

**Albemarle County Planning Commission  
February 3, 2009**

The Albemarle County Planning Commission held a public hearing and meeting on Tuesday, February 3, 2009, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

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

Other officials present were Wayne Cilimberg, Director of Planning; Bill Fritz, Chief of Current Development; Claudette Grant, Senior Planner; Elizabeth Marotta, Senior Planner; Amy Pflaum, Senior Planner; Megan Yaniglos, Senior Planner and Greg Kamptner, Deputy County Attorney.

**Call to Order and Establish Quorum:**

Mr. Strucko called the regular meeting to order at 6:01 p.m. and established a quorum.

**Election of Vice Chair:**

Mr. Strucko noted that the first order of business was the election of Vice Chair due to the resignation of Jon Cannon who was called to greater and higher duties for the presidential transition team. He thanked Mr. Cannon for his service and contributions to the Planning Commission. Since Mr. Cannon was their duly elected Vice-Chair at the first meeting of the year they now have a vacancy. He asked for nominations for the position of Vice-Chair for 2009.

Ms. Joseph nominated Tom Loach for Vice-Chair for 2009.

Mr. Edgerton seconded the motion.

There being no further nominations, the roll was called.

The motion passed by a voted of 5:1. (Mr. Loach abstained)

Mr. Strucko announced that Tom Loach was Vice-Chair for 2009.

**Committee Reports**

Mr. Strucko invited committee reports from the Commissioners.

- Mr. Morris reported that the Eastern Connector was dormant as well as the 250 By Pass Connector. The Pantops Master Plan Steering Committee met last week. The Committee is relying on staff in trying to figure out what they can do to really make an impact on the plan. It is an on-going process and the Committee is meeting monthly. This is going to be a very good steering committee for a Master Plan.
- Ms. Joseph reported that the MPO Tech Committee met and went over the priorities of transportation projects. Many projects went into the visionary category, which was very discouraging. She had to leave the meeting early, but was told that the committee did not come to many conclusions for recommendations. She missed the PACTECH meeting in January and asked Mr. Cilimberg to provide an update.
- Mr. Cilimberg noted that PACTECH covered two topics and took action on each one. One had to do with local climate action and a presentation on what city and county efforts are underway. PACTECH send on a recommendation that there be collaboration between the city/county and university on their climate action initiatives. That is going to be a work in progress. There is interest in talking among each other in that area. There was also a topic of the economic stimulus possibilities and projects that might qualify. The end result of the discussion was that there was recognition on the part of the representatives present that the city, county and university should

review potential projects together that might get the best bang for the buck so to speak if the stimulus dollars become available. PACH will bring that idea up in their meeting in February.

- Ms. Joseph reported that she had been meeting with Bill Edgerton to discuss ordinance language for allowing wind turbines. They plan to come to the Commission with a schedule in how they would like to proceed on this in the near future.
- Mr. Strucko noted that the Fiscal Impact Advisory Committee and Capital Improvement Committee have not been very active. Apparently there was something fairly significant with the CIP that warranted the calling together of another meeting of the group. It was scheduled and rescheduled so he did not know what the issue is or what is going to be decided. But, something is coming on that front.

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

#### **Other Matters Not Listed on the Agenda from the Public:**

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

#### **Consent Agenda**

##### **AFD-2009-00001 Buck Mountain**

Review of the Buck Mountain Agricultural/Forestral District: Periodic (10-year) review of the Buck Mountain Agricultural/Forestral District, as required in Section 15.2-4311 of the Code of Virginia. The district includes the properties described as Tax Map 8, Parcels 16A, 16C, 17E, 17F; and Tax Map 17, Parcels 26B, 26C, 26C1, 26C2, 26C3, 31 (part), and 32. The district includes a total of 503.89 acres. The area is designated as Rural Area in the Comprehensive Plan and the included properties are zoned RA Rural Areas. (Scott Clark)

##### **AFD-2009-00002 Yellow Mountain**

Review of the Yellow Mountain Agricultural/Forestral District: Periodic (10-year) review of the Yellow Mountain Agricultural/Forestral District, as required in Section 15.2-4311 of the Code of Virginia. The district includes the properties described as Tax map 54 Parcel 71B; Tax Map 55 Parcel 15; Tax Map 70 Parcels 15, 15A, 15D, 15E, 29, 37B, 37B1 (part), 37D (part), 37K, 37L; Tax Map 71 Parcels 2B, 22, 22A, 22B, 64, 64A. The district includes a total of 656.72 acres. The area is designated as Rural Area in the Comprehensive Plan and the included properties are zoned RA Rural Areas. (Scott Clark)

Mr. Strucko asked if any Commissioner would like to pull an item from the consent agenda.

**Motion:** Mr. Morris moved and Ms. Porterfield seconded for approval of the consent agenda.

The motion passed by a vote of 6:0.

Mr. Strucko noted that the consent agenda was approved

#### **Deferred Item:**

##### **SP-2008-00057 Charlottesville Kingdom Hall**

PROPOSED: Renewal of expired S.U.P. - SP2004-002 currently in site development process. Request for S.U.P. to allow a Church.

ZONING CATEGORY/GENERAL USAGE: R-2 Residential - 2 units/acre and R-4 Residential - 4 units/acre.

SECTION: Sections 14.2.2.12 and 15.2.2.12 of the Zoning Ordinance which allow for Churches.

COMPREHENSIVE PLAN LAND USE/DENSITY: Neighborhood Density Residential - residential (3-6 units/acre) and supporting uses such as religious institutions and schools and other small-scale non-residential uses in Neighborhood 5.

ENTRANCE CORRIDOR: Yes

LOCATION: 665 Old Lynchburg Road (Route 631), at the intersection of Old Lynchburg Road and Sunset Avenue Extended.

TAX MAP/PARCEL: 76/51  
MAGISTERIAL DISTRICT: Scottsville  
(Claudette Grant)

***DEFERRED FROM THE JANUARY 13, 2009 PLANNING COMMISSION MEETING***

Ms. Grant presented a Power-point presentation and summarized the staff report. (Attachment – PowerPoint Presentation)

The applicant is requesting re-approval of an expired special use permit, SP-2004-2, which is currently in site plan review process. The special use permit allows a church in a residential district. The current plan is very similar to the plans that were approved with SP-2004-2. This plan no longer provides an apartment as originally intended. That basically is the main change.

Factors Favorable:

- The permit provides an institutional use, which is supported by the Comprehensive Plan on Neighborhood Density Residential.
- The site design is appropriate given the topography.
- Accommodation is made for a possible future road, which could connect to the adjacent property.
- The factors supporting approval of the original special use permit have not changed.
- No ordinance changes have taken place which would affect development of the site.

Factor Unfavorable:

- The site will not currently be served with public sewer. However, a recommended condition would require hook up whenever sewer is available near by.

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

Hardie Johnson, representative for the congregations, pointed out that there are now four congregations using an existing building at Kingdom Hall. As the needs have grown over the years the congregations have expanded and the need to enlarge the building. The proposed one will now have two auditoriums instead of one to allow the scheduling of the use of the building. As noted in the report nothing has really changed from the application made five years ago. The only thing unresolved at the time is the sewer. Some recent developments with the change of ownership in Southwood have opened up some other possibilities for hooking into the public sewer. Their intention is to hook into the public sewer when possible.

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

Ms. Joseph asked if there is some reason the storm water is located where the proposed roadway is located.

Mr. Johnson replied that the site is relatively tight for the use and has relatively steep topography. That location was the only available space short of having an underground system. The thought was that if the road was developed that it would have its own storm water system and absorb this one as part of that. But, that road may be a long ways off.

