received the only feedback to date from SELC and the Commission may have received an email with the same information as well. Staff said the following items seem to be important to SELC:

- The use of the terms, "complementary and proportionate" are too subjective, why not use performance standards? Staff responded that it was taking the lead from the Commission who said at their last meeting that they did not want to get too detailed with this amendment. The PC said it would l get into the details about this with Phase 2. Ms. Echols noted that "complementary and proportionate" are subjective terms; but this is an art and not a science. It is similar to the role of the ARB when they review conforming to the Entrance Corridor Guidelines.
- A definition is needed for "tavern" and "inn". Staff said they agreed but sensed that the Commission did not want staff to stop now and provide those definitions. Ms. Echols said that some thought and time would go into providing those definitions. Right now, the ordinance does not contain a definition and staff believes it is okay to make the same interpretations as have been done in the past.
- The third thing from SELC was to reinforce that only those properties operating under an existing special use permit (SP) are eligible for additions or expansions. Staff believes that this is already taken care of under the "lawfully licensed" language in the proposed amendment.
- The next item recommended by SELC was to add a clause that no new structure should be built for restaurant use. Ms. Echols said that this item was never discussed by the Planning Commission or the Historic Preservation Committee. Staff agrees that it should be considered; however, staff thinks that could also take place under the Phase 2 changes because it is a substantive change that needs some discussion.

Ms. Echols said that staff has tried very hard to respond to the things the Commission asked for at the last meeting to keep the amendment moving forward which is why the ordinance only contains the items it does. Staff

recommended that the Commission recommend the ordinance in Attachment C to the Board of Supervisors. She said she did not provide a motion for denial because the Commission was the entity initiating the change. If the ordinance is not what the Commission wants to recommend and there are substantive changes, the Commission needs to staff what changes to make. Ms. Echols said that the Design Planner, Margaret Maliszewski, would help her to answer questions.
Mr. Keller invited questions for staff.

Ms. Firehock said she had a quick clarification question. In the staff report on the second page, it says staff recommends the Commission recommend adoption of the proposed ordinance found in Attachment D and we only have Attachment C.

Ms. Echols replied that this was a typo. The report should say Attachment C.

Mr. Lafferty noted another thing like that is under 27a part ii if changes to the historic structure are proposed such changes and underlined is will restore and shall has been crossed out.

Ms. Echols suggested that he might be looking at an earlier version but should look at Attachment C, which is the correct one located as the last thing in the packet.

Mr. Lafferty agreed that it had been changed back to shall.

Mr. Keller invited other questions.

Ms. Spain asked if Keswick Vineyards and the Keswick Inn would be considered two different uses at the same place or is Keswick Inn separate from Keswick Vineyards.

Ms. Echols replied it that the two uses, vineyard and historic inn,

Ms. Firehock asked to go back to Ms. Echols' characterization of the Planning Commission's recommendation. She said Ms. Echols talked about the fact that we wanted to keep things a little looser and not be too specific. Ms. Firehock said she was referring now to Article 2 Basic Regulations Section 5.1.1.6.1(2) where the proposed ordinance said the location and scale of proposed structures and additions shall be complimentary and proportionate. Ms. Firehock said that she specifically brought up the recommendation that we come up with some percentage because she thought the phrase was simply too subjective. She said she personally still feels that complimentary and proportionate is not specific enough as a guideline and would like to see a number put in there, whether it is 15%, 30% or whatever. She said that it leaves too much leaves too much leeway in terms of interpreting, whether or not the addition overwhelms the structure or structures on the site.

Ms. Maliszewski suggested if Ms. Firehock were interested in having a number in there, she would add the number to this language so you can cover both aspects of it.

Ms. Firehock said she had talked about 25 percent.

Ms. Echols said she remembered that there was discussion on particulars, but that the Commission did not want specifics with Phase 1. Staff and the Historic Preservation Committee from whom the Commission asked input felt like these words were extremely important. Ms. Echols said she did not believe that the HPC would have supported this ordinance amendment without language related to complimentary and proportionate. Ms. Echols said she thinks that each site has to be looked at on its own specifics as to what the proportionality might be. She did not believe that you could just require or mandate no more than a particular number because there are so many variables that exist with properties containing historic resources. A historic site can be extremely large with a very small building. A historic site could have a small acreage with a big building. Details on proportionality would be something reviewed through the special use permit process and a determination would be made, as such determinations always are. Ms. Echols said that the direction she thought she got from the Commission was that they were not looking for performance standards now. She said if she missed that direction, she I apologized.

