

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on March 19, 2008, at 6:00 p.m., in the Lane Auditorium of the County Office Building on McIntire Road, Charlottesville, Virginia.

PRESENT: Mr. Ken C. Boyd, Mr. Lindsay G. Dorrier, Jr., Ms. Ann Mallek, Mr. Dennis S. Rooker, Mr. David Slutzky and Ms. Sally H. Thomas.

ABSENT: None.

OFFICERS PRESENT: Assistant County Executive, Bryan Elliott, County Attorney, Larry W. Davis, Senior Deputy Clerk, Meagan Hoy, and Director of Planning, V. Wayne Cilimberg.

~~Agenda Item No. 1. 1:00 p.m. Call to Order.~~

~~Agenda Item No. 2. Work Session: FY 2008-09 County Budget: (if needed).~~

~~Agenda Item No. 3. 3:15 p.m. Recess. (Note: There was no need for an additional work session on the budget on this date so the part of the meeting adjourned from March 17, 2008, was cancelled.)~~

Agenda Item No. 4. Call to Order. The meeting was called to order at 6:00 p.m. in the Auditorium by the Chairman, Mr. Boyd.

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Agenda Item No. 5. Pledge of Allegiance.

Agenda Item No. 6. Moment of Silence.

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Agenda Item No. 7. From the Board: Matters Not Listed on the Agenda.

Ms. Mallek updated the Board on her recent "town hall" meetings. She received many good suggestions such as: because people are not able to attend Board meetings, find some way to keep them more aware of what is happening at those meetings; use some type of technology to get a draft of the minutes sooner; Local Government should have the same kind of resource utilization study the Schools just finished; and, the Board establish some sort of citizen board to respond to citizen concerns - people were suggested for appointment to same.

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Ms. Thomas said she would like a summary of the General Assembly actions that specifically affect Albemarle County since she could not tell from the VML report which would apply to the County.

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Mr. Boyd said he has received comments about budget items removed by the Board during its work sessions. Two items the Board talked about yesterday were "Save the Fireworks" and the "Workforce Council." They are small items, but there was not a clear decision about those items yesterday. He asked if there is enough interest to put the fireworks item back in the budget.

Mr. Slutzky said he did not think the Board had actually decided to eliminate it. He was surprised that staff sent a communication to constituents saying the Board had zeroed out that item. He would like to see it stay in until the final public hearing on the budget.

Ms. Mallek said she would like to leave it in for discussion.

Mr. Dorrier said he would support \$10,000 for this item.

Ms. Thomas said she suggested that it be taken out of the budget but would be happy either way as long as the Board discusses it again after the public hearing.

Mr. Boyd said the problem is that staff has notified people it is has been removed from the budget.

Mr. Rooker said there were a number of items on the list for discussion yesterday. The Board moved some items to the "not funded" section of that list; he does not mind the "fireworks item" being in for discussion and public input.

Mr. Slutzky said there were three things on the list and he does not think there was closure on the fireworks item. He thinks it should be included in the advertisement for the budget with the Board making a final decision after the hearing.

Mr. Rooker said in order to balance the budget certain items were removed from the list. The fireworks request was one of those items. He said the Board can discuss it again when it makes the final decision on the budget.

Mr. Slutzky said that is not what he agreed to. For the moment he would like for it to be included in the budget advertisement

Ms. Thomas said leaving it in will change the bottom line of the budget, but there is a reserve figure. Mr. Davis said it would only affect the Board's contingency. Mr. Elliott said staff hopes to have the

final version of the advertisement printed tonight so it is ready to go to the newspaper tomorrow. If the Board wants that item included, it will be incorporated into those final numbers.

Mr. Rooker said he does not see any reason to change the advertisement. If four Board members want to fund that item it can be done from the Reserve.

Mr. Dorrier asked about the Workforce Development item.

Mr. Boyd said they requested \$13,000 but the Board did not agree to fund that item.

Mr. Rooker said he thought the Board needed additional information about the request. If the information proved satisfactory, the item could be funded from reserves. He thinks the Board said it is a good program, but it wanted to be sure other localities participating in this agency are doing their part to make up for the lost Federal funding.

Mr. Boyd said staff should not tell people their request has been removed from the budget when the Board has not made its final decision on funding. Mr. Elliott said when the County Executive's recommended budget was presented to the Board, agencies were notified of what their funding levels might be. He thinks the letter sent by staff noted only what that funding level might be.

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Mr. Boyd said he and Ms. Mallek act as liaison with the Fire/Rescue Advisory Committee. They have reconstituted the group to look at the issue of EMS Recovery Fees. No decisions have been made despite what has been published in the newspapers.

Mr. Rooker said the Board tentatively included in the budget money for a half year of the volunteer program. He thinks that was conditioned on a recovery plan going through.

Mr. Boyd said all of that money was deleted from the proposed budget.

Ms. Mallek said the Board should let the meetings go forward and be patient. The reason there has been a problem in the past is because of the "red herrings" about the program. It is going to take some time for it to be worked out.

Ms. Thomas said at its roundtable meeting, the Planning District Commission talked about revenue recovery. The two neighboring localities that have such a program took about three years to get it before the public.

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Mr. Boyd said the Board wrote to the Department of Rail and Public Transportation and asked to be informed about any rail enhancement fund projects in the County. He has received a letter from Mr. Matthew Tucker, its director, saying he would be glad to meet with the Board, but there are no plans for anything in Albemarle. He asked if the Board members wanted to meet with him, or just wait to see what will happen.

Ms. Thomas said Mr. Tucker offered to provide the Board with a briefing on any potential future rail initiatives that might impact Albemarle. She thinks that before the end of 2008, the Board should get an idea of what those plans are.

Ms. Mallek said she met with some citizens last week who are interested in commuter rail service between Zion Crossroads and Waynesboro. They have talked both with Buckingham Branch and Amtrak, and they are interested. She said that on April 17 there is a dinner meeting at the Steakhouse for the Rail Historical Society, and a person from Buckingham Branch will attend to talk with them.

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Agenda Item No. 8. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Mr. Paul Accad said he lives in Glenmore. He has been following the budget talks closely and has an idea to share with the Board. He was listening to a podcast of the Board's discussion of the City/County Revenue Sharing Agreement and was surprised to hear that 70 percent of the County's lands do not generate enough real estate tax revenue to pay the City for the Revenue Sharing Agreement. He finds it hard to get information on the City/County Revenue Sharing Agreement (\$17.0+ million) and the Land Use Tax Program (\$-18.0 million), so it occurred to him that the Board could use the same format it used in 2006 to set up the Development Review Task Force and set up a new group to produce a document to educate the average citizen on the history of these two programs, and their current status. These programs have grown too big to be on auto pilot and they are too big not to review.

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Ms. Mallek said at a meeting in Crozet last night several farmers said that on their real property assessment notice the entire value of their house and the two acres is included in that land use number. She thinks it needs to be clarified as to how much of the land is on a reduced assessment. Mr. Davis said they are shown on the tax bill but are not included in the amount of the land use tax which is calculated separately.

Ms. Thomas said this must be the ninth time the Board has talked about having a study of land use taxation. But, to date, nothing has happened.

Mr. Rooker said staff has said it is one of the items in the rural area plan that it has not gotten to yet, but this is very large revenue item. He thinks it should be made a high priority. Mr. Davis said staff plans on making a recommendation concerning revalidation in April, and then report on the Land Use Plan and formation of a committee in May or June.

Mr. Boyd said he thinks the Board needs a refresher course on the Land Use Program. Mr. Davis said the program has been presented to the Board a couple of times over the last 15 years. It will be summarized again as part of a history of land use.

Mr. Slutzky asked if during the presentation next month on revalidation the Board could also receive the history and context of the program. Is there any reason to wait until July? Mr. Cilimberg said if this is a Community Development led initiative, they need to wait to find out how it fits in with other work priorities. This actually is more tied to the Finance Department. He asked if the Board is approaching this from the revenue side or more toward the purpose of the program for conservation and preservation purposes.

Mr. Slutzky said he thinks it is both. Mr. Cilimberg said if it is both, then Community Development has to make it a part of its work plan.

Mr. Boyd said if the Board wants to find out through the revalidation process whether land is qualified for the program that is one thing. If the Board wants to talk about it as a revenue source or doing away with the program, he does not want to be a part of that decision. He thinks it is an important program the County needs to keep. He does not want to discuss how to generate more revenue by doing away with land use taxation.

Mr. Slutzky said Mr. Boyd is only one Board member. He thinks there are questions about the purpose of the program and whether that purpose is being fulfilled. He would like to know if this is the best use of the County's revenue.

Ms. Thomas said it is not just a finance item, but is a land use item also. The Board has left the Community Development Department sorely under-funded, and there may not be a person to do that work immediately.

Mr. Slutzky asked if because of that fact Ms. Thomas would be willing to wait or is this sufficient enough of a priority to ask staff to give an update on the program in April. Mr. Davis said the data concerning the program needs a significant update and is being worked on now on the Finance side. The reason staff proposed breaking it into two parts is that revalidation can be done quicker. For the second part, Mr. Mark Graham and others must determine their resources and a way to deal with the Board's request that there be a comprehensive review of the program. That will take longer to pull together.

Mr. Rooker said from 62 percent of the land in the County less is received in tax dollars than is paid to the City on that land. That is a huge fiscal issue which needs to be looked at. Land use is a tool to help conserve land in the County and keep it out of development so a decision needs to be made as to whether it is a cost-effective tool. He said that over the years a number of people have asked how the Board can justify the expenditure each year when that money could be used to put land in permanent conservation easements by expanding the ACE Program. He thinks the Board needs to look at what the program is accomplishing and what other permutations might be available that would be less costly.

Mr. Slutzky agreed with Mr. Rooker, but the only option for keeping lands in conservation easements is not by expanding the ACE Program. The Board could say land must be in conservation easements in order to be eligible for land use deferral. There are a number of strategies in addition to the ACE Program. Although it sounds like this item will have to wait until the Board establishes the priorities for the Community Development Department's Work Plan, he is not convinced that is true.

Mr. Dorrier said this is a big, important issue. The Virginia Farm Bureau feels strongly about keeping the land use tax program for the farmers.

Mr. Slutzky said it sounds as though only the revalidation part of this item will be presented next month. Mr. Cilimberg said in May Mr. Graham will present a list of priorities for the Community Development Department. This matter is part of that Work Program discussion.

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Agenda Item No. 9. Consent Agenda. Ms. Thomas offered **motion** to approve Item 9.1 on the consent agenda, and to accept the remaining items as information. The motion was **seconded** by Mr. Rooker. Roll was called, and the motion carried by the following recorded vote:

AYES: Ms. Mallek, Mr. Rooker, Mr. Slutzky, Ms. Thomas, Mr. Boyd and Mr. Dorrier.  
NAYS: None.

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Item 9.1. Approval of Minutes: August 1 and August 8, 2007.

Ms. Thomas had read the minutes of August 1, 2007, and found them to be in order as presented.

Mr. Boyd has read the minutes of August 8, 2007, and found them to be in order as presented.

**By the recorded vote set out above, the Board approved the minutes which had been read.**

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Item 9.2. Crozet Crossings Housing Trust Fund Annual Report.

It was noted in the Executive Summary that the Crozet Crossings Housing Trust Fund was established in 1994 by an agreement between the County of Albemarle, the Charlottesville Housing Foundation (CHF), and the Albemarle Housing Improvement Program (AHIP). The purpose of the Trust Fund is to hold notes and deeds of trust on houses in Crozet Crossings and to collect and distribute funds upon the resale of the houses. The Trust Fund must meet the requirements set forth by the Virginia Department of Housing and Community Development under the provisions of the Community Development Block Grant Program. One of the requirements is that the collected funds be used for housing projects that benefit low- and moderate-income households. The Fund is managed by five trustees (two representing the County, two representing CHF and one representing AHIP) and is staffed by the County's Chief of Housing. The Trustees are required to submit an annual report of the Trust Fund finances and activities to the Board.

The Trustees met on January 30, 2008, to review the financial status of the fund and review/approve funding requests submitted by two nonprofit applicants. The Fund is in good financial condition with cash on hand in the amount of \$399,850.64 as of December 31, 2007. In addition, the Fund has potential receivables representing eleven loans totaling \$234,420 in original subsidy amounts and the potential to recapture through shared appreciation \$254,193 based on assessed values. The amount of shared appreciation is based on sales price or assessed value at the time that actions trigger repayment (sale or refinancing). There is one loan in bankruptcy that is not included in these amounts.

Last year the Trustees approved and the Board appropriated \$60,000 to Habitat for Humanity to assist in constructing two houses for households with disabled residents who were living in substandard conditions. These projects are underway. Two new applications were received in January, 2008 requesting a total of \$400,000 of funding. AHIP submitted an application for its proposed Treesdale Park development that will provide ninety units of affordable rental housing. Jordan Development Corporation, with Piedmont Housing Alliance, requested funding for the rehabilitation of twenty-eight existing rental units for seniors and the construction of thirty-eight new rental units for seniors at Crozet Meadows. The Trustees approved \$252,000 for Treesdale and \$134,400 for Crozet Meadows. Once these projects receive other financial commitments and are ready to begin construction, the Trustees will request the Board to appropriate the approved funding.

There is no General Fund budget impact, as these funds come from a restricted account required to fund housing projects. Staff, on behalf of the Trustees, recommends that the Board review and accept this report on the Crozet Crossings Housing Trust Fund.

**(Discussion:** Mr. Boyd said it is important to point out that \$400,000 from this fund will be put into affordable housing. It is almost the same amount of money requested by the IMPACT group.