Ms. Joseph said that the storm water was part of the plan. She was trying to envision when that road comes in who will then be responsible for their storm water. If the county pays for the road does the county have to pay for the storm water? If there is a condition that says a reasonable location or distance for sewer how do they figure out what reasonable means? She asked what that means to him.

Mr. Johnson replied that there are two options. There is 400' to the subdivision across the road where they can connect to a private sewer line. But, they have to bore under the Old Lynchburg Road and pump the sewage to that point. The other option, which they had put in the background because they could not work with the former owner of Southwood, is down on Hickory Lane that was 2,000 feet away. But, they are right in the middle of weighing that option. They have not had a chance to completely

explore that option. It is looking favorable. He noted that Mr. Tom Wilfong, who is put on that task, is here tonight. But, they have not completely worked that scenario out.

Mr. Strucko invited public comment on this matter.

David Mitchell, resident of 1242 Hatcher Court, noted that his lot was the potential tap on for the sewage system for the church. He came tonight just to learn a little bit more about the development. He commends the community for possibly allowing them to build a larger church. It is fantastic for the neighborhood and community. However, his concern was being the private landowner for the tap in. When he purchased the property 3 ½ years ago he was unaware of the tap in, which was in his backyard. The contractor showed him the plans of the potential tap on. His concern as the landowner was how they would actually put that in. It would disturb their conservation area, which is to the backside of his property. Since he put his name on the list he had since learned that there is another potential tap on in that area, which he hoped that the committee would allow then to do since it was to his benefit. He hoped that it would be beneficial to the other portions of the community as well. He asked for additional elaboration about potential sewer tap on.

Mr. Morris requested that the individual working on that particular phase of the proposal come forward and address this.

Mr. Strucko invited Mr. Wilfong to address the Commission.

Tom Wilfong, a Class A contractor in the state of Virginia and the project coordinator for the Kingdom Hall of Jehovah Witnesses, said they had two options. One was to do the force main up and under Old Lynchburg Road and in to the Mosby Mountain project and tap in to their public sewer that runs in the back of Mr. Mitchell's property. The other option, which was more favorable, is to go out the south of their property down through the Southwood Mobile Home Park all the way to Hickory Street. That is 2,000 feet of sewer line, but it is all gravity flow. There are no pump stations. They have talked to Ms. Audrey Storm with Habitat for Humanity who has spoken very favorably of this. It will take studies and a period to determine exactly how to run the line and how it will benefit them and us.

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

Ms. Joseph asked staff if she recalled the church on Avon that they approved without hooking up to sewer, but as soon as the sewer was available or within a certain distance.

Ms. Grant replied that she did not recall.

Mr. Cilimberg noted that there have been a few instances of uses that were not close, but when it came reasonably available the condition was that they would hook up. He was not sure if staff has a magic distance. He asked Mr. Kamptner if he recalled any similar prior considerations.

Mr. Kamptner replied that the only case he recalled was Kappa Sigma Fraternity Headquarters where the timing of their connection was related to the development happening on Avon. Ultimately, he believed that they did connect.

That is the only example that comes to mind.

Ms. Joseph said that the seating will be determined by the size of the septic site that they can find. She assumed that was what the Health Department would do.

Ms. Grant said that the Health Department was involved in the original request and did review it.

Mr. Strucko asked if the septic expansion will be underneath a paved parking lot, and Ms. Grant replied yes.

Mr. Strucko asked to hear more about the concerns regarding the storm water and the new proposed road.

Ms. Joseph noted that the proposed road that will connect to Sunset is right under that road. If and when that road is ever built that storm water facility that is serving this church and pavement will be gone and that will have to be taken up someone else

Mr. Strucko asked if there is an alternative site, and Ms. Grant replied yes.

Ms. Joseph noted that what Mr. Johnson was saying is that there is a little space behind that one parking area, but there is also underground facilities that can happen, but are pricey.

Mr. Strucko asked if that is the case.

Ms. Grant replied yes that is the case.

Mr. Strucko said that if that road goes in the church will be required to find an alternative.

Ms. Grant noted that it was her understanding. She said after talking with Jack Kelsey today that he said that if the county were going to put a road there that the county would have to accommodate the storm water. Mr. Kelsey said that typically what they do is tie in with whatever storm water they use for the road improvements.

Ms. Porterfield asked if they have done four-year extensions on these before.

Mr. Cilimberg replied yes that they have had five-year extensions. The Board recently granted a ten-year extension for a church.

Ms. Porterfield said that they were not setting any kind of precedent for that.

Ms. Joseph asked staff if they are getting the sidewalk area graded in. She asked who they expect will eventually put that sidewalk in.

Mr. Cilimberg replied that it would have to be a county project in a future plan, which at this point they don't have.

Ms. Joseph asked where the closest sidewalk to this place is.

Mr. Cilimberg replied that there is an asphalt path on the other side of Fifth Street. There is an asphalt path that runs on the north side of Fifth Street.

Mr. Morris said that that there are still a lot of loose ends here that made him hesitant to approve the request. He wished that it was a lot cleaner and that a number of the questions raised tonight had answers. He was a little concerned primarily with the storm water. That seems to be something that could turn around and bite the county.

Ms. Joseph asked if it was possible to add a condition that when and if that road is ever placed in that this applicant will be responsible for providing its own storm water facility so that they could retrofit this site if they needed to. Therefore, it would not be someone else's expense or responsibility.

Mr. Kamptner replied yes, to address the storm water issue. He was not aware that there is any county regulation that requires us to tie the existing facility into the road's storm water system.

Mr. Morris said that would be helpful.

Mr. Cilimberg pointed out that they should be careful because in fact a better storm water management solution may very well be tying into the public system especially in an urbanizing type of area. If they start expecting every development to have storm water on site they might not be accomplishing in all cases what they wanted to accomplish.

Mr. Morris noted that his concern is not whether it is going to be an on-site or not, but it would be the applicant's responsibility to do what has to be done.

Ms. Porterfield said that in other words they would bear the costs.

Mr. Morris replied that is correct.

Mr. Edgerton said that he would play the devil's advocate on that a little bit. The road that is shown going across the applicant's property, which was taking a large portion of t their property, he believed was proffered as part of the Biscuit Run project. The county has some resources some day some how coming to it to help with this. But, they don't know when as the applicant pointed out. The other thing is that by this easement, which they are showing on the plat, raised a question that he was not sure how they took that proffer without this property owner being involved.

Ms. Joseph noted that this was already approved and that road connection was already shown with this special use permit.

Mr. Edgerton said that was shown in the original special use permit. So this is limiting their use of their land. As such he felt that the county should have some responsibility if they are going to be putting a road across the property. There might be a way to put it to the southeast of the parking lot where the existing church is now that will now become a parking lot. There is some substantial proffer funding available for this road. He recalled that the proffer on Biscuit Run was that this has to go in before anything else. He felt that will be an enormous benefit to the county ultimately to have this road in here. They have already gotten it secured as step one of what is going to happen in the future. He was not familiar with the previous plan, but it looks like there is a benefit. For that reason he was comfortable in supporting the request.

**Motion:** Mr. Edgerton moved and Mr. Loach seconded to approve SP-2008-00057, Charlottesville Kingdom Hall with the conditions recommended by staff.

