

**Albemarle County Planning Commission
December 15, 2009**

The Albemarle County Planning Commission held a public hearing and meeting on Tuesday, December 15, 2009, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

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

Other officials present were Wayne Cilimberg, Director of Planning; Margaret Maliszewski, Design Planner; Joan McDowell, Principal Planner; Eryn Brennan, Senior 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. This is the last meeting for three of the Commissioners. Ms. Joseph, Mr. Edgerton and himself will not be here next year.

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.

Neil Williamson, with Free Enterprise Forum, commented on the level of detail in staff reports and the necessity for such detail in all cases. He indicated his purpose in raising these questions was to examine the process, staff workload and how the level of detail required by the Planning Commission far exceeds the requirements in any ordinance. He also thanked those Commissioners who will not be returning in 2010 for their service to the County.

Mr. Strucko thanked Mr. Williamson for his service to the community. There being no further speakers, the meeting moved to the next item.

Review of Board of Supervisors Meeting – December 9, 2009

Mr. Cilimberg reviewed the actions taken by the Board of Supervisors on December 9, 2009.

Consent Agenda:

Approval of Minutes – February 19, 2008, September 23, 2008, October 21, 2008, December 16, 2008 and November 17, 2009.

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

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

The motion passed by a vote of 7:0.

Public Hearing Items:

ZTA-2009-00009 Entrance Corridor Process Amendments

Amend Secs. 3.1, Definitions, 4.15.2, Definitions, 4.15.15, Regulations applicable to the entrance corridor overlay district, and 30.6.8, Appeals; Amend and rename Secs. 30.6.1, Intent, 30.6.2, Application, 30.6.3, Permitted uses, 30.6.4, Area and bulk regulations; minimum yards and setback requirements; height regulations; landscaping and screening; preservation of natural features, and 30.6.7, Administration;

Amend, renumber and rename Secs. 30.6.3.1, By right, 30.6.3.2, By special use permit, 30.6.6, Nonconformities; exemptions, 30.6.6.1, Untitled, 30.6.6.2, Repair and maintenance of structures, 30.6.6.3, Exemptions; Add Secs. 30.6.6, Submittal, review and action on application; preliminary review, and 30.6.9, Public health or safety considered; and repeal Sec. 30.6.5, Signs, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend and reorganize the regulation pertaining to lands within the ECOD by adding and amending definitions related to the ECOD ((All references are to new Sec. numbers) 3.1 and 4.15.2; amending the regulation of signs in the ECOD by requiring certain sign styles to have opaque backgrounds and moving the sign review regulations to Sec. 30.6 (4.15.15); amending the stated purpose and intent of the ECOD (30.6.1); restating the existing boundaries of the ECOD (30.6.2); amending the permitted uses and applicable standards for development in the ECOD, and combining those regulations in a single section (30.6.3); clarifying the types of development for which a certificate of appropriateness ("CA") is required, establishing a new class of CA - the county-wide CA - to allow expedited review of certain classes of development, and delineating the scope and authority of the architectural review board ("ARB") in reviewing an application for a CA (30.6.4); expanding the types of development exempt from the requirements of Sec. 30.6 (30.6.5); delineating the procedures for the submittal, review and action on an application for a CA, for both preliminary (30.6.6) and final review (30.6.7); restating the procedure to appeal a decision of the ARB to the Board of Supervisors (30.6.8); and, amending the authority of the planning commission to supersede any condition or requirement of a CA for any public health or safety reason, and expanding that authority to the agent under prescribed circumstances (30.6.9). 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. (Margaret Maliszewski)

Ms. Maliszewski noted tonight the Commission was reviewing the most recent changes to the draft amendment to the Entrance Corridor sections of the Zoning Ordinance. This draft is dated December 7, 2009. The changes are primarily to address the Commission's comments from the last work session on November 17. Many of those changes are rewording for better clarity. Other changes are related to additional information that has been added regarding the county-wide Certificate of Appropriateness. Staff reviewed the comparison table in the staff report to note the more significant changes, which were underlined in the comparison table that was included as an attachment to the staff report. (See Staff Report)

In Section 3.1 the definition of county-wide Certificate of Appropriateness has been clarified with the addition of the words "sites" and "architectural elements", as noted below.

Certificate of appropriateness, county-wide: A decision made by the architectural review board establishing specific design criteria consistent with applicable design guidelines for a class of structures, sites, improvements, or architectural elements. The decision applies to any structure, site, improvement or architectural element within that class that complies with the specific design criteria.

Minor wording changes have been made in **30.6.1 INTENT** that don't change the meaning of the section.

In **30.6.2 Boundaries of the district:** The words "routes" and "significant routes of tourist access" have been changed to "Entrance Corridor streets".

In Section 30.6.4 Certificates of Appropriateness the following changes were made to clarify the following:

- Building permits in the Entrance Corridors do require ARB approval even if a site plan is not required for that project. That is current practice.
- Under #3 is where county-wide Certificate of Appropriateness has been expanded. Section 3a, factors considered in issuing, has been added following suggestions at the Commission's last work session that the parameters of the county-wide certificate should be outlined more specifically. That is what has been done under 3a.
- Section 3b, design criteria has been added to outline more specifically the types of design features that the ARB specifies as criteria for the certificate. The factors listed in 3a would allow the types of projects that were discussed back in the early work sessions and joint meetings of

the Planning Commission, Board of Supervisors and ARB -- the types of things that the ARB would consider establishing the county-wide certificates for, such as telecommunication facilities, developments 2,000 feet or more from the Entrance Corridor, minor amendments, etc. Under design criteria #9 that reads other architectural or design features required for compliance with the architectural design guidelines there has been more thought about this particular section. That particular criteria is a very important one and staff is recommending that it should be made a more prominent consideration in the text. Staff has recommended a minor change to bring that out more specifically.

- Sections 3c and 3d, action and appeal, addresses the review process for the county-wide certificate. This is an addition since it was not outlined this specifically in the last version. Under section c it says that the director of planning determines if the proposal meets the criteria that had been established by the ARB, but the Director can forward that proposal on to the ARB for a decision if that is found to be the better route for that particular proposal. Section 3d says that an applicant who wants this sort of determination made needs to submit an application for review. Section 3d1 says if the director determines that proposal, which has been received, does not meet the criteria that had been established by the ARB, that the applicant can appeal the decision to the ARB. Section 3d2 says that if the ARB determines that the proposal does not meet the criteria that the applicant can appeal that decision to the Board of Supervisors. That is the current process.

There being no questions on the process, Ms. Maliszewski continued.

- Section 30.6.6.g.1 has been added. This section clarifies that the ARB can make a final decision on a preliminary application. Generally the ARB process is a two-step process with a preliminary first with the applicant coming back for a final. On occasion the ARB will find that only one review is needed. This is simply saying that an applicant does not have to come back for a final if the ARB thinks a single review is all that is required.
- In row #39 a section has been added to address the times when an applicant has gone through a preliminary review and is back for a final review and the ARB is not ready to approve the application yet. If the applicant agrees the ARB would not have to approve or deny, but the applicant could come back again with the additional revisions that the ARB suggests.
- In signs and definitions there had been a request to revise the opaque background definition to not use word the word "background" in the definition. The definition has been revised.
- The flow chart has been revised. Staff added some color and made some other changes based on the Commission's recommendations. The ARB also had some recommendations on the flow charts to simplify them. The overall flow chart was broken down into two separate ones that simplify the process for complete applications and incomplete applications. Staff presented and explained the revised flow charts for a complete application and the simplified version of the process for an incomplete application.

Mr. Morris noted that the yellow was very difficult to see especially on paper.

