

**Albemarle County Planning Commission
October 18, 2016**

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

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

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

Call to Order and Establish Quorum:

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

ZTA-2015-00013 Inns & Taverns (Clifton Inn)

The Planning Commission held a public hearing to receive comments on its intent to recommend adoption of an ordinance amending Secs. 18-3.1, Definitions, and 18-10.2.2, By special use permit (RA), and adding Sec. 18-5.1.61, Historic restaurants and inns, to Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 18-3.1 by amending the definition of Historic District; add Sec. 18-5.1.61 by establishing regulations applicable to historic restaurants and inns by delineating the requirements for establishing and expanding allowable uses, including a requirement that proposed additions, new structures, and structure modifications be complementary and proportionate to the existing structures and site and must not adversely impact the historic character or significance of the structure or site or result in de-listing of the structure or site from the National Register of Historic Places and/or Virginia Landmarks Register; and amend Sec. 18-10.2.2 by amending the requirements of what constitutes an allowable use after the effective date of this ordinance, if adopted, including a requirement that any additions or new structures to a historic structure or site shall serve an existing and operating restaurant, tavern, or inn. A copy of the full text of the ordinance is on file in the office of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia. (Elaine Echols)

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

Ms. Echols noted that the Commission asked that Phase 1 be expedited and it would affect only the historic restaurants and inns currently in operation. The Commission asked staff to obtain input from the Historic Preservation Committee, which they did in August, 2016. Ms. Echols also

said that the Commission asked staff to set the public hearing at the earliest possible date, which staff has done. She said that the draft ordinance could be found in the Commission's packet along with some analysis.

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

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

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

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

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

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

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

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

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

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

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

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

Ms. Echols said that number 3 on the proposed amendment was what the Commission was had been most concerned about – a building not losing its listing on the National Register or State

Register if additions were made. Staff said that If they were unable to get any comments from DHR, then staff would get the information from the County's Design Planner. Finally, the preservation of the archaeological features is included in the draft ordinance in keeping with what the HPC recommended.

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

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

Ms. Echols said that staff has tried very hard to respond to the things the Commission asked for at the last meeting to keep the amendment moving forward which is why the ordinance only contains the items it does. Staff recommended that the Commission recommend the ordinance in Attachment C to the Board of Supervisors. She said she did not provide a motion for denial because the Commission was the entity initiating the change. If the ordinance is not what the Commission wants to recommend and there are substantive changes, the Commission needs to staff what changes to make. Ms. Echols said that the Design Planner, Margaret Maliszewski, would help her to answer questions.

Mr. Keller invited questions for staff.

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

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

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

Ms. Echols suggested that he might be looking at an earlier version but should look at Attachment

C, which is the correct one located as the last thing in the packet.

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

Mr. Keller invited other questions.

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

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

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

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

Ms. Firehock said she had talked about 25 percent.

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

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

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

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

Ms. Echols replied that the staff would make a finding that they would then provide to the Planning Commission and the Board of Supervisors, just like it does with any other kind of determination for a staff recommendation. We report it to the Commission and then you decide whether or not you agree.

Ms. Riley said she was not clear whether we are talking about phase 1, phase 2 or both. But, she is going to assume for this conversation that we are talking about phase 1. She sat through the Historic Preservation Meeting (HPC) on this and thinks they were very clear about wanting more specifics. This is not my area of expertise, and she does not know if the percentage is the right way to go about this. But, ultimately as a Planning Commissioner who is not trained or has expertise in evaluating these kinds of proposals she would look to the HPC to do that for because there are people on that committee who do have that expertise. She would be looking this evening to insert some additional language and/or make some changes for this phase as well. She is concerned about having a Phase 1 now that is much vaguer and subjective and new applicants who come in under phase 2 with a higher standards,

Ms. More asked staff to clarify the statement she made about adding a clause that no new structures should be built for restaurant use and it sounded like you were recommending that to be in phase 2, and Ms. Echols replied, "yes, it is for phase 2."

Ms. More asked why not in phase 1.

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

Ms. More said so in phase 2 there are no other properties that would be a consideration for.

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

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

Ms. More asked why wouldn't the restaurant part be in phase 1 since it would only be addressing

the 3 existing.

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

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

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

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

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

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

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

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

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

Ms. Echols replied that she thinks that possibility exists.

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

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

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

Ms. Echols added or their designee.

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

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

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

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

Ms. Firehock said right, so if we could approve something, then build it; and then DHR could disagree with our interpretation and remove that designation, which would then in that case would nullify their ability to operate. She asked is that correct because we would have approved something contingent on them not losing their National Register status.

