

**Albemarle County Planning Commission  
March 24, 2009**

The Albemarle County Planning Commission held a public hearing, work session and meeting on Tuesday, March 24, 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, Don Franco, Calvin Morris, Bill Edgerton, Linda Porterfield, Thomas Loach, Vice Chairman and Eric Strucko, Chairman. Mr. Edgerton arrived at 6:02 p.m. Julia Monteith, AICP, non-voting representative for the University of Virginia was absent.

Other officials present were Wayne Cilimberg, Director of Planning; Juan Wade, Transportation Planner; Scott Clark, Senior Planner; Elaine Echols, Principal Planner and Greg Kamptner, Deputy County Attorney.

**Call to Order and Establish Quorum:**

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

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

Mr. 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:**

**Approval of Minutes** – July 18, 2006, August 15, 2006, September 9, 2008, February 10, 2009 and February 17, 2009.

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

Mr. Edgerton arrived at 6:02 p.m.

Mr. Morris noted that three Commissioners were not here in 2006.

Mr. Strucko pointed out that a person who was not on the board at that time does not have to abstain.

**Motion:** Mr. Morris moved and Mr. Edgerton seconded for acceptance of the minutes of July 18, 2006 and August 15, 2006.

The motion passed by a vote of 4:0:3. (Mr. Loach, Ms. Porterfield and Mr. Franco abstained.)

Mr. Strucko noted that the minutes for July 18, 2006 and August 15, 2006 were approved.

**Motion:** Mr. Morris moved and Ms. Porterfield seconded for acceptance of the minutes of September 9, 2008, February 10, 2009 and February 17, 2009.

The motion passed by a vote of 6:0:1. (Mr. Franco abstained.)

Mr. Strucko noted that the minutes for September 9, 2008, February 10, 2009 and February 17, 2009 were approved.

**Regular Item**

**HO-2009-00057 Joseph Dane**

The request is for a modification for a Home Occupation Class A for counseling services in accordance with Section 5.2 of the Zoning Ordinance. The modification is for the number of vehicles trips allows for his residence at 4310 Beaver Creek Road (State Route 1589). The applicant is currently allowed seven clients per week and is seeking to have that modified to be allowed to have up to eight (8) clients per day. The property described as Tax Map 31B, Parcel 157 is located in the Earlysville Forest subdivision. The property is zoned planned unit development. The Comprehensive Plan designates this property as Rural Area in the White Hall Magisterial District. (Juan Wade)

Mr. Wade summarized the staff report. (See staff report)

- Staff evaluated this request based on the transportation impact. The applicant proposes to operate a counseling practice from his home. He proposed to see up to eight (8) clients per day. This is more clients than staff typically supports, but they look at each modification and request on a case by case basis. Staff believes that the eight (8) clients per day would not negatively impact the neighborhood. The applicant will inform his clients to use the northern most entrance to the Earlysville Forest Subdivision so that they won't have to travel through the entire subdivision. In addition the applicant has requested to have a group session meeting on Mondays and the session will have up to 5 people. This was not noted in the staff report. They can modify condition #1 to indicate that the group session on Monday shall not include more than five (5) clients.
- Staff supports the request for this home occupation with the conditions noted in the staff report as amended to allow up to five (5) clients on Monday evenings.

Mr. Strucko invited questions for staff.

Ms. Joseph asked if staff had heard from any of the other property owners.

Mr. Wade replied no that he had not heard from any of the neighbors. But one of the first things that staff talks with the applicant about is whether the request is okay with the neighborhood. Staff received a letter from the neighborhood association in support of the request.

Mr. Loach noted that the report says that the hours of operation will generally be off peak and the applicant will be able to accommodate all associated parking on site and off the street. He asked if that will be true for the Monday group sessions.

Mr. Wade replied yes. He visited the site and with their long driveway there would be no problem for them to accommodate all of the parking on site.

Mr. Morris asked if staff sees any problems with the hours of operation going from 8 a.m. to 6 p.m. on Sunday since that is also a time that people either like to go to church or sleep in.

Mr. Wade replied no. If this had been in a more compact subdivision or either the one they looked at before Belvedere they would probably have not supported this. In this location he would not anticipate the neighborhood really realizing it. Because of the way the homes are situated you might not even be able to see the homes depending on the time of year in the driveway. He did not think that it would have a negative impact on the neighborhood.

Ms. Porterfield asked if staff has had any other type of applications that are not normal business days.

Mr. Wade replied that this is probably the first one that he could recall that had these kinds of unusual hours. This is the first time that it has been requested. Again, staff looks at these requests on a case by case basis.

Mr. Cilimberg noted that most of what he remembers seeing has been home occupation class b, which was by special use permit. It is a different kind of home occupation that is in different hours.

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

Dr. Joseph Dane, applicant, said that he wanted to address the Sunday issue. The reason for that is that there are a number of clients who can't come during the week. It is on that basis that he offers Sunday as a time. That is probably one of the most popular days that he has. He talked personally with the neighbors as requested by the homeowner's association. They are in perfect understanding and agreement of it. As Mr. Wade pointed out the way the home is situated most of the entire neighborhood won't even know that there is a car there. So he did not think that it would be an impingement on privacy or being able to sleep in or anything like that. In addition the entrance to that neighborhood is only three streets into the subdivision coming from the north end. So it would have virtually nil impact on 90 percent of the traffic area in the subdivision.

Ms. Porterfield asked what kind of group it would be on Monday night.

Dr. Dane replied that it was a group of adult females who have experienced sexual and physical abuse as children.

Ms. Porterfield asked if he did not offer Saturday hours and if he had a reason for choosing Sunday.

Dr. Dane replied that because there are so many folks that can't come during the week he offered Sunday hours. He keeps Saturday for himself.

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

Ms. Joseph asked if staff was assuming that all clients would park on site.

Mr. Wade replied yes. He noted that if the parking was going to be off-site that would have required another modification request. That was not included because all the parking will be on site. From his visit to the site he acknowledged that all of the parking can be accommodated on site.

Mr. Cilimberg noted that in the last two home occupation requests reviewed by the Commission the request was both for the additional trips and off-site parking. In this case it is only the additional trips. The applicant could not do off-site parking and it would be a violation without the Commission's allowance.

**Motion:** Mr. Loach moved and Mr. Morris seconded to approve HO-2009-00057, Joseph Dane Home Occupation Class A Modification in accordance with Section 5.2 of the Zoning Ordinance, with the conditions recommended by staff, as amended.

Ms. Porterfield noted that she could not support this application. She looked at it and really believes that home owners should have the knowledge that their area is not going to become a business area on the weekends and at night. If it one thing if there is no traffic to the home and somebody is running a business where they themselves are doing it, but they don't anybody else coming in. But she just cannot support it because personally she would be setting a precedent for future votes of the Commission. She said that these types of things with additional traffic like this should be run Monday through Friday and should stay within what they saw on the last two requests, which was 8 a.m. to 5:30 p.m. She thought that was reasonable for homeowners. But, she thought that Sunday hours are unusual. She might have been able to buy it a little easier if it was Saturday mornings or something like that. She could not go for Sunday or evenings. She thought that there is an expectation for home owners that their home is their castle and that they should have privacy and not have businesses coming in at that time.

Ms. Joseph noted that she might agree if the applicant was doing something outside. But she expected that all of this was going to be done within the dwelling itself. If he was doing drum therapy or something outside that it would be different in her mind than having the people come in to the house. She did not think that they would notice it that much.

Ms. Porterfield said that it was not even just noticing it. It is people coming and going on days when one would not expect this to be happening unless they are friends of the people next door. They would not

know who is coming and going. He has quite a lengthy list of clientele. They don't know who these people are and that sort of thing. It is not just this particular application, but any application. She felt that these types of things with all of this traffic that is added, which is why Dr. Dane is here, really should be business hours. If it can't be accommodated business hours then there are plenty places in Albemarle County where someone can get an office.

Mr. Loach said that if they were dealing with more than one practitioner he might agree. Two, if they did not have on-site parking that that the applicant can provide that is another thing. Also saying as a nurse, mental health services are hard enough to get in this society and that they are available on off hours for clients and patients that it is a plus. He thinks the doctor putting hours in on Sunday to see patients is very positive.

Ms. Porterfield said that she did not disagree because she was married to a doctor. She did not think that it was appropriate in a residential area on the weekends. If he wants to offer this she felt it was great. But, he can offer it in an office setting that is not in a residence.

Mr. Strucko invited Dr. Dane to come forward to address the Commission.

Dr. Dane said as a homeowner he could appreciate her concern. He understood her wanting to be protective. He felt that was a legitimate concern and is exactly why the process of getting actual community approval is involved. He would be a little concerned when community authorities decide to counter what the community itself has said they are fine with. If indeed the community had any objectives to what they are pointing out he thought that they would have pretty quickly voiced it. He talked personally with the people that would be even next door involved. Next door is not what one would think of as next door in that area. While he does respect her wish to protect the community the community has said that they don't want that protection and are fine with what this would involve. In fact, the comment about that it is available on the weekend and particularly a Sunday because most people don't want Saturday to do this kind of work. They prefer to have the Saturday available and a Friday/Saturday to be able to do the Friday night social and Saturday while a Sunday is less oriented towards social activity for those people are as she was suggesting for the sacredness of that time. Therefore, he had thought through why it would be on Sunday. It was not random and was not just for his convenience. It is convenient because he does not work Thursday and Friday. But, it is thought through with concern and consideration for the objections she was raising. If anyone had that objection he certainly would attempt to accommodate to it. He did attempt to get the community involved with it specifically to ask if it was alright with them. That community seems to be okay with it. He would appreciate that being taken into consideration and not let over protectiveness end up interfering with what the community has said that they want.

Mr. Morris asked to move the question.

Mr. Strucko asked for a role call vote.

The motion passed by a vote of 6:1 with the conditions, as amended. (Porterfield voted nay)

1. Client visits to the site shall be limited to Sunday 8 a.m. – 6 p.m., Monday 8 a.m. – 9 p.m., including group sessions from 6:45 p.m. – 8:45 p.m., Tuesday 8 a.m. – 7 p.m., and Wednesday 12 noon – 8 p.m. The group session held on Mondays shall not include more than five (5) clients. These hours of operation shall not apply to emergency visits.
2. Clients shall be scheduled with a minimum of 10 minutes between appointments;
3. The conduct of the home occupation shall generate no more than 16 total vehicle trips per day to the site (one client visit equals 2 vehicle trips) except on Monday nights when group sessions are held.

Mr. Strucko noted that HO-2009-00057, Joseph Dane was approved with the following conditions.

### **Public Hearing Item**

#### **SP-2008-00029 South Plains Presbyterian Church**

PROPOSED: Addition of new fellowship hall and sanctuary to existing church.

ZONING CATEGORY/GENERAL USAGE: RA -- Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots); EC Entrance Corridor - Overlay to protect properties of historic, architectural or cultural significance from visual impacts of development along routes of tourist access

SECTION: 10.2.2.35, 35, church building and adjunct cemetery

COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/ acre in development lots)

ENTRANCE CORRIDOR: Yes

LOCATION: 410 Black Cat Road, at the intersection of Black Cat Road (Route 616) and Louisa Road (Route 22)

TAX MAP/PARCEL: Tax Map 80 Parcel 116

MAGISTERIAL DISTRICT: Rivanna  
(Scott Clark)

Mr. Clark presented a PowerPoint presentation and summarized the staff report. (See staff report and PowerPoint presentation)

This is a request for a special use permit is to allow the addition of a new fellowship hall and sanctuary to an existing 19<sup>th</sup> century church. There is a wooded area at the southwest end of the parcel. There is a stream buffer. There are two distinct aspects to this review—the general health, safety, and welfare impact of the use, and the impact of this particular design on historic preservation and the Entrance Corridor. Staff feels that the use as proposed at this location is acceptable in terms of general health, safety, and welfare considerations. The entrance is adequately sited and staff has no concern with that. However, staff still has significant concerns about the *design* of the addition, and feels that design review should be carried out by the Architectural Review Board at the site-plan stage without the limitations of a conceptual plan. The parking area is larger due to the increase in size of the church. The parking area is very visible because it wraps around to the front of the property along the entrance corridor. The landscaping will be covered in more detail at the site plan phase.

Staff has identified the following factors favorable to this application:

1. There are no known significant physical limitations that would prevent this expansion.

Staff has identified the following factors unfavorable to this application:

1. The proposed design has significant impacts on the historic character of the existing church and site, as well as the Entrance Corridor. Staff is concerned with what happens to the manse. The manse is 19<sup>th</sup> century and when attached to the new building will not be visible.