Ms. Maliszewski reviewed the flow chart for an incomplete application that outlined all of the options. An incomplete application comes in and staff either informs the applicant or doesn't. If the applicant does get informed within the time period, the applicant has 15 days to resubmit. That would be with a restatement fee. If the applicant does not resubmit within 15 days, then the application is denied. If they do resubmit, then the application continues in the process with the next submittal deadline. If staff fails to inform the applicant within the specified time period that the application is incomplete, that application is accepted for review. There is still an opportunity to ask the applicant to submit the omitted information. If that request is not made, then that application proceeds on to the ARB for review. If the request for the omitted information is submitted and received in ten days, then it would proceed to action. If it is not submitted within ten days, then it is determined that application is incomplete and rejected.

Ms. Porterfield noted that the flow chart was a lot easier to read with the colors.

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

Neil Williamson, with the Free Enterprise Forum, noted that he sincerely appreciates staff's efforts on this. There are some really good things in here. But, he finds this to be window dressing and not comprehensive reform. His understanding from the Development Review Committee was that there was going to be a discussion process in how the ARB process could be integrated with the Planning Commission process so that applicants could move through in a uniform manner. He did not believe that this addresses that unification process at all. Most of the errors that he sees in most of the charts point to "NO", which is always a challenge to have that very narrow band to getting to "Yes". Rather than bump this up and approve it today to a new Board of Supervisors who won't have the background that they do, he would encourage this Commission to defer a decision on this until a new Commission is seated so they can review and perhaps enhance some of the very good work that is here rather than losing a month or two or whatever bouncing between the elected body and the appointed body.

Paul Wright, Chairman of the Architectural Review Board, made the following comments on the amendment.

- Mr. Williamson's criticism was one reason the ARB improved the flow chart. To fully guarantee everybody's rights all of the extra boxes have to be put in because even if they say "no" they can allow someone to do many different things. He thought that was best displayed in the way they have done so. The majority of applications that come in are complete. In reality the very first flow chart does accomplish a great deal of everything that they are looking for.
- Secondly, to the streamlining process he thought that it would take a lot of flexibility out of the applicant's hand. A lot of people like to come to the ARB first and others to the Planning Commission first. There is nothing that would prevent the applicant from doing both at exactly the same time.
- What he had learned, which he was looking forward to implementing in this time when things are slower, is there is absolutely nothing that prevents them from hearing something earlier than six weeks if they have the staff time and effort. He thought that it was going to be extraordinary to do and may be a little difficult. But, at least they can be accommodating when it is possible given staff time. There is absolutely nothing that prevents them from doing so. He thought this was a good first step.
- There are many things that they need to deal with in the future that he looks forward to dealing with the Planning Commission on. For example, environmental issues are very important yet he did not think that he could take LEED Certification into any sort of condition simply because they could promise to be LEED Certified in anything, but at the end if the applicant does not get it there is nothing they can do about it. That is something he would like to resolve in some sort of meaningful way. Another example is the Crozet Library, which was not done in a way that was good for anyone. Now he was looking at the fact that there might be revisions on something that is not even on the CIP for the next ten years. Perhaps they need to be a little bit more careful with the County's business in those issues and not use up staff time where it might be better spent on other things.
- He supported the request and encouraged the Planning Commission to take action on this today.

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

Ms. Joseph suggested that they talk with staff about the implementation of the process. She felt that they have done some streamlining of that in the past couple of years regarding rezoning and special use permits. She asked staff if that is true.

Mr. Maliszewski replied that in terms of Entrance Corridor review for rezonings and special use permits what they have done in the past couple of years is not immediately forward all of those proposals to the ARB. The ARB Planner has been reviewing the proposal and providing comments to the lead planner on

those requests to incorporate into that review process. The Entrance Corridor comments are forwarded on to the lead planner for those requests. That has reduced a lot of the work that the applicant was previously doing in having to make another application and go through another whole process.

Ms. Joseph said that was an attempt in streamlining, and Ms. Maliszewski agreed that was definitely streamlining.

Ms. Joseph noted that the other thing they heard is that the applicant can determine themselves whether they want to come before the Planning Commission or the ARB first. The applicant can decide how they are going to deal with that. Staff does not pressure the applicant, but tells them what the best process is for their project. She asked if that is correct.

Ms. Maliszewski replied that for site plans the ARB approval is required prior to the final site plan approval. So that leaves it up to the applicant at the preliminary site plan stage if they want to apply for the ARB application and the preliminary site plan at the same time or do one or the other first. If there are different circumstances or something in particular that is really complicating, staff might suggest that they do them together or one or the other first. But it is totally up to the applicant.

Ms. Joseph reiterated that staff has made some attempts to streamline the process with the ARB by simplifying the process, which was in the document.

Ms. Maliszewski said that the other way that staff has simplified the process is through the ARB's comprehensive sign review for shopping centers and buildings with multiple businesses. That process has significantly reduced the number of sign applications that go to the ARB for review.

Ms. Joseph noted that the other attempt at streamlining is the county-wide certificate of appropriateness.

Ms. Maliszewski noted that would be very similar to that process.

Mr. Loach agreed with Mr. Wright regarding the flow chart, but disagreed with Mr. Williamson because most of this is not a "no". In fact, there are only two instances in the flow chart where the application is denied or rejected. Depending on what the applicant does, the rest take the applicant into the process or back into the process and again to completion. Again, he thought that the flow chart is good.

Mr. Franco asked for clarification on how the design guidelines are maintained. In other words, there were some changes that could be adopted for the overall county-wide permits and things like that. He asked if those changes get adopted by just the ARB or does the Board get involved.

Ms. Maliszewski replied that it goes to the Board of Supervisors for final approval.

Mr. Franco pointed out that he was not at the previous work session. He did not disagree with what Ms. Joseph said that there have been some things that have been done to streamline the process. One of the confusing things was trying to apply this to his experience on the Planning Commission. The Commission heard a special use permit request for a church in Keswick where there was a lot of discussion back and forth about who had the final authority on a site layout. One of the things he was a little disappointed in is that they have not resolved some of that process issue. He thought what they have here is good in the fact that it takes the existing ordinance and helps to simplify it somewhat. But he still did not know if they were addressing some of the overall concerns of how the ARB folds into the rest of the process. He agreed that it is nice to have the applicant have the ability to go to the ARB first, but he was still struggling having been an applicant before on whether the ARB is going help dictate the land use issues or whether the rezoning or the Planning Commission helps to lay that out. A lot of time there is some conflict back and forth between the Commission and the ARB.

Ms. Joseph said what he was talking about is the land use decisions, which normally occurs with the rezoning request. What they are hearing now is that the rezoning application does not go to the ARB, but goes to staff and staff makes the comment. She was hearing that the process has changed a bit.

Mr. Franco agreed that the process has changed as far as having to go to the ARB. He was not trying to put blame on the ARB so to speak. But, it is still the application of the Entrance Corridor provisions. It is going back to that core question of should that be involved in the land use. Again, if they go back to the church it was not a rezoning but a special use permit. There were considerations that they have that are not listed in here as exceptions.

Ms. Joseph pointed out when a rezoning or special use permit comes in there is an application plan. The Planning Commission looks at the application plan. It has been her experience that it has to be in compliance with or in conformance to the application plan itself. The Planning Commission looks at the application plan and makes that determination of where the buildings are and the ARB is kind of stuck with where the buildings are located and can't move them around. That is the way she understands the process.

Mr. Cilimberg said that there was a little confusion in the church case about what the Commission and ultimately what the Board's decision meant in terms of the ARB review. It was clarified in the Board meeting that while comments on the Entrance Corridor are considered during the legislative process of a special use permit and taken into consideration that those things that the Board decides are absolutes or conditions of a special use permit cannot be modified by the ARB. There is an understanding of what is superior in terms of the ultimate decision on a plan. In the case of that church what was not known is how the ARB might require landscaping along the road to be provided. But that was not affecting the location of the church or the parking lot.