Mr. Slutzky said he thinks the IMPACT group has recognized there are different mechanisms already in place, and there are other things such as the Proffer Policy. They felt there were gaps beyond that existing level of investment that necessitated their suggestion for \$0.5 million.

Mr. Boyd said his point is that there is \$1.3 million in the budget going toward affordable housing for different programs.)

**By the recorded vote set out above, the Board accepted this report on the Crozet Crossings Housing Trust Fund only.**

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~~Item 9.3. Copy of letter dated February 29, 2008, from John Shepherd, Manager of Zoning Administration, to David Collins, John McNair Associates, re: OFFICIAL DETERMINATION OF PARCELS AND DEVELOPMENT RIGHTS - Tax Map 118, Parcel 17 (property of Philip H. Calhoun, Thomas Calhoun, David Calhoun, Andrew Calhoun, Jonathan Calhoun, Henry W. Calhoun, et al) and Tax Map 118, Parcel 18A (property of Mitchell O. Carr, Trustee) - Scottsville Magisterial District. (Removed from agenda)~~

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Item 9.4. Copy of letter dated March 3, 2008, from Ronald L. Higgins, Chief of Zoning, re: OFFICIAL DETERMINATION OF PARCELS AND DEVELOPMENT RIGHTS - Tax Map 79, Parcel 10 (property of Albemarle Edgehill Farm LLC) - Rivanna Magisterial District, **was received as information.**

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Agenda Item No. 10. **Public Hearing:** To solicit public input on the proposed **Community Development Block Grant** (CDBG) applications that may be submitted to the Virginia Department of Housing and Community Development for the following projects: Treesdale Park - installation of onsite infrastructure to include roads, water and sewer to support the development of 90 rental units; and, Crozet Meadows - installation of onsite infrastructure to support the development of 38 rental units for seniors. (Notice of this public hearing was published in the Daily Progress on March 3 and March 10, 2008.)

Mr. Ron White, Housing Director, said a public hearing was held on February 6, 2008, at which time information was provided on eligible activities that could be funded by VCDBG, the amount of

funding estimated to be available, past activities undertaken with VCDBG funds, and the process for applying for funding. There were no public comments tendered at that hearing. The purpose of the public hearing tonight is to seek input on proposed project applications; two applications have been received. Both applications request the maximum amount allowed for their specific activity or \$700,000 each; the County can apply for up to \$2.5 million.

Mr. White said the first project is for Treesdale Park Apartments. The proposal is for money to help with infrastructure costs, land development, road, sidewalks, water and sewer. The total development costs of the project are about \$23.0 million, and the project relies heavily on low-income housing tax credits for equity financing. He said tax credits are not as good at this time as they were last year so he expects there will be financing gaps over and above what is actually proposed. Treesdale Park Apartments is a proposed 90-unit rental development on Rio Road to be undertaken by the Albemarle Housing Improvement Program (AHIP). It will be a mix of one, two and three-bedroom units with initial rents ranging from \$450 to \$890 a month. At the end of the 15-year tax credit compliance period, AHIP will have the opportunity to buy the project for existing debt and any exit taxes in order to keep it in affordable housing stock.

Mr. White said the second project is for Crozet Meadows Senior Housing. The project is a joint venture between Jordan Development Corporation, the current owner, and the Piedmont Housing Alliance. The proposal is to rehabilitate 28 existing rental units and build 38 new rental units for seniors. All of the units will be one-bedroom with rents ranging from \$467 to \$561 a month. They are requesting money for onsite work, roads and installation of water and sewer lines. The total development cost is estimated at \$8.9 million.

Mr. White said DHCD's program guidelines this year indicate that funding for on-site infrastructure would be in the form of a loan with interest repayable at the completion and occupancy of the development. County staff has met with DHCD staff to emphasize the importance of using VCDBG funding as long-term deferred financing. The Housing Committee followed up with a letter to stress the need for a grant to the County so the County can make a deferred loan to the proposed developments. DHCD staff encouraged the County to proceed with the applications making a case for the need for deferred loans to both developments. If one or both proposals are awarded VCDBG funds, there will be additional opportunities to address this issue, if it still exists, prior to executing a contract with DHCD.

Mr. White said staff recommends that the Board, after receiving comments on the proposed VCDBG applications tonight, adopt resolutions approving submission of the applications, and authorize the County Executive to execute the applications and the required certifications and assurances for both proposals.

Mr. Boyd asked if this will allow both projects to lower their rent by a significant amount. Mr. White said the proposals are based on their receiving the money and it being a deferred loan. If the money is not granted, and AHIP or the Jordan Development Corporation cannot substitute it with like soft money, neither project is feasible. They should have a 110 percent debt coverage ratio, so without this money, or similar money being in the project as a deferred loan, they would not meet that debt coverage.

Ms. Thomas asked the chances of receiving this money. Mr. White said he will not weigh one proposal against the other, but the County has a good track record, and DHCD has a good track record working with AHIP on rehab projects such as the Whitewood Village project. He thinks that is the stronger proposal of the two. Unit costs are high because of site development costs and that could be a negative factor. In staff's meeting with them, they said they try to look at the whole picture. As long as the need can be documented (rental housing is an important need in the County), he thinks that covers a lot of what they are looking for.

Ms. Thomas asked if it is the sort of thing that a group like IMPACT could have input into. Mr. White said he does not think so, but if they were present tonight to speak at this public hearing, or if they had been present during the Board's first public hearing, staff would make note of that in the applications.

Ms. Mallek asked if letters could be sent after tonight. Mr. White said if he gets the letters by Monday they could be included as support documents with the application materials. Nothing will be accepted after the deadline; all materials must be in the application package.

Ms. Mallek said there is a comment in the staff's report that there is no budgetary impact unless or until an application is made and approved for a funded project. She asked if the \$56,000 listed as being included in each application to cover administrative and project management costs for the funded activities is paid by the County or AHIP. Mr. White said ten percent is allowed for those purposes. He hopes both of these projects can be managed using County staff working with Facilities Development so part of the money may be moved around in the County budget to help other departments. It is likely that things like Davis-Bacon wage reports and similar items would have to be contracted out. If the grant is awarded and the \$56,000 is not needed, he would ask that the money go into the project itself.

With no further questions for staff, Mr. Boyd opened the public hearing.

Mr. Cliff Fox said both of these projects are reasonable. He has looked at them with AHIP. He thinks there are a lot of missed opportunities in the current zoning ordinance; such things as the granny apartments and the accessory apartments that are named but are not articulated. That is a way to disperse affordable housing within the neighborhoods as opposed to clustering it. While these projects are great, the County needs to keep working on ways to integrate affordable housing throughout the neighborhoods.

With no one else from the public rising to speak, the hearing was closed and the matter placed before the Board.

**Motion** was immediately offered by Mr. Rooker to adopt the resolutions for the Treesdale Park Virginia Community Development Block Grant application and the Crozet Meadows Virginia Community Development Block Grant application approving submission of both applications, and authorizing the County Executive to execute the applications and the required certifications and assurances for both proposals.

The motion was **seconded** by Ms. Mallek. Roll was called, and the motion carried by the following recorded vote:

AYES: Ms. Mallek, Mr. Rooker, Mr. Slutzky, Ms. Thomas, Mr. Boyd and Mr. Dorrier.  
NAYS: None.

(**Note:** The two resolutions, as adopted, are set out in full below.)

### RESOLUTION

**WHEREAS**, the County of Albemarle is committed to ensuring that safe, decent, affordable, and accessible housing is available for all residents and improving the livability of all neighborhoods; and

**WHEREAS**, pursuant to Public Hearings held February 6, 2008, and March 19, 2008 the County of Albemarle wishes to apply for \$700,000 in Community Development Block Grant funds to support the production of a ninety (90) unit rental development known as Treesdale Park; and

**WHEREAS**, other resources estimated in excess of \$20,000,000 including, but not limited to, Low-Income Housing Tax Credits, HOME funds, Federal Home Loan Bank, the Crozet Crossings Housing Trust Fund, and VHDA loans will be invested in the project; and

**WHEREAS**, one hundred percent (100%) of the population residing at Treesdale Park Apartments will be very-low and extremely-low income as required by the Internal Revenue Service for federal low-income housing tax credits; and

**WHEREAS**, the County of Albemarle has committed to providing twenty-one (21) project-based Housing Choice Vouchers; and

**WHEREAS**, the projected benefits of the project include:

- Development of ninety (90) affordable rental units benefiting approximately 250 persons annually, one-third of whom are expected to be children;
- Construction of a community center; and
- Provision of services including after-school school programs.

**NOW, THEREFORE, BE IT RESOLVED** that Robert W. Tucker, Jr., County Executive, is hereby authorized to sign and submit all necessary and appropriate documents for the Treesdale Park Virginia Community Development Block Grant application.

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### RESOLUTION

**WHEREAS**, the County of Albemarle is committed to ensuring that safe, decent, affordable, and accessible housing is available for all residents and improving the livability of all neighborhoods; and

**WHEREAS**, pursuant to Public Hearings held February 6, 2008, and March 19, 2008 the County of Albemarle wishes to apply for \$700,000 in Community Development Block Grant funds to support the production of a thirty-eight (38) unit senior rental development known as Crozet Meadows; and

**WHEREAS**, other resources include Low-Income Housing Tax Credits and the Crozet Crossings Housing Trust Fund will be invested in the project; and

**WHEREAS**, one hundred percent (100%) of the population residing at Crozet Meadows will be very-low and extremely-low income as required by the Internal Revenue Service for federal low-income housing tax credits; and

**WHEREAS**, the County of Albemarle has committed to providing eight (8) project-based Housing Choice Vouchers; and

**WHEREAS**, the projected benefits of the project include:

- Development of thirty-eight (38) new affordable rental units benefiting approximately 50 senior persons annually; and

- Rehabilitation of twenty-eight (28) existing senior rental units benefiting approximately 36 persons annually.

**NOW, THEREFORE, BE IT RESOLVED** that Robert W. Tucker, Jr., County Executive, is hereby authorized to sign and submit all necessary and appropriate documents for the Crozet Meadows Virginia Community Development Block Grant application.

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Agenda Item No. 11. **Public Hearing:** ZMA-2004-018, Fontana Phase 4C (Signs #37, 45).

Proposal: Rezone 17.146 acres from RA Rural Areas which allows agricultural, forestal and fishery uses; residential density (0.5 unit/acre), R-4 Residential zoning district (4 units/acre) and R-1 Residential zoning district (1 unit/acre) to R-4 Residential zoning district which allows residential uses at 4 units per acre for 34 dwelling units at a gross density of 1.98 units/acre.

Proffers: Yes.

Existing Comprehensive Plan Land Use/Density: Neighborhood Density Residential (3-6 units/acre) and supporting uses such as religious institutions and schools and other small-scale nonresidential uses in Neighborhood 3 – Pantops.

Entrance Corridor: No.

Location: At the intersection of Fontana Dr (Rt 1765) and Via Florence approximately 0.5 miles from the intersection of Fontana Dr and Stony Point Rd (Rt 20 North).

Tax Map/Parcel: 78E-A.

Magisterial District: Rivanna.

(Notice of this public hearing was advertised in the Daily Progress on March 3 and March 10, 2008.)

Mr. Cilimberg summarized the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He said the Board saw this request several months ago. The location of the property is adjacent to the existing Fontana development. This proposal would convert several zoning districts to R-4 with a proffered plan for 34 single-family lots. It includes commitments for 15 percent affordable housing in the form of cash and the proffer to mitigate impacts at \$17,500 per unit for the single-family attached units which are part of the project. He pointed out on a map the areas where the project would be built. One of those areas is adjacent to the Cascadia development which had been approved by the Board. It includes extension of a road to eventually serve the development to the north of Fontana 4C.

Mr. Cilimberg said at its meeting on August 8, 2007, the Board heard concerns from residents in the existing part of Fontana subdivision about the unfinished pedestrian paths in those phases. The applicant agreed to work toward finishing those paths and staff prepared a plan which the applicant has now proffered to address the provision of paths throughout Fontana and to complete the path system, and to include this project in that plan. The plan contains locations for paths and the standards and the proffer will insure that the path system is installed prior to any grading in Phase 4C. The County Engineer worked on this to be sure it is a workable plan for the applicant and staff, and that there be some flexibility on the ground to deal with particular circumstances.

Mr. Slutzky interrupted to ask the County Attorney if there is a problem when the County actually drafts the language for the proffer. Mr. Davis said the proffer has to be voluntarily offered. County staff often assists in drafting proffer language.

Mr. Cilimberg said the recommendation is for approval of ZMA-2004-008 with the proffered plan dated July 30, 2007, inclusive of proffers dated February 24, 2008, and signed March 13, 2008. He said there were some technical aspects to the proffers that needed to be finalized, nothing substantive, and those have been reviewed by the County Attorney. The proffers are in hand, and he gave a copy to the Board. In addition to what is before the Board for action tonight, there will be some waivers necessary. Those will be considered during the subdivision approval process and be subject to the Planning Commission granting them. He said the Commission may not grant them or the applicant may not pursue all of them. They relate to things such as curb, gutter, sidewalks and street trees on three of the new streets, and critical slopes disturbance. He offered to answer questions.

Mr. Boyd asked the difference between the proffers just handed out and those sent out with the Board's materials for this meeting. Mr. Cilimberg said this final set of proffers basically gets all of the words right. Mr. Davis said there were some minor typographical errors, no substantive changes.