Staff's recommendation is somewhat different than the way they have treated other churches in the past. Rather than recommending approval of a particular conceptual plan acknowledging that the scale of the enlargement of the church can be accommodated on the site staff is recommending approval of a church of that scale with a fellowship hall as proposed with about a ten percent addition to accommodate later changes. However, staff is not recommending approval based on this specific plan because there are still a lot of issues to be worked out. Therefore staff would leave the review of the exact arrangement of the buildings to the Architectural Review Board during the site plan process rather than approving a plan that Design Planning staff has a lot of concerns with and then severely limiting the review of the ARB. Based on the findings contained in this staff report, staff recommends approval of SP 2008-00029 South Plains Presbyterian Church with the following conditions. The first condition limits the sizes of the buildings to ten percent more than is currently proposed and the 75 spaces as proposed. Most of the remainder of these conditions is standard conditions for churches, except for condition #5 which calls for the open area to the rear of the property to be filled in with trees and shrubs essentially in order to increase the screening of the property from neighboring properties.

1. The footprint of the new sanctuary shall not exceed 3,550 square feet. The footprint of the new fellowship hall shall not exceed 5,750 square feet.
2. Provided parking shall not exceed 75 spaces.
3. Commercial setback standards, as set forth in Section 21.7.2 of the Albemarle Zoning Ordinance, shall be maintained adjacent to properties zoned Rural Areas.
4. Stormwater facilities and parking lot surface meeting the approval of the County Engineer shall be required before approval of the final site plan for this use.
5. Staff approval of a landscape plan shall be required before approval of the final site plan for this use. Plantings for screening of the church facilities, to consist of a naturalistic pattern of multi-species trees and shrubs, as listed in the brochure titled "Native Plants for Conservation, Restoration, and Landscaping: Piedmont Plateau," published by the Virginia Department of Conservation and Recreation, are to fill the open area shown on Attachment C of the staff report. These plantings are to be arranged in a density that would mitigate views of the new church facilities, with a spacing allowing the natural form/habit of the plant material to be recognized.
6. There shall be no day care center or private school on site without approval of a separate special use permit;
7. Health Department approval of well and/or septic systems.
8. All outdoor lighting shall be only full cut-off fixtures and shielded to reflect light away from all abutting properties. A lighting plan limiting light levels at all property lines to no greater than 0.3 foot candles shall be submitted to the Zoning Administrator or their designee for approval.

Mr. Strucko invited questions from the Commission.

Mr. Morris noted that this was the first time that he had seen the recommendation on the screen. The staff report says based on the findings contained in this staff report, staff recommends approval of SP 2008-00029 South Plains Presbyterian Church with the conditions listed in the staff report, which does not include Architectural Review Board approval as part of the recommendation.

Mr. Clark replied that he addressed that issue in the body of the report and it was not part of the conditions. This explanation is just an attempt to sum up and explain the process at the end of the presentation.

Mr. Cilimberg noted that the fact there is no condition on a conceptual plan included among the eight conditions would result in the site plan determining how the site is laid out and the ARB having its review. On this slide staff is telling the Commission what would happen with the results of the conditions.

Mr. Morris pointed out that all he was saying was that it was not in the recommendations or the conditions.

Mr. Clark said that the ARB review is a standard part of the site plan process. Staff does not include elements that are already required in the conditions.

Ms. Porterfield noted that comments and concerns have been expressed by area and adjacent residents as well as members of the congregation. By staff's recommendation it would take away the ability to be completely open about how this site is going to be planned. She questioned why staff is doing that.

Mr. Clark replied that the Architectural Review Board is a public process.

Ms. Porterfield noted that the Architectural Review Board is not sitting here listening to everybody who is going to come up and talk. She asked if there was a way the Commission through a motion could at least provide to the ARB some knowledge as to where things need to be placed and then let them make a decision if they like or dislike that.

Mr. Cilimberg said that if the Commission so determines that they want to give the ARB further guidance than has been recommended then they certainly can. The Commission could go so far as to recommend that the Board include the conceptual plan that the applicant has offered as one of the conditions, which would then tell the ARB that is the way it needs to be. The Commission has to decide in their majority vote how they want to recommend that to the Board. Staff has given the recommendation that reflects the input from the Design Planner, which is not necessarily what all of the people have said that they want to see. So it is a decision left up to the Commission whether to recommend more than what staff has suggested in the conditions. The Commission could go so far as going back to the standard condition that has been used in the past including the conceptual plan if they feel comfortable with it.

Mr. Loach questioned the parking that says 75 spaces. In the specifics of the proposal it says class room size for 126 seats and the largest sanctuary with 225 seats. How does the number of seats correlate to the number of parking spaces required?

Mr. Clark replied that usually staff asks the church to do a parking study to determine what their own needs are rather than applying a single standard. In this case they went with the former standard that they use to apply, which was one parking space per three (3) seats in the area of assembly. That is the way parking is usually calculated and not from the class rooms.

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

Bill Atwood said he was present with Ashley Cooper and members of the South Plains Church. He presented a PowerPoint presentation and explained the proposal for the historic church.

- They concur with the comment that this is the postcard of the community. Actually his relationship with this building started in 1995 when the Japanese government asked them to do a village in Hiroshima. A delegation came to Albemarle County and selected this church as their symbol of Christian faith. They built a replicate in Hiroshima as part of that village. So they know this church very well. It is more than a postcard. This is a community of caring people who are taking care of their family and have been good neighbors. They have been folks that have taken care of this particular historic church for 190 years without bathrooms in the church itself. They define this as a three part church scheme – the church itself with people that play in the front yard; to the cemetery that is historic to the century which is the large 51" Red Oak and its twin the 48" wide oak behind the manse. They did a tree study on the trees as they relate to the site. The site is two-thirds covered with the trees on the site, a 27,000 square foot cemetery, an 18,000 square foot parking lot and the building. There is a small strip of critical slopes.
- Four years ago they created a plan that pulled the building back but took down the manse. That was not their primary concern. It became apparent as they got adjacent to the old sanctuary itself with the low clear windows that they were actually violating the view shed. Placing a building in this position it was their opinion that it would actually be one of the most offensive things that could happen to the scale of the church itself. It would only be worse if actually touching the church. They submitted a scheme that placed the parking behind the church supplemented by parking that is actually on the existing parking lot.
- They took this scheme to a town hall meeting in September. With this he felt that they got a very positive response from the attendees. He thought that the neighbors, Mr. Rintels and his wife along with Peter Hallock, actually had some surprise of the scheme and did register a concern for the hardwood edge as it relates to their property. They agreed to meet with them again and did. They indicated that the parking lot takes out some of the trees. The two century trees are very much in doubt because of the narrowness of the 40' separation between the tree and the cemetery. They then attempted a scheme where they took more spaces and went with spaces in the front and back out of the buffer. They discussed that and some other alternatives with the Rintels and the conclusion with the trees was pretty much the same that they were taking out a large number of trees. It became apparent in the conversation that it became apparent in the conversation that the problem of taking a driveway on the back side of that church was going to take out two of the biggest trees in that part of the county.
- He noted that this drawing was shown to the community with many of the questions answered. They really don't see anywhere else that the sanctuary could go other than down the hill. They

feel that the sanctuary should step forward because it is the new major element to the site and has a certain scale to it. They decided to do a parking study to attempt to get the numbers down to see if they could actually take some of the parking away from the Rintels' side. They started studying buildings in the area. Staff called their solution kind of suburban. He noted several examples of other churches where the parking is predominantly in front of the church, others on the side and pretty much all over the place. They actually came up the current parking scheme. The social viability for a church was found to be at the front door and parking. People tend to spill out the front. It would be a disservice to the Rintels to have that pouring out in the back. They decided to go with the grass paved scenario with a gravel paved road. All of that other than the road is green or a substitute material that would be approved by the county. All of the large trees between the church and the Rintels would be protected. There are really only two trees in the parking area that will be at risk. They are committed to save the red oak that is in question with staff. If they have to they will move the new sanctuary back, which will not be built for another five years. But they are committed to saving that tree, also.

- One of the suggestions that came out of the town hall meeting was to build a stone wall like the one across the street. They decided to trim out the parking area with the stone wall all the way around the parking area. This is in the Architectural Review Board venue. But they feel that in this scenario if they take the portico scale and the gothic formula and scale and begin to create almost like a Jeffersonian pavilion look for the fellowship hall the large footprint can be broken down in elements that makes sense with this church. But it makes total sense architecturally to step forward allowing the trellis, which will be stepped back away from the church, to create a main street that goes right through the church by the manse. It is their main street in. It gives those people who are challenged access to the church in a short distance. They feel quite comfortably that the appropriate thing to do is to create a family of forms in which the original sanctuary is part of that family. There will be no ridge in this scenario that will be higher than the sanctuary. They feel that it is appropriate. The sanctuary will be tucked somewhat behind the trees. It will really be a pretty low impact building.
- He requested approval of phase one tonight which would allow them to go ahead in the first five years to construct the building and use the existing parking lot that has been used for years. He presented their proposed final site plan, which was their final dream. He asked the community to support their dream.

Mr. Strucko invited questions for the applicant.

Ms. Joseph noticed on site plan it shows an area labeled the septic location for phase 1. She asked if they have a septic location for phase 2 when that goes in.

Mr. Atwood replied that it is the same. They are committing on phase one to use the existing parking lot, renew the septic system and build Kirk Hall.

Ms. Joseph asked if the septic system that is shown will serve the ultimate build out, and Mr. Atwood replied yes.

Ms. Joseph understood that engineering will not approve the grass pavers at this point in time that they are proposing. They are looking at other means of pavement, but they will probably have some storm water run off from the roof tops of these things.

Mr. Atwood said that they are proposing a water catchment. Every building they do now has a water catchment. They will use that water to take care of toilets and other aspects and are committed to that cause. The calculations in phase one literally with the existing parking staying the way it is will be presented during site plan approval.

Mr. Morris asked that he refresh his memory from the Town Hall meeting in September about relegated parking. One of the proposals mentioned in the briefing was relegated parking and Mr. Edgerton was very concerned about the relegated parking in the rear. He asked if the reason they were giving up the relegated parking in the rear was due to a number of problems for the neighbors including the trees.



Mr. Atwood replied that they could not create a road surface in the rear that would guarantee saving the big trees. Therefore, this entrance needs to be turned towards the front to make peace for the neighbors. He felt that the grass pavers would create a minimal impact in creating a parking scenario on the busy side of the street with a stone edge which would minimize the visual considerations. That was the beginning of their discussions with the Rintels about that area in the back. He felt that the best solution would be to leave it alone.

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

David Garth, Pastor of South Plains Presbyterian Church, thanked the Commission and planning staff for the efforts put into the consideration of the church plans. They are coming before the Commission tonight not to start a new business on the corner of Black Cat Road and Route 22, but to come as people who have really sacrificed for 190 years to maintain that building with a lot of sweat equity and a lot of hard cash as the years have gone by. They have always been more than an artifact of the past. That is important to emphasize here. They are a living breathing part of the Keswick community. They do support area food banks, the ministry at the Winter Haven Nursing Home and other similar type of activities in the area. They feel that they make a contribution to the community. At times they have seen this church survive by the grace of God. They have gotten to a place that they feel with a modest expansion in membership that they can be a healthy self supporting church. They don't want to crowd out the present sanctuary. They are very much committed to the beauty of that area. They feel that plan presented tonight accomplishes all of those things within the parameters of the county. Therefore, they ask for the Commission's support.

Marian Thompson, resident of Lake Monticello, spoke in support of the request. She wrote a history of the church in 1994. She explained the history noting that South Plains Church became the fifth Presbyterian Church in the county. Her heart was touched by all of the faithful service that she read about when she studied the history of the church and she prayed that the Commission would consider their need for growth and to further the Christian gospel in Charlottesville, Albemarle County and Lake Monticello.

Travis Taylor, an Elder at South Plains Church, said that his family, which included his wife and son, has been members since 2004. They live in the Boyd Tavern area of eastern Albemarle not too far from the church. He was employed an engineer in Albemarle County. The strong tradition of community involvement and warm friendship of the fellowship and community attracted his family to this church. As a family with a young child they have found the congregation of this church to have a loving and supportive fellowship. They want their family to grow up in a strong faith community with facilities and programs that foster good citizenship and a caring life. In order to achieve these goals the church needs the following basic needs: adequate classroom and nursery space, a room where the whole congregation can gather for meals and fellowship and a safe clean restroom. Their dream is not for a large church, but only for church facilities adequate for the programs and activities that will nurture their families. They feel that the building plans presented are entirely in keeping with the historic Keswick community of which South Plains is a vital part.

Abby Brown said she has been going to South Plains Church for ten years. Many people have joined since she was born. They need a new building because they are crowded and need more room for classrooms and activities. It will be very helpful.

Carl Buck, resident of the old Boyd Tavern structure, said that his family chose to live in this area because they were big believers of preserving history. When they lived in North Carolina they joined the National Trust Society and have been contributors to that cause for quite some time. It has not been easy refurbishing the old Boyd Tavern structure because there have been many challenges. They became members of the South Plains Presbyterian Church in 2005. One of the crucial factors in choosing to worship at the church was the congregation's commitment to continue to honor its historic positions in the area as well as its classic 19<sup>th</sup> century sanctuary.