1. The development of the site shall be in general accord with the concept plan entitled Kingdom Hall of Jehovah's Witnesses prepared by Hardee Johnston, A.S.L.A. Landscape Architect , Page T.1 dated January 9, 2006, Revised 12-08-08 and page C. 2 dated January 2, 2006, Revised 1-1-09 (hereinafter, the "Concept Plan"); In addition, the following elements shall be in strict accord with [or "conform to"] the Concept Plan: the relationship of parking areas to building areas, building areas to the street, location of the area for sidewalk dedication and reservation of area for the extension of the Southern Parkway.
2. The area of assembly shall be limited to a maximum of two (2) auditoriums with one hundred seventy-five (175) seats in each;
3. The final site plan shall show an area to be graded across the front of the site to allow the future installation of a sidewalk by others (the "sidewalk area"). The final site plan shall include a note reserving the sidewalk area for future dedication. \_The area for dedication shall allow for a minimum width of a five (5) foot sidewalk and which shall meet all applicable VDOT and County standards per Section 32.7.2.8 of the Zoning Ordinance. The sidewalk area shall be graded in conjunction with the installation of other improvements on the site required by the site plan. The sidewalk area shall be graded in compliance with the grading standards imposed by the agent. Upon request by the County, the sidewalk area shall be dedicated for public use. The owner shall grant all necessary temporary construction easements to allow the sidewalk to be installed;
4. There shall be no day care center or private school on site without approval of a separate special use permit and;
5. Construction of the development plan referenced in Condition 1 above shall commence by [insert date 4 years after date of BOS approval] or this special use permit shall expire.

The motion passed by a vote of 5:1. (Morris voted nay).

Ms. Joseph noted that she was encouraged that the applicant was working with the Habitat of Humanity on the sewer connection.

Mr. Strucko said SP-2008-57, Charlottesville Kingdom Hall would go to the Board of Supervisors on March 11 with a recommendation for approval.

**Regular Items: 632**

**SDP-2006-00125 Vandine Plaza**

The request is for preliminary site plan approval and critical slopes waiver for construction of two retail buildings totaling 26,866 square feet on 2.52 acres zoned C-1 (Commercial) and EC (Entrance Corridor). The property, described as Tax Map 45, Parcels 100, 101, and 101B is located in the Rio Magisterial District on W. Rio Road [Rte. # 631] approximately 0.1 miles southeast of its intersection with Berkmar Drive [Rte. #1403]. The Comprehensive Plan designates this property as Regional Service in Urban Area 1. (Amy Pflaum)

Mr. Fritz distributed information to the Planning Commission. (ATTACHMENT)

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

- This is an entrance requirement waiver request for SDP-2006-00125, Vandine Plaza, which is proposing development of about 2 ½ acres for two retail buildings totaling over 26,000 square feet on the above referenced property. The property is served by an existing entrance from Rio Road, which is shared with the neighboring property a commercial business. She displayed pictures of the existing entrance.
- The original site plan proposal showed minor changes to the entrance to tie in the new development. The entrance does not have an adequate landing as described in Section 18.12.17.b the County Code. The entrance grade also does not meet VDOT standards for commercial entrances. The applicant requested a waiver of the requirement. The waiver was reviewed and denied by Current Development staff because the alternative of constructing a new shared entrance on the Vandine property has not been explored. The applicant has requested a Planning Commission Review of the denial of this waiver.
- Staff recommends denial of the waiver.

Mr. Strucko invited questions from the Commission.

Ms. Joseph noted that one email received by the Commission was from Mr. Kilmer who owns Photoworks. Mr. Kilmer said that when Rio Road was improved is when this steep incline entrance came about. In essence this is something that happened when they widened a road. She asked if that was correct.

Ms. Pflaum replied that she believed that is correct.

Mr. Morris said that based upon the emails received by the Commission that the applicant has in fact tried to correct this and work with the neighbor and get some agreement on this. He asked if that is correct.

Ms. Pflaum replied that the applicant even working with engineering staff they have talked about a compromise to the requirements of the 40' landing going to a 20' landing even to a 5 percent to try to reduce the amount of disturbance to the neighbor's property or the Photoworks site. But, it was also to make a safer entrance. So those alternatives have been explored. The one alternative that has not explored, however, is constructing a new entrance within Vandine Plaza site and creating an easement for the Photoworks Shop and then closing the existing entrance.

Mr. Morris pointed out that having just gone by that area and looking at it he asked if there are two entrances where a patron could reach the Photoworks Shop. There is the one entrance that is in question and then also the one entrance to the east.

Ms. Pflaum replied that there is one, which she noticed that on a site visit that does not show up on the Photoworks Site Plan. She believed that was something that was put in at a later time. There was a cut through made between the Photoworks property and the one to the east. It is there.

Mr. Edgerton said he was struggling a little bit. He thought that from the engineering analysis there is no justification to make an exception here. But, he remembered several years ago they had a similar struggle with the shopping center on Pantops Mountain which they thought for safety reasons they should deny their access. The Commission was told subsequently that was totally the domain of VDOT and not the County's. He wondered if they were getting into the same territory.

Mr. Kamptner noted that was the Gazebo Plaza project. The traffic safety issue there was the access from Route 250 on to Hansen Mountain Road, which is not on site. It is not related to the direct access to the shopping center. Here the issue is that access point from the private property right onto the public road.

Mr. Edgerton said to improve this existing easement would involve going off site onto the neighbor's property. He asked if that was correct.

Mr. Kamptner replied that it does. He suggested that staff or the applicant might want to talk to the issue. His understanding from conversations with Mr. Fritz was that the Vandine owners actually have the legal ability to do the improvements without the consent of Photoworks. He thought that they were in this position because Photoworks and the owners of Vandine want to work together on this.

Mr. Fritz replied that they have a shared point of access. He noted that he could not recall whether it was at the time of the subdivision or the site plan approval of this property that easement was put into place. He could not recall off the top of his head when that was done. But, it was done by a prior action. That is the point of access for these two properties.

Mr. Morris recalled a few years ago that this site came before the Commission and it was to be a used car lot. There was no concern about the entrance at that particular time. That may have been before the VDOT improvements that rendered the improvements bad. He noted that was not a question at that time.

Mr. Edgerton noted that he remembered the same site where they were concerned about regulations about elevated cars, streamers and flags.

Mr. Morris agreed that was what killed it and not the entrance.

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

Fran Lawrence, an attorney representing the owners, noted that others present included Mr. and Mrs. Dennis Minetos and Justin Shimp who can answer the engineering questions. He distributed copies of the right-of-way document that controls this entrance. It puts either owner in the position of vetoing any construction projects to the entrance. He asked to provide a brief history of the site.

- The Minetos engaged Dominion Resources to basically get their site plan and work with engineering. Mr. Shimp went out initially to basically design an entry way which was in always compliant. That design ended up coming up on the Photoworks building a foot or two. In other words to get the right slopes there was some back and forth between engineering and Mr. Shimp. They went back out again in response to Mr. Kilmer because he did not want his building submerged with their driving. So they went back out again and carefully engineered a 20' landing instead of a 40' landing and made a bunch of compromises where the construction actually feathered to a planter on the side of Photoworks, which would almost not be disturbed. There was some slight disturbing of the planter. It would have made some marginal increase although it still would not have met the county criteria. That is the second email from Mr. Kilmer saying that may be you did not hear me the first time, but he was just not interested in the construction in front of his property. Mr. Kilmer said that he was not interested in doing this. The history for Mr. Kilmer is VDOT. Basically in his view VDOT destroyed his entrance. As one comes across Route 29 and looking at West Rio Road, one of the first features is about 50 yards up is this big

concrete retaining wall which was the beginning of elevating the roadway. Basically three of the four driveways that are adjacent have relatively the same configuration.