Ms. Thomas asked what is being done to affect the Monticello viewshed. Mr. Cilimberg said Proffer No. 4 talks about trees to be planted, or retained. Proffer No. 9 refers to architectural standards and talks about colors.

Ms. Thomas asked if experience shows that to be sufficient. Mr. Cilimberg said there is definitely a difference with that type of proffer. It has been the most effective way of dealing with the viewshed issue.

Mr. Boyd asked the status of the interconnection between Fontana and Cascadia. Mr. Cilimberg said Cascadia has not presented development plans yet. In their approval, they had provided for the possibility of a connection and this plan also provides for a connection.

Mr. Boyd asked if there are two connection points with one being near the Montessori School. Mr. Cilimberg pointed out on the plan where there would be a connection on the east side of Cascadia. Then on Fontana Drive toward Route 20 there is another location where a connection could be made.

Mr. Boyd said the connection at the top of the development was opposed by the neighborhood. Mr. Cilimberg said it was of concern because of the amount of traffic that might use roads considered substandard by the residents for through traffic.

Mr. Boyd said he was reading the minutes of the Board's last work session on this project and it was noted that the problem might be solved by putting a light at Cascadia, but VDOT has said they will not install a light there. The concern of the residents is valid; they fear the residents of Cascadia who want to turn left onto Route 20 will go through Fontana to get to a traffic light for that left-hand turn. Mr. Cilimberg said the Cascadia development has not progressed yet, and things have changed. There may be warrants that will be met with Cascadia's development for traffic that was not anticipated at the time of its approval.

Mr. Boyd said he travels Route 20 every day and during peak times it is difficult to make a left-hand turn out of there.

Mr. Rooker said the Board needs to be aware that VDOT is adopting standards which require connections, and if connections are not made, the County cannot get State Maintenance funds for those roads. He said the standards now being required are basically the Neighborhood Model standards the Board adopted some time ago. Those will become State requirements.

Mr. Boyd he can understand that when roads have been built to higher standards, but the Fontana roads were not built like that. There are no sidewalks, but there will be a trail system which might help.

Ms. Thomas said when she looked at the map of this plan originally there was an obvious gap between the dotted path and the beginning of the new section. She wondered if there would be a way for pedestrians to get from the path to the new section. Mr. Cilimberg said that path is shown as part of the proffered pathway plan. The new plan for Fontana 4C shows a path that would be part of the new section that will have a connection behind lots in the existing section.

Ms. Mallek asked Mr. Cilimberg to explain the waiver about the trees. Mr. Cilimberg said the applicant will be subject to the requirements of the Subdivision Ordinance for the Development Areas. There will be a standard cross-section of curb and gutter, a planting strip and a sidewalk. They can ask for a waiver from that provision during the subdivision process. Nothing the Board does in approving this petition would affect that request at the subdivision level. The Board would not be granting anything that the applicant would otherwise be required to do under the Subdivision Ordinance.

Ms. Mallek said it concerns her when staff has to spend a great deal of time doing work for the applicant. Hopefully staff's work on this path system might be used later for another applicant as to procedures, etc. Mr. Cilimberg said staff hopes they do not have to do too many of these plans.

With no further questions for staff, Mr. Boyd asked the applicant to come forward and speak.

Mr. Lewis Martin said he represents the applicant. When they were here in August the applicant proffered conditions that satisfied Planning. There was an issue regarding the pedestrian pathways. The matter was deferred with a strong recommendation from the Board that the applicants meet with County staff and resolve the pathway issue. That has been done; the applicant has worked with the County Engineer to come up with a plan. The applicant will not be able to move any dirt in this space until he has completed those pathways in the existing phases. He has to complete the pathways in this new section before he gets the ninth building permit in the new phase. He believes the concerns raised in August have been adequately addressed.

At this time, the public hearing was opened.

Mr. Carl Seelman said he is a resident of Fontana. He has two concerns about Glenn Brooks' plan for the pathways. One is because it is next to his house. He read Item 10 "At the transformer shown below, the transformer is to be moved where the trail ... for its full width to one side after easements are obtained." He said on one side of the trail is his property. He feels that he may be forced to give up his property to put a trail on it and that is of concern. Item No. 6 refers to 10 percent and he does not know what that number means. He assumes that 10 percent means that in 10 feet it can only go up one foot. It says that if that happens, stairs or realignments would be provided subject to the approval of the erosion control officer or the County Engineer. He said realignment to him means moving the path onto somebody's private property, and stairs means it will be inconvenient for people to push strollers up. He is concerned about the safety of the neighborhood. He sees a lot of strollers and women and children walking up the streets, partly because the paths are only partially completed. The residents have been asked not to use the paths which are not feasible and safe for people to walk on at this time.

Ms. Jeanne Anderson said she is a member of the Fontana Board of Directors Homeowners' Association. She wanted to reiterate their thanks to County staff for drawing up a plan and getting this into the proffers so the paths can be completed before work on 4C is started. However, even with a fully functioning path system, it is not a replacement for sidewalks, curb and gutter. She asked that the County keep this in mind when the Cascadia request comes in for approval. Their roads are substandard

and hopefully the pathways when finished will be useful, but they are not a replacement for a sidewalk system and will not alleviate their concerns about the road system.

With no one else from the public rising to speak, the hearing was closed and the matter placed before the Board.

Mr. Rooker asked if Mr. Brooks could address the Board about the pathway.

Mr. Glen Brooks, County Engineer, said there were two issues, one concerning a transformer and the other stairs. Ten percent may be low, but the idea was to leave some discretion so they could try and follow the plan. There are two locations on the plan where staff feels stairs are necessary, but tried to avoid requiring them everywhere else. This plan was intended to show the routes and then work on the details in the field because there is not an up-to-date survey of the property.

Mr. Rooker said as to the question of taking someone's property, the County does not intend to exercise eminent domain with respect to this pathway, so the applicant would have to work out a private agreement with the property owner. Mr. Davis said the burden would be on the developer to work out an acceptable agreement with the property owner.

Mr. Brooks said at this time there seems to be no alternative other than to move the transformer or to move the trail.

Mr. Boyd asked about the two locations which require steps. Mr. Brooks drew the locations on a copy of the plan. He then explained the use of steps in the plan and what type of steps might be used.

Ms. Mallek asked about the use of a wooden ramp such as those used at beaches. Mr. Brooks said there would be a worry about the longevity of such ramps. Ms. Mallek said she thinks it would be far better than stairs because it could be used by bikers. Mr. Brooks said there is flexibility in the plan to do something like that.

Ms. Mallek asked if the roads in the existing subdivision have been accepted into the State Highway System. Mr. Brooks said most of them have been.

Mr. Rooker said this application is a good example of how far the County has come with respect to the standards it requires. Most of the public comments received had to do with the fact that the subdivision was not built to the standards required at this time with respect to sidewalks, street trees, curb and gutter, etc. Mr. Cilimberg said everybody has to recognize that this development is on the side of a mountain. That poses a great challenge to putting in a system like the one being discussed. He said Mr. Brooks tried to come up with something that will work as a retrofit to what everybody wants to accomplish. It is not easy to make that happen in this kind of terrain.

Mr. Boyd said the roads are very narrow and with the sidewalks he is fearful a tremendous amount of traffic will be created through there when the roads are interconnected. With the amount of density being put in there with the addition of West Ashcroft, Lake Ridge, Ryan Homes, etc., the narrow roads scare him.

Mr. Rooker said there were people on the Board who did not support imposition of the standards and a lot of the development community said at one time that these standards should not be adopted. What the Board is seeing now is that the community wants and demands these standards. If standards are not put into place, problems are created when links are created. He thinks the Board has done good work getting to where it is now with respect to the standards being required at this time.

Ms. Mallek suggested that traffic calming measures might make it less appealing for people to speed if the connection is opened. A connection will provide benefits for getting emergency people through without having to go out to Route 20.

Ms. Thomas said that is a Catch-22 because the present residents will have to go over the speed bumps or whatever traffic calming is put into place. She lives next to a subdivision which has six speed bumps so has a feeling about what that does to the present occupants. She asked Mr. Boyd if he was suggesting that this petition not be approved.

Mr. Boyd said "no", but the Board will need to be careful when the Cascadia petition is brought back for approval. He is worried about where it will connect to Fontana. If it can be connected at the bottom of the hill near the Montessori School, that will reduce some of the traffic through the neighborhood. He then offered **motion** to approve ZMA-2004-018 inclusive of the proffers dated February 24, 2008, and signed on March 13, 2008.

The motion was **seconded** by Mr. Slutzky. Roll was called, and the motion carried by the following recorded vote:

AYES: Ms. Mallek, Mr. Rooker, Mr. Slutzky, Ms. Thomas, Mr. Boyd and Mr. Dorrier.  
NAYS: None.

(Note: The proffers are set out in full below.)

Original Proffer \_\_\_\_\_  
Amended Proffer \_\_\_\_\_  
(Amendment # I to ZMA 94-06)

### PROFFER FORM FOR FONTANA PHASE 4C

Date: February 24, 2008  
ZMA # 04-18  
Tax Map and Parcel Number Tax Map 78E, Parcel A  
17.15 Acres to be rezoned from R1, R4, RA to R4

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, the Owner hereby voluntarily proffers the conditions listed below which shall be applied to the property, if rezoned. These conditions are proffered as a part of the requested rezoning and it is acknowledged that such conditions are reasonable.

1. **Conformity with Plans:** Fontana Phase 4C shall be developed in general accord with the plans entitled, "Fontana — Phase 4C Rezoning Plan," prepared by Terra Engineering and Land Solutions, dated, July 30, 2007, a copy of which is attached hereto as Exhibit A, (the "Plan"). No more than thirty-four (34) dwelling units shall be developed in Fontana Phase 4C.
2. **Final Grading Plan:** The Owner shall submit a final grading plan meeting the requirements of this section (hereinafter, the "Final Grading Plan") with the application for each subdivision of the residential units shown on the Plan identified in Proffer 1 above. The Final Grading Plan shall show existing and proposed topographic features to be considered in the development of the proposed subdivision. The Final Grading Plan shall be approved by the County Engineer prior to the approval of the first preliminary subdivision plat. The subdivision shall be graded as shown on the approved Final Grading Plan. No certificate of occupancy shall be issued for any dwelling on a lot where the County Engineer has determined the lot is not graded consistent with the approved Final Grading Plan. The Final Grading Plan shall satisfy the following:
  - A. The Final Grading Plan shall show all proposed streets, building sites, surface drainage, driveways, trails, and other features the County Engineer determines are needed to verify that the Plan satisfies the requirements of this proffer.
  - B. The Final Grading Plan shall be drawn to scale not greater than one (1) inch equals fifty (50) feet.
  - C. All proposed grading shall be shown at contour intervals not greater than two (2) feet.
  - D. All concentrated surface drainages over lots shall be clearly shown with the proposed grading. All proposed grading shall be shown to assure that surface drainage can provide adequate relief from flooding of dwellings in the event a storm sewer fails. Graded slopes on lots proposed to be planted with turf grasses (lawns) shall not exceed a gradient of three (3) feet horizontal distance for each one (1) foot of vertical rise or fall (3:1). Steeper slopes shall be vegetated with low maintenance vegetation as determined to be appropriate by the County's program authority in its approval of an erosion and sediment control plan for the land disturbing activity. These steeper slopes shall not exceed a gradient of two (2) feet of horizontal distance for each one (1) foot of vertical rise or fall (2:1), unless the County Engineer finds that the grading recommendations for steeper slopes have adequately addressed the impacts.
  - E. Surface drainage from one-half (1/2) acre of land or from three (3) or more lots, whichever is greater in area, shall be collected in a storm sewer or directed to a drainage way outside of the lots.
  - F. All drainage from streets shall be carried across lots in a storm sewer to a point beyond the rear of the building site.
  - G. The Final Grading Plan shall demonstrate that an area at least ten (10) feet in width, or to the lot line if the distance is less than ten (10) feet, from the portion of the structure facing the street has grades no steeper than ten (10) percent adjacent to possible entrances that shall not be served by a stairway. This graded area also shall extend from the entrances to the driveways or walkways connecting the dwelling to the street.
  - H. Any requirement of this condition may be waived by the County Engineer by submitting a waiver request with the preliminary plat. If such a request is made, it shall include: (i) a justification for the request contained in a certified engineer's report; (ii) a vicinity map showing a larger street network at a scale no smaller than one (1) inch equals six hundred (600) feet; (iii) a conceptual plan at a scale

no smaller than one (1) inch equals two hundred (200) feet showing surveyed boundaries of the property; (iv) topography of the property at five (5) foot intervals for the property being subdivided and on abutting lands to a distance of five hundred (500) feet from the boundary line or a lesser distance determined to be sufficient by the agent; (v) the locations of streams, stream buffers, steep slopes, floodplains, known wetlands; and (vi) the proposed layout of streets and lots, unit types, uses, and location of parking, as applicable. In reviewing a waiver request, the County Engineer shall consider whether the alternative proposed by the Owner satisfies the purpose of the requirement to be waived to at least an equivalent degree. In approving a waiver, the County Engineer shall find that requiring compliance with the requirement of this condition would not forward the purposes of the County's Subdivision and Water Protection Ordinances or otherwise serve the public interest; and granting the waiver would not be detrimental to the public health, safety or welfare, to the orderly development of the Project, and to the land adjacent thereto,

- I. The Owner may request that the Plan be amended at any time. All amendments shall be subject to the review and approval by the County Engineer.
3. **Affordable Housing:** The Owner shall contribute \$2,809.00 cash per dwelling unit, up to an aggregate maximum contribution of \$95,500.00 (equivalent to \$19,100 cash per unit as cash in lieu of five (5) affordable dwelling units) to the County for the purpose of affordable housing. Each cash contribution shall be due and payable with each application for a building permit. Each cash contribution shall be used for the purpose of funding affordable housing programs in Albemarle County. If this cash contribution has not been exhausted by the County for the stated purpose within ten (10) years after the last payment of the contribution, all unexpended funds shall be applied to any public use serving Neighborhood 3 Pantops.
4. **Trees:** At least one hundred-seventy (170) trees shall be planted or retained on the subdivided lots. Trees shall be distributed among all lots with a minimum of 5 trees per lot. The five trees to be counted on each lot shall be marked in the field for inspection purposes. The owner shall not request a certificate of occupancy until a final zoning inspection is performed and all required trees are in place.