Jeff Buck, son of Carl Buck, pointed out that he and his brother were the only two in their class for the teen Sunday school. Their classroom is also a storage room. It is really cramped. There are number of

things crammed in the storage room such as a television, a ladder and clothes. He was also part of a new youth group with this church and two other churches. They have not been able to have any youth groups meetings at their church due to the size of each room. He hoped that the Commission would allow them to build Kurt Hall in order to make more room for everybody and everything to have its own place.

Carl Buck noted that as Jeff said the church is simply out of room. They feel that it is difficult for the church to continue the next generation of Presbyterians in this area is simply because they don't have the facilities to welcome other people aboard. He emphasized that they were working with other local churches to continue community involvement with the youth in the community. Their church accepts its responsibility to treasure the history that it provides to the Keswick area. He hoped that the Commission would take into consideration their request to add Kurt Hall to be a valuable part of the community.

Joanna Hadata, an area resident, noted that she and her husband retired to the area 15 years ago and loves the area and its wonderful historic background. She comes from the Old Dutch Church of Sleepy Hollow that was built in 1685, which is famous in Washington Irving's legend. There is really a church and she used to belong to it. That church still stands with 3' thick walls without electricity, heat or any modern things. However the congregation had to move because there was no place next to it to build a church house. A church needs to have facilities. She was a member of the choir. Their church choir goes to the old manse, which about 25 yards from the sanctuary. They have to go down there, robe up and then come rain, snow, hail or sleet they dash from there up to the sanctuary. They really need to have a facility that will be closer and will give them the opportunity to robe up and to go to the sanctuary with the worshipful attitude that one really should enter the sanctuary for worship in. They really need this facility, which will be very historically in character.

Mary Howard, a retired federal employee and resident of Westminster Canterbury, said that she had been a member of South Plains Church since 1987. For those who attend South Plains and live at Westminster Canterbury the church is very convenient. It is close by and does not take very long to get to in heavy traffic. The friendly attitude at South Plains has made members very welcome as members of the church family. However, South Plains needs meeting space and rest rooms that are on the same level as the present sanctuary. At least one-half of their members are 65 or older. Those who rely on a cane or a walker have a difficult time going down the uneven sloping sidewalk from the present sidewalk down to the old manse. Once inside there are the uneven floors. Those who can't do stairs are confined to the four rooms downstairs. Those four rooms are the Church office, a nursery, a kitchen and one meeting room. So the older folks would like to see their Kurt Hall built and become a reality while they are still around to enjoy it.

Marge Hampton, a 77 year old Elder at South Plains Church, said ten years ago she came to the church emotionally and physically challenged. The church welcomed her with open arms and put her to work. She did volunteer work and became the Chair Person for the Fellowship Committee. The old manse is a wonderful place, but is old and inadequate for what the church needs. She agreed with the previous speakers. Three years ago they decided to step out on faith and raise funds for Kirk Hall. They have managed to raise \$700,000 to put into Kirk Hall. The church has seen three miracles over the past year and she is requesting the fourth miracle tonight in her request for approval of Kirk Hall. They want to have the building in the ground by next December when the next snow flies. She invited everyone one at a time to visit South Plains Church.

William Orr, resident in the neighborhood for 30 years, said that the church has been there for 30 years. In recent years the church has really been a source of a lot of support for his family. His son was buried in the church cemetery. He was an urologist which dealt with problems associated with being able to go to the bathroom in a timely manner. He pointed out that the church surely needs that and make this a very reasonable request. They would like to have something similar to the church located just down the road, Grace Episcopal Church. He hoped that the Commission would see fit to approve their request for the parking as proposed on the sketch. On the bottom of the sketch is a triangular piece of land that is an open field that Mr. Rintel has been having hair cut on it although it belongs to the church. They went through a good bit of time and expense to offer to trade him that triangle for some land along the cemetery where they could eventually expand the cemetery. It is a long way from the church and there is

already one row of trees. Therefore, he saw no logic in requiring the church to fill that field in with tree planting. He felt that it ties their hands and keeps the church from using it as a playground, picnic area or possibly to enlarge the cemetery. It seems it would be better to have a border of trees rather than asking to fill the whole area in with trees.

Ken Edwards, Pastor of Union Grove Baptist Church since 1999, said that their church was about 200 yards from South Plains Church on Black Cat Road. For generations both churches have enjoyed friendships and have supported each others ministries. Once a year the two congregations visit each others services. They have vacation bible school together each summer in order to serve the needs for Christian education not only for their children from the two congregations but also for other families in the area that are interested. This is about more than meets the eye. This is about something much smaller. South Plains Church is not a mega church. They are not talking about Liberty University or Kenneth Copeland Ministries where thousands attend. They are talking about in comparison a little South Plains Presbyterian Church with a membership around 150 people building a little bitty building on land that they purchased before anyone in this building were even born. They believe that strong churches make a strong community. Therefore, Union Grove Baptist Church support the plan South Plains Presbyterian Church has submitted to expand their ministry and serve the community.

Frank Kiplinger said that he and his wife came to Keswick 15 years ago and joined South Plains Church about 14 years ago. Their congregation was aging. Many others have discussed what the church has done in the community and around the world. The requested facility would give their aging congregation the opportunity to bring in younger children in our community and to start training them and bringing them up to continue this work around the world. That is why they are asking for this space. This process started five or six years ago when Bill Atwood came in and started the plan. At that time they met with their neighbor. Through that time they have met with staff and worked towards the plan which they are requesting approval on tonight. They pray that the Commission can approve that plan as shown on wall

Jay Cronnester, resident of Fluvanna County and Elder, said that he and his wife have been members of South Plains Church since 1994. He serves as Trustee of the Chairman of the Long Range Planning. For the past four years he has been actively involved with the plan, which the congregation adopted. In the spring of 2007 the church held a capital fund campaign and raised the bulk of the money they need to construct this facility. They don't aspire to be a large church, but a church that meets the need of their congregation, community and neighbors. One of the major considerations that he sees in the questions that have been raised is where Kirk Hall is located in relation to the manse. The reason that manse is there is they can't take it down and build Kirk Hall. The construction is about a year project. They need offices, class rooms and fellow ship area, which the manse provides. They also need the restrooms too. A number of the folks have talked about the age of their congregation. One of their concerns is being able to respond to the needs of all of the congregation members including the children that need adequate space for class rooms. Therefore, the manse is critical to the church right now and they can't tear it down to move Kirk Hall. To use portable facilities would be difficult on the senior members of the congregation. On behalf of the Long Range Planning Committee who looked at where the church can best place facilities on the limited space the plan that Bill Atwood has worked with the congregation, staff and the neighbors is the best they can come up with. Their commitment is to preserve the historic nature of that area. When they build new buildings the old sanctuary is still going to be the focus of their ministry. They have a lot of pride and have spent a lot of money on keeping it up to date so they can use it. They have worked to make their church assessable with the new Kirk Hall and eventually the new sanctuary. The big issue right now is the new Kirk Hall. They were hoping to be building it now because they need it now. They have inadequate classrooms in the manse and cannot add to the manse. They are requesting approval of a site plan and a building plan that will allow the church to continue to meet the obligation that they have to the original donator of the property, Margaret Rogers who on June 15, 1871 deeded the property.

Minister Linda Battle said that she grew up in the Keswick community and remembers as a child coming past South Plains Presbyterian Church and always wondering what kind of fellowship they had. She was thankful because in the last three years she has had the opportunity to fellowship with them being the Associate Minister at Union Grove Baptist Church. She prayed that with the help of God and the Planning Commission that they will support them in expanding their building. She prayed that the

Commission would help them meet their needs. There are a lot of elderly people in the church and it is hard for them to walk down the hill to the manse to get to the restrooms. She asked that the Commission support the request.

Cynthia Step, a member of the congregation of South Plains Church, said that the church has been in the community since she was a child. She feels the love of the people at the church. The church has been a place of peace and she feels that the plan should be approved to allow the church to continue serving the community. It is for the benefit for the church, congregation and those in the community. She asked that they not hinder the church's service or work. If they have a heart or prayerful mind it should be approved and the church has given adequate reasons why it should be so.

**The Planning Commission took a seven minutes break at 7:23 p.m. and the meeting reconvened at 7:35 p.m.**

Peter Taylor, part owner of Ben-Coolyn Farm, which is immediately to the church, said that his driveway intersects on Route 22 and Black Cat Road. He has the good fortune of being able to look at this beautiful church for the past 10 to 12 years. It is truly a magnificent site. He absolutely supports the expansion of the church. It is clear while it is a post card of Keswick it is clearly small and does not have the facilities that any reasonable church would need in this day and age. He knows that it was an exciting moment when Grace Church, which is up the road and he is a member, added to the Hall. He applauds the church on their initiative and supports it. That being said he thought that they have a responsibility as a community because this is a scenic by way and one of the main thoroughfares into Charlottesville and Monticello to get this right. While he thought that the plans have come a long ways and he really likes them and Mr. Atwood has been very communicative with the neighbors on some of the changes they have requested and he thanks him for that, he thinks that it is important to get this right. Within the context of supporting the request he would ask two things. He did not understand fully staff's recommendation to approve this and then turn it over to the Architectural Review Board. He would ask that the Planning Commission be careful to ensure that the details of this are consistent with the historic nature of the neighborhood. The second item he would ask because time has a way of changing things is to approve what is going to be built now and not approve a number of open ended items that could change over time. Within the context of that he fully supports it and he wished the congregation the best of luck.

Tony Vander walker, a Keswick citizen, said that he lived about a mile down the road from the church. He asked to tell the Commission a little story. This is really not about a dispute between a neighborhood and a church. It is really about the devotion of a neighborhood to its character. When he first bought the farm in Keswick a neighbor called him up and said welcome to the neighborhood and asked could a number of people come over and discuss a problem they have with his property. He agreed to allow them to come. Six people showed up at his door the next day and said that they had a problem with his driveway entrance. He was told that he had azaleas planted along both sides of the driveway entrance and in the spring most of the azaleas are magenta, but there is one azalea that is orange. The previous owner would not get rid of the orange azalea. So they asked if he would please consider getting rid of the orange azalea because it really bothered them. He agreed and took the orange azalea. It just shows you the kind of commitment, compassion and devotion that the neighborhood has about every rock, fence and building in the neighborhood. That is why most of the land in the Southwest Mountains Historic District is protected with conservation easements. People have gone far enough to give the right to develop their property because they believe in it. That is really what is going on here. Mr. Orr mentioned Grace Episcopal Church and the way its historic structure relates to its new fellowship. In talking with Mr. Atwood at the break he said that if this church could approach Grace Episcopal segregation of the new building to the old building the neighborhood would be much appreciative. They openly embrace Grace Episcopal in the way they handled that new building. If this church could do the same thing they would all be on the same page.

Jonathan Rintels noted that he had cut hay on the property as noted with the permission of the pastor. He made the following comments.

- For 18 years he and his wife have owned an adjacent farm which borders the church on two sides. They have the utmost respect for the church and its members. Over those years they

have meet from time with them not to prevent their expansion but to facilitate it. As proof of their ability to work with their neighbors they have a landscaping agreement from two years ago when the Little Keswick School built its dormitory on their western border. They worked with the school very closely when they sought that special use. When they saw the harm that their expansion would do to their property they stepped up and agreed to buffer its impact for which he was very grateful.

- Last fall they meet with Bill Atwood, the church's architect, to suggest some reasonable suggestions that would make its expansion plan acceptable to us. They have made some changes. The new sanctuary now faces forward, the parking is in front and more trees are preserved. They are very grateful for those changes to the church and thank them for making them. Unfortunately, those changes don't go far enough. They agree with the county staff and the nearly 60 other members of the Keswick community including nearly every resident that lived within walking distance or close proximity of the church who have sign their joint letter to the Commission. There still remain too many aspects of this particular expansion plan that are too damaging not just to his property but to the wider Keswick and Albemarle County communities.
- As heard the church is often called Keswick's post card. The church stands in the Southwest Mountain Rural Historic District where many local residents have donated valuable permanent conservation easements. Of all places where sensitivity is required it is in this Rural Historic District on a State and Scenic By Way. The plan can easily be improved to become acceptable to the community at little expense to the church in time, money or square footage with a few reasonable changes. They agree with the staff that the two buildings are not designed of a rural scale and should be pushed back. They think that the manse should be taken down and the hall built on its footprint. A landscaping plan with far more vegetative buffering is required. The staff's recommendation of plantings in the open area and the new field is welcomed but will not mitigate their views because that field is so much lower than the new building's elevation. They need significant evergreen trees planted during phase one on the church's side of the existing rear tree line. The Keswick School's landscaping plan agreement could be a precedent for that.
- The do agree with the church that the parking should be in front of the building. However, those spaces could be much better integrated among the site's existing trees as at Grace Episcopal Church that is on the same Entrance Corridor. For two hours on Sunday morning when there is almost no traffic on the Entrance Corridor having the parking in front is hardly a burden. Placing the parking in the rear will advertently affect a wet land and a stream that waters horses on their and others properties and will require the removal of the trees that screen the church and significantly reduce the value of their property as a rural farm. Requiring these reasonable changes will avoid needlessly damaging for decades not just their farm but one of their communities' signature rural and historic treasures while also allowing the church to expand as it wishes.