Ms. Firehock replied that she said it was merely her opinion, and she did not know if her fellow Commissioners

agree with her on that point and we can find that out now. But, she said she was also a little confused on the process. If you leave in "vague language," and it then is reviewed by our Historic Preservation Committee, which has no legal authority it is very odd. The HPC certainly has an advisory role; but we do not have a Historic Preservation Ordinance that enables them to be an official advisory body. She asked Ms. Echols to clarify that.

Ms. Echols replied that staff did not put such a requirement in the proposed ordinance.

Ms. Firehock asked who determines that it is indeed complimentary and proportionate.

Ms. Echols replied that the staff would make a finding that they would then provide to the Planning Commission and the Board of Supervisors, just like it does with any other kind of determination for a staff recommendation. We report it to the Commission and then you decide whether you agree.

Ms. Riley said she was not clear whether we are talking about phase 1, phase 2 or both. However, she is going to assume for this conversation that we are talking about phase 1. She sat through the Historic Preservation Meeting (HPC) on this and thinks they were very clear about wanting more specifics. This is not my area of expertise, and she does not know if the percentage is the right way to go about this. But, ultimately as a Planning Commissioner who is not trained or has expertise in evaluating these kinds of proposals she would look to the HPC to do that for because there are people on that committee who do have that expertise. She would be looking this evening to insert some additional language and/or make some changes for this phase as well. She is concerned about having a Phase 1 now that is much vaguer and subjective and new applicants who come in under phase 2 with higher standards,
Ms. More asked staff to clarify the statement she made about adding a clause that no new structures should be built for restaurant use and it sounded like you were recommending that to be in phase 2, and Ms. Echols replied, "yes, it is for phase 2."

Ms. More asked why not in phase 1.

Ms. Echols replied that adding a phrase to say that no new structures should be built for a restaurant is a substantive change that was not considered or discussed by the HPC or Commission. She explained that restaurants have different impacts than lodging and dealing with those impacts should be discussed, but to do so now would prolong the process for this ZTA. Being instructed to expedite the process and since there are only three properties that are under consideration for expansions and additions, Ms. Echols said she felt this should wait to Phase 2. She said that if the Commission wanted staff to discuss it and provide a recommendation they could; but they just got the suggestion today.

Ms. More asked in phase 2 if there are no other properties that under consideration.

Ms. Echols replied that phase 2 was intended to look at how other properties might be able to take advantage of making additions and expansions. She said that right now, if you have a property that is listed on the National Registrar and it has been used as lodging or taverns, you could come in and ask for a special use permit, but the use would have to be within the confines of that building footprint. (She noted that she told them last time that were 28 possible properties that staff knows of that might qualify.) She said that the impact of the ordinance change on 28 potential properties could be greater than the impact of the change on the three existing properties and the Commission wanted to open the opportunity up for three properties at this time. She said that the County does not allow restaurants in the rural area in a by right or a special use permit arrangement except if it is a historic resource.

Ms. More asked if only three facilities have been doing that, and Ms. Echols replied that is correct.

Ms. More asked why the restaurant part would not be in phase 1 since it would only be addressing the three existing.

Ms. Echols replied that it would be up to the Commission if you wanted to recommend adding the restriction requested by SELC.

Ms. More pointed out that she missed the work session while she was on vacation so she read the minutes and pulled that piece out as a question. Therefore, she was only looking for clarification.

Mr. Lafferty said following up on that the Clifton proposal in attachment B shows the grand floor plan; it appears that the center section is a restaurant.

Ms. Echols pointed out that the restaurant would not be a new facility since there is an existing restaurant at Clifton.

Mr. Lafferty agreed but noted that the restaurant is currently in the old part of Clifton; and, this is a new building here. He pointed out it was the B floor plan and the restaurant appeared to be right in the center of the bottom of the U, which means it would be a restaurant in a new building.

Ms. Echols said the person who made the application might be able to provide further clarification of that when they come up for the public hearing.

Mr. Keller invited Mr. Dotson if he had anything to ask.

Mr. Dotson said he had two things. On the question of restaurant, it occurs to me that it might actually protect an historic building that if at least the kitchen and restaurant activity were located in a new building that was up to Code that could actually protect the historic resource. Therefore, that is just one thought. However, the other thought coming back to the word proportionate, he wrote down not to exceed the square foot measurement of the historic resource. To me if the historic resource is 1 square foot bigger than the new part it is still dominating and proportionate. Therefore, that would be a numerical standard and one that makes some sense to me that there is more historic than not historic.