**Standard for trees to be retained:** Deciduous trees to be retained shall be at least a 1 1/2 inch caliper d.b.h. and non-deciduous trees shall be at least four (4) feet in height. All trees to be retained shall be identified on erosion and sediment control plans, final grading plans, and road plans. A tree conservation plan in accordance with Section 32.7.9.4. of the Zoning Ordinance shall be submitted and approved prior to approval of any erosion and sediment control permit for grading.

**Standards for trees to be planted:** All trees shall be planted in accordance with either the standardized landscape specifications jointly adopted by the Virginia Nurserymen's Association, the Virginia Society of Landscape Designers and the Virginia Chapter of the American Society of Landscape Architects, or the road and bridge specifications of the Virginia Department of Transportation. At planting, deciduous trees shall be at least a 1 1/2 inches in caliper d.b.h.; non-deciduous trees shall be at least four (4) feet in height.
5. **Pedestrian Paths:** Pedestrian paths shown on the Plan shall be constructed according to the standards for Class A Type I pedestrian paths in the Albemarle County Design Standards Manual. The Owner shall not request that the County issue the ninth (9th) building permit until the paths have been completed to the satisfaction of the County Engineer.
6. **Cash proffer:** The Owner shall contribute \$17,500 cash to the County for each unit constructed within the Property for the purpose of mitigating impacts from the development. Each cash contribution shall be used for improvements for schools, libraries, public safety, parks and transportation as identified in the County's Capital Improvements Program. The cash contribution shall be paid in increments of \$17,500 for each unit prior to or at the time of issuance of a building permit for each unit. If this cash contribution has not been exhausted by the County for the stated purpose within five (5) years after the date, all unexpended funds shall be applied to any public use serving Neighborhood 3 Pantops.
7. **Annual Adjustment of Cash Proffers:** Beginning January 1, 2008, the amount of each cash contribution required herein shall be adjusted annually until paid, to reflect any increase or decrease for the preceding calendar year in the Marshall and Swift Building Cost Index (the "MSI"). In no event shall any cash contribution amount be adjusted to a sum less than the amount initially established by these proffers. The annual adjustment shall be made by multiplying the proffered cash contribution amount for the preceding year by a fraction, the numerator of which shall be the Index as of December 1 in the preceding calendar year, and the denominator of which shall be the Index as of December 1 in the year preceding the calendar year most recently ended. For each cash contribution that is being paid in increments, the unpaid incremental payments shall be correspondingly adjusted each year.

8. **Final Approval:** The Owner shall not submit an application for an erosion and sediment control permit for grading until improvements have been completed for phases 1, 2, 3, and 4A and 4B of the Fontana Subdivision and all bonds held by the County in conjunction with subdivision, stormwater management, and erosion control for prior phases have been released by the County.
9. **Architectural Standards:** The Owner shall require as part of the covenants for Fontana Phase 4C that all structures be constructed using medium shaded earth-tone colors for façade treatment of the buildings and dark, non-reflective materials for roofs. The colors for the façade treatments and the colors and materials for the roofs shall be subject to prior approval by the Director of Planning.
10. **Plan for Pedestrian Paths for Phases 1 2,3, 4A and 4B of Fontana Subdivision:** The Owner shall construct pedestrian paths in accordance with the plan entitled "Fontana Pedestrian Path Plan," prepared by Glenn Brooks 2-25-08, pages 1, 2 and 3. These paths shall be completed to the satisfaction of the County Engineer prior to grading in Phase 4C.

(Signed) A. M. Nichols

Signature of Owner

A. M. Nichols, Trustee  
Fontana Land Trust

3/13/08

Date

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Agenda Item No. 12. **Public Hearing:** ZMA 2006-14, Professional Office Building at Hydraulic & Georgetown Rds (Signs #58 & 65).

**Proposal:** Rezone 1.051 acres from C-1 Commercial zoning district which allows retail sales and service uses; and residential use by special use permit (15 units/acre) to NMD Neighborhood Model District zoning district which allows residential (3-34 units/acre) mixed with commercial, service and industrial uses. Approx. 20,000 sq ft building.

**Proffers:** Yes.

**Existing Comprehensive Plan Land Use/Density:** Rural Areas - preserve and protect agricultural, forestal, open space and natural, historic and scenic resources/density (.5 unit/acre).

**Entrance Corridor:** Yes.

**Location:** Southwest corner of Georgetown/Hydraulic Roads intersection.

**Tax Map/Parcel:** 60F/3.

**Magisterial District:** Jack Jouett.

(Notice of this public hearing was advertised in the Daily Progress on March 3 and March 10, 2008.)

Mr. Cilimberg summarized the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He said the location of this project is in the Rural Areas on the edge of the Development Area. Some years ago the property was rezoned for a commercial use and approved specifically for a gasoline station. That plan was never pursued, but a few years ago a site plan was presented that required a number of waivers, and the plan was never exercised. The current application is for a change of the allowed use at this location, which would be accomplished through a rezoning from the current C-1 designation to NMD to develop a professional office building of approximately 16,800 square feet. The request is for NMD in order to achieve some design aspects preferable in this location. The site falls back significantly from the roads to the rear of the property; it is in the drainage basin of the South Fork Rivanna Reservoir.

Mr. Cilimberg said the plan calls for the development to occur on the front two-thirds of the property with parking under the building. An area adjacent to the parking would be preserved and also there would be a preservation area to the rear of the property. There is a specific proffer which addresses replacement of trees in the conservation area. No trees would be removed in the preservation area on the rear of the property. There is a reference in the staff's report to a critical slopes waiver, and he pointed out that area on the plan. Along the front of the property, there would be sidewalk reconstruction because there is a path and sidewalk there now which would be continued between the adjacent properties along Hydraulic and Georgetown Roads, and there would be plantings along the front of the building. He said the applicant has had to deal with the existing waterline along the front of the property, and that has affected the design of the front of the building.

Mr. Cilimberg said the Planning Commission recommended approval but with a recommendation that several issues be resolved. Those issues have been addressed. The general development plan now delineates the conservation and preservation areas. The conservation area is overlaid with the existing conditions noting trees to be removed. Replacement for trees to be removed from the conservation area will be two trees of similar species or quality for each tree removed or destroyed. The trees to be replaced are those in excess of twelve inches and the replacement trees will be not less than two and one-half inches. The current proffers and Code of Development have been revised. He then handed to the Board members the final copy of these materials.

Mr. Cilimberg said the recommendation is for approval of the zoning map amendment inclusive of proffers dated and signed March 18, 2008, the Code of Development dated February 25, 2008, and the General Development Plan dated January 19, 2007, revised February 25, 2008. There are also five waivers recommended for approval by the Commission. One waiver allows this planned development in the rural areas, or otherwise it should be in a development area. To accomplish what is considered to be a preferable use and design of this location, a planned development approach has been taken and that

requires a waiver of Section 8.4 of the Zoning Ordinance. A waiver is required for reduction of the rear setback adjacent to the RA from 50 feet to 47 1/2 feet. A critical slopes waiver is required. Also, a waiver to allow one use rather than a mixture of uses and housing types in this location, as just offices are planned for the site, although the applicant has also mentioned some limited support commercial. A waiver is required to allow reduction of amenities from the required 20 percent of the site to 11 percent of the site based on site constraints. Amenities are supposed to be usable open space, but site constraints do not allow the applicant to achieve the 20 percent. They did provide a sidewalk and they are adjacent to other areas including the school complex.

Mr. Rooker asked the size of the preservation area. Mr. Cilimberg said it is probably one-third of the site. The total acreage is a little over one acre. He offered to answer questions.

Ms. Thomas said there was mention of a bus shelter, but she does not see it on the plan. Mr. Davis said Proffer No. 2 references that shelter, but apparently it has not been finally located. That would be a requirement of the site plan.

Ms. Thomas asked about a water retention basin which is mentioned in the report. Mr. Cilimberg said the site has been evaluated as to its ability to handle the basin, but the basin is not shown on the plan.

At this time, Mr. Boyd asked the applicant to speak.

Mr. Keith Woodard said the location for the bus stop will be determined by VDOT and the County jointly. If that can be determined prior to the time they submit the final site plan, or during construction, it is their responsibility to build it either on their property or just off of their property. In the proffers they have agreed to pay a certain amount with an escalation clause in case it ends up with someone else having to build the shelter. With regards to drainage, the current site plan shows two filter units as well as under parking lot drainage structures, piping and such. Water will be both retained and filtered on site before being released into the watershed. They have worked with the RWSA, ACSA, Dominion Power, VDOT and the County planners to achieve the plan presented. It is a tight and challenging site, but they have come up with something that will add to that intersection and still accommodate all the activity that needs to flow around it. He offered to answer questions.

Mr. Boyd then opened the public hearing. With no one from the public rising to speak, the hearing was closed and the matter placed before the Board.

Mr. Rooker said originally this site was approved for a gas station as a sole use. Without a rezoning, there was no flexibility to do anything else on the site. When VDOT condemned land for the widening of Hydraulic Road, there was a gas station on the adjacent property to the north. VDOT took their gas tanks so it could no longer operate when the sidewalks were installed. The County then agreed to a gas station being built on the site so the business could continue, but it never was continued. This is a much better use of the property and he is glad to see this plan come forward. He then **moved** approval of ZMA-2006-014, inclusive of the proffers dated and signed March 18, 2008, the Code of Development dated February 25, 2008, and the General Development Plan dated January 19, 2007, revised February 25, 2008.

The motion was **seconded** by Mr. Dorrier. Roll was called, and the motion carried by the following recorded vote:

AYES: Ms. Mallek, Mr. Rooker, Mr. Slutzky, Ms. Thomas, Mr. Boyd and Mr. Dorrier.

NAYS: None.

(**Note:** The proffers are set out in full below.)

Original Proffer X  
Amendment

#### PROFFER FORM

Date of Proffer Signature: 03-18-2008  
ZMA: #06-014  
Tax Map and Parcel Number: 60F-3  
1.051 Acres to be rezoned from C-1 to NMD

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, the owner, or its duly authorized agent, hereby voluntarily proffers the conditions listed below which shall be applied to the property, if rezoned with the offered plans approved for development. These conditions are proffered as a part of the requested rezoning and it is acknowledged that the conditions are reasonable.

1. The Owner shall install a permanent 5-bike bicycle rack as shown on the revised plan entitled, "General Development Plan page 2 of 4", dated 1-19-07 and last revised 2-25-08, hereinafter referred to as the "Plan". Installation of the bicycle rack shall be completed prior to the issuance of the certificate of occupancy for the building to be erected on the property.

2. The Owner shall construct one bus shelter as shown on the Plan with the dimensions as follows: nine foot (9') - wide shelter with six foot (6') all metal bench with back. Construction of the bus shelter shall be completed prior to the issuance of the certificate of occupancy for the building to be erected on the property. If VDOT and the County transportation planner do not determine the location of the bus shelter prior to final site plan approval, then upon the subsequent determination of the shelter location by VDOT and the County transportation planner, and upon written request by the County, the Owner shall construct the shelter and metal bench in the selected location at its sole expense, but not to exceed seven thousand eight hundred dollars (\$7,800). The Owner shall complete construction of the shelter and bench within 90 days after the date of the written request by the County.
3. Each building to be constructed on the property shall be rated a minimum of "Certified" (or demonstrated to the County's Director of Community Development's satisfaction to be eligible to receive such certification) under the LEED-NC Green Building Rating System for New Construction and Major Renovations, Version 2.2 (October 2005) or the LEED Green Building Rating System for Core & Shell Development, Version 2.0 (July 2006), as applicable (collectively, the "LEED Compliant Commercial Space"). Prior to issuance of the building permit for any proposed LEED compliant space, the Owner shall provide to the County Director of Community Development a certification from a LEED certified architect that such space, if constructed in accordance with the building plans, is designed to achieve the minimum "Certified" rating under LEED provided in this Proffer 3. Before the Owner requests a certificate of occupancy for any building for which a LEED certified architect rendered such a certificate, the Owner shall submit to the County's Director of Community Development a written statement from the architect that the building was built to the plans on which the opinion was based. For each building containing LEED compliant space, the Owner shall provide a copy of the LEED certification to the County's Director of Community Development within one (1) year after the date the certificate of occupancy was issued for that building.
4. The preliminary and final site plan shall delineate the Conservation and Preservation Areas on the property. The Owner shall replace trees that must be removed in Conservation Areas. Replacement shall be two (2) trees of similar species or quality for each removed or destroyed tree. All tree replacement shall be in accord with the final landscape plan for the final site plan for the Property. The Owner's obligation to replace trees within the Conservation Areas shall be completed within the following planting season. The trees to be replaced must be in excess of 12" dbh and shall be replaced with trees of the same or a similar species or quality of not less than 2.5" dbh, as determined by the County's Director of Community Development.