Mark Columbus, Head Master of Little Keswick School, said that he was in a unique position because he was on both sides of the fence. About two years ago since the school borders Mr. Rintel's property the school went through a special use permit for a school expansion to meet their needs. In thinking about what has been said and looking at Bill Atwood's drawings he noted that there have been things that have changed since the first time he saw the plans at the church. There are some things that are inherent when one takes the responsibility of having a special use permit in which they take on the burden to meet the need of the neighbor or community. In doing so with their relationship with Mr. Rintels and what they have done through the whole process, and he thought that the church has made an effort to do this as well, is to keep them informed. But when they realized they infringed on his view and with property values and taxes the school went above and beyond meeting the need of that neighbor. In doing so the school planted over 100 trees in the height of anywhere from 10' to 20' and even got permission to plant trees on his property. When looking at Mr. Atwood's plan he felt that in actuality there was not much of a screen at all. That is something that should be taken into consideration by the Commission. The other concern the school has is in the lower left hand corner of this area is more or less where the stream comes through is a bog. He was pleased that the parking lot was moved to the front. There is still a danger which was in the details and getting right first in doing all of the planning before they allowed it to go out of the barn. That area would significantly impact the watershed of a creek that feeds their horses and goes on to Keswick Hall.

Jim Balheim, area resident, said that he had lived within one mile from the church for 30 years. One of the things he noticed was that the membership goes up and down. There have been many times when there were ten or fifteen cars in the parking lot on Sunday morning. He suggested that maybe the current situation is on the up swing. Maybe they don't have to plan as things will keep going upwards. He suspects that many of the newer members of the church probably pick the church because they drove by and it is pretty and a nice area. He and his wife did the same thing 30 years ago when they moved here. In 1985 they put an easement on their farm. He had the feeling that what is going on right now. He took issue with the request. They put an easement on their farm in 1985 and since then thousands of acres in the area have been done. At least three properties contingent to the church have done this. They can't change their mind about the easement if the community changes. Part of doing something like this they would expect the county to go along with their regulations and uphold these. There has been much said about the integrity of the building, which is more dependent on the building on the site than the building per say. He did not think they could make something so much larger and say they are concerned about the integrity of the building. At the meeting last fall he asked the architect if he had looked at expanding the current building and the answer was no. He found that very odd and nobody from the church spoke to it either. The bathrooms are not the issues here because bathrooms could be added onto the building and the people in the neighborhood would say great.

Craig Ellis, a neighbor across the street, noted that there was a basic argument here for the need for a bigger church and the need to protect Keswick. Being that they are debating 190 years of history and character the neighbors have invested significant time and money in permanently protecting a lot of that character. He proposed sending it back to planning and doing more work on this to get something that they all can be proud of. They can enhance the character of Keswick that future generations will be proud of.

Hattie Douglas, resident of Keswick on Black Cat Road, said that the church had a positive effect on the community. She asked that the Commission take the church's need for expansion into consideration

Louise Butler, Youth Director of Union Grove Church, suggested that everyone pull together and allow the church what they need in order to expand the church. She felt that they need to look out for the needs of the elderly and youth. She asked that the Commission approve the request and allow the church expansion.

Natasha Wood, member of Union Grove Church, expressed support for the plans for expansion of South Plains Church.

Peter Hallock, of Ben-Coolyn Farm, suggested that would be helpful if they can volunteer to give things to get the special use permit to agree if the woods along the creek and side would be a permanently do not disturb area and just let it grow up. If they don't want to plant anything in that area cedar trees will come in which will create a buffer. That is truly what the Rintels need. That is what they did with the school. If they put in some evergreens in time the trees would grow up and cut out what can be seen of the manse right now from Mr. Rintels front porch. This is a church and a needed building, but they have to realize this is a rural area and this is a special use permit. So they should at least listen to the neighbors, which they have. He gave Bill Atwood some credit and was pleased to see that there was nothing connected to the little church. He complimented him today for coming up with the idea that the view out of the church is important. All of this needs to be worked out. It would be very nice to put in a permanently do not disturb area of the trees along the bank, critical slopes and around in the back.

Jeff Werner, representative for Piedmont Environmental County, noted that he recently had gotten off the council of St. Marks Lutheran Church and had sincere respect for the efforts of the congregation of South Plains. He knew how hard all of this work is. The PEC has a very special relationship with the Southwest Mountain. In the past they worked with residents to establish the Southwest Mountains Rural Historic District. It is on the State and National Register. The Commission is aware of the importance of that entire landscape and not just a single site within it. The integrity of the whole is what is important in a district. Their primary concern was the entrance off Black Cat Road, which appeared to be resolved. He asked to insert into the Commission's considerations that some more tree protection provisions be applied for the site as a whole. For example, in the parking area tree protection provisions such as what

they have in the cell tower regulations that stipulate how the trees will be protected during construction and not just put a piece of tape on it. That tape does not stop a bull dozer from going in. Some specific provisions that protect those trees would be useful. In the staff report it mentions that the storm water facilities have not been designed. So that puts at risk some trees and vegetation which has not been identified in this plan. He suggested that the Commission flush out how important and critical the vegetation and trees are so that when staff reviews it later that they know what is protected.

Laurie Campbell, member of South Plains Church for eight years, spoke in support of the request. She asked for consideration for their church so that it goes on for the future of the children.

Lisa Clymer, member of the church since 1997, spoke in support of the request so that they can fulfill the needs of the community.

Edgar Lee, resident of Keswick, asked the Commission to allow the church's expansion request particularly for the youth's need for Christian education.

Vince Hockett, resident of Keswick community, supported the request so that the church and community can grow in a positive way. He felt that the plan before the Commission does not take into account maybe all of the concerns that have been raised. He asked if there was a way that the Commission could as stewards of the community can bring the parties together by staying involved and approving something that they have seen and understand what the concept is prior to handing it off to another forum, the ARB that is maybe a little less public to help the community in Keswick arrive at a plan that is positive for the church and the community. He felt that is the Commission's role and asked them to fulfill that to help the community continue to grow in a very positive way.

Betty McClenahan, a member of South Plains, spoke in support of the request because the church is accomplishing some wonderful thing in their mission work.

Chad Wiener, member of South Plains for four years with his wife and child, spoke in support of the request. He asked that the Commission reconsider condition #5, which requires that the church fill the open grassy field with a screen or buffer of trees and shrubs. Condition #5 will be difficult to satisfy as one of the neighbors wants to assure that the church is not seen from their property. In a letter to Mr. Clark they specifically request that large evergreens be planted in the open grassy field. This specific request is troubling for if the Commission approves condition #5 the church will effectively be required to plant a long dense wall of evergreen vegetation along the southeast property line. In his view it is not desirable that the county encourage its residents to plant dense evergreens to separate each others property. Not only would that detract from the rural beauty it suggests that the proper way to live along side each other is to not be seen. Second, he worried that by approving condition #5 the Planning Commission is effectively encouraging its resident who do not like to see their neighbors to submit letters to do their bidding. This is not a neighborly way to handle these matters and not a respectful use of the Commission's time. Condition #5 addresses one resident of the county. It will not make the property more beautiful from those passing by as such buffer is set back from the road and not visible from Route 22 or Black Cat Road. He believes that the church has been responsive to staff's concerns throughout this process and displayed its willingness to change its plans for the broader benefit of the county. However, condition #5 does not benefit the county more broadly and is only aimed to satisfy one property owner. He suggested that if the neighbor does not like to see the church they could have planted large evergreens along the property long ago. He asked the Commission to reconsider condition #5 and approve the special use permit tonight.

Kelly Mosque Golding, a member of South Plains Church, spoke in support of the request and asked for approval of the request. First Presbyterian, Meadows and Westminster Presbyterian took the youth fellowship from South Plains Presbyterian into their group because of their small historic church and not having adequate space for the youth meeting. South Plains Church is growing and needs the additional space.

Jeff Battle Sr. resident of Keswick and member of Union Grove Church, prayed that the Commission will take into consideration some of what the homeowners have to say, but to allow this church to do what they need to do.

Mr. Strucko closed the public hearing to bring the matter back before the Commission for discussion and action.

Mr. Morris pointed out that this is his district and he had the pleasure of meeting with these lovely people. He acknowledged the plans presented tonight are different from seven months ago and that they have been doing an awful lot of work to address many concerns. What they are looking at is that a sanctuary is made for a community of believers. That community of believers changes going up and down as they have heard. Unlike many churches in the US and throughout the world are going up while others are failing. He wanted to do everything that he could to increase the growth that they are experiencing. But to really experience that growth the church needs room, particularly for the youth. He believed that these folks over last four years and seven months have bended over backwards to listen to staff and the neighbors. It is the Commission's turn to step up to the plate and accept their responsibility to move forward and approve or disapprove this. But as of this evening they need to know where they stand. That it does not go back for architectural review, but moves forward. He agreed that condition is an obstruction. This particular piece of land is below where the neighbor's house is. He did not think that anyone here would live long enough for the trees to grow high enough to really create a buffer in that particular area. He fully supports this based upon what they have in front of them that says they will recommend approval of SP-2008 09 with the 7 not 8 conditions and definitely that it does not go back to the Architectural Review Board..

Mr. Strucko agreed and wanted to grant the special use permit. One speaker said this church is not an artifact and if they can preserve history while accommodating contemporary needs he thought that is a solution and would probably benefit all sides of the argument. His only concern is that he is not sure what they are granting a special use permit for. It seems that they are adding 9,300 square feet to this facility and not looking at design. He hoped they can have some discussion on that. He was confused by the role of the ARB in what is proposed here.

Ms. Joseph suggested the Commission request Margaret Maliszewski, Design Planner, to come forward and address the ARB concern.

Mr. Strucko asked Ms. Maliszewski to come forward and address the Commission.

Margaret Maliszewski, Design Planner, said the project has not been before the ARB and so it can't go back to them because it has not been there yet. The ARB review would be part of the site plan review process.

Ms. Joseph noted that there are some issues still outstanding concerning the placement and size. She asked why this request did not come before the Commission as a work session. The Commission takes comments from the public in work sessions. It is very helpful in working these types of issues out. Right now what they have is a recommendation from staff to just approve the square footage and then allow the ARB to determine the placement. That makes her feel uncomfortable.

Ms. Maliszewski replied that there was a recommendation that there be a work session. That was not the option that was chosen. Therefore, it was staff's recommendation just as a means to try to move things forward to bring it to the Planning Commission and make a recommendation.

Mr. Strucko noted that he misread the staff report that said that the plan had been reviewed by the Architectural Review Board staff or Design Planner.

Ms. Joseph pointed out that the ARB would have to grant a Certificate of Appropriateness in the site review process. There is no way for this project to avoid going before the ARB.



Mr. Cilimberg noted that without a plan condition here the ARB would not be obligated to design based on that plan. In a more typical case where a conceptual plan would be one of the conditions then the ARB would be obligated to review but the applicant would have the plan or basis layout already established by the Board of Supervisors. The ARB would have less discretion on how they would recommend building location and such because it would have to conform to the conceptual plan. He noted that the back area would be outside of the ARB review.

Ms. Porterfield asked if the Commission could specify where the parking is to be. If the Commission is comfortable with the parking in the front yard she felt that they should keep it. She felt that the ARB would want the parking in the rear. The Commission would not want that to become an issue. There are reasons for both but that seems to be something they need to decide here. She asked if the Commission could say that the footprint should stay where it is or needs to move.

Ms. Joseph noted that the Commission could say anything they want to.

Mr. Cilimberg suggested that the Commission should probably go ahead and have the condition for the conceptual plan if the footprint of the buildings and the location of the parking area are stipulated because not much else will really be affected.

Mr. Edgerton said that if he was hearing correctly if they go with staff's recommendation they will be delegating the responsibility for not only the aesthetics that would be impacting the corridor that the ARB is responsible but they would also be delegating to them the responsibility of the plan. He was uncomfortable with that. He felt that the Commission has the responsibility to give the ARB a plan that they are comfortable with so the ARB can apply their review in the more traditional way where they do accept a schematic plan. He has been listening hard to the concerns and to the efforts that the architect has made here. He was looking at a site that has some absolutely spectacular trees that the design has gone to great lengths to try to preserve. He thought that there was one tree that Mr. Clark had mentioned in the staff report that he was concerned about, but he believed he heard the architect is committed to trying to save that. If the tree can't be preserved, then the architect is going to try to amend the placement of the future sanctuary. From a massing point of view he thought that the architect has been incredibly sensitive in placing that future sanctuary into the hillside so that it can actually be lower than the historic structure. He did not see a way of getting this scale of an addition to the church, which he thought that they have heard loud and clear was needed, without doing more damage to the site. If the facility is located anywhere else on the site several of the really magnificent trees will be destroyed. Those trees have been on the site for several hundred years. He supported Mr. Atwood's proposal and suggested that they approve the schematic plan as shown. In the past he had always argued for relegated parking, but in this particular situation out of concern for the specifics of the site he thought that this is the time that this parking should be in the front. He appreciates the effort of the architect and the church in trying to soften the impact with the porous pavers and the stone wall which will minimize the visual impact. He thought that they have really gone the extra mile and supported the request.