Mr. Franco understood that there was a lot of discussion about the location of the building and the parking lot.

Mr. Cilimberg replied that there was discussion about location, but what was brought to the Planning Commission was the recommendation for a particular location as the applicant wanted to provide. The Planning Commission is then in the position of advising the Board as to whether they want to go with what the applicant desires to provide or whether they want to go with what the ARB staff have recommended might have been a better location. In that case he believed that the Commission went with the applicant's proposal. He did not think that was confusing the process, but really just laying it before the Commission as to which decision they want to make and ultimately what the Board would make.

Mr. Franco asked staff to talk briefly about the Montessori School site plan and Certificate of Appropriateness. There was a complication in that the site plan was approvable to planning staff but the building was not approvable because of the way it looked. He asked how that played out.

Mr. Cilimberg recalled that it was a question of how the building was being designed by the applicant for possible consideration of a kind of certification like LEED. There was concern about how that design might play out by the ARB. That was not in a legislative decision. That was in a site plan decision that a design of the building itself was up to the ARB.

Mr. Franco noted this is where the complication comes in. He understood from other people that the issue on that particular building came because there was not LEED certification that they were pursuing, but it was capturing the storm water. They had a special design that accommodated that and the ARB did not like the design. At some point they now have a conflict between sort of an engineering choice and an ARB side of things. He heard from Mr. Wright that LEED certification is not enforceable and therefore something they don't really consider as a good thing in the design side. He questioned how that plays out. He sees exceptions for health and safety, but in his mind he thought that environmentally better design ought to be something that the applicant has the ability to pursue in a by-right scenario.

Mr. Cilimberg said that the best way that it could play out would be the Board would establish what the priorities are in consideration of the plans. They established an Entrance Corridor Ordinance with guidelines adopted for the ARB to implement. They can only implement what they have to work with. If

the Board feels there are other considerations in design to deal with other priorities of the county, they need to decide that and establish that as overriding. That is not for this ordinance.

Ms. Joseph pointed out that is what needs to be worked on for the ARB to take a look at some of these other issues, which would be guidelines.

Mr. Franco noted that was the part that he would like to see incorporated into this process whether it is something attached to this or it is something that follows this. It is important that some of that structure take place.

Ms. Joseph pointed out when they were looking at this initially she was talking with people in the city to see how they approve LEED Certified, etc. buildings. That information is in their guidelines. That is how most localities do it. She noted that it is not in their ordinance. But it is in their design guidelines themselves that allow for that flexibility for the ARB to look at those issues. She was voting that the ARB or the county looks at their guidelines and changes those and does not put it in the ordinance.

Mr. Franco asked if there was any reaction to what Mr. Williamson suggested.

Mr. Edgerton replied that he did not see how bringing three new people into this process would be beneficial to the process. Back to the initial concerns he pointed out that Ms. Joseph and he over a year ago had several meetings with several representatives of the ARB trying to talk about streamlining the process and some of these issues. Some of it was triggered by concerns related to the Montessori School rainwater collection system. There is a difference that comes from the Code of Virginia in the mandate of the ARB and what it can and can't do. But he thought that a lot of that is represented in the existing guidelines, which are more focused on more traditional architecture. Until those guidelines are changes there is some limiting language in the Code about that.

Mr. Kamptner said that what the enabling authority does is give Virginia localities who wish to do so the ability to regulate visual impacts in certain designated areas. He suggested that they look at the example of the special use permit of South Plains Church. They may look at location of a building and may be trying to deal with the land use impact. It may be that the new building needs to be setback from a property line because of the impacts it may have on the house next door. The ARB can look at the exact same issue for the location of the buildings for a completely different reason for the visual impacts and how that location is important to being in compliance with the Architectural Guidelines that the Board has adopted. The enabling authority is unique, different and very specific. Mr. Edgerton pointed out that the Planning Commission does not have any authority in the development of the guidelines. The ARB develops the guidelines working with the Board and then the Board makes the decisions of what the guidelines say. The ARB was following their guidelines when they challenged the design of the Montessori School. If the guidelines did incorporate and put aesthetic value on LEED Certified project or sustainable project, then it could be reviewed as part of their review. Under the current guidelines that is not the case. The recommendation would be that the ARB go back and determine whether the guidelines need some adjusting. That direction needs to come from the Board of Supervisors and not necessarily the Planning Commission. The ARB makes recommendations for amendments to the guidelines. But, ultimately it is the Board of Supervisors' decision. The guidelines are not passed through the Planning Commission for comment.

Mr. Edgerton pointed out that he was not happy about it.

Mr. Franco asked that the minutes reflect that this is a concern. As the process moves forward for a reform that is not just to the procedures related to the guidelines, to incorporate some of those other things into it.

Mr. Cilimberg said that the guidelines could address how development appears from the Entrance Corridor. Where they can't change the guidelines is getting in how it relates to adjacent properties.

Mr. Franco noted that is where he struggles that it really needs to be part of the process though. There are times when the applicant comes in after meeting with the neighbors. The applicant will reflect their concerns. The neighbors are pushing the development away from them and the ARB is pushing it away from the street. There is a lot of conflict and in the end there are not a lot of good negotiations that take place because the neighbors really have no standing in some of this. The neighbors can present their case to the ARB, but their domain really is to consider the Entrance Corridor and not the adjacent properties. He thought that the process should somehow include those neighbors and give them some type of standing.

Ms. Joseph disagreed. She thought the neighbors do have some standing. When neighbors come to the ARB meeting and speak that the ARB does not ignore them, but listen to them and try to make some sort of compromise that they are dealing with the aesthetics and the concerns of the neighbors. The ARB listens to people just as the Planning Commission does.

Mr. Franco suggested that could be part of the streamlining in that they might be able to do that earlier. His focus has been as the applicant submitting this in if he has met with the neighbors ahead of time and develop a plan that meets that. Then if he has to go to the ARB and they send him the other direction how does he get that compromised faster and sooner. That is the streamlining that he thought would help.

Mr. Cilimberg noted that the applicant has the choice in working with neighbors to go to the ARB as early as they want to get a response even before they are filing anything. Nothing in these regulations prevents that. There is a lot of flexibility in how the ARB can review projects.

Mr. Franco noted that the other minor comments he has are questions in the flow chart regarding when they look at a submittal and the applicant chooses to make revisions. He asked are revisions always of such a big nature that they can't be similar to site review. It seems the loop always ends up suspending the review and resubmitting. Are there any kinds of plans that are quick changes to those that could enable them to stay in the process? The site review normally has about 11 days so they can stay in the process versus being kicked out. He asked if there was a way to allow small revisions so the applicant can stay on the time line. If revisions could be done within one or two weeks would it be possible to stay on track.

Ms. Maliszewski replied that she was not sure how to define what can be done quickly and what might be longer.

Mr. Cilimberg pointed out that the applicant is informed in writing if he responds in 15 days the application stays on track. A lot of the issue with the suspension has to do with how quickly the applicant responds. The submittal date runs in cycles. The suspension allows for the restart once it is resubmitted. If it is submitted quickly it will hit the next submittal date and the suspension will be only the time when it is resubmitted and the next submittal date. There are two submittal dates per month.

Ms. Porterfield noted that they would lose two week at most.

Mr. Franco said that he was not hung up on it, but was just pointing out some concerns.

Ms. Porterfield suggested that it might be helpful to determine what should come first. She questioned if it would be better if the ARB review was first so when the request comes before the Planning Commission they already have the information from the ARB on how they want the site treated. Then the Planning Commission can use that information in their review along with concerns regarding the neighboring properties.