CKW2 LLC  
(Signed) Chris Kabbash  
By: Chris Kabbash  
Its Member

03/18/2008

**Motion** was then offered by Mr. Rooker to approve the five waivers for ZMA-2006-014, Professional Office Building at Hydraulic & Georgetown Roads, as recommended by staff and the Planning Commission. The motion as **seconded** by Ms. Thomas. Roll was called, and the motion carried by the following recorded vote:

AYES: Ms. Mallek, Mr. Rooker, Mr. Slutzky, Ms. Thomas, Mr. Boyd and Mr. Dorrier.  
NAYS: None.

**(Note:** The waivers are set out in full below.)

1. Waiver of Section 8.4 of the Zoning Ordinance allowing this Planned Development in the Rural Areas (permitted by Section 8.2);
2. Reduction of the rear setback adjacent to RA from 50' to 47.5';
3. Critical slopes waiver;
4. Waiver of Section 20A.8 to allow one use rather than a mixture of uses and housing types; and
5. Waiver of Section 20A.9.b to allow reduction of amenities from the required 20 percent to 11 percent of the site.

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Agenda Item No. 13. **Public Hearing:** SP-2007-27, Emmanuel Episcopal Church Amendment (Sign #4).

Proposal: Site reorganization including expanded parking, future office/education building, columbarium, memorial garden.

Zoning Category/General Usage: RA-Rural Areas: agricultural, forestal and fishery uses; residential density (0.5 unit/acre).

Section: 10.2.2(35).

Comprehensive Plan Land Use/Density: Rural Areas - preserve and protect agricultural, forestal, open space and natural, historic and scenic resources/density (.5 unit/acre).

Entrance Corridor: Yes.

Location: 7599 Rockfish Gap Turnpike (Rt 250), Greenwood.

Tax Map/Parcel: 70/12, 13 & 13A.

Magisterial District: White Hall.

(Notice of this public hearing was advertised in the Daily Progress on March 3 and March 10, 2008.)

Mr. Cilimberg summarized the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. This is a request for some expansion and improvements at the existing church complex on Route 250 West. It also will incorporate a building which previously has not been part of the church's area in the special use permit. There will be site reorganization for expanded parking, a future fellowship building, a columbarium, and the existing education building will be brought into the special use permit and brought into compliance. There is waiver of disturbance of critical slopes for future building and a portion of the parking area which was granted by the Planning Commission. The Board is dealing with the special use permit tonight. He said the waiver had to do with a proposed building and he pointed out that location on the plan. He said there will be reorganization of parking on the site and some trees will be taken.

Mr. Cilimberg showed pictures of the site and the inside of the existing church. He said this is a historically significant church so the proposal is sensitive to its historic surroundings; the proposal is supported by the Virginia Department of Historic Resources. The reconfigured parking will avoid destruction of some mature trees. No changes to the historic buildings on the site are proposed. A couple of unfavorable factors to the proposal are: some mature trees will be removed in order to accommodate some parking areas; and, some parking areas will be located closer to Route 250 in front of the cemetery and the education building.

Mr. Cilimberg said staff and the Planning Commission feel it is a balanced proposal and recommended approval subject to 10 conditions including an adjustment to Condition No. 7 which notes that construction is related to the new building, and the columbarium. He offered to answer questions.

Mr. Slutzky asked why parking at the education building was not put at the back of the building. Mr. Cilimberg said it may be for the purpose of access because that part of the property has a separate access point. There is also a walking path up to the other structures. He suggested the applicant speak to the parking arrangements.

At this time, Mr. Boyd asked the applicant to speak.

Mr. Doug Gilpin said he is a member of the church and has been their architect since 1976. He said Mr. Mark Lewerth from LPDA is also present to answer technical questions. He said the church goes back to 1861. The basic church structure was built in 1917 and it was expanded in the 1950s. They do not want to change the historic structure or the landscape. The request before the Board tonight is in response to the parishioners. The church has grown in membership. People park on the entrance drive and close to Route 250. They wanted a good comprehensive parking plan and also wanted to do some future planning. A great firm, LPDA, was hired and the church has been working with them for 15 or more months on this plan which responds to their desire to keep the site historic, and answers safety issues so the parishioners can get their cars into a parking place close to the church. In response to the question raised about parking, some members would like to have parking closer to the church. It is quite a distance and a change in elevation down into the other area mentioned. With regard to the access off of Route 250, it goes back to an old drive to the Greenwood Garage, circa 1940s or 1950s. That is why that access comes in at an odd angle. He said that Mr. Lewerth is available to answer questions.

Mr. Mark Lewerth said he would address Mr. Slutzky's comment. The building in question is a one-story brick rancher with a walkout basement. There is also a septic tank in the back.

Ms. Mallek asked if there is a grade change from the front door level. Mr. Lewerth said it is probably four or five feet; not a great distance.

Ms. Thomas asked about preservation of trees. Mr. Gilpin said many of the trees being taken down as part of the plan are in the forested area, and many are not a good species. None of the historic oaks will be removed.

Ms. Thomas said one of the conditions states that construction has to begin before March 19, 2013. She asked if that condition is satisfactory to the church. Mr. Gilpin said it is possible that construction could not begin until five years out, and maybe even longer. The County has given them a deadline and they will have to work with that.

Ms. Thomas asked if Mr. Gilpin prefers having a deadline. Mr. Gilpin said he would like for it to be a little more open. With the changes in the County, they may need the building in three years, but they have been wise in their growth pattern, but they need another building now.

Mr. Slutzky said the Board can extend that deadline beyond five years. Mr. Gilpin said that two years ago he guessed that the building would probably be seven to ten years out. He asked if the Board could give a ten-year deadline.

Mr. Boyd asked if the Board had to set a deadline. Mr. Davis said if the Board does not set a deadline, the ordinance sets it at two years. The ordinance allows the Board to extend that two-year period of time to whatever it feels is appropriate.

Mr. Slutzky said he has no problem with giving them ten years. Mr. Gilpin said the building is to be brick with a slate roof just like the other structures. Ten years would be very generous.

Ms. Thomas said that usually she hates to do something like that when there might be changes in the neighborhood during that period of time, but she does not think that would be a problem in this location. Mr. Cilimberg said there have been similar requests from other churches, but the longest time given to any of them has been five years. The Board would be setting a new precedent.

Ms. Thomas said she does not think it would be a precedent because this is such an isolated building that no neighborhood changes are contemplated around it.

Mr. Rooker said he does not see any public benefit to not giving the church ten years. The County has no interest in seeing this structure completed in a speedy manner.

Mr. Slutzky said the Board members can make it clear that this is not a precedent and the general rule will be the shorter duration.

Ms. Thomas said questions were raised at the Planning Commission as to what is meant by "limiting the amount of outdoor light pollution." She asked if that has been clarified for the applicant. Mr. Lewerth said it has not been clarified. It seems to be a fairly vague condition. He said they would be happy to adhere to a standard, but what is "too much light pollution" in the rural areas. He thought the intention was to put limitations on the number of lights on the site, or the foot candle illuminations. They have no intent to light this site like a gas station, but he does not want to be in a situation where they are hung up over language.

Ms. Thomas said for other rural churches, the Board has pointed out that lighting pathways with bollards instead of overhead lights, or the full cutoff lights, is required, as is limited glare and luminosity. She thinks the Zoning Administrator knows how to keep lighting from affecting the dark skies of the surrounding rural area. She is comfortable with leaving the condition as recommended. Mr. Cilimberg said this is the condition the Board has used for the last several months. He said staff will be reviewing this issue to see if it can come up with some standards. He said this church will be subject to Entrance Corridor review. The whole lighting plan falls under the ARB's review, so he doubts they will permit anything inconsistent with the Board's intent. It will boil down to the ARB's requirements, rather than anything from the Zoning Administrator.

Mr. Lewerth said he knew the church was subject to Entrance Corridor review, but at this point he understands the request is subject to staff review. Mr. Cilimberg said staff is very experienced in dealing with lighting plans.

At this time, Mr. Boyd opened the public hearing. With no one from the public rising to speak, the hearing was closed, and the matter placed before the Board.

**Motion** was immediately offered by Ms. Mallek to approve SP-2007-027, Emmanuel Episcopal Church, subject to the 10 conditions recommended, but amending Condition No. 7 to extend the deadline to 2018.

The motion was **seconded** by Ms. Thomas. Roll was called, and the motion carried by the following recorded vote:

AYES: Ms. Mallek, Mr. Rooker, Mr. Slutzky, Ms. Thomas, Mr. Boyd and Mr. Dorrier.

NAYS: None.

**(Note:** The conditions as approved are set out in full below.)

1. There shall be no day care or private school on site without a separate special use permit;
2. Approval from the Health Department for the septic system and well shall be required prior to approval of an issuance of a building permit;
3. Future burials in the cemetery shall be limited to areas outside the one hundred (100) year floodplain;
4. Expansion of the mausoleum structure shall require amendment to this special use permit. Tombs inside may be added;
5. Any future expansion of the church structures and/or size of assembly area shall require amendment of this special use permit;
6. Special Use Permit SP-2007-027, Emmanuel Episcopal Church, shall be developed in general accord with the concept Application Plan, provided by the applicant and received December 21, 2007 (Attachment A – on file). However, the Zoning Administrator may approve revisions to the concept Application Plan to allow compliance with the Zoning Ordinance;
7. Construction of the new building and columbarium, as identified on the concept site plan (Attachment A – on file) shall commence on or before March 19, 2018, or this special use permit shall be deemed abandoned and the authority granted hereunder shall thereupon terminate;
8. Tree protection measures shall be required on the erosion and sediment control plan in accordance with the Virginia Erosion and Sediment Control Handbook and the tree protection measures shall be installed prior to any land disturbing activity;

9. The parking lot shall be paved using prime and double seal surface or, at the option of the permittee, another surface material approved by the County Engineer deemed equivalent or better than a prime and double seal surface in regard to strength, durability, sustainability and long-term maintenance; and
10. All outdoor lighting shall be arranged or shielded to reflect light away from the abutting properties. A lighting plan reasonably limiting the amount of adverse outdoor light pollution shall be submitted to the Zoning Administrator for approval as a condition of site plan approval.

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Agenda Item No. 14. **Public Hearing:** ZMA 2007-011, Patterson Subdivision (Signs #43 & 61).

Proposal: Rezone 3.52 acres from R1-Residential (1 unit/acre) to R6-Residential (6 units/acre) to allow for up to 10 dwelling units.

Proffers: Yes.

Existing Comprehensive Plan Land Use/Density: Community of Crozet; CT-3 Urban Edge: single family residential (net 3.5 - 6.5 units/acre) supporting uses such as religious institutions and schools and other small-scale nonresidential uses.

Entrance Corridor: No.

Location: Between Lanetown Rd and Lanetown Way approximately 400 yards from the intersection of Mint Springs Rd, Lanetown Rd, and Railroad Ave.

Tax Map/Parcel: 55/63.

Magisterial District: White Hall.

(Notice of this public hearing was advertised in the Daily Progress on March 3 and March 10, 2008.)

Mr. Cilimberg summarized the staff's report which is on file in the Clerk's Office with the permanent records of the Board of Supervisors. He said this project came to the Board in December, 2007 after a recommendation for denial by the Planning Commission. The applicant asked that the request be referred to the Commission, and that request was granted. The Commission held another hearing, and the request is again before the Board. The request is to rezone R-1 property to R-6 for construction of 10 units. The property is in the Crozet Development Area designated CT-3, Urban Edge, within what are called hamlets. The subject property is to the west of Gray Rock North. Orchard Acres is to the east. He showed an aerial photo and pointed out an existing house with a driveway on Lanetown Road. There are other dwellings on Lanetown Road with driveways; Lanetown Way intersects Lanetown Road.

Mr. Cilimberg said the edge of the Crozet Development Area runs along Lanetown Road. The CT-3 designation is over most of the site, but the area of the site along Lanetown Road is actually designated CT-1 in order to represent its edge condition next to the rural areas. He said the Planning Commission recommended denial 4:2:1 based on issues which included density not being appropriate based on the Crozet Master Plan's recommendations for the edge areas of the Crozet Development Area. Also, the addition of traffic to Lanetown Road and Lanetown Way is a concern. Some Commissioners felt the applicant should have had an opportunity to request deferral in order to address items of concern. Some agreed that the proposal could meet the 10,000 square foot average lot size recommendation of the Crozet Master Plan land use designation thereby reducing the overall density of the project, that the bio-filter and green space area adjacent to Lanetown Way should be increased, and the new streets to serve the new development should include sidewalks. There was a varied opinion among the Commissioners as to the appropriateness of the project.

Mr. Cilimberg said staff included in the Board's Executive Summary, its analysis of the Crozet Master Plan. Some of the Commissioners believed the entire area was an edge condition, so therefore the density allowed by CT-3 would not be appropriate. Staff felt the CT-3 designation given to this part of the Crozet community included the possibility of allowing those densities CT-3 allows, but the edge area on the north side of the property should not be developed. The applicant has provided a concept plan and has proffered the plan that shows access at Lanetown Way, shows the location of two bio-filter areas plus one along Lanetown Road which provides for that separation from Lanetown and the lots in the subdivision. It would provide for a future connection to the west for properties that might develop and it lowers the number of lots the Commission saw from 12 to 10 with an average lot size of 10,000 square feet.