Mr. Strucko asked what his view was of the open area.

Mr. Edgerton said that heard two points about the open area. If the church was asked to increase the vegetation on the open area to provide a buffer it will certainly benefit the property owner to the southeast. But at the same time it will take away an area that he thought some members of the church say that they use for activities. He thought that would be unfortunate. If the neighbor is concerned about his impact he certainly has plenty of land that he can plant trees on that would provide a better buffer than what would go in that lower site.

Ms. Porterfield agreed. She observed that the meadow is very low from having been on the site today. If someone stands on the Rintels property and looks across they are going to look over these trees even if it was a 20' tree. The applicant indicated that they are going to plant a garden between the historic church and the manse. She suggested that the church submit a landscape plan that shows what they intend to do since they should be able to soften the building with a variety of things that certainly in the winter time the Rintels will see. In addition the church could bring that softening around the large church they intend to eventually build.

Mr. Edgerton noted the option of taking down the manse, which one could argue that it has some historic value as well, and allowing Kirk Hall to be moved back is a problematic option. The church right now cannot exist without the facilities that are currently in the manse. This plan as proposed actually will allow them not to have to touch the manse until after the facility is built. Then the church can go in and retrofit it so the manse will still be useful during the constructive stage and available to the church to use. That is responsive to the practical needs of the church. For that reason he was comfortable with the plan that is before the Commission tonight.

Mr. Strucko noted that staff's recommendation says that the special use permit would only address the size of the expansion.

Mr. Edgerton said that he was totally opposed to staff's point of view and thought that they need to designate and approve this plan.

Mr. Strucko said that was the point that he wanted to make. He was moving past the staff's recommendation and looking at this conceptual site.

Mr. Edgerton said that he felt that the Commission has a responsibility for the site. The ARB has another responsibility and the request has to go through that process. Certainly in the final site plan there will be adjustments made. But rather than just picking a square footage and hoping that they get it right later he supported the plan before the Commission because it was their best chance to address a lot of the environmental issues on the site and address the church's needs for expansion.

Mr. Morris asked if that was a motion and if that includes condition #5 of the 8 conditions.

Mr. Edgerton moved for approval of SP-2008-00029 extracting condition #5.

Mr. Morris seconded the motion.

Mr. Cilimberg noted that would require that they add the typical condition referencing this plan.

Mr. Edgerton agreed.

Mr. Kamptner said for staff's benefit the condition will read the development shall be in general accord with this conceptual site plan. What they have been doing recently with the conceptual site plan is asking that the key elements shown on that conceptual site plan be identified so that staff has better direction as to determining whether or not ultimate development is in accord. He had heard the location of the parking area up near the front, the location of the new sanctuary and fellowship hall. He asked if it was that exact location or no closer to Route 22 that is important. It may be where it is shown because any movement in any direction looks like it will affect trees.

Mr. Edgerton said that if they move it back they were going to destroy the manse and the 100-year old tree. The location is responsive to the site and he was comfortable with what he sees before them.

Mr. Kamptner said just for the ARB's benefit the Commission is making this recommendation with this additional condition in order to be satisfied that the applicant has addressed the element that the character of the district will not be changed, which was the one element that was out there.

Mr. Edgerton noted that he was glad Mr. Kamptner brought that up. Mr. Kamptner educated the Commission this last week in anticipation of this discussion in some of the Religious Land Use and Institutional Person's Act of 2000. That really gives them some serious responsibility here. He did not know how many of the Commissioners have a copy of what Mr. Kamptner sent them, but on page 6 under section 21.510 in determining whether features is a religious exercise, in some of the red bold type, "In conducting its review, an ARB is advised to heed the following passage from *First United Methodist Church v. Hearing Examiner for the Seattle Landmarks Preservation Board*. This was a precedent in the 1996. In this case the judgment reads, "While preserving aesthetic and historic structures may be of

value the locality, 'the possible loss of significant architectural elements' is a price we must accept to guarantee the paramount right of religious freedom." He asked if that language was part of the ruling.

Mr. Kamptner replied yes that it was part of the public benefit. This application is different from most of the special use permit applications that they receive because they have to consider the First Amendment to the US Constitution in a federal act, which is called the Religious Land Use and Institutionalized Person's Act that applies only to prisoners and specific land use applications. But they have to consider that as part of our analysis as well. It changes the analysis a little bit. But certainly they have to be sensitive to the legislature.

Mr. Edgerton said that it was directly applicable to this particular request. They have the so called postcard of Keswick before the Commission, which is a 180 plus year old sanctuary that is no longer functioning in the way that it needs to function for this congregation. He thought that they have to be respectful. Per the information supplied to the Commission he was not sure if they have the right to turn the request down if they wanted to. But he would leave that to Mr. Kamptner since he was not an attorney.

Mr. Kamptner said that he would not have to make that call because he was hearing a favorable recommendation. But there are a couple of issues that are raised with this application, which do raise the red flag. One is that they have a church that needs to expand on this site. Compounding that issue is that this is a church that has been there for almost 190 years. To expect them to go and find another place of worship he thought could be problematic. The other issues raised with this are just the physical elements of the ultimate church buildings and the extent to which the ARB will decide what its outward appearance is and if there are any architectural elements that are religious in nature that are beyond the scope of the county's review.

Mr. Cilimberg pointed out that staff does a lot of consulting with Mr. Kamptner when they are dealing with church issues. In the last couple of years in several reviews the size has been an issue. This one was due to the questions of design. In consulting with Mr. Kamptner staff did not feel that they could make a recommendation for denial and didn't. Mr. Kamptner suggested that if there were concerns about the presented plan that could be simply addressed as part of the site plan process with the ARB. That is why staff recommended in this way because of the concern with the plan. He thought what the Commission has said tonight is they are not concerned with the plan and that most of the Commissioners feel comfortable with the plan. Therefore, conditioning that is the alternative that staff would have recommended if the plan was not an issue.

Mr. Strucko noted that there was a motion on the table and had been seconded. He reiterated that the motion was for this conceptual site plan before us and 7 of the 8 conditions that are in the staff report with condition #5 removed regarding the landscape plan.

Ms. Porterfield noted plus the added condition that it was going to be in general accord with this conceptual site plan.

Mr. Cilimberg noted that Mr. Kamptner identified two elements that were important, building location and parking location. He heard in the conversation among some of the people who spoke that the preservation of trees was identified as something the Commission wanted to achieve. He asked if the Commission would consider that as an element that is important in this plan for the preservation of trees.

Mr. Edgerton agreed.

Mr. Morris agreed noting that it was a good point.

Mr. Edgerton pointed out that there was one thought he had about that. The applicant suggested that right now they are only considering phase one. Unfortunately, the drawing shows both phase one and the addition of the future sanctuary. Unless he misheard the impact on the third beautiful tree over near the wooded area he thought that the thread of the future sanctuary is really the issue there. He suggested

that maybe they should consider approving it in phases. He asked how the rest of the Commissioners felt about that.

Ms. Porterfield said that they were giving the church the opportunity to slide the new sanctuary back. If they slide the sanctuary back it does not affect that tree towards the road. The other big tree is behind the manse.

Mr. Cilimberg said that it becomes a little difficult to design on the run so to speak.

Ms. Porterfield said that she would rather see them have the ability to stick as close to this design and if in the future they have to slide it around she was sure that they were not going to move it that far.

Mr. Morris said if they keep it that way then they know what they are approving.

Mr. Franco said with the approach of making the concept plan the plan that they are following do they need conditions 1 through 4 since they are basically shown on the site plan. He noted that at least conditions 1 through 3 would be reflective in the plan.

Mr. Cilimberg asked if it was the number of parking spaces and building square footages. He referred the question to the review staff.

Mr. Clark noted that 75 spaces are shown on the plan. Therefore, that would be covered. Condition 4 would need to remain because it would be requiring a later approval.

Mr. Franco said that conditions 1 – 3 are reflective in the plan and so are redundant.

Mr. Kamptner noted that zoning staff may appreciate the specificity of these conditions.

Mr. Cilimberg said that it does not hurt to keep them in because it further defines the plan.

Ms. Joseph said that she did not agree with taking out condition #5. She thought that it was important to note that churches have a different function in a rural and residential area. When a church is adjacent to residential properties it was just good neighbors to have some sort of barrier between the two. She did not think that they need a brick wall. She did not think that there was anything wrong in allowing some vegetation back there to grow and did not agree with taking out condition #5. She was also a little bit concerned about the landscaping shown across Route 22 where the parking area is going. She would like to see something that is more natural. The staff report says that it looks like a suburban church. She was concerned with the massing and the rural character in that area. Those are two things that make it difficult to support, but she understands the need and that it is a tiny little church. But there is still something about the size of it. She knew that Mr. Atwood has done a good job in using the architectural forms to make it look integrated. It is unfortunate but what will happen with the plan is that the existing church is going to be subordinate to the new big church. She thought that was what staff was talking about. So she still has a little problem with that. She understands Mr. Atwood's concept that if they smash that building right against the other that when one looks out they are going to see a brick wall or the other building rather than the rural country side. She was hoping what the ARB would do is help this thing settle into the landscape and allow the existing church to still be the primary structure on the property.

Mr. Loach asked if condition #6 should say that there shall be no full time day care center assuming that the church may want to set aside part of their building for daycare. .

Mr. Clark replied that day care is a separate use by special use permit.

Mr. Loach asked if the church would be prohibited from having daycare area during the services, and Mr. Cilimberg replied that was not part of it.

Mr. Loach asked if bible school would be considered as part of the private school, and Mr. Cilimberg replied that it was not.

Mr. Loach agreed with Mr. Edgerton and Mr. Morris on condition #5 because he did not see a need for it. The plan is a good one. From what he had heard from the congregation there is a commitment to respect the past and the architecture was going to be consistent with the church. Therefore he saw no reason to shield it. As Mr. Edgerton said the adjacent owner could put shielding on their land if they want to. He was supportive of the proposal as outlined.

Mr. Cilimberg asked to make a comment about Ms. Joseph's comment about plantings along Route 22 since he did not think the Commission identified it as a key element. Therefore, he thought that the ARB can exercise some discretion in how they ask that the plantings be treated to the extent that they have the room to deal with it.

Mr. Strucko asked to be clear that after the Commission takes action tonight that this matter does go to the Board of Supervisors and then at the site plan phase it will go to the ARB. He asked for a role call.

The motion passed by a vote of 6:1. (Ms. Joseph voted nay)

Mr. Strucko noted that SP-2008-00029 South Plains Presbyterian Church would go to the Board of Supervisors on May 13 with a recommendation for approval.

**The Planning Commission's motion and conditions are reiterated and summarized below:**

**Motion:** Mr. Edgerton moved and Mr. Morris seconded for approval of SP-2008-00029, South Plains Presbyterian Church with staff's recommended conditions, as amended extracting condition #5 and that the development shall be in general accord with this conceptual site plan. The key elements shown on the conceptual site plan were identified as follows: the location of the parking area up near the front and the location of the new sanctuary and fellowship hall.

1. The development of the site shall be in general accord with the "Conceptual Site Plan" prepared for South Plains Presbyterian Church by Atwood Architects, Inc., dated January 19, 2009. In addition, the following elements shall be in strict accord with and or conform to the Conceptual Site Plan: the location of the parking area, the location of the new sanctuary and fellowship hall, and the preservation of existing trees.
2. The footprint of the new sanctuary shall not exceed 3,550 square feet. The footprint of the new fellowship hall shall not exceed 5,750 square feet.
3. Provided parking shall not exceed 75 spaces.
4. Commercial setback standards, as set forth in Section 21.7.2 of the Albemarle Zoning Ordinance, shall be maintained adjacent to properties zoned Rural Areas.
5. Storm water facilities and parking lot surface meeting the approval of the County Engineer shall be required before approval of the final site plan for this use.
6. ~~Staff approval of a landscape plan shall be required before approval of the final site plan for this use. Plantings for screening of the church facilities, to consist of a naturalistic pattern of multi-species trees and shrubs, as listed in the brochure titled "Native Plants for Conservation, Restoration, and Landscaping: Piedmont Plateau," published by the Virginia Department of Conservation and Recreation, are to fill the open area shown on Attachment C of the staff report. These plantings are to be arranged in a density that would mitigate views of the new church facilities, with a spacing allowing the natural form/habit of the plant material to be recognized.~~
7. There shall be no day care center or private school on site without approval of a separate special use permit;
8. Health Department approval of well and/or septic systems.
9. All outdoor lighting shall be only full cut-off fixtures and shielded to reflect light away from all abutting properties. A lighting plan limiting light levels at all property lines to no greater than 0.3 foot candles shall be submitted to the Zoning Administrator or their designee for approval.