Mr. Lafferty said getting back to that and the restaurant part he would be concerned if that is a restaurant and we let this go on through for Clifton will Keswick and the others come back to us and say hey they work for them and how come it is not working for us.

Ms. Echols replied that she thinks that possibility exists.

Ms. Firehock said she had another question for staff. Also, under Article 2 Basic Regulations #2 it says in no event shall the proposed addition/new structure/exterior modification to the historic structure adversely impact the historic character or significance to the structure as determined by the Director of Planning or his or her designee. Ms. Firehock questioned whether the Director of Planning has the professional credentials to make that determination, what is essentially a legal judgement, as to whether that addition would now change that property to no longer be deemed worthy of being on the National Register.

Ms. Echols replied that it is not a legal requirement, and Ms. Maliszewski may want to answer about Historic Preservation professionals. She does not know if Andrew Gast-Bray has that qualification.

Ms. Firehock noted that it just says that you will be able to make that determination.

Ms. Echols added or their designee.

Ms. Firehock said but they are allowed to make it.

Ms. Maliszewski pointed out there is a distinction between #2 and #3. Therefore, #3 would be the legal definition about whether or not it is still eligible for listing in the Register and that would be left to DHR. The language in #2 about the Director of Planning or his designee is standard language that we use for this type of thing; and, if the Director of Planning does not have that expertise, then the assumption is that someone on staff does.

Ms. Firehock said she was just not sure that person could actually make that judgement. She said we approve it and then they lose their register status down the road, and she was not talking about the Clifton Inn here in particular. She knows that is a wonderful plan and done by very qualified people; she is just talking about in general.

Ms. Maliszewski noted as she said #2 and #3 are distinct so the legal determination is left to DHR.

Ms. Firehock said right, so if we could approve something, then build it; and then DHR could disagree with our

interpretation and remove that designation, which would then in that case would nullify their ability to operate. She asked is that correct because we would have approved something contingent on them not losing their National Register status.

Ms. Maliszewski apologized, but said she was not following her.

Ms. Firehock said she was trying to understand the process here. The application comes forward and the staff tells us that in my best professional judgement determined that this addition will not cause this property to lose its status.

Ms. Maliszewski replied no, that is not what we would do. She noted that we would say we think it is proportional or it is not proportional, and then we would report on what DHR has said.

Ms. Firehock asked okay, then are you saying it would go to DHR and then to the Planning Commission.

Ms. Echols replied if DHR is available, but if DHR cannot make any comments.

Ms. Firehock pointed out that we heard this comment last time because we talked about the fact that DHR is understaffed. We have one person covering a huge district, and she happens to know that person, so it is unlikely that DHR would be weighing in. Therefore, she was just bringing up the possibility that we run the risk of approving something that causes the National Register status to be put in jeopardy because she is questioning whether we have on staff adequate resources to make these judgements. It is not to disparage to anyone in the room; she is just questioning that because she thinks it is a very serious undertaking.

Mr. Keller said he understands her point; but, he must say that it seems to me that the vast majority of these are going to be tax credits t so they are going to be reviewed by DHR just by the definition of how these sorts of projects are happening all over the nation right now.

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

Katurah Roell, with the Piedmont Development Group, said he was here on behalf of the applicant, Clifton Inn, and has worked diligently with Margaret and Elaine. They have done an exceptional job as we have worked through this process to understand how this ordinance might be worded to both protect the interest of the county as well as permit the expansion of the Clifton Inn, Michie Tavern and Keswick as they are currently operating under a current special use permit only. With regards to Ms. Firehock's concern about DHR approval or let staff or Margaret approve, they would in no way would make a recommendation without some sort of professional backing. Some recommendation when we started this a year and three quarters ago and we met; Margaret made the point to us to draft your plans send them to DHR and when you get DHR approval come see me. So she was not going to make any determination without DHR approval backing her up however qualified she is. He was sure our new Planning Director would not either. Therefore, in that end then once DHR approves those plans they consider them to be in scale, proportionate, and appropriate for the existing structure as they have already approved our plan designed by Hank Brown. Therefore, to that end, adding a percentage number of what is relative and how it should fit relates to the architecture and scale. Therefore, if our main structure is 2 ½ stories high; keep it at a single story; spread out to be subordinate to the main structure; do not attach to the main structure with any additions or construction; then we have maintained the integrity of the original structure and provided room to expand that met with DHR approval. To that end, we do not want to step on their toes and will continue to be watched by them, monitored, nor does the owner want to lose his status in the Historic Register or build something that is inappropriate. So to the end of proportionate and scale Mr. Roell said he understands staff's effort to maintain that.