Mr. Cilimberg said the applicant made cash proffers for affordable housing. They have no more than 10 dwelling units with up to two single-family attached. At the Planning Commission's last hearing, staff recommended approval of the rezoning since it appeared that the outstanding concerns of the Commission had been addressed, but the Commission recommended denial. The applicant has since addressed some of those outstanding issues, particularly lowering the number of lots to make it in keeping with the CT-3 in a hamlet area. However, the proposal has not been modified to the extent that it provides an edge area density for the entire property. If the Board should find the rezoning is approvable as currently proposed, staff recommends approval be inclusive of the proffers, including the proffered Concept Plan. He said that on the Concept Plan the roads within the development would be subject to normal urban standards.

Mr. Rooker asked if sidewalks would be provided. Mr. Cilimberg said unless the Commission decided to waive that requirement. That would be decided during the subdivision process.

Mr. Dorrier asked that Mr. Cilimberg explain the mention that the development does not comply with edge requirements. Mr. Cilimberg said there are a couple of interpretations as to the edge condition.

Based on the designations shown on the maps, as well as wording in the Comprehensive Plan, staff feels the site is predominantly CT-3, but the edge condition in the Master Plan has been designated as CT-1. Essentially no development would be allowed in that area. Some of the Commissioners felt this land on the edge of Crozet is an edge condition, therefore, the density should be at the lowest end of CT-3 which would restrict the number of developable lots.

Mr. Rooker asked that Mr. Cilimberg point out the location of Gray Rock on a map. He asked if Gray Rock North is in an edge condition. Mr. Cilimberg said it is designated as a CT-4 area.

Mr. Rooker said Gray Rock North butts up against the same boundary to the development area so under that interpretation the whole parcel on the back would be an edge parcel. Mr. Davis said the parcel pre-existed the Master Plan.

Mr. Rooker asked how far back the edge goes under the interpretation today. It seems ridiculous to him. Mr. Cilimberg said staff did not interpret the edge to be as extensive as what was noted at the Planning Commission's hearing.

Mr. Rooker said evidently staff does not agree with that interpretation of the Master Plan for this location. Mr. Cilimberg said staff felt the edge was addressed through the CT-1 zoning along Lanetown Road and the rest at CT-3 was eligible for development at that density.

Mr. Slutzky said staff's interpretation makes sense to him. If that is the consensus tonight, it should be made clear to the Planning Commission that is how the Board views it.

Ms. Mallek said citizens are confused because sometimes the Comprehensive Plan map colors do not match the text. Legal staff told her the text could be used to make an interpretation as much as the map.

Mr. Boyd asked what the text says.

Ms. Mallek said it calls the area a "fringe" area which means that at the edges compatibility with what is on the other side of the street needs to be taken into consideration.

Mr. Slutzky asked if the text clarifies the meaning of "edge." He thinks staff's interpretation is that it is the thin edge along the road, but the Planning Commission's interpretation of edge is that it is the entire property along the edge of the Crozet growth area.

Ms. Mallek said for the "fringe area" the plan reads: "Most of the periphery of the development area is recommended for a gross density of development consistent with the rural area designation outside it." It has been explained to her that considering all the open space, the large lots and the separation of houses on the other side of this small rural road at the end of a long accessway, it was part of the step down in density between the core of the growth area and the outside.

Mr. Slutzky asked why the designation for this entire parcel was not a lower density.

Mr. Cilimberg said there was a question of how deep to go into this property to reflect the other side of the road. He thinks some of the Commissioners felt the area along Lanetown Road should reflect what is on the other side. Their view of the fringe condition was much greater than represented by the colors on the map.

Ms. Thomas asked how this correlates with the Neighborhood Model which says that the edges of the development areas should be distinct lines where there is density and then it stops. Mr. Cilimberg said he thinks that was reflected in the colors on the map. Whether or not to have defined edges or tapered edges has been argued for a long time. If the edges are to be tapered, the Master Plan does not reflect that as the intent. The words in the Plan are about "edge" and "transition" into the adjacent rural areas. Colors and words have to be balanced as to how wide of an area that should be. That is what factored into a majority of the Commissioner's decision to recommend denial.

Mr. Slutzky said that over time members of the Planning Commission and the Board of Supervisors will change. That is the reason to have a master plan document that is clear in its purpose and intent. For those members who were not present at the time the original document was approved, they would know the intent so it could be honored. It is important that things like this be identified during implementation of a master plan. Since he was not on the Board during the earlier discussion, it appears that the definition of an edge is much narrower than the Commission applied in this case.

Ms. Thomas said she drove to the site and looked at Lanetown Road. It is a very rural road. It has no curb or gutter or shoulder. That is the road that would be used for traffic from the subdivision. Mr. Cilimberg said the character of the road itself was considered. When the Board discussed the North Pointe development it struggled with the issue of Pritchett Road which is on the edge of the development area.

Mr. Slutzky said there is a difference here because no traffic was going to be dumped onto Pritchett Lane at all. Mr. Cilimberg said that is true. In this case, traffic would use the new road built for Gray Rock and come out to Lanetown.

Mr. Boyd said Mr. Cilimberg mentioned the edge as being tapered or defined, but the problem is that there is no clear definition of a taper. To him it sounds as if the Planning Commission was

considering a taper as a parcel. Mr. Cilimberg said the Commission did not try to decide how much depth there should be. This was a condition it needed to address; in this case it became most of a parcel. There is nothing in the plan to define how much depth physically there should be on the edges of Crozet.

Mr. Rooker said there is nothing to say this is a fringe area except for a small strip. The words have to be merged with the map. In the first instance, what is an edge? He assumes the edge is designated by the map.

Mr. Boyd said it could be argued that the edge starts on the other side of the road.

Mr. Rooker said in order to depict the edge you have to go to the map. The words do not conflict with the map in that regard. The map defines the edge, and the words define what can be done with the edge.

Mr. Slutzky asked the meaning of CT-3 if it is not supposed to be the density of that designation. He does not understand the interpretation of the Planning Commission in this instance.

Mr. Rooker said there is also the question concerning adequacy of the road to handle traffic. What is staff's view of the road and its ability to reasonably handle traffic from this new site along with current traffic? Mr. Cilimberg said staff relied on VDOT's comments. VDOT has been against accessing Lanetown Road directly from the site. They felt traffic could be managed coming from Lanetown Way, which is a public way, out to Lanetown Road.

Mr. Boyd asked if that is the only entrance to the property. Mr. Cilimberg said that at this time that is true. They have shown the possibility for western access through the Patterson Subdivision which also ends up taking Lanetown Way.

Ms. Mallek said this is where the effect on the current Gray Rock North residents is overwhelming. There could be 80 to 100 cars a day going onto the "J" shaped street that has no sidewalks or storm drains or street lights. She was there at dusk and kids were playing ball in the streets. She said Lanetown Way which runs through the middle of Gray Rock North was not designed to take on a lot more traffic. She is disappointed that VDOT said using this street is safer. It would not be safer for the people who live in the neighborhood. Lanetown Road is extremely rural and narrow. She thinks the Board has to take into consideration in some way the people who live there now.

Mr. Slutzky said as development areas are developed, the Board will always have to confront the timing sequence. The Board committed to this being a growth area so the County might have to absorb some of the cost of upgrading these roads. The Board will have to decide if it is serious about concentrating growth in the growth areas, or since there is not sufficient infrastructure, whether not to implement master planning. He thinks the appropriate outcome is to develop the growth areas the way the master plan contemplates it happening.

Ms. Mallek said there might be a further reduced number of lots that would bring this proposal into consistency with the square footage of lots in the existing area.

Mr. Slutzky said that is just second-guessing the densities the community supported for this site when they decided on master plan densities.

Mr. Rooker said if this proposal were reduced by one more lot it would conform with the lot sizes in Gray Rock of about 12,000 square feet.

Ms. Mallek said that has been a concern for the residents in Gray Rock.

Ms. Thomas said the applicant has proffered to provide one affordable house in the development.

At this time, Mr. Cilimberg handed to the Board members the current, acceptable and allowable proffers for the Board's public hearing.

Ms. Thomas said the Board can't allow a change in these proffers after opening the public hearing. She asked if there could be a public comment period first to see if there are any good ideas presented by the public. Mr. Davis said the Board can do that, but the risk goes to the applicant. If it were legally challenged and that was deemed to be an improper process, there is a risk any approval could be voided.

Ms. Thomas said for the public that a new restraint has been placed on the Board in that no changes can be made to proffers after the public hearing is opened. That seems to be ridiculous because the Board cannot respond to minor suggestions made by the public. Mr. Davis said it creates a potential theory that could be used to challenge the rezoning.

Mr. Slutzky said the Board is not saying that theory is sound, but it probably should avoid the opportunity for that to arise.

Mr. Rooker said the Board has been placed in a ridiculous situation where it can hold a public hearing, but cannot incorporate any comments into the proffers for the development without re-advertising and starting over.

At this time, Mr. Boyd asked the applicant to speak.

Mr. Cliff Fox said he is working with the Pattersons to get this proposal approved. Regarding the traffic issue, he met with VDOT to look at ways to move traffic to the western boundary, but it was not feasible given sight distance and other VDOT criteria. If there is a concern about traffic from adjoining neighborhoods using this road, the pipestem is about 72 feet wide running up the western boundary and it has the sight distance, so there could be relief on Lanetown Way. Obviously, a road out to Lanetown Road will not be extended until the adjacent property owner decides to do something with his property.

Mr. Fox said he was involved with the Waylands Grant rezoning. It came about almost simultaneously with the proposal on the southern half of the Gray Rock property. Gray Rock North was required to submit a rezoning request within six months of that approval. Interconnections were forced in the approval process between Waylands Grant and Gray Rock. The developer of Gray Rock North should have made the future residents of that development aware of the potential connection. It should have been articulated within the County planning process and the approval process for Gray Rock north, but it was not. If the adjacent properties are ever developed, he thinks that will provide relief and take traffic away from Lanetown Way.

Mr. Fox said their first plan was for 17 dwelling units. That was reduced to 12 dwelling units with a park. Part of the exercise was to create a sense of place in the context of the Neighborhood Model. That park was on the northern third of the property. They tried to negotiate a reduced cash proffer through donation of the park. They were even willing to guarantee the maintenance of the park by having the homeowners' association manage it. The linguistic infrastructure in the County Code is not there to manage that, so the County Parks & Recreation Department was not comfortable with such an arrangement. Then, at the neighbor's request, they moved to a minimum lot size of 10,000 square feet. Currently Lots 1 through 8 have a minimum of 10,000 square feet, and the connector road has about 19,551 square feet. He needs another 449 square feet to get both of those lots up to 10,000 square feet. During the subdivision process, if he can tweak the connector road he will be able to gain that area to create 10, 10,000 square foot lots. He needs a little flexibility.

Mr. Fox said that along Lanetown Road, they created a 50-foot bio-filter area. It will act as a screen and an environmental component of the development. Almost two-thirds of the property runoff flows toward Lanetown Road. One other concern of the neighbors was to make sure the water quality in the two ponds at Gray Rock are not inundated, so they have included in the plan two bio-filters adjacent to Lanetown Way. The County's Engineering Department said they appear adequate to serve that function.

Mr. Rooker asked the size of the parcel for this development. Mr. Fox said it is 3.52 acres. They are asking for 10 dwelling units. The recommendation from the Comprehensive Plan is stated incorrectly in the Executive Summary. The higher number is incorrect in staff's comments. In a hamlet area it is 3.5 to 4.5 units per acre. This request stands at 3.55 units per acre.

Mr. Slutzky asked Mr. Cilimberg if the staff report is inaccurate on the upper boundary. Mr. Cilimberg said the Executive Summary noted that the minimum is 3.5 and the maximum is 4.5 for CT-3. For 3.5 acres (2.8 net acres is what the Crozet plan gives to base densities on), the minimum lots would be 10 and the maximum 13. The applicant is proposing 10. The net density would be 3.55. Historically, Crozet was under Neighborhood Residential in the Comprehensive Plan which was 3-6 dwelling units an acre.

Mr. Fox said the Crozet Master Plan is modeled and structured on the Neighborhood Model. The twelfth principle of the NM discusses clear boundaries with the rural areas. He noted that he had sent the Board members an E-mail concerning this. He then read that principle aloud. He handed to the Board members copies of a petition signed by 33 Crozet business people along with a letter.

Mr. Slutzky asked the size of the buffer along the road. Mr. Fox said it is approximately 50 feet in width. He has about 100,000 square feet in lots, and has retained a six percent contingency to make adjustments.

Mr. Slutzky asked Mr. Fox if he had presented this same information to the Planning Commission. Mr. Fox said he had not, he was surprised by the interpretation.

Ms. Mallek asked if a possible connection to the property to the west would allow a disconnection to Lanetown Way. Mr. Fox said that would go against the principles of the master plan. Interconnectivity is desired. The notion of the Neighborhood Model is to integrate, not to segregate everything.

Mr. Rooker asked if the public hearing has been opened.

Mr. Boyd said it has not been opened. Mr. Davis agreed.

Mr. Rooker said the Board may want to decide whether there is support among the members for this plan in its current form, or whether the Board would prefer changes in this plan before its approval. He would prefer to hear from the public before doing that, but legally the Board can't do that. Perhaps the Board should have that discussion now so it can advise the applicant.

Mr. Dorrier said the key issue appears to be the road. Ms. Mallek has said the road cannot carry a greater load of traffic. She implied that if the road were fixed, the development would be suitable.

Ms. Mallek said she did not make any suggestion. She said it is heavily used for everything now whether it be as a sidewalk, or for playing or for driving. She does not know what the options are if this plan goes forward.