- The first one is by the Union Bank building and the next property over. It basically appears to be very similar to them. The next is in front of Pizza Hut. The one that goes in between Union Bank and the other one goes to the back of Pizza Hut. Therefore, it accesses a lot of parking. He asked if the argument was that it is not that bad. The argument is that it is consistent with at least 3 of the 4 other entrances in area. It has been there since before the Mlnetos bought their property. It was ten years or more some time after 1989 and before 1998. The antidotal information they get is there has never been any accidents there. Part of that is due to the speed limit is 35 miles per hour.
- People don't seem to have trouble waiting beside the road at a greater angle than maybe they ought to. It is a five lane road with a dividing line in the middle, which probably creates a safer condition. There is lots of space in the road. It would be their position that they are not optimistic that Mr. Kilmer, who has been very gracious to talk with them but not willing to change things, would be willing to agree to close his entrance and have his entrance somewhere further down on their property. Photoworks brings in Fed X and UPS trucks everyday. They have about an 18' or 20' van truck that they own. Now it comes down off the road onto their property and there is no difficulty with that. If they have to go all the way to the end of their property and turn around and come back through they think that will be tough for them and will take a lot of their property to do that.
- There is some statutory authority that if VDOT harms your entrance they are supposed to correct it. It seems that VDOT does not think that it has harmed any of these entrances because they have not had any problems with them. Therefore, they have not done anything to correct them. He asked for the Commission's support because it is not unsafe, it is the best way to get bigger trucks in there to Photoworks and has been in existence for a long time. They think that it is safe.

Mr. Strucko invited questions for the applicant.

Ms. Porterfield said that it may have been safe with the Photoworks building there, but they are adding well over 100 parking spaces. That is going to create a tremendous amount of traffic. She asked if there has been any discussion with the Photoworks people in them trying to use the entrance that is farther to the east. That entrance is also much flatter.

Mr. Lawrence replied that he did not think that they have the right to use that. It is one of these things when people open up entrance ways. There is no suggestion that the entrance that comes out of the other end that they have a granted right-of-way through there.

Ms. Porterfield asked if he had approached that, and Mr. Lawrence replied no.

Ms. Porterfield pointed out that on a site visit today someone came in the entrance he was speaking about, went around her, went through this other area and went behind the Hair Salon. This car was accessing the parking behind the hair salon that was next door. She was very concerned about the number of parking spaces that they were adding. She asked if he knew what kind of businesses are going to be in the proposed buildings.

Mr. Lawrence replied that he did not because they don't have any leases at this time. In response he pointed out that one of the entrances between Union Bank and the next thing accesses a bunch of parking also.

Mr. Strucko invited public comment on this matter. There being none, he closed the public hearing to bring the matter before the Commission.

Ms. Porterfield asked if VDOT has totally said that this particular applicant cannot build a totally separate entrance.

Ms. Pflaum replied that she had talked to Joel DeNunzio of VDOT regarding this. Although he had not commented on the state of the existing entrance, when she discussed it they talked about the option of putting a new entrance entirely inside the Vandine Plaza site and he was fine with that. He thought that

would make a safer condition if they put a new entrance in and closed the old one. VDOT's stance is fine as long as there is still just one entrance to serve Photoworks and Vandine Plaza.

Ms. Porterfield asked if he wanted the entrance to Photoworks to be closed if this other happened.

Ms. Pflaum replied that there could only be one entrance for the two properties.

Mr. Loach questioned why he suggested that.

Ms. Pflaum replied that it has to do with the spacing.

Mr. Loach said if they looked at the property next door it seemed if they built the Vandine Place and an entrance on the further portion it would be no further or no closer than the entrance to the property next door for the hair saloon.

Mr. Morris agreed.

Ms. Pflaum noted that VDOT also has entrance standards and are trying to limit the number of access points to public road. They are not interested in creating new access points when they don't have to. They would prefer to maintain it as a shared entrance regardless of where its location is.

Mr. Morris said it was putting an undue hardship on an existing business to create new business right-of-ways. He felt that it does not make sense since the access is working now. In past review they thought it would work if they up scaled to a used car lot. Therefore, he did not see any reason for denying the request.

Ms. Joseph supported the waiver request if they can use only one entrance. It would be very expensive to put in a new entrance and using part of the vacant property for a new entrance is not using the land efficiently.

Ms. Porterfield said she could not support the waiver due to the dangerous access. The thought of putting 100 more cars on it is just bad news. When she saw the site she could not understand why every other business seems to have their own access points and now they are telling them they can't have it. She believed that the applicant and Photoworks could approach using the east site access so to have a flatter access and only X amount of parking going into it and then potentially close the other access. She felt that it would be a safer access. She feared that they could end up with some businesses that will have heavy parking uses.

**Motion:** Mr. Morris moved and Mr. Loach seconded to approve SDP-2006-00125, Vandine Plaza for the entrance requirement waiver as recommended by staff.

Mr. Fritz asked that the Commission clarify the criteria for their finding dealing with the public health, safety and welfare in dealing with the ordinance. It will be helpful to staff. He heard that the public welfare is being served because it preserves an existing entrance and business and it is an efficient use of the development area.

Mr. Morris noted that in addition the history is that there have been absolutely no accidents.

Mr. Loach said that it is also that VDOT knows what the size and scope of this project is in saying that entrance is adequate. The onerous should be on them if they are not going to give them the second access. There is only going to be one and that they are actually stating that this access is appropriate for the new business to come, which answers Ms. Porterfield's opposition.

- The Planning Commission made the following findings:
  - The public welfare is being served because it preserves an existing entrance and business and it is an efficient use of the development area.
  - The history has been absolutely no accidents.

- VDOT knows what the size and scope of this project is in saying that entrance is adequate. The onerous should be on them if they are not going to give them the second access. There is only going to be one and that they are actually stating that this access is appropriate for the new business to come.

The motion passed by a vote of 5:1. (Porterfield voted nay).

Mr. Strucko said SDP-2006-00125, Vandine Plaza was approved for preliminary plat approval with a waiver to allow access to these lots and one additional existing lot via a private street subject to staff's recommended conditions, as amended.

**SDP-2008-00178 NTELOS CV842-West Ivy (Dickerson)-Final**

The request is for approval of a treetop personal wireless service facility with a steel monopole that would be approximately 104.5 feet tall (10 feet above the height of the reference tree), within a 25 x 25 foot lease area. This application is being made in accordance with section 10.2.1. (22) of the Zoning Ordinance, which allows for Tier II wireless facilities by right in the Rural Areas. The site is located at 1108 Dry Bridge Road [State Route 708] approximately 300 feet south of the intersection of Dry Bridge Road [State Route 708] and Ivywood lane [Private]. The property, described as Tax Map 58, Parcel 13A, contains 2.00 acres and is located in the Samuel Miller Magisterial District and is zoned RA, Rural Areas. The Comprehensive Plan designates the property as Rural Area in Rural Area 3. (Elizabeth Marotta)

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

- Proposal: The applicant requests to install a Tier II personal wireless service treetop facility. The monopole facility consists of a 104.5 foot tall monopole measured above ground level, painted brown with an approximate top elevation of 798.57 feet, measured above mean sea level.
- Staff recommends approval of this personal wireless service facility. Based on the findings presented in the staff report, staff recommends approval at 10 feet above the reference tree.

Mr. Strucko invited questions from the Commission.

Mr. Edgerton noted that he had problems with visualizing the reference tree with the 7'.

Mr. Fritz replied that staff is confident that it is not visible.

Ms. Joseph asked if staff had received any comments from neighbors in the area, and Ms. Marotta replied no.

Mr. Kamptner noted that there was one photo simulation in the packet on page B17 that was photo #1. He asked staff or the applicant to explain that photograph. It is an Ntelos photograph that shows the simulation of the facility from right behind the house. Asked if applicant could explain when comes up

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

Valerie Long, representative for the applicant Ntelos Wireless, noted that Jesse Wilmer with Ntelos was also present this evening. Ms. Marotta covered most of the details. She asked Mr. Kamptner to clarify his questions about the photograph.

Mr. Kamptner noted that there were two points about the photograph. One was that Ms. Marotta explained that the facility would be in the middle of trees and the simulation was in front of the trees. The other is that the photograph taken by staff in the field was taken from the driveway across the street and this is not the view. He asked that she clarify the view as a comparison between the two photos.