Mr. Roell said his group including their architect and preservation group were at this hearing. He said that he welcomes the Commission's input. At the last meeting he said that he would accept any input from the Commission as long as does not affect DHR's approval because anything that you decide that goes against their approval, then puts us in that very position that draws into question are we maintaining our historic status. He said he would answer questions. He pointed out that the kitchens are not restaurants. Those are like kitchenettes, wet bars, living room areas, living room areas and are meant just for gathering space in amongst some of the rooms. Often times when wedding parties come instead of just having your room and your room to go to there is actually just a simple

gathering space pre-post wedding. Therefore, that is what it is intended for the restaurant space in the main structure as it is.

Mr. Lafferty asked in Attachment B does the B and B stand for bed and breakfast.

Mr. Roell replied yes, there was a consideration for one stand-alone building on that corner providing we can find a location, suitable septic field and so forth for that. Again, that decision was a result of zoning saying that a single B and B building can be permitted in a separate case; and, again it would only have a kitchenette and not a restaurant in it. He noted that it is our desire that everyone goes to the main restaurant; but has a small facility even if you go to the courtyard you would like to have a little kitchenette, refrigerator or something handy. That is the intent and not to serve as a restaurant anywhere outside of the main structure.

Mr. Lafferty said he would assume that with all the little cottages you would have adequate septic space.

Mr. Roell replied that would be a condition of the site plan approval and the Board of Health. He said they have been doing soil studies and researching areas. That is how the current facility is operating. There is an area of land that is fairly level with good minimum slope that will support the soils.

Mr. Lafferty pointed out that all through that area (the geology) is known to have shifts, which does not perk very well.

Mr. Roell replied that he is well aware of that with the property that is across the way with Dr. Hurt for many years.

Ms. Echols added that these are the considerations that would take place once they apply for the special use permit.

Mr. Roell pointed out all those conditions have to be met along with site plan.

Mr. Dotson asked if the proposed expansion would exceed the square footage of the existing historic resource at Clifton.

Mr. Roell said if you are talking about gross square footage of the building and what areas that is; if you added up the square footages of the existing buildings, he was not sure. He said he just knows that their proposed layout in footprint has been reviewed by DHR and without having to go back to them other than with construction plans, he will try not to step on their toes.

Mr. Dotson said so you do not know whether the new to old ratio is more than 50/50.

Mr. Roell replied that he would say it would be close to one another and it could similar; but whether it is slightly in excess or slightly less he did not know specifically. We were going more for style, low-key footprint and courtyard look in meeting the requirements after meeting with DHR and with Hank Brown, which was the basis for the design. He said he hoped he was able to answer things adequately and appreciates your attention to this matter. Thank you.

Mr. Keller invited public comment.

Jeff Werner, with the Piedmont Environment Council, said he knows Katurah is having so much fun with this one and asked can we just keep it going? He said he has been reading through a staff report for Zoning Text Amendment 99-07 from the Planning Commission June 27, 2000 and Board of Supervisors August 16, 2000 and we were discussing all these various things. There are a lot similar discussions and concerns. He knows this is not about Clifton Inn and we all agree where we are with Clifton Inn; but we cannot take our eye off the ball since there are other things that will come out of this. He said Mr. Butler would probably speak; but he just wants to say that absolutely everything that you received from him about the proposed changes to Section 27a he thinks are excellent and you absolutely have to include those. They really narrow and clarify some of the concerns. It even came up during the Historic Preservation Committee discussions.

Mr. Werner said that the thing about DHR making a determination has troubled him. He said there was a lot of discussion at the committee about the role of DHR. He thinks the ordinance should simply say that DHR should be

consulted. Clifton did it up front and it will only be onerous on the person proposing the addition. If an applicant comes in, we approve something, and then after the fact they lose their destination; then what is the point? It is like a cell tower saying we are going 199 feet because then we do not have to light it. Well that is what the FAA regulations say; but the FAA can still come in and make you put a light on top of it. Therefore, it is better to go and get that determination up front because assumptions do not work. We are dealing with a little bit of a double-edged sword here. This is still a special use permit process, and as we know, the Board of Supervisors can be subjective. There are conditions that can be in here so it is difficult to think of these as really constraining things. It is good to get as much in here as we want; but, remember the Board of Supervisors still gets to make their call and one of the big decisions about how this will impact the character of the area. Therefore, there are pros and cons to special use permits. It is where local government has a tremendous amount of discretion and it is just a function that happens to be on your Board of Supervisors at that time. Therefore, he just wants to make sure that is still understood. However, again, he supports what Mr. Butler proposes in 27A and please include it.