Mr. Loach said based on their knowledge with staff he would agree that it should go to the ARB first.

Ms. Porterfield noted that there are so many Entrance Corridors in the county.

Mr. Loach asked does the applicant have the knowledge of which they should go to first or should they make it procedural.

Mr. Franco noted that it had been years since he had gone through his process. There were two different things. One is whether it looks appropriate. The other is can you do it and what are the technical concerns. When talking about going to the ARB he did not know if all of the details would be worked out at that point in time, such as if the parking is going to be relegated or how tall the buildings are. There also may be site plan waivers required. In order to get some questions answered such as access points, etc. one would have to have a site plan. In the end the building layout may change because when he goes back to the ARB they may say these buildings need to be arranged differently for Entrance Corridor concerns. He asked if he should go to the ARB first with the assumption that he was going to get the waivers or how. There is a lot of confusion in that process. Maybe they could circumvent that by saying they have made a legislative act as far as giving the critical slope, but then they would have taken some of the power away from the ARB if they create that condition.

Mr. Loach asked if staff makes a recommendation to the applicant based on what has been submitted as to what they should do first.

Ms. Maliszewski pointed out that there is always the pre-application conference where representatives from each of the divisions are present to make comments. That is an early point in the review process where some of these possible conflicting issues come out and the applicant is made aware of those. For a site plan submittal ARB staff doesn't make comments until there is an ARB application.

Mr. Strucko felt that it was not a linear process where an applicant moves from a to z.

Mr. Kamptner asked which type of applications presents the most conflicts between an ARB's decision and what is approved by the Commission and Board.

Ms. Maliszewski replied that the biggest issues in the past were with the special use permits and rezoning that went to the ARB for review. That seems to have worked itself out since they are doing those as staff comments to the lead planner. There does not seem to be conflicts very often with waivers.

Mr. Cilimberg pointed out that the biggest conflicts in the past was with big rezoning that either were looked at by the ARB and their comments were not part of the action taken by the Board or they never saw it and the Board took action that kind of tied the ARB's hands. That created issues. To address that staff that was very knowledgeable of what the ARB looks for reviewed the rezoning and some special use permits before the Commission reviewed the application to provide comments so that could be factored into the decisions that got made. He thought that those had generally gone away as issues. The legislative matters are ultimately decided on by the Commission and Board. Site plans are being worked out ministerially.

Mr. Strucko said that this process as outlined is probably the best they can do with what information they can control. He did not think it was going to be a perfectly linear way of getting through the process. He supported the Commission taking an action at this stage since they were at the public hearing stage and not at the work session stage. Therefore, he did not think they should defer it to another Commission.

Ms. Porterfield pointed out she had some editorial changes to submit to Ms. Maliszewski for review.

Motion: Ms. Joseph moved and Mr. Morris seconded to recommend adoption of ZTA-2009-00009 Entrance Corridor Process Amendments, with the incorporation of minor nonsubstantive corrections identified by Ms. Porterfield.

The motion passed by a vote of 7:0.

Mr. Strucko noted that ZTA-2009-00009 Entrance Corridor Process Amendments would go to the Board of Supervisors on a February 10, 2009 with a recommendation for approval.

Due to Eryn Brennan's absence, the Commission skipped to the next agenda item for SP-2009-00017 Hugs and Kisses Day Camp and Hotel for Dogs.

SP-2009-00017 Hugs and Kisses Day Camp and Hotel for Dogs With Special Needs

PROPOSED: Special Use Permit for a dog day camp and overnight boarding for dogs. Waivers have been requested from Section 5.1.11(a, b c, d) pertaining to setback, fencing, noise, other considerations when in proximity to intensive uses, and soundproof confinement requirements

ZONING CATEGORY/GENERAL USAGE: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots)

SECTION: 10.2.2 (17) Commercial Kennel

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

ENTRANCE CORRIDOR: No

LOCATION: 5038 Turkey Sag Rd. (Rt. 640) appx. 1.6 miles east of Stony Point Rd. (Rt. 20)

TAX MAP/PARCEL: 049000000006B0

MAGISTERIAL DISTRICT: Rivanna
(Joan McDowell)

Ms. McDowell made a Power-Point presentation and summarized the staff report.

The applicant has requested approval of a special use permit to be allowed to operate a dog day camp facility, with overnight dog (hotel) available inside her home when this service is needed by the pet owners. The concept plan is included as Attachment A and the location map is included as Attachment B. The applicant has advised that all of the dogs in her care have a variety of special physical or emotional needs such as arthritis, allergies, diabetes, and separation anxiety. Pet owners visit the property on their initial visit and only occasionally afterward. The business web page can be accessed at www.blairsbabies.com. The applicant has provided the following specifics of the operation:

Day Camp

- Days of operation – Tuesday through Thursday; alternate days (Monday and/or Friday) if inclement weather or other reasons prevents opening on the regular days
- Hours of operation – 10:00 AM to 2:00 PM
- Dogs picked up by the applicant at the respective homes of the dog owners and returned to their homes by the applicant at the end of the day
- No employees
- Number of dog guests – between 10 and 15 at a time
- Dogs are kept outside in fenced areas
- Closed five weeks per year – these weeks vary from year to year

Overnight (Hotel)

- Open seven days a week and 24 hours a day
- Dogs are kept inside the residence during the night, except for occasional, supervised walks outside
- A maximum of 5 dog guests at a time

The applicant currently owns two dogs that have not been included in the number of dog guests listed in the operation information listed above, as they are her personal pets.

The entrance to the property is gated.

The applicant has also requested Waivers from Section 5.1.11 (a) (b) (c) and (d) of the zoning ordinance.

Some adjacent land is owned and is under conservation easement. Staff talked with the Nature Conservancy and they have no issues with this application.

There are a lot of critical slopes in this area of the County as noted in the presentation.

Letters in support of SP200900017 are included as Attachment C of the staff report. No objections to the application have been received.

Planning and Zoning History:

In 1999, the applicant applied for a Home Occupation Class A permit to be allowed to have a dog training business on the property. A Class A permit requires that the occupation be conducted inside the residence and not in the yard. It was determined that there would be a change to the outside appearance of the residence as well as visible and audible evidence of the conduct of the home occupation; therefore, the permit was denied since it did not meet the definition for Home Occupation Class A. The applicant was also advised that the use would require approval of a special use permit for a Home Occupation Class B.

In 2009, an anonymous complaint against the business was filed with the Zoning Division, resulting in this special use permit application to relieve the zoning violation. The complaint had nothing to do about noise or visibility of animals.

Staff reviewed the concept plan supplied by the applicant. The site is extremely wooded.

Based on the findings contained in this staff report, staff recommends approval of SP-2009-00017 Hugs & Kisses Camp and Hotel for Dogs subject to the conditions listed in the staff report. The last condition is Approval of Waivers from Sections 5.1.11 (a) and (b) shall be required. The special use permit cannot be approved without the approval of the two waivers.

Waiver Requests

The applicant has requested waivers from the following zoning ordinance requirements.

[Section 5.1.11 COMMERCIAL KENNEL, VETERINARY SERVICE, OFFICE OR HOSPITAL, ANIMAL HOSPITAL, ANIMAL SHELTER (Amended 6-14-00)

Each commercial kennel, veterinary and animal hospital shall be subject to the following:]

Waiver from Section 5.1.11(a) *Except where animals are confined in soundproofed, air-conditioned buildings, no structure or area occupied by animals shall be closer than five hundred (500) feet to any agricultural or residential lot line. For non-soundproofed animal confinements, an external solid fence not less than six (6) feet in height shall be located within fifty (50) feet of the animal confinement and shall be composed of concrete block, brick, or other material approved by the zoning administrator;*

Applicant's Justification: This requirement is not needed for the following reasons:

The owners of the adjacent property (tax map 49-06) will state as follows:

- They have no complaint or objection to 'Hugs and Kisses' business operations and / or any aspects of the same.
- Their property surrounds the subject property. Their land is undeveloped, mountainous and in land use.