Mr. Slutzky asked if she is talking about Lanetown Way.

Ms. Mallek said "yes."

Mr. Rooker said the Board does not know if the residents want to have that road upgraded. He asked Ms. Mallek if she is supportive of this plan in its present form.

Ms. Mallek said she is torn because she is concerned about its effect on the existing 25 houses in the area. Those residents are caught in the middle of the master planning process. She said the applicant made efforts to meet all of the suggestions they received, so she applauds them for that. The green things they will put in, plus the bio-filters to protect the lakes, are pluses for the project. They are almost there on the square footage. Compatible size was important to the homeowners' association. They did send her a letter earlier today.

Mr. Rooker asked Ms. Mallek if she is willing to support this rezoning in its present form. Are there changes to the plan she would like to have made in order to support it? Once the public hearing is opened, the Board will have to either approve or deny the request.

Ms. Mallek said there may be four Board members who will support the plan as presented.

Mr. Rooker said he would like to hear Ms. Mallek's comments. Does she support it as it is; are there changes which need to be made? Mr. Davis said he does not believe that the types of changes that would have to be made could be made tonight because the plan is basically laid out on a sketch plan, and it is also proffered. If the Board finds that there are elements of this proposal that are unacceptable and it wants the applicant to offer additional changes, the plan would have to be deferred and readvertised.

Mr. Rooker said he thinks the things Ms. Mallek has raised could only be achieved by reducing the number of lots.

Ms. Mallek said that would be the easy solution, but it contradicts the plan. That is her dilemma.

Mr. Rooker asked if she is referring to the Crozet Master Plan.

Ms. Mallek said if the map is to be taken as the primary guide and it suggests a higher density, her suggesting that a lower density would be compatible with the neighbors contradicts where the County is supposed to be going.

Mr. Rooker said there is language in the master plan about compatibility with neighboring properties and the edge.

Mr. Slutzky asked if the language referring to neighboring means neighboring in the rural areas.

Mr. Rooker said he is not sure what it means.

Ms. Mallek said it is truly unclear.

Mr. Fox said the letter he just handed to the Board members actually "walks the Board" through the Master Plan. It is not crystal clear, but it references the pages in the plan. He read from Page 48 concerning hamlets. The majority of this property is designated CT-3, 3.5 to 4.5 dwelling units to the acre.

Mr. Rooker said everybody seems to be of the opinion that the vast majority of the property is CT-3.

Mr. Boyd asked if the lot sizes were increased to 12,000 square feet if this project would be feasible.

Mr. Fox said that would make eight, plus the affordable unit, plus the cash proffers.

Mr. Slutzky said the plan is already at the bottom edge of the range of densities the community determined were appropriate for the site.

Mr. Fox said the project is hardly feasible now coming down from 12 to 10 units per acre. He had a discussion with the Piedmont Housing Alliance yesterday, and they were excited about the affordable housing opportunity. Rarely do they find a 10,000 square foot lot for an affordable house. That is twice the size of the lots in Waylands Grant and houses there are selling for over \$400,000.

Ms. Thomas said Waylands Grant has the necessary infrastructure, but the road people will be driving in on to this project does not have that.

Mr. Rooker said it appears the amenities here will be better than in the adjoining area in terms of the internal amenities – bio-filters, sidewalks, street trees, road standards, etc.

Ms. Thomas said if the stub-out does not get turned into a road any time soon, it contains a certain amount of acreage. She asked what the average would be if that acreage were included. Mr. Fox said one of the suggestions from Gray Rock was elimination of that stub-out.

Ms. Thomas said she is not suggesting that, but in terms of calculation of square footage, what would it add? Mr. Fox said it is a 44-foot right-of-way which is 129,000 square feet of 950 square feet per lot.

Mr. Slutzky asked where the 10,000 square foot figure originated. Mr. Fox said that figure is an average, not a minimum, and it is referenced in the Crozet Master Plan in the CT-3 District. It says the average lot size should be 10,000 square feet, not the minimum size.

Mr. Slutzky asked if that is per parcel or within that sector of the Master Plan being inclusive of the contiguous parcel. Mr. Fox said it is inclusive within the hamlet. He said in Gray Rock North the average lot size is 12,500 square feet.

Mr. Slutzky said these lots could be 8,000 square feet without violating the spirit of the language. Mr. Fox said that is correct. Mr. Cilimberg said the language mentioned by Mr. Fox is for the hamlet designation.

Mr. Boyd said he appreciates what Mr. Rooker is trying to do, but he does not see how the Board cannot go ahead with the public hearing. He asked if other Board members had questions for Mr. Fox.

At this time, Mr. Boyd opened the public hearing.

Mr. Mike Beno said he is a resident of Gray Rock North and a member of its homeowners' association. He asked that the Board look at Table I of the Crozet Master Plan matrix. While it talks about 10,000 square foot averages, under the definition of a hamlet it says 50 percent of the land in areas dedicated to open space are preserved. To him a hamlet is designed to have more of an open feel. As to the appropriate use of the edge, he thinks Commissioner Loach was the most "bull-dog" on the issue. He said he was one of the authors of the document and to him the edge was intended to be a little more rural. He said the residents of Gray Rock feel the project is denser than is fitting for the parcel. Gray Rock and Gray Rock North are all zoned R-4. Since the road would be coming through their neighborhood, it would, in effect, be a continuation of Gray Rock North, and they would like to see as much as possible preserved. If the applicant went to R-4 and increased the lot sizes, that would be more in concert with their neighborhood.

Mr. Rooker interrupted to say that R-4 allows four dwelling units per acre. Mr. Beno said that is true, but that makes the minimum lot size 10,800 square feet which would eliminate the smaller parcels.

Mr. Rooker said R-4 would allow 13 or 14 dwelling units on this property. Mr. Beno said once the sidewalks, etc. were included, it would be more in concert with Gray Rock.

Mr. Beno said when the Planning Commission recommended denial of this petition, it was said that Gray Rock was developed without sidewalks because they were not required at the time; everyone might agree that was probably not a good decision. Gray Rock residents are asking that the Board not compound those shortcomings by adding extra traffic onto Lanetown Way. He personally stepped off the distance between Lanetown Way and Orchard Drive, and then to the existing entrance of the Patterson property. They are about the same. He thinks sight distance might be met if VDOT were asked to look at it again. They ask that the Board not compound the safety situation.

Ms. Thomas asked if the school bus comes up Lanetown Way. Mr. Beno said it does not; it meets at the intersection of Lanetown Road and Lanetown Way.

Mr. Fox asked if he could make a further comment. Mr. Boyd agreed.

Mr. Fox said he thinks the Subdivision Ordinance would actually force interconnectivity back to Lanetown Way even if there were an entrance off the other way.

Ms. Mallek said the residents would have that direct access out, so they could use that way for convenience, but would not be required to do so.

Mr. Fox said he had VDOT come out and inspect the sight distance. He has talked with the adjacent owners and no one has been willing to give a sight easement; an easement would be required for that location.

Mr. Slutzky said the Board made a commitment through the master planning process to the broader principle of interconnectivity, of concentrating development activities within growth areas, and upgrading infrastructure on those sites as they develop. There will constantly be situations where things that were developed in the past do not have the sidewalks and other infrastructure needed. If that should become a reason to stop honoring the whole point of the growth areas and master planning, the Board would be "shooting itself in the foot." He is sympathetic to the real situation the residents of Gray Rock have articulated. There was a chance during the master planning process to decide the boundaries of the growth area and to decide on densities. The community as a whole came up with a vision and he thinks this proposal is consistent with that vision in many ways. It has a number of quality features that would otherwise be preferable. The only "bump" is that the master plan has to be superimposed on an existing development inside the growth area that is not compatible with what would be required on that

property today. For him it is not a struggle if the Board is serious about the master planning process and the growth areas. He does not see that there is a lot of discretion with this petition. He will support it.

Mr. Boyd said there is a similarity between this and the discussion about Fontana earlier tonight. He will support it, but he still thinks neighborhoods should be connected.

Ms. Thomas said this is not easy for her, particularly after she went to visit the area. She is trying to balance R-4 versus sidewalks, connectors, bio-filters and affordable units. She thinks the County will be a better place having those aspects on this property. She wishes there were amenities Lanetown Way could enjoy and she believes they will enjoy the sidewalks. This isn't an easy decision, but she will support the request.

Mr. Rooker said staff recommended approval. Looking back at what the Planning Commission did, the vote against it was almost entirely based on an interpretation he feels was strained of the designation for this property in the master plan. The applicant has made numerous changes through this process to meet the requirements of staff and the recommendations of the Commission from earlier work sessions/public hearings on the petition. He will support it, although it is difficult.

Mr. Dorrier said he thinks the Planning Commission was erroneous in deciding that the edge was a reason to deny the request. The applicant has made changes, and it is now for 10 units. There are various things proffered and one unit will be affordable housing. It has a traffic problem, but it is not the first traffic problem the Board has seen in the growth areas. He will support the request.

At this point, Ms. Thomas offered **motion** to approve ZMA-2007-011 subject to the proffers dated February 19, 2008, and signed March 18, 2008, including the proffered Concept Plan.

The motion was **seconded** by Mr. Rooker. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Rooker, Mr. Slutzky, Ms. Thomas, Mr. Boyd and Mr. Dorrier.

NAYS: Ms. Mallek.

Original Proffer X

#### PROFFER FORM

Date of Proffer Signature: February 19, 2008

ZMA # 2007-00011

Tax Map 55 Parcel Number 63

3.521 Acres to be rezoned from R-1 to R-6  
Patterson Subdivision

Emile Bethanne Patterson is the owner (the "Owner") of Tax Map 55, Parcel 63 (the "Property") which is the subject of rezoning application ZMA 2007-00011 known as "Patterson Subdivision" (the "Project").

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, the Owner hereby voluntarily proffers the conditions listed below which shall be applied to the Property, if rezoned with the offered plans approved for development. These conditions are proffered as a part of the requested rezoning and it is acknowledged that the conditions are reasonable.

#### 1. AFFORDABLE HOUSING

The Owner shall provide affordable housing equal to fifteen percent (15%) of the total residential dwelling units within the Project in the form of for lease or for sale affordable dwelling units (the "Affordable Dwelling Units" or "Affordable Units"). Each subdivision plat and site plan for land within the Property shall designate the lots or units, as applicable, that will, subject to the terms and conditions of this proffer, incorporate Affordable Units as described herein, and the aggregate number of such lots or units designated for Affordable Units within each subdivision plat and site plan shall constitute a minimum of fifteen percent (15%) of the lots in such subdivision plat or site plan.

In the event that the number of Affordable Dwelling Units to achieve 15% results in a fractional unit, the Owner shall contribute cash to the County in a proportionate amount based on the amount of \$19,100. For example, if 15% equates to 1.8 Affordable Units, the Owner would provide 1 Affordable Unit pursuant to the terms described herein, and would contribute cash to the County in the amount of \$15,280 be paid prior to issuance of a building permit for the first Affordable Dwelling Unit. The Owner reserves the right, however, to provide two (2) Affordable Units and concede, or gift, the fractional monetary interest, (2 Affordable Units minus 1.8 Affordable Units required equaling a 0.2 affordable overage) to Albemarle County, to meet the County's Affordable Housing Policy.

A. The Affordable Dwelling Units shall be comprised of single-family attached housing (townhouses) or single family detached houses at the Owner's option. The Owner or his successor in interest reserves the right to achieve the 15% Affordable Dwelling Units in a variety of ways, utilizing the above mentioned unit

types alone or in combination as outlined below. The Owner shall convey the responsibility of constructing the affordable units to any subsequent purchaser of the Property. The current Owner or subsequent Owner shall create units affordable to households with incomes less than 80% of the area median family income (the "Affordable Unit Qualifying Income"), such that housing costs consisting of principal, interest, real estate taxes and homeowner's insurance (PITI) do not exceed 30% of the Affordable Unit Qualifying Income; provided, however, that in no event shall the selling price of such Affordable Units be required to be less than the greater of One Hundred Ninety Thousand Four Hundred Dollars (\$190,400.00) or sixty-five percent (65%) of the applicable Virginia Housing Development Authority (VHDA) maximum mortgage for first-time home buyers at the beginning of the 90-day identification and qualification period referenced below. The Owner or his successor in interest may at its option facilitate the provision of down payment assistance loans to reduce the out-of-pocket cash requirement costs to the homebuyer, such as, but not limited to a second lien Deed of Trust, so that the resultant first mortgage and housing costs remain at or below the parameters described herein. All financial programs or instruments described herein must be acceptable to the primary mortgage lender. Any second lien Deed of Trust executed as part of this paragraph for the 15% required affordable housing shall be donated to the County of Albemarle or its designee to be used to address affordable housing. For purposes of calculating the price of the Affordable Dwelling Units, the value of Seller-paid closing costs shall be excluded from the selling price of such Affordable Dwelling Units.