Ms. Long pointed out that one photo was taken when Ntelos conducted a balloon test obviously at a different time of the year. They can see that the leaves are on the trees. She believed that it was in mid-to-late November. Ms. Wilmer stood essentially on their driveway and did not go all the way up to the top of their property. She believed that Ms. Marotta's photo may have been taken from a slightly higher elevation and gives a slightly different vantage point. Because Ms. Marotta was standing at a lower elevation looking up at the balloon it appears to be sort of towering over the trees more so than it will

when up higher and a little bit more level so it levels out more. The top of the reference tree would be 10' lower than the top of the facility. On their plans she referred them to the tree survey sheet, TR-1.

Mr. Loach noted that it was sheet C-20.

Ms. Long noted if they can find the solid pole in the middle there is the reference tree marked as a bolded X. There are 29 trees that they surveyed. All of the trees are in a close proximity. They chose this location because there are a lot of tall trees nearby. But there is also an area where they can locate the facility without having to remove any trees to construct it. They have two trees that the arborist recommended to be removed due to decay and damage. But in terms of needing to construct the facility or access it there is not any need for tree removal. Tree #109 is the reference tree, which is 97' tall. It is at a slightly lower ground elevation than where the pole would be located. When they factor in about a 3' difference in ground elevation the pole at 104.5' equates to 10' above the top of the tallest tree. There are a number of other tall trees in the areas as well. The trees to be removed are #108 (38' tall) and #110 (66' tall). They feel that given the other tall trees around it certainly the removal of the 38' tree won't increase the visibility. They don't feel that the 66' tall tree with either.

Mr. Loach asked about the fall zone for the tower. He asked if it would fall on the house.

Ms. Long replied that the existing residence is within the fall zone. But this is a pole that will be made of steel and it will be engineered so if in the very unlikely event of a structural failure they are designed to collapse within a very small area. They don't fall over at its base like a tree. It is engineered to have a stress point so that the top joint might fall over on itself. Or perhaps the middle point would fall. But they collapse within a relatively small area. This is the landowner's vacant house. They are comfortable with leasing the property to Ntelos at this location.

Mr. Loach asked if the residence was leased if there would be any county safety problems or concerns.

Mr. Fritz replied no. The ordinance speaks only to the need to obtain a fall zone easement if they were in proximity to the property line. If the fall zone extended to an adjacent property they would need to get an easement from the adjacent property owner or the Commission needs to take a specific action to authorize there to not be an easement. In this case it falls entirely on the property and does not come into play. The thought being is that the property owner controls the property and if they feel it is a concern they can control where it goes or to not grant the lease. But the county has no separate requirements.

Mr. Long noted that is one of the benefits of using the steel pole facility as opposed to a wood pole. The steel poles can be engineered to account for those types of things. Usually if necessary they can provide a letter from a structural engineer confirming the fall zone radius. But, it is usually a 50' radius or smaller. They can be engineered to have a very small fall zone radius. The owner is very comfortable with it. The property has been in their family for a number of generations. It is a very well maintained home, but no one is living there. The owner lives very near this property, but not on this property right now. She asked that the Commission approve the request because the proposal meets all of the requirements of the zoning ordinance and the county's wireless telecommunication facilities.

Mr. Strucko invited public comment on this matter. There being none, the public hearing was closed and the matter brought back before the Commission.

**Motion:** Mr. Morris moved and Ms. Porterfield seconded to approve SP-2008-00178, Ntelos CV842-West Ivy (Dickerson) Final as recommended by staff.

Mr. Loach suggested that staff get the engineer report for the fall zone offered by the applicant for the file since it would be useful to have.

Ms. Joseph suggested that the Commission be very careful with photo simulations in the future since it can be deceiving.

The motion passed by a vote of 6:0.

Mr. Strucko said SDP-2008-00178, Ntelos CV842-West Ivy (Dickerson) - Final was approved.

**The Planning Commission took a break at 7:19 p.m.**

**The meeting reconvened at 7:30 p.m.**

**SUB-2008-00183 Belle Vista Subdivision - Preliminary Plat**

The request is for preliminary subdivision plat approval to create 2 lots on 76.518 acres; associated with this request is a request for a waiver to allow access to these lots and one additional existing lot via a private street. The properties are zoned RA, Rural Areas described as Tax Map 69 - Parcels 50C and 50C1 are located in the Whitehall Magisterial District on Critzers Shop Road [Route 151] approximately 0.25 miles southeast of the intersection with Rockfish Gap Turnpike [Route 250]. The Comprehensive Plan designates these parcels as Rural Areas in Rural Area 3. (Megan Yaniglos)

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

- The two lots being created are Lot 2A and 2B. Lot 1 is an existing lot. The existing conditions of the private entrance as it exists right now were noted in the photographs as well as the proposed turn-around.
- The applicant provided justification for the approval of the private street under Section 14-232A3 general welfare. The applicant stated that the owner is willing to forfeit two development rights with the approval of the private street. Staff found that with the forfeit of the development rights reducing development in the rural area it does serve the general welfare. Staff found no factors unfavorable. Staff recommends approval of the request with the recommended conditions listed in the staff report with the following changes:
  - Condition 3 – Health director approval of individual private wells and ~~or~~ septic systems. The word “or” was deleted.
  - Additional condition added that a note shall be added to final plat that states not more than one dwelling unit may be established on lot 2A and not more than one dwelling unit may be established on lot 2B. Dwelling unit is as defined in the Albemarle County Zoning Ordinance.

Mr. Strucko invited questions from the Commission.

Mr. Edgerton supported the fifth condition proposed. He noticed that the two lots being carved out are greater than 21 acres. He asked if the applicant has used up all of their smaller development rights.

Ms. Yaniglos replied that when lot 1 was created it used a development right; Lot 2A and Lot 2B would get one development right each and the rest would be forfeited.

Mr. Edgerton noted that they would not count because the lots were greater than 21 acres.

Mr. Fritz pointed out that a development right was only needed when developing a lot less than 21 acres. The development rights are still there.

Mr. Edgerton said that theoretically someone could come back in and resubdivide these parcels.

Mr. Fritz replied yes, if there were not a condition that would prohibit them from doing so.

Ms. Joseph said that the condition just means that they would have to come back to the Planning Commission for approval for those additional lots.

Mr. Fritz replied that is correct. The reason they are doing this is because they see that as a connection between the request, a private street and the condition. The method that they are getting there is through the private street approval.

Ms. Joseph pointed out that they could back in for a private street request for those additional lots because Mr. Kamptner has said that those development rights never go away.

Mr. Kamptner said that is correct. The applicant could amend the condition or base their request for approval of the private street on something other than general welfare such as the environmental prong of the test. The development rights remain there and are a condition of this particular private street approval. They just can't be used while the owners are taking advantage of this particular approval.

Ms. Joseph said that they can come back in at any time to propose an upgrade to the private road and use those development rights.

Mr. Kamptner replied yes to the public road standard.

Mr. Strucko said unless they secure those development rights through some sort of legal arrangement and easement.

Mr. Kamptner replied yes. He asked if staff handed out the email. He noted that Jeff Werner sent an email to the Planning Commission late this afternoon. He suggested a conservation easement. It is a tool that they are just beginning to use in their office that may also be available as a deed of restriction, which would also limit the use of the property as per the condition. The county would be a third party beneficiary to enforce that. The release of that deed of restriction would be subject to Board of Supervisors approval. The advantage of that over a conservation easement is that they have no idea whether these properties would be eligible for a conservation easement.

Mr. Edgerton asked if they could achieve the same purpose by adding a condition that this private road approved can only serve three lots maximum as shown on this plat. He asked if that would limit it.

Mr. Kamptner replied yes.