The applicant rents the property and the residence from someone else who actually owns the property surrounding it. Owners of property (TMP 49-06B) property on which Hugs & Kisses operates will state:

- They object to solid fencing, as it would destroy the natural beauty and rural nature of the surrounding area.
- During many unscheduled visits, they have never witnessed barking dogs; had any neighbors complain about barking dogs; observed dogs out of control and/or unsupervised.

Staff Analysis: The owners of the subject property are also the owners of the parcel that borders the subject parcel on the west, east, and north, sides (TMP 49-06). The Nature Conservancy owns the three adjacent parcels on the south, across Turkey Sag Road. These parcels are part of the Walnut Mountain preserve and are under conservation easement held by the Nature Conservancy. None of the adjacent

parcels contain residences. The concept plan provides approximate distances for the house to the property line and staff has measured approximate distances from the fence to the property lines.

Adjacent parcel (west, east, and north TMP 49-06) – approximately 95' from residence to the closest property line and approximately 15' from the fence to the closest property line.

Adjacent parcels on the south (TMP 49-8M, 21.6 acres; TMP 49-8N, 16.9 acres; TMP 49-8P, 25.8 acres) TMP 49-8P is approximately 40' from the pond and approximately 25' from the fence surrounding the pond and approximately 230' from the residence. The center parcel (TMP 49-8N) on the southern border is approximately 200' from the residence and approximately 100' from the closest fence. The westernmost parcel (TMP 49-8M) is approximately 100' from the closest fence and 280' from the residence.

Outside areas where the dogs are allowed do not meet the 500' minimum setback distance to agricultural or residential lot lines and the existing fencing materials used to confine the dogs consists of 6' high wire mesh fencing.

The nearest residence is over 1,500 feet from the subject property and the surrounding area consists of mostly undeveloped parcels and forested areas and scattered residential. All of the parcels along the south side of Turkey Sag Road spanning at least 1,500' feet on either side of the subject parcel are under conservation easement held and owned by the Nature Conservancy. The Nature Conservancy has advised that there are no plans to develop the properties and that they have no objection to the dog care facility.

Staff Recommendation: Staff recommends approval of a waiver from the requirements of Section 5.1.11(a), as the particular circumstances of this parcel prevent conformance with the standards; the characteristics of the location would isolate the dog care facility from surrounding properties and any existing residences; and solid fencing would not be necessary for sound attenuation and would not be in character with the Rural Areas.

2. Waiver from Section 5.1.11(b) *For soundproofed confinements, no such structure shall be located closer than two hundred (200) feet to any agricultural or residential lot line. For soundproofed confinements, noise measured at the nearest agricultural or residential property line shall not exceed fifty-five (55) decibels;*

Applicant's Justification:

- Owners of the subject property will state they have not received any complaints from neighbors regarding barking or any other aspect relating to Hugs & Kisses.
- Neighbors have confirmed and will provide statements they have had no cause to complain due to barking dogs or any other disturbances to their peace and quiet
- Zoning Ordinance Section 4.18 Noise the sounds from "animals, including, but not limited to barking dogs" are not subject to this section
- The structure for boarding is the home of the applicant and thus cannot be soundproofed.
- This section of the ordinance pertains solely to soundproof confinements.

Staff Analysis: As stated in the Section 5.1.11(a) staff analysis, the confinement areas for the dogs are inside wire fenced areas and inside the existing residential structure. These areas are not soundproofed and would not meet the 200' setback requirement; the applicant is renting the residence and has indicated that soundproofing would not be possible; it is anticipated that when the dogs bark that they would exceed the maximum fifty-five (55) decibels at the property lines. The owners of the subject property and the most adjacent parcel signed the application for the dog care business.

Staff Recommendation: Staff recommends approval of a waiver from the requirements of Section 5.1.11(b), as the particular characteristics of the location of the property would sufficiently isolate the dog care facility from adjacent properties.

3. Waiver from Section 5.1.11 (c) *In all cases, animals shall be confined in an enclosed building from 10:00 p.m. to 6:00 a.m*

Applicant's Justification:

- Elderly and small dogs may need to relieve themselves during the night.
- Any dog requiring this is accompanied outside and when finished they are returned to the house.
- Dogs do not sleep outside during nighttime hours under any circumstances.

Staff Analysis: As the requirement in Section 5.1.11(c) for animal confinement will be met based on their proposal, staff has determined that this waiver would not be necessary. No Planning Commission action is required.

4. Waiver from Section 5.1.11 (d) *In areas where such uses may be in proximity to other uses involving intensive activity such as shopping centers or other urban density locations, special attention is required to protect the public health and welfare. To these ends, the commission and board may require amount other things: Separate building entrance and exit to avoid animal conflicts. Area for outside exercise to be exclusive from access by the public by fencing or other means.*

Applicant's Justification:

This requirement is not needed based on the following factors:

- Hugs & Kisses business (TMP 49-6B) is located in a rural area.
- No intense type of activity (businesses, shopping centers or urban locations) is located in the surrounding area.

Staff Analysis: Section 5.1.11(d) addresses kennels that are in proximity to more intensive uses; therefore the isolation of the dogs at the day care and boarding facility is not applicable under these circumstances. Staff has determined that this waiver is not applicable. No Planning Commission action is required.

Mr. Strucko invited questions for staff from the Commission.

Ms. Porterfield assumed that staff was recommending approval because this is located in an unusual area. She has not reviewed any other similar requests that are this far away from surrounding properties.

Ms. McDowell replied that is true.

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

Blair Morgan, owner of the day camp and hotel for dogs, pointed out that there is one thing Ms. McDowell did not mention. The dogs that come to the camp are only dogs that have special needs. She did not take dogs that are normal. The dogs that come have all been rescued, handicapped and have health issues, such as arthritis, blind, deaf, environmental or food allergies, etc. That is why she keeps the business and day camp very small. These dogs have no other places to go. They can't go to a regular kennel or dog daycare due to health issues.

Mr. Strucko invited questions for the applicant.

Ms. Porterfield asked what the average number of dogs would be on a daily basis including the daycare and those spending the night.

Ms. Morgan replied on an average daily basis it would be seven, eight or maybe nine dogs. In unusual circumstances, such as cancellation due to rain, she divided the dogs and had twelve dogs. She requires all dogs to know each other. She cannot have an issue with aggressive dogs since they live in her home. She is selective in what dogs she takes.

Mr. Strucko invited public comment.

Jennie Stratus, the owner of the property, said that Blair has been a tenant for the last 11 years on the property she owns with her husband Tim. Blair has been extremely conscientious and responsible as a tenant. They have never gotten any complaints about the business. She has always been very forthright about her dog care business. Therefore, they have no complaints.

Kathy Everly, resident of Turkey Sag Road and one of Blair's closest neighbors spoke in support of the request. She understands one issue related to the request has to do with possible impact of noise from her property on the neighborhood. The dogs boarded or at the day camp have never been an issue to her family. In fact, with the day care and hotel being so low key she doubts that very many people on the road know this is going on. The only reason she learned about the use was by having talked to Blair. The noise has never been an issue. She is glad that Blair lives in the neighborhood and supports the application.