Morgan Butler, with the Southern Environment Law Center, said we obviously sent some comments to you yesterday knowing it would be hard to get into those issues in any depth tonight. He appreciates Ms. Echols going over them with you; and hopes at least some of you had a chance to read those. He would not try to dig into them tonight. He said he just wanted to respond quickly to what Ms. Echols offered. He said that they understand the point about subjectivity and whether the County wants to get that involved in setting standard on this one. He said that, we just think having some type of a ceiling makes some sense whether it is 25% or 100% number. He said even in this phase 1 we think it would be a nice safety valve to have. With respect to whether or not to allow new structures for restaurant use, we just wanted to be sure to point out that was inconsistent with the comprehensive plan statement. There is a statement in the comprehensive plan that clearly says new structures shall not be built for restaurant use that we quoted in the letter we sent you. Again, if that is something you want to defer to phase 2 he did not think that is a huge issue. What he thinks is important though part of why we are comfortable perhaps with pushing some of those things to phase 2 is because we are saying with phase 1 it is only going to be covering these 3 properties. We are just not clear that this language limits it to those 3 properties. We think the addition under a special use permit issued under this section, as we suggested in our red line, would help do that. He thought Ms. Echols referred to the lawfully licensed language perhaps providing that security.

Mr. Butler apologized in advanced that this is going to get somewhat technical and hoping that at least Mr. Blair will be able to follow. However, as we read it the lawfully licensed language applies to A1. If you have a historic structure on your property that at some point was historically used or lawfully licensed as a restaurant, tavern or inn, then you can get in the door to apply for a special use permit. He said A3 is then potentially referring to a different structure; and, it allows new structures as long as they serve a restaurant, tavern or inn existing and operating on the date of the ordinance adoption. Those are potentially two different structures. The language in A1 about lawfully licensed is not necessarily linked to A3. But, even if you interpreted them to be linked it is important to point out that the structure in A1 does not have to have been lawfully licensed. It could have either been historically used or lawfully licensed. So we don't think the lawfully language is something that is 100 percent safe to rely on here. We do not see what harm it would do to add the language we are proposing there at the end of 27a, existing and operating under a special use permit issued under the section 10.2.2.27 as of the date of the ordinance adoption. He hoped that was at least relatively fair to Mr. Blair and if it is helpful he would be happy to come back up to explain or answer any questions. Thank you.

Mr. Keller invited further comment.

Katurah Roell asked to make a clarification and thank Mr. Butler for making these points. He agreed with Mr. Butler as far as how to define it and add the language about the special use permit and operation. As far as the legal language it is the draw of legally licensed may be a little vague; but, it clearly states as he has put it a special permit is issued and we are operating as of the date of the ordinance and clearly defines the framework of who we are talking about. He thinks that is clarify and assurance that we are all looking for. As far as we have talked about restaurant uses and so forth in how they are defined Mr. Roell said, we are in favor of any clarity that can be added to that language that identifies what this purpose is. He said the proportionate use, again, by putting a numerical number on something is like taking a dart and throwing it at a dartboard; and, do we hit 3 or 9 he did not know. Is it really relative to it; and, only DHR would speak to that and true balance to say it is overwhelming or it is not. Thank you.

There being no further public comment, Mr. Keller closed the public hearing to bring the matter before the Planning Commission for discussion. He invited discussion.

Ms. Riley asked the Commission's counsel, Mr. Blair, to advise them on Mr. Butler's assertions.
Mr. Blair thanked Mr. Butler for his comments. He certainly can understand some disagreement; but, when you read 27A or he should say 10.2.2.27.a you see provided the structure was historically used or lawfully licensed as a restaurant, tavern or inn; he is correct that the structure itself could be either historically used or have been lawfully licensed as a restaurant, tavern or inn. But, as you read there is a semicolon and then after small roman numeral ii and then you have small roman numeral iii; now he would submit that as it is currently written the structure was either historically used or lawfully licensed restaurant, but the ands are conjunctive meaning the structure itself would have to meet all 3 of those criteria. Now on the other hand he thinks if you want to make it, air tight if you do not want to rely on the conjunctive interpretation you can add the language about the special use permit. However, he would submit that the ands do cover and require all three criteria to be met because that is a principle of interpretation; and the conjunctive means all must be met or is the disjunctive meaning 1 or 2 or 3 can be met to receive that treatment.