The motion passed by a vote of 6:1. (Joseph voted nay)

Mr. Strucko noted that SP-2008-00029 South Plains Presbyterian Church would go to the Board of Supervisors on May 13 with a recommendation for approval.

**The Planning Commission took a break at 8:57 p.m.**

**The meeting reconvened at 9:00 p.m.**

**Work Session:**

**ZTA-2008-00003 Planned Development Changes**

Amend the following sections of Chapter 18, Zoning, of the Albemarle County Code: 3.1, Definitions, to amend and delete several definitions; 8.2, Relation of planned development regulations to other zoning regulations, to change section heading, to clarify the regulations applicable to planned developments ("PD"), to require that waivers and modifications be expressly granted, and to reorganize the section; 8.3, Planned development defined, to revise the definition of "planned development"; 8.5.1, Applications and documents to be submitted, to revise the standards and information accompanying an application to establish a PD district; 8.5.2, Preapplication conferences, to revise the parties in a preapplication conference; 8.5.3, Review and recommendation by the planning commission,, to revise the matters considered by the planning commission in acting on an application for a PD district; 8.5.4, Review and action by the board of supervisors, to change section heading and to clarify the documents applicable to a PD upon approval of the PD rezoning; 8.5.5, Final site plans and subdivision plats, to change section heading; 8.5.5.1, Contents of site plans and subdivision plats, to revise a cross-reference; 8.5.5.2, Review of site plans and subdivision plats, to provide that when subdivision plats and site plans are reviewed, they shall be reviewed for compliance as follows: (a) if the PD district was established on or before December 10, 1980, the zoning and subdivision regulations currently in effect apply unless vested rights are established; (b) if the PD district was established after December 10, 1980, at the option of the developer, the zoning and subdivision regulations in effect when the PD district was established or those currently in effect apply, provided that if the developer elects the former, six delineated subjects of regulation are not so grandfathered and the developer must comply with current regulations pertaining to those 6 subjects unless vested rights are established; to revise the zoning administrator's and director of planning's review for compliance, to define "applicable regulations," and to declare that vested rights are not impaired; 8.5.5.3, Variations from approved plans, codes, and standards of development, to revise the provisions of a plan, code or standard the director of planning may vary, and to authorize the director to require that specified information be provided; 8.5.5.4, Building permits and erosion and sediment control permits, to revise references to county officers and bodies and to clarify other clauses; 8.5.5.5, Site plan and subdivision plat requirements for planned development zoning districts established without an application or application plan, to change section heading and to clarify the procedure and requirements for reviewing a site plan or subdivision plat where there was no application plan when the PD district was established; 8.6, Amendments to planned development districts, to revise and expand the procedure to amend a PD district by establishing requirements for who is an eligible applicant, submitting a map if the rezoning affects less than the entire district, notice, and factors considered during review; 20A.3, Application requirements; required documents and information, to change reference from "general development plan" to "application plan"; 20A.4, General development plans, to change section heading and the required elements of an application plan in a neighborhood model district (hereinafter, NMD); 20A.5, Codes of development, to clarify that any substantive or procedural requirement of the Zoning Ordinance applies in an NMD unless the subject matter is expressly addressed in the code of development (hereinafter, the "code"), to expressly require that the code be in a form required or approved by the director of planning, to change the required elements of a code, and to limit the applicable architectural standards in pre-existing codes to only the new required elements unless determined to be key features; 20A.6, Permitted uses, to change a reference from "general development plan" to "application plan" and to allow a code to provide that any use allowed by right or by special use permit in any other zoning district be a use allowed by special use permit in an NMD; 20A.7, Residential density, to correctly state the formula for calculating residential density in an NMD; 20A.9, Green spaces, amenities, conservation areas and preservation areas, to change references from "site area" to the "area

proposed to be rezoned" when calculating the areas of green spaces and amenities; and 20A.10, Streets, to change a reference from "department of engineering and public works" to the "department of community development." 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 presented a PowerPoint presentation and summarized the staff report. (See PowerPoint Presentation)

She noted that the last work session was held on December 9, 2008. On February 10, 2009 the Planning Commission held a public hearing. At that public hearing there were some comments that came at the end and the Commission wanted to have some time to look at them before taking action on this particular zoning text amendment. Ms. Echols reminded the Commission that the proposed amendment is about clarifications, clean ups, change of titles, vesting, the parking study timing and architecture.

Ms. Echols said that at the public hearing there were comments that came in from Valerie Long. Staff has incorporated her comments into the proposed draft where they agree with Ms. Long's comments. There were additional comments from the County Engineer related to clarification which have also been incorporated. Then there were some additional changes from the County Attorney. Ms. Echols briefly reviewed the changes in the amendment before the Commission. The changes were noted as follows:

- Added to Section 8.5.5.2 -- Water Protection Ordinance applies regardless of when the application plan was approved
- Added to Section 8.5.5.2.b. – Application plans approved after March 19, 2003 is considered "significant governmental acts". Ms Echols said that this was half of what Ms. Long asked for staff to do.
- Added to Section 8.5.5.2.c – The County Engineer determines conformity of grading and road plans. Ms. Echols said that if a conceptual grading plan has been provided with a Planned Development application, after a rezoning occurs an applicant can get an early grading permit. As a rule the County doesn't allow any kind of grading until a site plan has been approved. This is one of the incentives that the County provides for Planned Districts. What has been added in this section is the County Engineer's role. The County Engineer has always been involved in making the determination for conformity of an early grading plan to the conceptual grading plan submitted with the rezoning, but staff just clarified how it works.
- Added to Section 8.5.5.3. – Variations – The County Engineer recommends to the Planning Director whether changes in stormwater management and disturbance of conservation areas should be approved. The same is true with variations that deal with anything such as storm water management. The new section has been added to clarify the County Engineer's role. For clarification, Ms. Echols told the Commission that in Neighborhood Model Districts and Planned Districts there are preservation areas and conservation areas. Preservation areas are "do not disturb" zones. Conservation areas are "disturb with care" areas. The County Engineer is the one who would determine what needs to be disturbed in the conservation areas and advise on the care that needs to be taken with that disturbance.
- Added to Section 8.5.5.4.b.and c -- Clarifies County Engineer involvement in early grading permits.
- Re-added option to Section 20.a.3. – Parking Study
- Added to Section 20A.6.a – Clarifies how Zoning Administrator determines if use is allowed in NMD
- Added to Section 20A.f.4 – new words, "any proposed" to "connections" in requirements for an application plan. The ordinance currently says "connections to existing streets." Ms. Long asked for the change due to the potential ambiguity of the requirement.

Ms. Echols told the Commission of the requested changes not included with the proposed amendment where were requested by Ms. Long:

- Planned districts approved between 1980 and March 19, 2003 be considered as “significant governmental acts” Because many of the application plans between those dates were very vague, staff felt that a significant governmental act should be something that came after March 19, 2003.
- Provision for and applicant to submit an “interim” grading plan if no grading plan had been submitted with a rezoning. Ms. Long had suggested that an “interim” grading plan be allowed even if a conceptual grading plan had not been provided with a rezoning to a Planned District. Because it was a Planned District they could provide a grading plan that looked like it conformed to the application plan. Ms. Echols said that the County’s engineers felt like that was leaving the door open for any kind of site work because there might not be a follow-up site plan for many years. Therefore, the engineers were not comfortable with adding this particular provision. Ability for Planning Director to approve any other variations that he/she considered “reasonable” and adding to the list of variations that the Planning Director was authorized to approve, a “catch all” category. Ms. Echols said that this starts to get into the gray area of what is a rezoning and what is not a rezoning. Ms. Echols said that the Planning Director was not comfortable with having a “catch all” category without any parameters, which is why that was not included. The County Attorney was also not comfortable with it.
- Ability for PC or staff to approve increases in density beyond what was approved by BOS. Staff is not allowed to administratively change the density by state law.

Ms. Echols reiterated that the staff has incorporated the changes that they thought were appropriate. Staff has addressed the recommended changes that they have not incorporated. The Commission has not seen one set of comments received from Morgan Butler with Southern Environmental Law Center. Mr. Butler has been in contact with Greg Kamptner about some of the language and comments about subdivision regulations. There is a reference to subdivision regulations included in this amendment. They have been communicating back and forth on the mechanics of how all of that works in the legal framework.

Ms. Echols noted that Morgan Butler had another comment regarding landscaping that staff believes has been resolved. Mr. Butler asked if landscaping standards in a Code of Development that had been previously approved would remain. Ms. Echols said she had told Mr. Butler that the ordinance clarified that only landscaping beyond what is required in the zoning ordinance should be in a Code of Development. Approved projects with landscaping in excess of the current requirements would remain in those Codes.

Ms. Echols said that staff recommends approval of the ordinance as it stands. There might be tiny tweaks that generally happen after this occurs because the County Attorney’s Office might find something else.

Mr. Strucko invited questions from the Commission.

Mr. Edgerton asked the legal meaning of the term “significant governmental acts”, which was referenced by Valerie Long.

Mr. Kamptner replied that it was in the context of the State statute that confers vested rights on certain types of land use decisions, which are certain proffered rezonings that specify use or density, special use permits, preliminary and final subdivision plats and site plans. It is an open ended list. What the Code says is significant governmental acts includes what he just listed, and other types of approvals as well.

Mr. Edgerton asked if the designation staff is recommending relates to any application plan approved after March 19, 2003 or the identification of that is being a significant governmental act. He asked if that guarantees that the applicant has a vested right.

Mr. Greg replied no, that is only the first of three elements that a land owner needs to establish in order to obtain vested rights. That just gets them in the door.

Mr. Loach said that the time frame from 1980 to 2003 if there was a Planned Development is considered a significant act by virtue of that time frame.



Mr. Kamptner replied no. The March 19, 2003 date is important because that is the date when the Planned Development regulations were amended and when the Neighborhood Model regulations were adopted. That is the demarcation line where they are confident that the level of specificity that is contained in application plans is pretty substantial. The plans before then particularly as they go farther back in time get less and less specific. Staff was not comfortable saying those early plans should be considered as significant governmental acts. Mr. Kamptner said it is possible that there may be a pre-2003 rezoning that had a plan where the application plan is not sufficient to constitute a significant governmental act. But there may be a proffer that goes along with the plan that specifies a specific use or a specific density. So a pre-2003 application plan may get into the door that way. Just in the last couple of weeks there has been a Virginia Supreme Court decision in the town of Blacksburg, which is indicated that in order for an act to be considered to be significant governmental act specificity is required. So that further bolsters our comfort that the March 19, 2003 demarcation line is appropriate if they are going to go that route.

Mr. Franco asked if they have a list of what fell out between 12-10-1980 and 3-19-2003. He asked if they have a list of the planned developments that were approved during that period of time.

Ms. Echols replied that staff has a list of properties that have particular zonings on them and it is in an earlier staff report. She did not have the list with her right now. There were questions about three of the projects listed on the list of old ones in terms of whether or not they had ever been acted on.

Mr. Franco said that he remembered the discussion about the pre-1980 ones. He thought that those were the three projects. But since that discussion they have moved this line up to 2003 now. He was trying to understand what the plans are that fall into that range now.

Mr. Kamptner noted that he might be misunderstanding what this new language does. The grandfathering provisions have not changed from the prior version. What Valerie Long had asked for was that they consider that Planned Developments that have been approved that the application plans be deemed significant governmental acts. So they have said that the ones after March 19, 2003 they will deem those to be significant governmental acts. But the grandfathering provisions in 8.5.5.2 have not changed substantially in the last 2 or 3 iterations of the recommended ordinance. There are still the pre 1980 applications that need to establish vested rights. Everything from 1980 on is allowed to proceed since they are grandfathered except for the 6 specific types of regulations.

Mr. Franco said that is what he was trying to understand. He knows that there were a lot of Planned Developments that came forward in the late 90's that he was not really sure when they go approved. As the Neighborhood Model was being developed some of the requirements of that were being introduced to regular Planned Developments that were moving forward during that period of time. So he was trying to understand if there were any of those that are undeveloped that are still sitting there that might be affected by how they are approaching this thing.

Ms. Echols replied that she did not think that there are, but she would have to go back and check them. From her memory, anything that was rezoned with Neighborhood Model principles prior to March 19, 2003 has been acted on.

Mr. Franco said that he understood that, but the amendment indicates that post March 19, 2003 plans were getting preference. He was just trying to make sure that there are not things that were in 2002 that might deserve that same preference. Without knowing which projects were on the list he could not tell.