Rachael Satire noted that she was a dog owner and supports Blair's application. She asked to elaborate that her dog has special needs and she would not board her dog anywhere else. Blair takes care of her special needs dog that has arthritis and other issues. Blair is very devoted to this business. She pointed out that Blair is very strict about not visiting her property. She does not permit drop-ins. She does not want people come to the property except for the initial visit. She is mindful of neighbors and the noise level. She asked that the request be approved.

Melinda Cordell supported the request. She had been a client since May, 2002 since she had a dog with an overweight issue. They have moved from initially boarding to a two day a week camper. With the pick-up and drop off service, she has only been to Blair's house about ten times during the past years. Blair is very strict about not visiting her house. The day camp allows for lots of exercise and socialization. Her dog recently had surgery and the arthritis is beginning to set.

Karen Waunakee, resident of Albemarle County, supported Blair Morgan and her application for waivers for Hugs and Kisses. Her dog Molly was a nine-year old Golden Retriever who was a rescue dog from Puerto Rico where she was chained up and used as a guard dog. When they got her at two years old her front teeth had been knocked out and she was 30 pounds underweight. Because she was chained up Molly is very afraid of thunder storms. Blair has worked with Molly at day camp two days a week. Blair provides a wonderful service particularly with the swimming. She asked that the waivers be approved.

Amanda Fertile spoke in support of Ms. Morgan's Hugs and Kisses business. She uses her services on a weekly basis and boards at least one week a year at her facility for her special needs dogs. Ms. Morgan recognizes the special needs of her dogs. She asked that the request be approved.

Dianna Ferguson, resident of Albemarle County, said that her 12 year old Labrador with terrible allergies has been attending day camp for three years. She agreed with everything that had been said and asked that the request be approved.

There being no further public comment, the public hearing was closed and the matter before the Commission.

Mr. Edgerton noted that the request was for a special use permit and two waivers. His understanding is that the special use permit goes with the land. He asked if there was a way to restrict this.

Mr. Kamptner replied that the special use permit does run with the land. He noted that they could talk with zoning, but suggested that they could condition it as being a commercial kennel for special needs dogs and could put a duration limit on it.

Mr. Edgerton said that right now the owner and surrounding owners are happy with the situation. If they sold the property in a couple years the subsequent owner might not be happy with the special use permit being on this property. He asked if there was a way to limit it under this ownership.

Mr. Kamptner replied that he would discourage that because the permit needs to run with the land. That is the classic nature of the special use permit.

Mr. Cilimberg noted that the Commission would need to act on the special use permit first. The waivers are a condition of the special use permit.

Ms. Porterfield said one speaker noted she was a near neighbor and the noise is not an issue. Since this approval would run with the land, it does not mean that the next person that comes in will be as concerned about the needs of the neighbors. The business could run differently. She asked if there are other things they could do to narrow the focus.

Mr. Strucko asked what would be a typical duration.

Mr. Kamptner replied that they have never had one like this. They could put a time limit on the life of the permit. That is another type of condition he does not encourage unless they are dealing with a real unique situation.

Mr. Edgerton questioned why it would be too much trouble for the County to enforce.

Mr. Kamptner replied that it was because it runs with the land and there may be issues with the financial investment in the permit that may go away. They have done it with some uses where they wanted to see what the impacts were after a certain period of time and as part of the renewable process they could look at the impacts and the possible conditions to address that. They could condition it to make it ten years that they come back to review the impacts.

Mr. Cilimberg pointed out that they don't normally recommend it unless they see the uniqueness and the potential impacts of the use warranting having a review of it again within a period of time. He thought they did it on the outdoor music festival because it was very unique and large. Otherwise, they have talked some about cost and process.

Ms. Joseph noted that they have also talked about opening up the rural areas to allow for smaller scale concerns. She thought that this was of a smaller scale with less than 20 dogs. She thought that the way this is written and the fact if they added commercial kennels for dogs with special needs that would limit this use.

Mr. Edgerton agreed that would work.

Ms. McDowell pointed out that in the history it indicates that it has been operating for ten years without a special use permit, but without any complaints. She had received a telephone message from the closest neighbor indicating that the business has been operating in the same manner since 2000. The applicant is not planning any expansion. Therefore, she assumed that neighbor was okay with the request.

Mr. Franco asked if the Noise Ordinance and Dog Barking Ordinance still apply to this.

Mr. Kamptner replied that this is a five acre parcel and was right at the threshold in the rural areas where the Barking Dogs regulations would not apply.

Mr. Franco asked if that was a simpler way to address that concern in the future to make that a condition of the special use permit that would apply. If there was a change in ownership or the kind of dogs, they would be protecting the neighborhood by implementing it.

Mr. Kamptner agreed they could incorporate the condition based on current regulations.

Mr. Franco noted they would then not have to worry about the investment aspect of the time line or other things like that.

Mr. Edgerton agreed that the condition was needed if the use would be going on forever.

Ms. Porterfield noted concern because the special use permit runs with the land and the other similar requests have not been given waivers. The soundproofing and fencing has been provided on other similar requests. She suggested cutting the number of dogs down to maximum at any one time.

Mr. Franco said that he was comfortable with the application as presented with the addition of the application of the Noise Ordinance to this parcel for the barking dogs if the applicant is okay with it.

Mr. Strucko invited Ms. Morgan to come forward.

Ms. Morgan questioned exactly what they meant.

Mr. Franco noted that his understanding was that as a rural parcel of this size it would basically be exempt from the Noise Ordinance dealing with dog barking. By adding this as a condition in the future if something changes with the adjacent properties and the dog barking becomes an issue, then the County has a mechanism for controlling the noise. That is opposed to adding a time line to the use or just narrowing the use to special need dogs. It is putting a Noise Ordinance on top of it, which is consistent with the Noise Ordinance that applies to the rest of the County for smaller parcels.

Mr. Kamptner pointed out that the barking would have to go on for 30 consecutive minutes or more with no cessation of sounds for time periods greater than five minutes during the thirty consecutive minutes.

Ms. Morgan noted that there have been no complaints.

Ms. Joseph replied that the special use permit is for the land and not just to her business. If she decided to move and close her business someone else can come in without going through the process and still have a kennel. What they have been hearing from the neighbors is that there has been no intrusion on the land. But, if someone else comes in they might not be as nice and concerned as she was.

Mr. Strucko said that her neighbors could change and they wanted to make sure there were mechanisms in place to handle potential future issues. They understand that there are no issues now. They are talking about applying the barking dog aspect of the Noise Ordinance to this parcel as a condition of approval. Also, they are talking about limiting the use to special need dogs.

Mr. Loach agreed with Mr. Franco's point that the limitation to the noise was adequate without limiting the use to special need dogs.

Mr. Franco felt that the added condition on the noise was adequate because it was measureable. He was not sure what special needs meant as far as enforcement goes.

Mr. Edgerton and Ms. Joseph agreed.

Mr. Strucko asked if the applicant was okay with the suggested condition to add the barking dog aspect of the Noise Ordinance.

Ms. Morgan agreed to the added condition.

Ms. Joseph supported the request because it was in the rural area, very isolated and would not affect anyone.

Ms. Porterfield supported the request because of its location.

Mr. Morris supported the request because it was a great idea.

Motion on Special Use Permit:

Motion: Mr. Morris moved and Mr. Edgerton seconded to approve SP-2009-00017, Hugs and Kisses Day Camp and Hotel for Dogs with the conditions as recommended by staff, as amended.