Ms. Joseph said that does not limit the future. They can come in and upgrade to a public road and can use the development rights. They would not have to come back to the Commission because they would be complying with the ordinance if they put in the public road.

Mr. Edgerton questioned if the main reason they should approve this request is that they are forfeiting these development rights.

Mr. Kamptner pointed out that the deed of restriction can exist in perpetuity and it would be crafted in a way that it could be released only by the county.

Mr. Loach asked if that is a condition the Commission could put on the approval.

Mr. Kamptner replied yes. He noted that something was lost in translation. Condition 5 should actually begin with the quotation marks because the condition is not that there be a note added, but there not be more than one dwelling unit and add, This condition shall be implemented through a deed of restriction or similar instrument. This condition shall be stated as a notation on the final plat could be added if the Planning Commission wants a note on the plat for notice to future purchasers.

Mr. Loach asked staff to refresh his memory about the private road standards and its adequacy for emergency vehicle.

Mr. Fritz noted that this would be a 3 to 5 lot standard and it establishes the 14' travel way and does not establish the same standard that the zoning ordinance does for the building permit to permit the maximum grade of 16 percent and 14' clear zone. The ordinance does not have that language yet. There has to be a turn around at the end for the 3 to 5 lots, but he could not recall the standard.

Ms. Porterfield noted that this one has the turn around at the gate and not up by the houses.

Mr. Fritz replied that is correct because the standard drops from the 3 to 5 lots at that point. The ordinance allows it when you have a driveway breaking off that the road standard can break at that the point.

Ms. Yaniglos noted that it actually has both. It has one towards the entrance and then there is a turn around provided at the end of the private street where they are proposing to end private street and where the driveway would come off.

Mr. Edgerton asked Mr. Kamptner about his suggestion that the fifth condition not say note shall be added.

Mr. Kamptner said that the condition should start with not more than one. If the Commission wants the condition shall also be include with a note on the plat.

Mr. Edgerton asked which would be stronger.

Mr. Kamptner replied that deleting the clause would be stronger. He noted that the last word should be instrument rather than agreement. It could also say that the condition could be restated with a note on the final plat.

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

Tom Gale, representative for the owner, said that it is the owner's intent not to do any further subdividing of this property. Any kind of restrictive covenant that is needed he would be happy make that and record it with the plat. He had nothing further to add.

Mr. Strucko invited public comment on this matter. There being none, he closed the public hearing to bring the matter before the Commission.

**Motion:** Mr. Loach and Mr. Morris seconded to approve SUB-2008-00183 Belle Vista Subdivision - Preliminary Plat with the conditions recommended by staff, as amended.

1. The plat shall be subject to the requirements of Section 14-303 (Contents of final plat), as identified on the "Final Subdivision Checklist" which is available from the Department of Planning and Community Development;
2. The final plat shall address all minimum requirements from Sections 14-410 (Standards for all street and alleys) and 14-412 (Standards for private streets only).
3. Health director approval of individual private wells and septic systems.
4. A maintenance agreement must be submitted and approved by the County Attorney, as specified in Section 14-317 of the Subdivision Ordinance.
5. Not more than one dwelling unit may be established on Lot 2A and not more than one dwelling unit may be established on Lot 2B, as the term "dwelling unit" is defined in the Albemarle County Zoning Ordinance. This condition shall be implemented through a deed of restriction or similar instrument. This condition shall be stated as a notation on the final plat.

Ms. Joseph said that she appreciated the owner coming in to preserve part of this property because there are a lot of steep slopes and a stream through property.

Ms. Porterfield asked Mr. Loach if he was happy with the fire trucks going to the top and not being able to turn around.

Mr. Loach noted that he understood it was at both ends

Ms. Porterfield replied that the turn around was down by the first two. She noted that this was a lot of property.

Ms. Joseph said she looked at it as a driveway and did not anticipate that each lot has a turn around at the end of the driveway.

Ms. Yaniglos said that the turn around will provide access to lot 1 and 2b and lot 2a has the easement for access. Lot 2a would be accessed at the end of the driveway.

Ms. Yaniglos noted that the turn around was for both lots.

Mr. Loach said he understood what Ms. Joseph was saying. But, with long driveways it was problematic to get up and then to try to back out a ladder truck. A fire truck is a million dollar piece of equipment. They should have something up there to use as a turn around to be able to make a circle to move. He was under the impression that it already existed in the plan.

Mr. Fritz noted that at that point up they would have to meet the driveway standards

Ms. Porterfield said that she had a problem with this request and the next because they need to try to make sure if need emergency vehicle they must be able to get it out as expeditiously as possible because someone else is going to need it.

Mr. Gale asked to add that as far as the concern of turning around at the top of the hill the owner is happy to provide an easement for that. There is a different standard on the road after you leave point W up the hill. It is a 2 lot standard. At the top of the hill they could provide or record a covenant with the plat that emergency vehicles have the right to turn around. The owner has no problem with that.

Mr. Loach asked if it is wide enough from that point up to get two vehicles back and forth if there is a turn around.

Mr. Fritz replied that when they apply for building permits they have to meet the driveway standard under Section 4.6.6 for 10' in width.

Mr. Loach noted that it is a non issue whether you have it or not because they would just have trucks lined up along the driveway unfortunately. Providing a turn around is the best they can do in that other area.

Mr. Edgerton noted that if it was a public road there would be a cul-de-sac.

Mr. Gale said that this was the best solution that they found for subdividing this property. This is the only option that the owner has to try to salvage one additional lot. Once again they had a private road with staff endorsement that was somewhat controversial. There was confusion about whether this property could be developed any other way. There really was no other way. When they left that meeting some people were not convinced with that. But, this is the best way. If they need a turn around at the top of the mountain for an easement for fire trucks they have no problem.

Mr. Loach noted that it will not make that much difference. He asked what is the length of the driveway from the point of where the turn around would be from point W.

Mr. Gale replied that it was about 2,000 feet.

Mr. Morris asked that the question be called.

The motion passed by a vote of 5:1. (Ms. Porterfield voted nay)

Mr. Strucko said SUB-2008-00183 Belle Vista Subdivision - Preliminary Plat was approved for preliminary subdivision plat approval to create 2 lots on 76.518 acres associated with a waiver to allow access to these lots and one additional existing lot via a private street subject to conditions.

**SUB-2008-00240 Little Yellow Mountain - Final Plat**

The request is for final subdivision plat approval to create 2 lots on 75.65 acres; associated with this request is a request for a waiver to allow access to these lots, as well as 2 additional existing lots, via a private street. The properties are zoned RA, Rural Areas described as Tax Map 55 - Parcels 40D and 44 are located in the Whitehall Magisterial District on Mint Springs Road [Route 684] approximately 0.45 miles southeast of the intersection with Railroad Ave. [Route 788]. The Comprehensive Plan designates these parcels as Rural Areas in Rural Area 3. (Megan Yaniglos)

Ms. Yaniglos presented a PowerPoint presentation and summarized the staff report. She provided clarification on what the existing parcels look like and how they are being proposed to be divided with the boundary line adjustments. The proposed lot 40d is having property added from parcel 44. Lot 40E is staying the same shape and the blue and purple colors are the proposed lots. She noted the location of the proposed private street. Parcel 40D has an existing dwelling.