Mr. Edgerton said that if he heard Mr. Kamptner correctly, some plans between 1980 and 2003 could be considered significant governmental acts if their approval was specific enough.

Mr. Kamptner replied yes, that every owner of a Planned Development project has the ability to establish vested rights. That is required by State law and the County can't impinge on that. Right now every Planned Development is grandfathered as far as subdivision and zoning regulations are concerned. The ordinance amendment has said that pre-1980 Planned Developments are no longer grandfathered and need to establish vested rights in order to proceed under the old regulations rather than the current ones. Everything from 1980 forward is grandfathered with the exception of the six specific types of regulations

where they can establish vested rights if they chose to. They have added this additional provision that what they are saying that any application plan that was approved after the March 19, 2003 date will be considered a significant governmental act, which is the first step towards establishing vested rights. Usually it is the lapse of time that is problematic for the serious vested rights claim. They have to diligently pursue their approval. The case law unfortunately is all over the board. A 50 year delay is obviously not diligent pursuit. One, two up to five years or even longer than that factoring in economic conditions may be considered diligent pursuit. This provision is an additional protection for the owners of the Planned Developments.

Mr. Franco said that he understands that. But, it is a condition that exists today. What they really are doing is keeping post 2003 in the same condition that they have today whether they are grandfathered and removing some of the protection that exists for 1980 to 2003.

Mr. Kamptner replied no, that actually the Planned Developments approved between 1980 and the present have the same protections as they do under the current regulations except for the six specific areas. In his email to Morgan Butler, Mr. Kamptner said this particular type of regulation needs to be amended every several years because things are changing and certain projects are becoming more and more out of compliance with the regulations. This particular provision substantially has not changed since 1980. It is basically the same. It has been reorganized a little bit, but substantially it is the same provision that was adopted on 12/10/1980.

Ms. Joseph said that on page 17 it talks about the zoning administrator to determine the uses. They just talk about commercial uses in the Neighborhood Model. She was wondering if some other uses besides commercial should be included in the list. For example, she wondered if light industrial in employment centers could be included.

Ms. Echols noted that was a very good call and agreed.

Mr. Kamptner said that this type of regulation exists as the introductory section to the commercial districts where the zoning administrator has the authority. He noted that the zoning administrator does not have similar authority for industrial. It is just the commercial, which is why it is limited to commercial.

Ms. Echols asked Mr. Kamptner if the proposed changes needed to be limited to commercial uses.

Mr. Kamptner replied no.

Mr. Edgerton suggested that they cross out the word "commercial" so that it said "By right in a conventional zoning district".

Mr. Cilimberg noted that C-1, CO and HC are all conventional districts. Highway Commercial, Commercial Office and Light Industrial are basically the non planned districts.

Ms. Joseph asked if the zoning administrator would include industrial uses with her ability to make determinations about commercial uses.

Ms. Echols replied that she would not think so. She thought that Mr. Kamptner could change the language to be more inclusive of other uses. . She said this would be particularly relevant where the Places29 Plan is recommending research and development and flex space. Different types of things that might not be explicitly stated, but are similar to other kinds of uses could be appropriate in a particular Neighborhood Model District.

Mr. Cilimberg noted that if the Planning Commission wanted broader language staff could make sure that they get that in for the Board.

Ms. Porterfield noted in the same section going down to visual impacts she wondered with reference to the concerns that came up with the Vess application that they should add "visual, auditory and olfactory impacts". She said those issues were big league problems in the Vess proposal. It was not just visual

problems but taking the other senses into consideration. She asked if adding these words is possible or if staff or the Commission sees the additional words as useful.

Ms. Echols replied that she thought it could be useful and asked if it was something the Planning Commission wanted to add. She asked Mr. Kamptner if he could see any issue with adding that type of language.

Mr. Kamptner replied no, but he would defer to staff on whether or not any of those things are included in operational characteristics that are right before visual impacts.

Mr. Cilimberg replied that they probably are. But, if they wanted to be sure that they were covering those other impacts then they could add it.

Mr. Franco said that at one point there was a catch-all in the proposed amendment that gave the Director of Planning the ability to permit minor modification of a plan that might be necessitated for conformance to the current ordinance. He asked if that was still in there somewhere. For instance, if the Water Protection Ordinance or one of these six things kicks in that requires changes to the plan.

Ms. Elaine noted that language previously was in the variations section. After further scrutiny by the County Attorney's Office, staff did not feel as comfortable having that language in there.

Mr. Franco asked if variations would be available only for the things that are listed in the proposed amendment.

Ms. Echols replied that is correct.

Mr. Cilimberg said that #6 in the variations list does get in to some of that for storm water management, land disturbance including disturbance within conservation areas.

Mr. Franco said that he was not sure what he was looking for there that might change, but he can see changes especially in those six items in the Water Protection being something that could create big changes to the application plan.

Ms. Echols said that it is only so far one could go without a rezoning.

Mr. Cilimberg said that there was some general concern, but the Water Protection Ordinance is going to basically supersede. The WPO is going to take away potentially from what could be developed on a plan. That does not require a variation to happen.

Mr. Franco said that they were not worried about elimination of developable areas shown on the plan.

Mr. Cilimberg said that they may have to be eliminated due to other ordinance provisions then that can happen. He believed that the plan does not have to be rezoned basically to do that.

Mr. Kamptner said that up until now he was not aware that the Water Protection Ordinance when applied had affected Planned Development or what has been shown on an application plan to a significant degree. If there was a circumstance where it did materially change they need to look at that and evaluate it on a case by case basis as to the extent to which the two regulations are going to mesh together.

Ms. Echols said that she was only aware of two instances when the Water Protection Ordinance affected an application plan and in those two instances it was because the applicant did not provide enough environmental information with their application plan. When the site plan or a subdivision plat was being prepared, the owners found streams that had been there all along, just not identified with the application plan. All of a sudden, a stream buffer had to be applied to the streams, in which case the applicant had to do some shifting. In one case, staff was able to use the existing language of the variation to deal with the modification to the plan. She was not sure if the other case has been finished. But it comes back to the

question of the due diligence at the very beginning in making sure that developers know what land they are dealing with before bringing in a plan for development.

Mr. Franco said that he had this funny hat on now. He said he was aware of projects that have been approved where staff was aware of streams and creeks and said that interconnections and intensity to development was more important than protecting those resources in the development area. Current staff in charge of the WPO doesn't necessarily agree with that. So where are they going to put that applicant in the future.

Ms. Echols said that these kinds of determinations take place on a case by case basis and where a variation is required staff will try to sort through that at the administrative level.

Mr. Cilimberg said that he did not think what Mr. Franco was talking about related to variations actually. Mr. Cilimberg said it is about a level of development shown on an application plan that would have been under review at the time of the zoning as the maximum area of development that could occur and then the application of ordinance provisions ends up removing the potential of developing some of that area or making that interconnection. He did not think that in and of itself is kicking in a variation. At public hearings he had told the Board of Supervisors that some of which is shown as being for development on an application plan may have to be modified based on regulations such as critical slope provisions that they did not see in the original review. They can't get down to all of those details sometimes in the review of a rezoning or storm water facilities that might be necessary.

Mr. Franco asked if the Water Protection Ordinance supersedes everything.

Mr. Kamptner said that superseding might not be the best way to characterize it. It operates and exists independently of the zoning regulations. Zoning regulations are also unique in that they apply to what is there at the time. The Water Protection Ordinance can have retroactive effect when it kicks in. It applies to whatever is happening on the property or whatever has previously been approved on the property. There are only certain things that trigger its application.

Mr. Franco noted for example stream buffers there are sites that have been approved where the stream buffers rose. The WPO requires a 100' buffer. The federal governed state would be as low as a 25' buffer on the same creek. But, all of a sudden if the 100' buffer is applied the development area is changed. He thought that the WPO gave the ability to work within that buffer. He questioned how that is going to get resolved for the applicant at that point if staff says no that they cannot go in the buffer and the zoning does not protect them at that point in any kind of fashion.

Mr. Cilimberg replied that to the degree that the administrator for the WPO can reduce buffers staff is going to look for that in accordance with the zoning that was approved if it was shown in that area.

Mr. Franco asked if staff would encourage the applicant to reduce it.

Mr. Cilimberg replied that it depends on whether it can be.

Mr. Franco asked if it was so case specific that it is hard to make a blanket statement.

Mr. Cilimberg said that if it was shown on the plan it is giving staff the guidance of what they are expecting can happen as part of the development of the site. If there is discretion that can be exercised in how a particular ordinance provision is applied in that case then if that discretion is to potentially allow a reduction in a buffer, as an example, staff's view of it going to be let's make sure that reduction is permitting development that was approved under the zoning. So it is not about varying the zoning really, but about how the particular ordinance provision is being exercised. Staff cannot vary other ordinance provisions to achieve the zoning since it is not the role of this ordinance section. It is about varying the plan that was approved in order to accommodate some changes that are desired.

Mr. Franco said that he understood that. He noted that it is hard to predict what changes may be required when they apply these outside ordinances to a plan. It made him nervous without having some catch-all ability to be flexible in design. If an interconnection was important and now it is precluded by an

ordinance then maybe that is a simple one that is very doable. But if crossing the stream means one could not develop a portion of the site and they had a minimum density that was now required how are they going to deal with that aspect.

Mr. Cilimberg said for a minimum density requirement for the whole development staff does not have that in terms of number of units. They have it in terms of the low of floor of density.

Ms. Echols noted that one development has a minimum density requirement and acreage would be a number.

Mr. Cilimberg noted that was proffered, which was a different animal. This speaks to the application plan and was not about proffers.

Mr. Franco said that he did not know if it was proffered other than it came in as part of the code of development.

Ms. Joseph asked Mr. Ron Higgins how the statement on page 21 (b), which was all underlined, about parking would be accomplished. It says the applicant can submit the parking information after the rezoning, which she agreed with. But the way it was written if she wondered what she has to do to demonstrate to the satisfaction of the zoning administrator that the uses that may occupy the buildings are not sufficiently known at the time of the zoning map amendment. She asked how an applicant would be able to do that except by saying they had no idea who was going in there and they wanted this amount of parking,

Ron Higgins replied that this has come out of some projects where the code of development allowed so many different types of uses. For example, if uses allowed include offices and restaurants, an applicant could end up with a building that is all offices or retail and offices. Restaurants increase the parking requirements. If the applicant does the parking studies at the time of rezoning it may be very different than what the reality is in the future

Ms. Joseph asked how she could demonstrate that she did not know what is going on other than just saying it at the preliminary stage.

Mr. Higgins replied that he thought she was reading it wrong. It was supposed to mean if at the rezoning stage the applicant can demonstrate to our satisfaction that the uses are not sufficiently known, then the applicant could just wait until they do the preliminary site plan.

Ms. Joseph asked how she could demonstrate that she did not know at the rezoning stage.

Mr. Higgins replied that she would show on the code of development and application plan that they did not know which of the list of uses would be in the 4,000 square foot building, as an example. That is all an applicant would have to do.

Ms. Joseph noted that the language seemed overpowering and made her think she would have to come in with all of this information. She questioned how she would be able to convince staff of this.

Ms. Echols asked if it was the desire of the Commission that language could be modified so it is not quite as imposing.

Mr. Franco suggested that they say the applicant may do it later.

Mr. Higgins pointed out that if the applicant says that is the case, then he would accept it. He felt that this is an opportunity to simply say they do not have a detail layout of their floor plan and were going to do it at the site plan stage. Staff tries to get the information early so they will have some idea about parking.

Mr. Loach asked if it ever occurs that even though staff and the applicant come to a meeting of the minds on the uses the applicants still need more parking.

Mr. Higgins agreed. He noted that the applicant needs to be anticipating that. In the past he has had projects where the applicant did a great study up front and needed 70 spaces. But when they put the project on the ground they needed 90 spaces. At that point the applicant did not have room on the ground to put 90 spaces. He has always told people up front if they are thinking in those terms remember that they are limiting themselves. The applicant essentially can eliminate some of the uses they can put in this building because they did not give themselves enough room to grow the parking. That is the object staff is talking about here.

Ms. Joseph suggested that the language be tweaked a little bit.

Ms. Porterfield asked on page 13, #1 where they talk about historic structures and sites. She asked if this includes cemeteries. She asked if staff could ask for cemeteries on the plans.

Ms. Echols replied that staff does not specifically ask for them, but the Commission should assume that they are going to be there because an applicant would have a lot of problem moving a cemetery.

Ms. Porterfield asked that staff just go ahead and ask for identification of cemeteries so that people know that they have to at least put them on the plan. That would also help people who are in the historic preservation that are interested in these old cemeteries in documentation. At least those persons would know that they are coming in on a piece of property.

Ms. Porterfield asked that on page 14 staff take the hyphen out of "lay-out". She also said that at the bottom part under the pre application conferences in the first line it says each applicant for a planned development shall and in the next paragraph it says each applicant is encourage to use. She felt there was a big difference between shall and encourage. If they want it then it should be shall. But if they don't want it, then encouraged is fine.