Mr. Lafferty said it is certainly true in algebra that the "and-is conjunctive" means this and that have to be true for the statement to be true.

Mr. Dotson said however, more language that gives a safety net that avoids possible confusion seems worthwhile and it does not seem like it has a downside.

Mr. Keller added that we have an actual applicant here who is comfortable with that language so our case study and point supports that addition it seems.

Ms. Riley said she was just wondering if there needs to be a full definition of what historically means.

Ms. Echols replied that one would take a lot of time to get into. She said that staff discussed it at length and it was something the Historic Preservation Committee wanted to have. She said it can be used to mean "at the time of its historic significance" or it can mean that sometime in the past it was used as a tavern. Right now, it is not clearly stated in the ordinance and without getting into a lot more discussion and determinations about that, we felt right now we should just leave it as it is. Ms. Echols said it was a very good question. She said if you were to use the term to mean that it was used as a restaurant, tavern or inn at the time of its historic significant that would not allow Clifton to be able to make this application. The current regulations allow this special use permit allows him to have this use because it was in the past used as a restaurant, tavern or inn although not at the time of its historical period of historical significance. She would suggest that is also a phase 2 discussion. But, if the Commission thinks it is important she would ask that you go ahead and wrestle it down to the ground with your discussions tonight and advise on what it is you think is most important about that.

Mr. Keller said he would like to take a shot just for everyone to consider. He thinks that we have all labored under the difficulties of not having historic designations in the county and having an ordinance; and that we should make a recommendation in support of the modifications of this current piece with the additional wording that was suggested. However, we should link it so that the Supervisors see that we support this ordinance that will allow the Board to be able to act on a project that has been held up for some time. He knows that there is some interest in many sectors to finally move this forward; but, we should link it to them supporting the phase 2 because what we really want to do is to get the complete ordinance and we do not want this to be held up for years. He suggested that maybe Bruce or Andrew can comment because of the CIP. However, he has concerns about just doing the one and oh that is the answer and we do not have to deal with the other.

Ms. Firehock commented that she thinks it is both fortunate and unfortunate that we have the Clifton Inn as part of this consideration because, of course, they are the poster child for doing everything right. We have to create regulations not assuming that everyone is as wonderful and thorough and architectural correct as the Clifton Inn application. She said this will not slow them down because they have already gone through the DHR and she did not know if there is support tonight for my request to have something proportionate be tied to a number; however, at the very least someone would go to the Department of Historic Resources and share their renderings and get an opinion that yes they feel that this continue to support that because she does have heartburn with it being left to staff

and it is optional as it stands now. This county has cut staff positions in the past and we all know that. We do not have the staff that we use to have a decade ago. Therefore, she would like to be careful that we make sure that someone has gone to that professional body. She did not know how the Commissioners feel about that. But, you are going to spend the time, money and effort and you are indeed committed to keeping your historic designation and why wouldn't you want DHR to look at it.

Mr. Keller said it was my understanding that many communities that have a very long history of historic resource protection do not agree with the concept of delegating a local responsibility to a state body. Therefore, we would need clarification on that. We have a local body as the decision maker and that is my reasoning for the second phase in implementing the second phase and working that through so that we have the designated individual that staff.

Ms. Firehock said she would have to disagree with Mr. Keller because she did not see any difference in how we ask VDOT for opinions all the time and they are a state body commenting.

Mr. Keller pointed out that VDOT owns our roads, and that is the difference. He said VDOT is the entity that actually is running our road network. That is the distinction, which is significant.

Ms. Spain said but DHR is the entity that decides whether these places lose their designation if there are changes made, and so she agrees with Ms. Firehock that it should be included in the requirements for the second phase. She asked if that is what we are talking about.

Ms. Firehock suggested that they could include it tonight or you could punt it to the second phase.

Ms. Spain suggested that they do it tonight. She said we also side step the issue of how do we define historic because DHR does that.

Ms. Firehock added or proportionate, and Ms. Spain agreed or proportionate.

Mr. Blair suggested that other staff could comment as well; but he thinks we did talk about this at one point in discussions and as has been pointed out 2 and 3 are distinct. Number 3 is in fact about listing on the National Registrar and the Virginia Landmark Register. He said number 2 is what he is interested in knowing from a policy perspective are you willing to default to the state making that determination.