- The applicant provided justification for the approval of the private street under Section 14-232A1 to alleviate significant degradation to the environment. The applicant provided sections and earth work computations that showed the total volume of grading for the construction of a public street would be 300 percent greater than that of a private street in the same alignment. Staff found that the construction of a public street would require significantly more earth work and disturbance of critical slopes to the Powell's Creek stream buffer than the construction of a private street. However, the private street does cross over Powell's Creek using an existing bridge. Section 14-234(B) states staff shall consider that absence a compelling circumstance that private streets should not cross over dams or bridges. Staff has found no compelling circumstance in this case.
- Factors Favorable – A public street would require significant upgrades and grading in the Powell's Creek associated stream buffers and therefore a private road would alleviate a clearly demonstrable danger of significant degradation to the environment. A private street does not permit more development than a public street in the rural area.
- Factors Unfavorable – The private street would cross a bridge over Powell's Creek that would be reasonably prohibitive to maintain. Therefore staff recommends denial.
- If the Commission grants approval staff recommends the conditions again listed in the staff report with a change in condition 3 to omit the word "or" and just have "and."

Mr. Strucko invited questions from the Commission.

Mr. Edgerton asked if their denial of this were to mandate that the only way the applicant can develop this land would be to go with a public street, which the Commission has not seen the alignment of, he was assuming that the 300 percent increase in impact was along the same alignment.

Mr. Yaniglos replied that the applicant provided information regarding the public street, which was in an attachment to the staff report.

Mr. Edgerton asked if it goes in the same location.

Ms. Yaniglos replied that it goes further back and crosses the creek.

Mr. Edgerton asked if there would be a bridge, and Ms. Yaniglos replied yes.

Mr. Fritz noted that it was a favorable factor.

Mr. Edgerton asked why the 300 percent would not be considered a compelling circumstance. He asked if there was a definition as to what is allowed to be considered or is it discretionary.

Ms. Yaniglos pointed out that the referenced section said considering the request for the approval of a private street that the private street should not cross over dams or bridges. That is what that is referencing.

Mr. Fritz noted that the specific answer to his question was no that there is no definition to what a compelling reason is. As he had stated before staff takes a very conservative view when they are looking at these and staff is looking to the Planning Commission for guidance. Staff has not had cases like this. So what the Commission says here will provide more guidance to staff for future decisions. This was a very difficult one for them. Staff noted it as a favorable factor because with the denial of this the applicant could still develop the property which would involve some potential significant environmental degradation.

Mr. Edgerton said that the denial could force a more environmentally intrusive development of the property and then a burden on the taxpayers to pay for the maintenance of it. That is the down side.

Ms. Porterfield asked what the weight limit is on the bridge, and Ms. Yaniglos replied she had no idea.

Ms. Joseph noted that Attachment C shows a couple of different profiles of the roads. She asked if one side is a private road and the other a public road.

Ms. Yaniglos replied yes.

Ms. Joseph asked which was the public street or the private street. It is showing 20 percent slopes in some areas, which was a little confusing.

Ms. Yaniglos replied that one that states the disturbed area of .45 acres is the private road.

Ms. Joseph noted that is only showing up to the turn around. So it is not showing all the way up to the cul-de-sac.

Ms. Yaniglos replied that the cul-de-sac is what the applicant would need to do for the public street.

Ms. Joseph asked why there are two of these with a cul-de-sac and one that shows a 16 percent slope and the others are showing 20 percent slopes. She questioned what she was looking asked.

Mr. Fritz replied that the one showing the disturbed area of 1.45 and is the one going with a private street meeting the 3 to 5 lot standard all the way back. The applicant did not take advantage of the break point where the driveway breaks off and he carried a 3 to 5 lot road standard all the way back to the same point as the public street.

Ms. Joseph noted that she was surprised because she did not know they allowed 20 percent slope.

Mr. Fritz replied that on the 3 to 5 lots under the current ordinance there is no maximum slope. It simply says when one goes over 7 percent it has to be paved. But there is actually no maximum slope for a 3 to 5 lot road right now. That is in the proposed Subdivision Text Amendment.

Ms. Joseph asked if staff has received any comments from Fire/Rescue on that one.

Mr. Fritz said what they are proposing is an amendment to the ordinance. The Commission has recommended approval on the proposed amendment and it is before the Board now. It went to the Board and they referred it to a Round Table, which is going to be February 26. One of the things being proposed is that the maximum grade of 16 percent be put on for the 3 to 5 lot subdivision.

Ms. Porterfield asked if they did a public street they would have to bring that bridge up to public standard.

Mr. Loach asked if what staff was saying was that they were going to put more houses in there on 3 to 5 lots plus the existing house and that bridge would not have to come up to a state standard. He asked if the bridge could hold emergency vehicles.

Mr. Fritz said that if they did it as a private street he did not know if they have a standard for the bridge as to what the weight limit would be.

Mr. Loach noted that they would be adding another 3 homes to an area that may not be accessible by emergency vehicles

Ms. Yaniglos said that there were 2 existing residences, which makes a total of four.

Ms. Joseph asked to clarify that there are still development rights available on these 2 parcels beyond what they are asking.

Ms. Yaniglos replied yes that is correct.

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

Rob Cummings, project manager with Kirk Hughes & Associates, said that he was present to answer any comments or questions regarding the property division they propose in a private street to be constructed along a 465' portion.

- This access is intended to continue where it has been since 1952 along Mint Spring Road and to serve not only the 3 existing parcels but also the new parcel noted as parcel A on the preliminary plat. They have looked at multiple designs regarding the improvement of the access to these parcels and what they have before the Commission tonight is the best design with the least amount of impact as supported by the engineering staff and VDOT. As shown in the staff report a public road would nearly increase the disturbance by 300 percent. Whereas a private road as they have demonstrated while using an existing farm road and recently improved bridge reduces greatly not only the environmental impact but will keep the aesthetic impact at a minimum. The entrance and bridge crossing Powell's Creek has been in place since 1952.
- An engineering study was done on the bridge abutment in the stream bed by a structural engineering firm of Dunbar, Milby, Williams, Pittman and Bond of Charlottesville on April 23, 2007. Their observation in report on the then wooden bridge channel and abutments was the channels profile was fairly level and displayed little evidence of movement or undermining of the abutments. The substructure showed low evidence of settlement and displacement. They further added that improving the bridge's characteristics would be a substantial undertaking possibly including adjusting the roadway grade and increasing the bridge span. They further noted that the current configuration appears to be functioning adequately. However, their recommendation to replace the wooden deck with a reinforced pre-cast concrete slab consisting of four 3' X 16' slabs as shown on the attached plans. In that design the load would meet or exceed the Virginia legal truck load. The installation was performed by R.V.I. Constructors of Madison, Virginia as per approved plans. They further recommended continuing the monitoring of the channel around the abutments for any signs of damage or undermining especially after high water flow events and keeping debris clear of the bridge.
- It is with this recommendation that the owner will include provisions within the road maintenance agreement that the expense for repair, replacement and monitoring will be borne equally among the members of the home owner's association. It will be further noted on the final plat that a private street and bridge within this subdivision may not meet the standards of acceptance into the secondary system of state highway and will not be maintained by the Virginia Department of Transportation or the County of Albemarle. Again, the bottom line is at the end of the day they would like to place a private road where a private street exists and create only one additional parcel to access Mint Springs at the same point where it nearly has for almost 56 years with no impacts within its streams or its banks. The undertaking of a public street in this area will do nothing but go against what ordinances are intended to protect and that is the rural character of Albemarle County. He invited Mr. Bowling up to join him at this time to better answer questions regarding the historic nature of his property or questions about the bridge and the bridge installation that recently occurred.

Richard Bowling said that he had been familiar with this property since he was five years old. His grandparents and aunt owned the farm about 1/10 of a mile downstream along Powell's Creek and on the opposite side of Mints Spring. His motive in acquiring this property when James Seal died was preservation or to preserve the farm like character along Mint Spring and restore the working pasture and maintain the houses with their existing look and feel. With respect to the bridge he had to replace the deck. At that time he contacted a structural engineer to inspect it. He gave specific instructions that they wanted a bridge that would support the heaviest fire truck in use in the state of Virginia, which is 81,000 pounds. The heaviest commercial vehicle permitted on Virginia highways is 54,000 pounds. So this bridge exceeds the commercial truck level as well as more than adequate for a fire truck. The other part is about prohibited expense. He has replaced the deck of the bridge. He grandparents lived on a property where the sole access is across Powell's Creek. So he certainly was familiar with that situation. He pointed out that James Seal assessed the two houses on the property over this bridge for over 50 years. Therefore, he felt that they have addressed to all practical extent the adequacy and functionality and of the bridge.