1. Development of the use shall be in accord with the conceptual plan titled "SP200900017 Hugs & Kisses Dog Care" prepared by the applicant and submitted on September 21, 2009 (hereafter "Conceptual Plan"), as determined by the Director of Planning and Zoning Administrator. To be in accord with the Conceptual Plan, the development shall reflect the following major elements within the development essential to the design of the development:
 - Areas noted "where dogs allowed" within fenced areas
 - Gate at entrance
 - Pond
 - Two structures: residence and barnas shown on the Conceptual Plan. Minor modifications to the Plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance.
2. The maximum number of dogs attending the Hugs & Kisses daytime camp shall be 20 dogs at any one time (does not include personal pets owned by the applicant).
3. The maximum number of dogs attending the hotel (overnight) shall be 5 dogs (not including personal pets owned by the applicant) at any one time.
4. Dogs boarding overnight shall be kept inside between the hours of 10:00 PM and 6:00 AM, except for occasional supervised trips outside.
5. The hours of operation for the Dog Camp (day care) shall not begin earlier than 9 A.M. and shall end not later than 5 P.M., each day, Monday through Friday.
6. An on-site sign for the dog care business shall not be permitted.
7. Transport of the dogs to and from the site shall be by the applicant, except in emergency situations.
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.
9. Dogs attending the daytime camp or boarding overnight shall not howl, bark or make other animal noise that is audible from any other parcel which continues for thirty (30) consecutive minutes or more with no cessation of the sounds for greater than five (5) minutes during the thirty (30) consecutive minute period.

The motion passed by a vote of 7:0.

Motion on Waivers:

Motion: Mr. Morris moved and Mr. Franco seconded to approve the waivers from section 5.11.1(a) and (b) for SP-2009-00017, Hugs and Kisses Day Camp and Hotel for Dogs with the conditions as recommended by staff, as amended.

The motion passed by a vote of 7:0.

Mr. Strucko noted that the waivers were approved, which did not go to the Board of Supervisors. Also, SP-2009-00017 Hugs and Kisses Day Camp and Hotel for Dogs would go to the Board of Supervisors on February 10, 2010 with a recommendation for approval.

SP-2008-00035 Covesville Church

PROPOSED: Special Use Permit to construct new sanctuary building, adjacent to existing church building, to contain fellowship hall, classrooms, and activity spaces on a 3.028 acre parcel. Parking area would be relocated to accommodate new building.

ZONING CATEGORY/GENERAL USAGE: RA -- Rural Areas -- agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots)

SECTION: 10.2.2. (35) Church building and adjunct cemetery

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

ENTRANCE CORRIDOR: No

LOCATION: 5883 Henderson Lane (Rt. 805), appx. 1,300 feet west of Monacan Trail (Rt. 29 South)

TAX MAP/PARCEL: 10900-00-00-006E0

MAGISTERIAL DISTRICT: Samuel Miller
(Eryn Brennan)

Eryn Brennan made a PowerPoint presentation and summarized the staff report. (See Staff Report)

This is a proposal to locate an approximately 3,200 square foot sanctuary 34' east of the existing church. The surrounding area is comprised of primarily large forested parcels to the south and west. The church is located in the Cove Creek Watershed. Several parcels of land approximately one mile north are under conservation easement. The Covesville Historic District is located about a quarter of a mile south of this parcel. Please note this correction on attachment A in the staff report.

The new sanctuary would mirror the existing church, and the entrance porticos would be connected by a covered breezeway. The existing sanctuary seating would be relocated to the new sanctuary, and the old church would be used as a fellowship hall, with Sunday school classrooms and offices in the basement. The proposed development would not increase the maximum number of 180 seats in the sanctuary allowed by the current Special Use Permit, SP 89-21, and no day-care, after-school program, or kitchen facility is proposed.

A new paved parking area is also proposed north of the church. The proposed parking would be able to accommodate 37 parking spaces, as opposed to the current 29 informal parking gravel spaces east of the existing church.

The applicant is requesting a waiver from the landscaping requirements of Chapter 18, Section 32.7.9.7B of the Code of Albemarle, which requires landscaping in and around parking areas. Given the rural character of the site, requiring landscaping and screening for parking areas would be inconsistent with previous Special Use Permits in the Rural Areas district and with the goals of the Comprehensive Plan.

Staff has identified the following factors favorable to this application:

1. The new sanctuary would help sustain the continuing presence of a vibrant community church, enhancing the quality of life of its rural congregation.
2. The new sanctuary addresses the needs of rural residents.
3. The new sanctuary would minimally impact the existing character of the church building.

Staff has identified one factor unfavorable to this application.

1. The new sanctuary would have a minimal impact on the adjacent property to the east.

Based on the findings contained in this staff report, staff recommends approval of Special Use Permit 2008-35, First Baptist Church Covesville with the conditions listed in the staff report.

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

Ron Keeney, of Keeney and Company Architects, noted that there were two possible questions that might have arisen in their minds.

- One question was why they are building this. They are building a new sanctuary. There is an existing sanctuary built 20 years ago. It has a wood floor with a basement under it. When they

get a full congregation on the wood floor the noise is so loud the basement cannot be used for the children. They have requested a new sanctuary with a sloped concrete floor in order to have a better sanctuary facility. They will use the existing building to house their children and their classroom that occur during their meetings. They are not anticipating any additional growth to the sanctuary. The extra parking is being provided because it is different from 20 years ago.

- The second issue that may be a question was in regards to the parking lot down the side line. They are putting the building down that lot line. They were originally asked to by the County because there was some question as to the landscaping along the side lot line. The landscaping waiver they are asking for, which normally would occur along the parking that now was going in the front, would be to put the landscaping down the side lot line where the old parking area was located. Other than that they are available for comment.

Mr. Strucko invited questions for the applicant.

Ms. Joseph asked if the County would allow a gravel parking lot in lieu of concrete.

Mr. Keeney replied that he was not sure they know that at this point. One of the things they were looking at is to try to do a rather unique permeable concrete parking area that would allow the water to drain through the concrete and down off the back of the parking space down the grassy slope as oppose to having a hard surface. They have to work that out with the Health Department because of the septic field location.

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

Ms. Porterfield asked if they need to add the four Leyland Cyprus as a condition because the applicant is saying that they are going to do that. The four Leyland Cyprus would help buffer the house next door. She asked if the Commission needs to take action on a waiver of that section.

Ms. Brennan replied that the waiver is for the landscaping required for the parking only.

Ms. Porterfield noted that in addition to the approval of the special use permit with conditions, the Commission also needs to do a waiver.

Ms. Brennan noted that in this case she did not think the waiver needs to be a condition of approval. In terms of the four trees shown on the concept plan she presumed Mr. Cilimberg can speak to this better, but if shown on the concept plan that would be what is then taken to Current Development for the site plan.

Ms. Joseph asked to speak to the Leyland Cyprus. She asked that Leyland Cyprus not be used, but to be something like American Holly or something that one would expect to see out there.

Mr. Strucko asked what the difference was.

Ms. Joseph noted that Hollies are indigenous, which she felt would be more appropriate in this setting at 4' to 6'.

Mr. Cilimberg noted that in actuality the applicant can use another type of tree if they so choose because there are minor modifications allowed under condition #1.

Motion: Ms. Porterfield moved and Mr. Loach seconded to approve SP-2008-00035, First Baptist Church Coveseville with the conditions as recommended by staff.

1. Development of the use shall be in conformity with the Conceptual Plan entitled, "First Baptist Church Coveseville: New Sanctuary Building," prepared by Keeney & Co.

Architects, and dated October 9, 2009, (hereinafter, the "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator.

To be in conformity with the Conceptual Plan, development shall reflect the following major elements within the development essential to the design of the development:

- *limits of disturbance*
- *building orientation*
- *building mass and shape,*
- *location of buildings and structures*
- *location of parking areas*

as shown on the Conceptual Plan.

Minor modifications to the Conceptual Plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance.