Ms. Firehock replied that she would guess that she is. She said it says in number 3 as indicated in a determination by the Department of Historic Resource when available. She would merely request that we just put a period and why not utilize that considerable knowledge. Again, she would go back to my point that we have had many staff cuts and so she was not going to assume that always had at the ready the expertise in house to make all these determinations.

Mr. Blair said that he wants to be clear because maybe he misinterpreted what you said because hearing what you were saying almost sounded like you wanted to delete section 2.

Ms. Firehock replied no, she was simply saying that she would like to have a letter from that that we are required to consult them not that maybe perhaps if they are available they might happen to weigh in.

Mr. Blair said that he had heard it was almost as if we just get the local staff out of the determination.

Ms. Firehock said no not at all; but, she simply is asking that we are as tax payers of Virginia are paying for this considerable resource we staff to the state agency and she understands they area one of the lowest funded agencies when you compare it against the United States and all of the other historic agencies. They also say perhaps that it is because it is the most efficient. However, she would like to be able to take advantage of their considerable expertise, that is all and quite simple.

Mr. Keller said he was with Mr. Blair if you are talking about advisory as opposed to saying that the decision that they make has bearing. Let us face it if things are delisted and do not qualify anymore that is a whole other issue and it really does not have bearing on the local level; it has a bearing on the individual; but, it is really none of our

business. Unfortunately, we do not have the kinds of controls that a number of European counties have in historic preservation. If somebody in our state right now wants to bulldoze a property or do major changes to it and it is on the National Register or State Register they can do it unless there is a demolition clause in the local ordinance in which case it will be held up for a certain period of time and then in most cases, there is demolition.

Ms. Firehock said she thinks she had made it clear she simply wants to consult them and strike the end of the sentence as when available.

Andrew Gast-Bray, Director of Planning, asked to weigh in. He exempted himself from being an expert on Virginia legislation discussing historic preservation; however, he has dealt with historic preservation for a very long time in a lot of different states and this is his understanding of what is going on. He thinks Chairman Keller started getting at it - that there really are a couple of things going on. This concerns a historic destination, or we wouldn't be discussing this. You would not be able to do this if you were just Joe Schmo in a mcmansion out on the outskirts of town as he understands it; but, you have to have that historic designation that was part and parcel of how you could even get into the door. That determination is indeed currently predicated on the Historic Landmarks Commission and the DHR, and unfortunately in his experience with many DHR's, there is no guarantee that a historic designation opinion won't change from Landmarks or DHR no matter what you do. The idea that you think that a destination is going to be consistent from historic period to historic period and what is actually considered "historic" is not guaranteed even if it was once upon a time. Furthermore, what actually is the historic feature that is the designated characteristic may not be the same in every case. It may be architectural; it may be a vista; it may be other certain characteristics that go with that. So in that case, coming up with a "percent historic" worried him; but, he kind of liked what you are suggesting in that you have to take the historic piece and weigh that separately. The county, though, has its own requirements that is also trying to achieve historic preservation outcomes that the DHR is not going to evaluate for us. So those are two different things and that is why there is this little conflict.

Mr. Gast-Bray said he thinks where Chairman Keller is going was important in the sense that it really is up to the applicant to make sure that any modifications they make are consistent to keep their historic destination status. He pointed out that Margaret knows far more than he does about this and she would be reluctant to guess at the opinion of a DHR evaluation for instance; and, one evaluator versus the next might come to a different conclusion so he certainly does not want to be the one making the determination that something will be considered historic and is going to stay characterized that way by the governing entity. On the other hand, he thinks that staff does have an awful lot of impact on the use, and in what is going on with that use in its context. He agrees that waiting till phase 2 might be wise since the idea of proportionate pertains not only to the historic aspect, the land use impacts other things. If you have a huge restaurant that goes in, its impacts are disproportionate regardless of whether it is completely consistent architecturally. It may have an impact on traffic and the other things that you may or may not want to consider. An example from the Midwest: there are a lot of Germanic-style buildings built by the immigrants that came in, and so later they often added things like beer gardens, which are way bigger than the original Germanic structure; but, it is completely consistent and completely historic. Proportionality might represent many things, depending on what was the character, etc. of what went in. So he would suggest with phase 1, you already are pretty secure in this sort of pilot test with the 3 properties that qualify under it currently. But, he thinks it is probably premature to extend the evaluation criteria based on what he has been hearing because you are not spelling out what those differences are that address both the historic needs and the county needs in enough detail to go beyond those three properties. He hopes that kind of lends a little understanding on why we have been reluctant to determine things like proportionality, etc. at this time.