Mr. Edgerton asked if the decking has been replaced as recommended by Dunbar, Milby and Williams.

Mr. Bowling replied yes that was done in 2007. There are two existing houses and he wanted to be able to access them with a fire truck.

Mr. Edgerton asked if their analysis was based on the numbers that he just gave based on the weight of the trucks.

Mr. Bowling replied yes that the 81,000 pounds was the number that they based their design on. The slab is 16" thick with reinforced steel.

Ms. Porterfield noted that he was basically showing a turn around at the end of the private street. She asked how far distance are the houses now going to be with their driveways from that point.

Mr. Bowling replied that two of the houses will be within 100' and possibly less. There are two houses further up at the top of the mountain. If it is a requirement it makes plain common sense to have a turn around based on the top of the mountain. If that is a condition he had no problem with it. He asked that it be worked out at the staff level since he preferred not to do it now.

Mr. Cummings pointed out the topography does allow for a couple places for that actually to already happen.

Mr. Bowling noted that the top of the mountain was actually fairly level. There are slopes getting there. He had no problem with putting in a proper turn around with a proper easement at the top.

Mr. Strucko invited public comment on this matter.

David Wayland, resident of Powell Creek and a member of the Crozet Community Advisory Committee appointed by the Board of Supervisors said that he had lived in this area since 1935. Therefore, he was fairly familiar with the property. He watched the bridge being built day after day. He thought that they did a good job. They put in a new mailbox anticipating a lot of new houses going across there. He noted that his concern is the critical slopes. That property is very steep. They used to have an expression in Crozet that there was land that if you plowed it the dirt would go down your shirt collar. This property is that steep. It is so steep that the hillside is actually terraced. There used to be apple trees or fruit trees of some nature on it and it was terraced so that the trees could be maintained. They spent a lot of time worried about an electronic tower that would be visible. He asked what about two houses built on the high side of Little Yellow Mountain that would be very visible. He asked why people built houses on sides of mountain. Of course, it is for the views. He voiced concern with the visibility of the proposed houses from Crozet because it was very close to being ridge top construction up on the side of Little Yellow Mountain. He urged the Commission to be very careful because once they allow this to happen it would be opening up to future development. The people in Crozet have been backing the master plan because that is containing new development within a certain limit. This would be an invasion of the rural properties that many residents don't want to see happen.

Charles Mitchell, resident of 1645 Mints Spring Road, noted that this property was diagonally across from the subject property. If the property were to be developed leaving the two houses and the property up at the top that would be fine. But this is a change. This property abuts Mint Spring Park, which is a very special place. He hated to see development in this area. They know that the mail boxes have already been set up across street. It looks like it will hold as many as five mail boxes, but maybe as many as ten. That tells him that this property is being set up to be developed. This property is outside the growth area, which should be part of this consideration. They would like to see this waiver not granted because it takes away from the area. The Albemarle County website shows this area having 25 percent slopes. He did not see how these houses could be developed sitting on top of a mountain given everything they have talked about regarding slopes, growth area and Mint Spring Park. He asked the Commission not to grant the waiver.

Mr. Strucko asked Mr. Bowling to come forward and respond.

Mr. Bowling asked to respond to some of the points and obvious concern. One of these parcels, parcel 44, has the only two house sites on that property at the top of the mountain. Basically if they did nothing they would have to build a driveway to access it, which would cross Powell's Creek and would proceed up the hill. They have looked at that alternative. But it did not make any sense. He suggested that they use the existing road that has served the property for 50 years. The other is the slope of the road. The top of the mountain has been timbered for quite some years. Part of his motive was to restore the timber at the top of the mountain. Cattle grazed up there for a long time. The mountain road was used by logging trucks on many occasions as well as farm vehicles. He walked up there. His neighbor jogs up there. It is steep, but accessible. Certainly considering some of the other developments in Albemarle County it is consistent. As far as are they going to get ten houses up there it is shown there are actually three legal house sites at the top. That is the maximum. There are a total of 8 development rights. If that is of interest to limit the number of housing up there he would be happy to accept that condition. There are only a limited number of house sites at the top.

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

Ms. Joseph asked if the white area shown on the map was in the Mountain Protection Overlay District and was where all of the house sites are, and Ms. Yaniglos replied yes.

Mr. Loach said that they talked about what is going to be allowed in the new ordinances. What they had done in the past with the Neighborhood Model before it was accepted was to use that as a gold standard which they were judging some of the developments coming before the Board and Planning Commission. If they applied those same standards now what would be the outcome.

Mr. Fritz replied that it would simply require that the road from the public street all the way to the house site everything in between would meet the standard of Section 4.6.6, which is the driveway standard that they have for maximum grade and minimum clearance zones.

Mr. Loach asked if the plan exceeds that now.

Mr. Fritz replied that the maximum grade showing now is 16 percent as shown on Attachment C for the private street. The applicant is within the maximum grade.

Mr. Morris noted his only concern was the heavy disturbance of critical slopes in the rural areas, which is one of the things they are trying to avoid.

**Motion:** Ms. Joseph moved and Mr. Morris seconded for denial of the waiver request for SUB-2008-00240, Little Yellow Mountain – Final Plat. The denial is based on the recommendation from staff within the staff report.

Mr. Kamptner noted that it would be based upon staff's identification of the unfavorable factor that is set forth in Section 14-2-34b which discourages the private streets crossing bridges or dams. In this case the Commission found no compelling reason to vary from that standard.

The motion for denial passed by a vote of 6:0.

Mr. Strucko said SUB-2008-00240 Little Yellow Mountain – Final Plat was denied by a vote of 6:0.

Mr. Kamptner noted that the applicant has the ability to appeal the decision within ten days to the Board of Supervisors.

### **Old Business**

- On 1-6-09 during the review of SUB-2008-00109 Bellair Subdivision, the Commission asked staff to provide an explanation of the administrative waiver granted for building site shape in writing or at a future meeting. A copy of John Shepherd's determination memo was included in the

Commission's packet. The Commission requested staff to review John Shepherd's determination memo at a future meeting and provide the following information.

- Mr. Edgerton requested an electronic copy of the memo.
- Ms. Joseph asked for clarification because it appeared that what was approved was not exactly what was approved on the final plat.
- Ms. Porterfield asked for clarification on who could appeal Mr. Shepherd's determination.

- Mr. Morris asked staff to encourage all applicants to contact their neighbors about their requests.

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

**New Business:**

Mr. Strucko asked if there was any new business.

- Mr. Fritz noted that Gerald Gatobu had been promoted to Principal Planner in Current Development.
- The Planning Commission discussed safety aspects of the creation of driveways in rural areas. No formal action was taken.
  - Mr. Loach asked if in the review of rural area roads and a 2,000 foot driveway if they look at anything else other than the steep slope. He noted concerns about the fire/rescue dangers of access with large emergency vehicles and the potential danger to the rescue workers and fire equipment. He suggested that a written opinion be obtained from Fire/Rescue on this matter.
- The next meeting will be Tuesday, February 10, 2009.

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

**Adjournment:**

With no further items, the meeting adjourned at 8:44 p.m. to the Tuesday, February 10, 2009 meeting at 6:00 p.m. at the County Office Building, Second Floor, Auditorium, 401 McIntire Road, Charlottesville, Virginia.

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V. Wayne Cilimberg, Secretary

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