Ms. Echols replied that in 8.5.2 it was saying that they have to attend a pre application conference and you may or may not do what staff recommends you to do.

Ms. Porterfield noted that when she read this she got the impression that she did not have to come if she did not want to. She thought that staff wanted everyone to show up.

Mr. Cilimberg suggested that it say that each applicant is encouraged to use the outcome, direction or guidance of the pre application conference process.

Ms. Porterfield agreed that it needed to make the applicant understand that it is a requirement of this to show up at the pre application conference. She noted on page 15 #c under 8.5.3 it says the underlined addition including all requests of waivers or modifications. It sounded like they would have to approve the application with all the waivers and modifications. She questioned if it should read all or some so that there is the opportunity to drop some things out. It sounds like the choices are to approved everything that is brought in, approve changes that are going to be made prior to Board of Supervisors as opposed to having them in what the Commission sends on to the Board of Supervisors or disapproval. On page 17 she was confused with #1 (b). They have all these things that are going to apply to development districts that are established after December 10, 1980. She asked if those items also apply to anything in front of or earlier than December 10, 1980.

Ms. Echols replied that earlier it said that everything has to apply and everything before 1980 all the regulations apply unless the applicant can establish a vesting. After 1980 these are the things that apply unless for some reason there is some kind of vested right that would not allow them to apply. It saying affirmatively they have to abide by these regulations.

Ms. Porterfield said if they were before December 10, 1980 and can show vesting these things do not apply. So those people don't have to.

Mr. Kamptner pointed out that they would not have to anyway because once they establish vested rights they were allowed to develop.

Ms. Porterfield asked if on page 18 # (e) if the applicability of chapter 17 applies to the old zoning or pre December 10, 1980.

Mr. Kamptner replied yes it applies to the pre December 10, 1980.

Ms. Porterfield noted under (a) under 8.5.5.3 #4 staff refers to architectural standards and then they move to page 23 where they refer to architectural styles in #4 and then in the underline following that architectural standards. She asked if they have a definition of both terms since she does not know the difference in style versus standards.

Ms. Echols replied that standards would be the full set of the restrictions and the architectural styles are the specific types of architecture like colonial.

Ms. Porterfield asked that staff make sure that is clear.

Ms. Joseph asked Mr. Edgerton about the difference between "standards" and "styles".

Mr. Edgerton explained that one relates to "requirements" and the other relates to types of architecture as Ms. Echols had indicated.

Ms. Porterfield asked if Section 8.5.5.4 regarding the grading is going to keep them from the Hollymead Towne Center situation where there is a lot of land that is being graded and nothing is being built. She said the situation is kind of sad and it would be nice not to do that again. Also, they have sections up there where the streets don't connect. She was wondering if they have solved that problem or is there anything they can do about it.

Mr. Kamptner replied that the history of the Hollymead Towne Center grading is that a big chunk of property was zoned rural areas. That was the starting point because all of the trees could be removed.

Mr. Cilimberg said that Hollymead Towne Center A1 and A2 rezonings that surrounds the Target, Harris Teeter Shopping Center was all rezoned after the grading had taken place. The grading was done under the old rural areas zoning district. That is not part of what the Commission was dealing with here.

Ms. Porterfield asked if they are closing the loop or is this not where the loop is.

Mr. Cilimberg said that it is going to depend on what the zoning is at the location that is being graded. If the zoning is under a Planned Development where grading was shown on the plan then grading could take place according to the application plan grading in advance of any development taking place.

Ms. Joseph pointed out that a lot of planned developments that have come in during the last few years have been done in phases. It has been the requirement of the rezoning that they phase how they do the grading.

Mr. Cilimberg noted that loop had been closed in the rezoning phase. In fact, Biscuit Run was one of the developments that got that kind of treatment for phasing.

Ms. Porterfield noted that she wanted to make sure that the Village of Rivanna does not suddenly look like everybody has taken everything down.

Mr. Franco pointed out that he did not think it has the constraint that Biscuit Run has. He felt that the other challenge that was going to exist out at that particular project is that terrain is going to be kind of close to what Hollymead Towne Center is and in order to provide the major interconnections of the roads and things like that a lot of that site is going to have to be graded all at once in order to get the infrastructure in that the county has asked for. It is not necessarily a loop hole so much as the form of

the development and the requirements for the development of interconnections are things that necessitate that massive grading.

Ms. Porterfield noted that it was not here that they would address that issue.

Ms. Porterfield asked that on page 23 under # 3 (g) the preservation of historic structures sites and architectural sites identified by she asked that they put in cemeteries there, too. In #4 where it says compatible with it says contiguous developed surroundings. She felt that contiguous means adjacent or abutting. She was not sure that is really what they want here. It is sort of like the area, but not the property directly adjacent to it. It could be the surrounding area as opposed to just the pieces that were contiguous.

Mr. Kamptner asked if there any discussion on the contiguous versus surrounding.

Ms. Joseph noted that because they were dealing with an urban area she felt that contiguous is more appropriate than the area. If it is abutting they need to be compatible with what is abutting. She did not think they need to give an extra burden to the applicant to look around the area because sometimes it is a mix-match. She felt that it was easier to look at just what was directly adjacent in an instance like this.

Ms. Porterfield pointed out that the reason she brought this up was because of Rivanna Village. Her understanding was that they wanted it to be in the "Williamsburg style" because what is out there with Glenmore and other things that were there as far as what it looked like. But Glenmore is not contiguous to Rivanna Village. It is in the area and it was something that she was told was supported. She thought it was something they had talked about before and was put in to try to maintain the architectural styles if they were important in a rezoning that they stay important as the rezoned property is developed.

Ms. Echols noted that Rivanna Village won't be affected. The application of the "compatibility" standard would be with a new infill project. It is a question of how far out do they go to look for compatibility and it would be what is close in.

Ms. Porterfield noted that staff was basically talking about infill here and not about an entire project.

Mr. Kamptner noted not necessarily. If something is already there they are speaking in the context primarily of infill. Contiguity actually has a secondary meaning that does not necessarily require physically touching. So if they want to constrain it more, "abutting" would be the more accurate term to use.

Mr. Loach agreed with Ms. Porterfield that it should be stretched out a bit.

Mr. Strucko questioned how far is a bit, two miles?

Mr. Loach replied no, that he did not want to say they just had to look at what is in front of, behind and on the two sides of a project and that was the end of it.

Mr. Cilimberg noted that as part of the rezoning process they had talked about if the Commission felt that they needed to reflect styles, materials and what have you that were a broader area than this provision sets out they could stipulate that as part of the zoning action in a particular case. So if they were in an area that was "Williamsburg" style and they wanted to reflect that beyond what was fairly intermediate they could actually put that in as part of their zoning action. It could be proffers.

Mr. Strucko asked that they move this discussion along. He invited public comment.

Neil Williamson, of Free Enterprise Forum, said that he appreciated the Commission's work in this late hour. He requested the resolution of the concept that was discussed last time on the ala carte menu items just because it has not been answered. He knew the answer was probably that they can't do it legally, but he wanted to make sure that they close that loop. He also appreciates the consideration of Valerie Long's memo. It was most helpful in framing some of his thoughts on this. As this comes forward



it would be helpful to have a specific list, as specific as staff can get, with regard to those planned districts that occurred that may be falling under this. He asked how many there are or how big the scope of what they are dealing with. He remembered when there were applications coming forward when DISC II had wrapped up its work and the ordinances had not yet been placed in 2002 and early 2003 where elements of the Neighborhood Model were being embraced by the development community. From what he was hearing it sounds like those are going to be held harmless, but he wanted to make sure that takes place as well. He commended the Commission for their attention to detail on this ordinance.

Mr. Cilimberg noted that the question was whether the Commission wanted to see this anymore. If the Commission is inclined to move it forward staff can review what they heard tonight and make the changes.

Mr. Strucko said that he wanted to make sure that everybody's concerns were met. He asked for Commission input.

Mr. Edgerton said that staff has done a very commendable job. He would like to move it on with the minor adjustments that have been mentioned. The only issue he was struggling with that staff has recommended is whether they really want to draw a line on March 19, 2003. It has occurred to him in particular from listening to what Mr. Kamptner has said and the process involved with establishing vested rights and this being one piece of it. Certainly that is available the way it is written without that deadline. The demonstration is available. He sees this as being a problematic issue. Granted in 2009 those of us sitting here and present staff look back and say well gosh as long as they meet the rules and regulations on March 19, 2003 that certainly will be adequate. But, maybe ten years down the road things may be different and all of a sudden it will have to be gone back to and readjusted. He was just wondering what value they have in drawing the line there. With the exception of that he thought that staff and the Commission have done a remarkable job.

Ms. Joseph felt that it was a fluid document and it is going to change. She felt that they should expect it to change. It is sort of a place holder.

Mr. Edgerton asked what the value of the place holder is.

Ms. Joseph replied that the value of the place holder now is making the community feel a little bit more comfortable if they have spent a whole lot of time and money getting something done with a whole lot of detail. She thought that was what she was hearing from many people. As Mr. Kamptner said if they look and see that our regulations have changed significantly then they go ahead and change that date.

Mr. Kamptner said that the other value is that when the Neighborhood Model was established on that date they are asking for mixed use and typically ranges of density. What the state law does is that it determines a significant governmental act where the applicant specifies a use or density. The kind of development that they are encouraging now in the Neighborhood Model District kind of gets away from a specific use or a specific density. They are encouraging mixed uses and various densities. So another way of looking at this is that it kind of closes the loop or opens up the avenue for proffered planned rezonings that they are encouraging here by elevating them to a status of a significant governmental act. They really don't want the conventional type of rezoning where the applicant is proffering that specific use or that specific density.

Mr. Edgerton said that he would buy that and back off of the issue.

Mr. Morris said that he would like to support the item that both Mr. Franco and Mr. Williamson brought up. At some point in time he would really like to see a list of the items between December, 1980 and 2003. He would just like to see what the list looks like.

Mr. Cilimberg pointed out that they actually had a list for the Commission at one time. The master list had a few or possibly 3 projects before 1980, but most were after. Staff had a list, but did not know which projects fell where.

Mr. Franco said that he would be comfortable with seeing these changes made and then coming back on the consent agenda as quick as possible in order to move it forward.

Mr. Strucko asked staff to bring it back on the consent agenda so the Commission could have one last reading of the proposal to make sure to get the details right.

Mr. Cilimberg agreed that staff would bring the ordinance amendment back under the consent agenda. He asked if the Commission would agree that staff only give them the ordinance under the consent agenda and not put together a staff report.

Mr. Kamptner noted that he would add a color that would highlight just the words being changed from this version to the one received.

In summary, the Planning Commission held a work session to review staff's recommended changes to the draft ordinance amendment on ZTA-2008-003 Planned Development. The Commission asked staff to make the following changes, as summarized below, and bring the resolution of intent back for approval on the consent agenda.

- Section 8.5.1.c.1. -- add cemeteries to the list of existing physical conditions
- Section 8.5.1.9 (renumbered) change "lay-out" to "layout"
- Section 8.5.2. second paragraph - change from "Each applicant is encouraged to use the preapplication conference" to "Each applicant is encouraged to use the guidance provided in the preapplication conference"
- Section 8.5.3.c. clarify that the commission is not obligated to approve all requested waivers and might approve only some of the requested waivers
- Section 8.5.5.2.c.1. -- revise section to allow for more than just commercial use determinations; also add as parameters for making determinations similarities in smells and sound.
- Section 20A.3.b. - make the phrase less "imposing" so that it is more the applicant's choice than the zoning administrator's decision about whether there is enough information for a parking study
- Section 20A.5.g.3. -- add cemeteries to the list of areas to be preserved
- Staff to also provide a list of approved Planned Developments between 1980 and 2003
- A revised ordinance will be provided with the proposed word changes highlighted in yellow on the consent agenda of the next available meeting.

#### **Old Business:**

Mr. Strucko invited old business.

- Mr. Strucko asked that the Commissioners provide comments to the Chair or Vice-Chair on the Belvedere home occupation in preparation of the meeting to be held with staff in the near future.
- Ms. Porterfield encouraged staff to provide plans that they can read. Mr. Cilimberg noted that all the staff reports and plans are on line. Staff was asked to provide paper copies of plans to Porterfield and Joseph.
- Mr. Franco asked that staff reports be emailed.

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

#### **New Business:**

Mr. Strucko invited new business.

- The Commission requested the Chair and Vice-Chair to set up a meeting with staff to discuss the

problems encountered at the Belvedere home occupation hearing on 3-10-09 to prevent a reoccurrence of the situation.

There being no further new business, the meeting proceeded.

### **Adjournment**

With no further items, the meeting adjourned at 10:10 p.m. to the Tuesday, March 31, 2009 hearing 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 and Planning Boards)