- i. For-Sale Affordable Units - All purchasers of for-sale Affordable Units shall be approved by the Albemarle County Office of Housing or its designee. The Owner shall provide the County or its designee a period of ninety (90) days to identify and pre-qualify an eligible purchaser for the Affordable Units. The 90-day period shall commence upon written notice from the Owner that the units will be available for sale. This notice shall not be given more than 120 days prior to the anticipated receipt of the certificate of occupancy. If the County or its designee does not provide a qualified purchaser during this ninety (90) day period, the Owner shall have the right to sell the Unit(s) without any restriction on sales price or income of purchaser(s); provided, however, that any Units(s) sold or leased without such restriction shall nevertheless be counted toward the number of Affordable Units required to be provided pursuant to the terms of this proffer. If these Units are sold, this proffer shall apply only to the first sale of each unit. Nothing herein shall preclude the then-current Owner/builder from working with the County Housing Department prior to the start of the notification periods described herein in an effort to identify qualifying purchasers for Affordable Units.
- ii. For-Rent Affordable Units
  1. Rental Rates For-Lease Affordable Units. The initial net rent for each for-rent Affordable Unit when the Unit(s) is available for occupancy shall not exceed the then-current and applicable maximum net rent as published by the County Housing Office. In each subsequent calendar year, the monthly net rent for each for-rent affordable unit may be increased up to three percent (3%). For purposes of this proffer statement, the term "net rent" means that the rent does not include tenant-paid utilities. The requirement that the rents for such for-rent Affordable Units may not exceed the maximum rents established in this paragraph 1A(ii)(1) shall apply for a period often (10) years following the date the certificate of occupancy is issued by the County for each for-rent Affordable Unit, or until the units are sold as affordable units as defined by the County's Affordable Housing Policy, whichever comes first (the "Affordable Term").
  2. Conveyance of Interest. All instruments conveying any interest in the for-rent affordable units during the Affordable Term shall contain language reciting that such unit is subject to the terms of this paragraph 1A. In addition, all contracts pertaining to a conveyance of any for-rent affordable unit, or any part thereof during the Affordable Term shall contain a complete and full disclosure of the restrictions and controls established by this paragraph 1A(ii). At least thirty (30) days prior to the conveyance of any interest in any for-rent affordable unit during the Affordable Term, the then-current owner shall notify the County in writing of the conveyance and provide the name, address and telephone number of the potential grantee, and state that the requirements of this paragraph 1A(ii) have been satisfied.

3. Reporting of Rental Rates. During the Affordable Term, within thirty (30) days of each rental or lease term for each for-rent affordable unit, the then-current owner shall provide to the Albemarle County Housing Office a copy of the rental or lease agreement for each such unit rented that shows the rental rate for such unit and the term of the rental or lease agreement. In addition, during the Affordable Term, the then-current owner shall provide to the County, if requested, any reports, copies of rental or lease agreements, or other data pertaining to rental rates as the County may reasonably require.
  - B. County Option for Cash In Lieu of Affordable Units. If at any time prior to the County's approval of any preliminary site plan or subdivision plat for the subject property which includes one or more for-sale Affordable Dwelling Units, the Housing Office informs the then-current owner/builder in writing that it may not have a qualified purchaser for one or more of the for-sale Affordable Dwelling Units at the time that the then-current owner/builder expects the units to be completed, and that the Housing Office will instead accept a cash contribution to the Housing Office to support affordable housing programs in the amount of Nineteen Thousand One Hundred Dollars (\$19,100) in lieu of each Affordable Unit(s), then the then-current owner/builder shall pay such cash contribution to the County prior to obtaining a certificate of occupancy for the Unit(s) that were originally planned to be Affordable Dwelling Units, and the then-current owner/builder shall have the right to sell the Unit(s) without any restriction on sales price or income of the purchaser(s). For the purposes of this proffer, such Affordable Dwelling Units shall be deemed to have been provided when the subsequent owner/builder provides written notice to the Albemarle County Office of Housing or its designee that the Affordable Units(s) will be available for sale.
2. **CASH PROFFER**
- A. The Owner shall contribute cash to the County in the following amounts for each dwelling unit constructed within the Property that is not an Affordable Dwelling Unit. The cash contribution shall be used to address the fiscal impacts of development on the County's public facilities and infrastructure (i.e., schools, public safety, libraries, parks and transportation) identified in the County's Capital Improvements Program. The cash contributions shall be paid prior to issuance of a building permit for the category of units described in this paragraph 2 in the following amounts:
    - i. Eleven Thousand Nine Hundred Dollars (\$11,900) for each attached town home/condominium unit that is not an Affordable Dwelling Unit
    - ii. Seventeen Thousand Five Hundred Dollars (\$17,500) for each single family detached dwelling unit that is not an Affordable Dwelling Unit.
    - iii. Zero Dollars (\$0.00) for each Affordable Dwelling Unit
  - B. Beginning January 1, 2008, the amount of cash contribution required by Proffer Number 2 shall be adjusted annually until paid, to reflect increase or decrease for the preceding calendar year in the Comparative Cost Multiplier, Regional City Average, Southeast Average, Category C: Masonry Bearing Walls issued by Marshall Valuation Service (a/k/a Marshall & Swift) (the "Index") or the most applicable Marshall & Swift index determined by the County if Marshall & Swift ceases publication of the Index identified herein. In no event shall any cash contribution amount be adjusted to a sum less than the amount initially established by these proffers. The annual adjustment shall be made by multiplying the proffered cash contribution amount for the preceding year by a fraction, the numerator of which shall be the Index as of December 1 in the preceding calendar year, and the denominator of which shall be the Index as of December 1 in the year preceding the calendar year most recently ended. For each cash contribution that is being paid in increments, the unpaid incremental payments shall be correspondingly adjusted each year.
3. Total Number of Dwelling Units and Unit Types. There shall be no more than 10 dwelling units within the development. Of the 10 dwelling units permitted there shall be no more than two single-family attached units.
  4. The property shall be developed in general accord with the "Concept Plan" dated February 19, 2008, attached hereto.

By: (Signed) Emile Bethanne Patterson)  
Emile Bethanne Patterson (Owner)  
Date: 3/18/08

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Agenda Item No. 15. From the Board: Matters Not Listed on the Agenda.

Mr. Thomas said she spent a lot of time in the past week dealing with Chesapeake Bay issues. She does not have anything major to report, but it looks like it will not be cleaned up, and if it does not get cleaned up all localities will probably have passed upon them a stronger protection of the waterways. Each stream will probably get a maximum load it will have to meet and there will be no money for that. She was glad the Board passed the new buffer requirements because it was a divided vote, but she thinks all will be glad that was done when stronger requirements come down on the County.

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Ms. Mallek said she hopes to get a response soon from the Zoning Administrator to her recent query about accessory apartments. She is having trouble with the requirement that it have connected heated space. That seems to be contrary to having a mother-in-law or someone come and live in a small unit on the property. She needs to know more about that.

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Ms. Mallek said she has mentioned several times the issue of the burial of asphalt in the rural area. Today she got a call from someone who is a heavy equipment contractor who wanted the details of where to put the materials because a landowner was requesting that he dig a big hole and bury it in the ground. She hopes the Board will move forward to clarify this issue and tell people there is a feasible option available.

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Ms. Mallek said that included with the Board's materials for this meeting there was information about a treetop wireless tower in Earlysville. She thought it was going to be discussed tonight. Mr. Cilimberg said the Planning Commission will hold a work session soon on the tower policy, but he is not sure when that is scheduled.

Ms. Mallek said she called the neighbors to ask if they had been notified about this discussion, they said "no." Mr. Cilimberg said when applications are received, staff sends a copy of the applications to the Board member representing the district in which the tower is requested.

Ms. Mallek said that is why when she saw the material in tonight's packet, she was confused. She asked if there are other towers within 100 feet of many, many houses. She has a real problem with the health issues connected to towers, and to be putting this right over a neighborhood is very alarming to her.

Mr. Rooker said the FCC does not allow the health issues of towers to be a basis for denial of location for a tower. It is a federal preemption issue.

Ms. Thomas said one of her constituents has pointed out that for most towers now Planning staff has them float a balloon and they takes pictures, but only from public lands. They do not go onto private land. Those people who may not be close enough to the site to receive notification may not know there is a request pending. This particular constituent went to the Planning Commission and recommended that flying of the balloon be made widely known throughout the neighborhood. She even thought of suggesting the County use its reverse E-911 system for notification. It would be a way the entire neighborhoods could be made aware that something is about to happen. At one time towers were requested along entranceways in order to assure that users of cell phones would have access. There is now a new cell phone company in the County so there will be a bunch of new cell panels and there is an interest in moving more into the residential areas because more households are going wireless. With a combination of those two things, the Board may want to change its policy about how it deals with the notice for the cell tower requests. The Board has a policy which has been nicely developed and worked over for a long time, and it works. All of a sudden there is this glitch and people are not hearing about new towers in neighborhoods.

Ms. Mallek said the people on the ground refused to answer the questions of the neighbors who came to asked them what was going on.

Mr. Bryan Elliott said staff can talk about implementing some notification so people will be made aware of the test so they can witness it.

Ms. Mallek asked if notification is only sent to the owners of abutting parcels. Mr. Cilimberg said that is the legal requirement. He knows this issue came up at the Planning Commission meeting and he has communicated with the Current Development Division. This is not handled by the Planning Department. He said the Planning Commission will have a work session on the Tower Policy soon and maybe the Board should be invited to attend that meeting.

Mr. Slutzky said he appreciates the comments about expanding the notice, but would caution the Board not to use the E-911 reverse system for what might be argued would be aesthetic purposes versus public safety issues.

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Mr. Boyd said there is an historic black church (Evergreen) on Proffit Road near the railroad crossing which has been in disrepair for quite some time. The Church members either cannot afford, or don't want to keep it up any longer, so it was put on the market for sale. There are some uses that could be made of the property that are not intrusive, but it would have to go through a rezoning process. He wonders how amendable the Board members would be to such a request because applying for a special

use permit requires money and a lot of time. The church members do not have a lot of money. Would the Board be receptive to the idea of fast tracking such a request in order to preserve this historic site.

Mr. Rooker said he does not think it is so much fast tracking as the Board being amendable to the special uses which are allowed. Site specific uses have been approved in the past, but they must go through the process.

Mr. Cilimberg said the Board would not want the church to choose a path that would require a rezoning because the Board would then be dealing with spot zoning. Depending on what the Board chooses as work priorities for Community Development, the Board will soon be looking at a list of potential uses in the rural areas.

Mr. Rooker said he is not amenable to spot rezoning this property. If there is some potential use that is not listed in the Zoning Ordinance and it is a good use, the church could seek to amend the ordinance to allow that use. They would have to go through the process. Legally the Board only has two options. It can approve something allowed by the Zoning Ordinance in that zone, or the ordinance can be amended. Also, the property could be rezoned, but of those options, rezoning that particular location is not a good option.

Mr. Slutzky asked if the County could create a zoning category for historic structures or something like that.

Mr. Rooker said that would take a longer time than just amending the ordinance to allow some use by special use permit that is not currently in the ordinance, assuming everybody thought it was an appropriate use.

Mr. Slutzky asked if the applicant could initiate a change in the Zoning Ordinance. Mr. Cilimberg said "yes", but he does not know the date of the next application period. There is a fee associated with such a request. Also, the Board could initiate a resolution of intent to amend the Zoning Ordinance.

Mr. Rooker said when discussing the Watkins application recently, the Board said the ordinance should be amended. Mr. Cilimberg said he would not suggest that *de facto* the Board start getting into individual uses that end up taking time to review when a better use of time would be to look at all uses in the rural areas. If that were made a priority for staff, it could be done.

Mr. Boyd asked if it makes sense to have more lenient options in the ordinance for historic structures. Mr. Davis said a simple way to address this issue would be to create another special use which would be an adaptive use of an existing historical structure by special use permit. Staff would have to look at the scope of such a change, but it would be a simple way to deal with an historic structure.

Mr. Slutzky asked how the Board would initiate such a change if there were a consensus of interest to add that item. Mr. Davis said if there is a consensus, the fastest way to initiate that is to ask the Planning Commission to initiate a text amendment. Unless a lot of analysis is required by the Planning Department, it could be done easily. If staff is going to look at the question, it can be brought before the Commission with a recommendation that the Commission initiate it.

Mr. Cilimberg said Mr. Graham has been very sensitive about the staffing situation, and this would basically be setting a priority for the Department. He does not want the Board to think that adaptive reuse of historic buildings would be just a simple matter. First, there has to be a decision as to the types of adaptive reuses that are appropriate. There could be a wide gambit that people might want to exercise. In the case of country stores, which is coming to the Board soon, staff has gone through an analysis of previous activities in country stores so the Board would have an idea of the limits of uses in a country store situation.

Mr. Boyd said if the language were vague, the special use permit would still have to be approved by the Board. Mr. Cilimberg said if the Board is willing to make it that simple, it would be without any supplementary regulations.

Mr. Rooker said the supplementary regulations should go to the preservation of the structure. Mr. Davis said the more complicated issue might be defining an existing historic structure. There would need to be some definition of that.

Mr. Boyd suggested that this be looked at by the Historic Preservation Committee.

Mr. Dorrier suggested asking the committee to come before the Board and bring it up-to-date on the issue of crossroads stores.

Ms. Thomas said that is coming from staff soon. She said the next meeting of the Historic Preservation Committee is on next Monday at 4:30 p.m. She is the Board's liaison but she will not be able to attend that meeting. Ms. Mallek said she might be able to attend.

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Ms. Mallek said there is a big "Community Kick Off" for the western park in the middle of the Old Trail development on Tuesday, March 25, 2008, at 7:00 p.m. It will be at Western Albemarle High School.

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March 19, 2008 (Regular Night Meeting)  
(Page 28)

Ms. Thomas said that thanks to Mr. Boyd the WINA folks are giving a time slot to some member of the Board to talk for approximately 10 minutes after each Board meeting.

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Agenda Item No. 16. Adjourn. At 9:14 p.m., with no further business to come before the Board, the meeting was adjourned.

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Chairman

Approved by the Board of County Supervisors
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Date: 11/12/2008
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Initials: EWJ
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