2. The area of assembly shall be limited to a maximum of a 180-seat sanctuary.
3. There shall be no day care center or private school on site without approval of a separate special use permit.
4. Health Department approval shall be obtained prior to site plan approval.
5. 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 prior to site plan approval and the commencement of the special use.

The motion passed by a vote of 7:0.

Action on Waiver:

Motion: Ms. Porterfield moved and Mr. Loach seconded for approval of the waiver of section 32.7.9.7(b) regarding the street trees.

The motion passed by a vote of 7:0.

Mr. Strucko said that SP-2008-00035, Coveseville First Baptist Church would go to the Board of Supervisors on February 10 with a recommendation for approval. The waiver does not have to go to the Board of Supervisors.

Mr. Keeney requested to speak. He said that they were looking at the most patient man he had ever worked with in his 25 years in the County. He met at a pre-application meeting on May 19, 2008. The site plan was submitted in July, 2008. This is a renewal of a special use permit that they have had for 20 years on that site. It has taken 18 months to get here through three different staffers. All the way through they have had nothing but approvals. The letter from September 18 has no objection from six planners on it. As an architect considering applying for Ms. Joseph's seat, he suggests that this is an example of "process". When Williamson speaks to process that is something that needs to be looked at. As another example tonight, the dog owner had been there for ten years without a complaint and with one phone call they had to go through this process. That is what development community is concerned about, which simply is the length and magnitude of the process.

Mr. Strucko noted that they did not have all the facts and reasons for this delay, but his point was taken.

SP-2009-00022 Daylily Preschool

PROPOSED: Private preschool for a maximum of 10 children located within existing Mountain Plain Baptist Church, but not affiliated with Church

ZONING CATEGORY/GENERAL USAGE: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots)

SECTION: 10.2.2.7 Private School

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

ENTRANCE CORRIDOR: No

LOCATION: 4297 Old Three Notch'd Road, at intersection of Brown's Gap Road (Rt. 680) and Seven Hills Lane

TAX MAP/PARCELS: 57-26

MAGISTERIAL DISTRICT: White Hall
(Joan McDowell)

Ms. McDowell presented a Power-Point presentation and summarized the staff report.

- This is a special use permit for Daylilly Preschool located within the existing Mountain Plain Baptist Church at Old Three Notch'd Road just south of the Beaver Creek Reservoir. The proposal is for a childcare, daycare facility with a maximum of ten children of 2 ½ to 5 years of age with the transportation provided by parents. There is an existing gravel parking area in front of an existing church. The building next to the sanctuary would serve in the basement level for the pre-school from 8:30 to 12:30 Monday through Friday. Snacks would be provided. Lunch would be provided from home. The preschool would take place in the accessory building. It would be privately owned and operated. The applicant would rent the building space from the church. Staff reviewed the concept plan and explained the layout.
- Staff recommends approval subject to the recommended conditions with a modification to condition #5. Condition #5 at the County Attorney's request has been modified somewhat for clarification.

Mr. Strucko invited questions for staff from the Commission.

Mr. Loach questioned the entrance since the staff report says that the county engineer has advised some alteration of frontage to achieve all or part of the concept might be appropriate.

Ms. McDowell replied that if the church ever expands or this preschool gets larger that the county engineer had some suggestions to fix the parking.

Mr. Loach noted that he thought that the parking was adequate.

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

Elizabeth Claman, applicant, explained her philosophy and why she was interested in starting the preschool. She believed that preschool aged children should be provided with an engaging learning environment in which to grow. They need to be actively involved in small group learning centers and instruction on a daily basis. That is why she wanted to have ten children with herself and a teacher assistant. The ratio would be five children to one teacher. She believed that children need to be taught reading, math, science and social studies in a safe nurturing environment. They should be encouraged to be independent thinkers and generate original ideas. The program is designed to prepare children socially, physically and cognitively for kindergarten. Children need to have a foundation before they enter kindergarten especially in reading. So she will be teaching letter sounds, phonics and that sort of thing. The goal is to enable children to become lifelong learners. Monthly themes will enhance the learning and play opportunities for the children. Each month the themes and centers will reflect their developmental goals for them. As a reading specialist she will individualize the lessons and implement them for the children's specific needs. She believed that children need to have this foundation before entering kindergarten.

Mr. Strucko invited public comment.

Jeff Claman, husband of the applicant, spoke in support of the request. He interjected that what she is providing is an alternative for preschools in the Crozet/Ivy area. With her background she is amazing with children. He felt that the preschool would be a positive thing for the community.

There being no further public comment, the public hearing was closed and the matter before the Commission.

Mr. Loach noted that Crozet is growing and that this would be a good addition to the community. He thought that everything was covered in the staff report. Regarding the traffic comments, he felt that it was safe enough in that area for the traffic generated for the ten children.

Mr. Kamptner asked if the conditions included the modification to condition #5.

Motion: Mr. Loach moved and Mr. Morris seconded to approve SP-2009-00022, Daylily Preschool with the conditions as recommended by staff with the modification to condition #5.

1. Development of the use shall be in accord with the conceptual plan titled "Special Use Permit 200900022 Daylily Preschool" prepared by the County of Albemarle, signed by the applicant and dated December 4, 2009 (hereafter "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in accord with the Conceptual Plan, development shall reflect the following major elements within the development essential to the design of the development:

- *location of buildings and preschool*
- *location of parking area and entrance to be used for the preschool*
- *relation of buildings and parking to the street*

as shown on the plan. Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance.

2. The maximum enrollment shall not exceed 10 children, without approval of an amendment to this special use permit.
3. The hours of operation for the preschool shall not begin earlier than 8 A.M. and shall end not later than 1 P.M. each day, Monday through Friday.
4. The use shall not operate without the required licensure by the Virginia Department of Social Services, as required by Section 5.1.06 of the Zoning Ordinance.
5. The building shall be accessible for the Albemarle County fire official to allow periodic inspections of the premises, at his/her discretion

The motion passed by a vote of 7:0.

Mr. Strucko said that SP-2009-00002 Daylily Preschool would go to the Board of Supervisors on February 10, 2010 with a recommendation for approval.

Old Business:

Mr. Strucko asked if there was any old business.

- Mr. Franco noted that he was now an official member of the Fiscal Impact Committee.

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

New Business:

Mr. Strucko asked if there was any new business.

Mr. Morris noted that it had been a pleasure serving with the three Commissioners that were leaving. It is 18 years of experiences that will be going off of this board. He really appreciated their contributions and would truly miss them.

Mr. Strucko thanked and recognized all Commissioners and Julia Monteith with the University of Virginia for their contributions. It was truly a pleasure serving with all of the Commissioners and Ms. Monteith.

Ms. Joseph said that she went to the work session on farm stands and farmer's markets last week, which is going to be coming before the Planning Commission. It is really exciting to see how many people are doing so many different things in the rural areas. Therefore, all of the time the Commission has spent in trying to make sure that those lot lines are not drawn in the rural areas is worthwhile. It was wonderful to see all these people doing so many different kinds of things who want to get involved and are making a living off of the land.

Mr. Strucko thanked Mr. Cilimberg and County staff for their effort and hard work.

Mr. Edgerton thanked his fellow Commissioners and staff for their contributions over the past eight years while he was on the Commission. He was honored to have been given the opportunity to serve on the Planning Commission.

- There will be no Planning Commission meetings on December 22, December 29 and January 5.
- The Planning Commission will reconvene on January 12, 2010 at 6:00 p.m.

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

Adjournment:

With no further items, the meeting adjourned at 8:20 p.m. to the January 12, 2010 meeting at 6:00 p.m. at the County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

V. Wayne Cilimberg, Secretary

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