Mr. Dotson noted that it was very helpful.

Mr. Keller said he thinks the Commission should make a recommendation tonight and that they have the momentum building to move to phase 2 and we want to move to phase 2.

Mr. Dotson said it seems like what he has heard is when available goes away or at least that is a possibility and the Butler language amendments about the special permits. Those are the two things that have stuck with me.

Ms. More suggested adding in the definition of tavern or inn, which was in staff's presentation in the beginning.

Ms. Echols said if you feel comfortable with us creating something and then taking it to the Board of Supervisors that is fine. If you want to see it again; then we can bring it back to you. But, there is some work on getting those definitions just right and there may be some people who want to provide some input on it. She said that is why she was saying that maybe we should postpone that until a later date.

Mr. Keller noted that now we have a limited number that ranges between 3 and possibility 28.

Ms. Echols said the other 28 would not be eligible under this ordinance if it were approved for additions or new structures.

Ms. More said so we are positive there is nothing out there that could come under as an inn that we do not mean for it to that would be affected by phase 1.

Ms. Echols pointed out there is one other one, Colston, which was operating under a special use permit and it is no longer in operation. She said if they wanted to make an application for a new structure or expansion they would have to ask for a special use permit. Therefore, that is the only one that is sort of in a gray area; but, they might be eligible they are just not operating that way right now.

Mr. Blair said in taking another look at the language in Section 10.2.2.2.7, that criteria 3 that any additions or new structures shall serve a restaurant, tavern or inn existing and operating on the date of this ordinance so he was not sure it would apply to that.

Mr. Keller asked for a motion.

Mr. Dotson moved to recommend approval of the proposal contained in attachment C with the modification of striking the words, "when available" in point 3 and the addition of a reference to special use permits and in an appropriate location.

Mr. Keller said before we have a second is there merit in adding that phase 2 encouragement to the Supervisors there or should that be separate.

Mr. Blair suggesting doing that separately.

Mr. Lafferty seconded the motion.

Mr. Keller invited discussion. He asked if there was anything to add of if you are good with it as it stands. He asked for a roll call vote.

The roll was called, and the motion passed unanimously by a vote of 7:0.

Mr. Keller asked while they were on this topic if somebody would care to make a motion for phase 2 regarding the Planning Commission support so that can sort of be moved forward at the same time.

Mr. Lafferty moved that the Board of Supervisors encourage Phase 2 of the proposal.

Mr. Blair asked if that was a recommendation from the Planning Commission.

Mr. Lafferty replied yes.

Ms. Riley seconded the motion.

Mr. Keller invited discussion. There being no further discussion, Mr. Keller asked for a roll call vote.

The motion passed unanimously by a vote of 7:0.

Mr. Keller said this matter would be forwarded to the Board of Supervisors to be heard on a date to be determined.

The meeting moved to the next agenda item.

Other Public Comments.

Mr. Keller invited other public comments at the end of the meeting. Hearing none, the meeting moved to the next agenda item.

Old Business

Mr. Keller asked if there was any old business.

Jennie Moore discussed Community Meeting/CAC Meeting Process and procedure.

Bruce Dotson discussed the CIP Process and asked for input from the Planning Commission on November 15.

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

New Business.

Mr. Keller invited new business.

Mr. Dotson discussed the 2232 Review Court System and the Planning Commission's review of the proposed facilities and locations for conformity with the comprehensive plan. He asked staff to report to the Planning Commission on plans for the 2232 review.

Mr. Dotson said he would be absent at next week's Planning Commission meeting on October 25th.

Tim Keller announced a time change that the Joint Meeting with the City Planning Commission on Tuesday, October 25, 2016 would be at 5:00 p.m. at Thomas Jefferson Planning District Building, 401 Water Street E.

There being no further new business, the meeting moved to adjournment.

Mr. Lafferty moved for adjournment to Tuesday, October 25, 2016, 5:00 p.m., at Thomas Jefferson Planning District, Water Street Center, 401 Water Street E, Charlottesville, VA 22902.

The motion carried by a unanimous vote of 7:0.

Adjournment

With no further items, the meeting adjourned at 9:40 p.m. to the Tuesday, October 25, 2016, Joint Meeting with the City Planning Commission at 5:00 p.m. at the Thomas Jefferson Planning District, Water Street Center, 401 Water Street E, Charlottesville, Virginia.

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Andrew Gast-Bray, Acting Secretary

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

Approved by Planning Commission
Date: 1-17-2017
Initials: SCT