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

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

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

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

Ms. Echols replied if DHR is available; but, if DHR can't make any comments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Dotson said so you don't know whether the new to old ratio is more than 50/50.

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

Mr. Keller invited public comment.

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

Mr. Werner said that the thing about DHR making a determination has troubled him. He said there was a lot of discussion at the committee about the role of DHR. He thinks the ordinance should simply say that DHR should be consulted. Clifton did it up front and it will only be onerous on the

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

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

Mr. Butler apologized in advanced that this is going to get somewhat technical and hoping that at least Mr. Blair will be able to follow. But, as we read it the lawfully licensed language applies to A1. That is a structure that gets you in the door to apply for a special use permit. If you have a historic structure on your property that at some point was historically used or lawfully licensed as a restaurant, tavern or inn, then you can get in the door to apply for a special use permit. He said A3 is then potentially referring to a different structure; and, it allows new structures as long as they serve a restaurant, tavern or inn existing and operating on the date of the ordinance adoption. Those are potentially 2 different structures. The language in A1 about lawfully licensed is not necessarily linked to A3. But, even if you interpreted them to be linked it is important to point out that the structure in A1 does not have to have been lawfully licensed. It could have either been historically used or lawfully licensed. So we don't think the lawfully language is something that is 100 percent safe to rely on here. We don't see what harm it would do to add the language we are proposing there at the end of 27a, existing and operating under a special use permit issued under the section 10.2.2.27 as of the date of the ordinance adoption. He hoped that was at least relatively fair to Mr. Blair and if it is helpful he would be happy to come back up to explain or answer any questions. Thank you.

Mr. Keller invited further comment.

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

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

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

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

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

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

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

Ms. Echols replied that one would take a lot of time to get into. She said that staff discussed it at length and it was something the Historic Preservation Committee wanted to have. She said it can be used to mean "at the time of its historic significance" or it can mean that sometime in the past it was used as a tavern. Right now it is not clearly stated in the ordinance and without getting into a lot more discussion and determinations about that, we felt right now we should just leave it as it is. Ms. Echols said it was a very good question. She said if you were to use the term to mean

that it was used as a restaurant, tavern or inn at the time of its historic significant that would not allow for Clifton to be able to make this application. The current regulations allow this special use permit allows him to have this use because it was in the past used as a restaurant, tavern or inn although not at the time of its historical period of historical significance. She would suggest that is also a phase 2 discussion. But, if the Commission thinks it is important she would ask that you go ahead and wrestle it down to the ground with your discussions tonight and advise on what it is you think is most important about that.

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

Ms. Firehock commented that she thinks it is both fortunate and unfortunate that we have the Clifton Inn as part of this consideration because, of course, they are the poster child for doing everything right. We have to create regulations not assuming that everyone is as wonderful and thorough and architectural correct as the Clifton Inn application. She said this will not slow them down because they have already gone through the DHR and she did not know if there is support tonight for my request to have something proportionate be tied to a number; but, at the very least that someone would go to the Department of Historic Resources and share their renderings and get an opinion that yes indeed they feel that this continue to support that because she does have heartburn with it being left to staff and it is optional as it stands now. This county has cut staff positions in the past and we all know that. We don't have the staff that we use to have a decade ago. So she would like to be careful that we make sure that someone has gone to that professional body. She did not know how the Commissioners feel about that. But, you are going to spend the time, money and effort and you are indeed committed to keeping your historic designation and why wouldn't you want DHR to take a look at it.

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Keller said he was with Mr. Blair if you are talking about advisory as opposed to saying that the decision that they make has bearing. Let's face it if things are delisted and don't qualify anymore that is a whole other issue and it really does not have bearing on the local level; it has a bearing on the individual; but, it is really none of our business. Unfortunately, we don't have the kinds of controls that a number of European counties have in historic preservation. If somebody in our state right now wants to build doze a property or do major changes to it and it is on the National Register or State Register they can do it unless there is a demolition clause in the local ordinance in which case it will be held up for a certain period of time and then in most cases, there is demolition.

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

Andrew Gast-Bray, Director of Planning, asked to weigh in. He is going to exempt himself from being an expert on Virginia legislation along those lines; however, he has dealt with historic preservation for a very long time in a lot of different states and this is his understanding of what is going on. He thinks you started getting at it, Chairman Keller, that there really are a couple of things going on. There is the historic destination, which is the window to actually even getting to discuss this from the get go. You would not be able to do this if you were just Joe Smog out of a mcmansion out on the outskirts of town is the way he understands it; but, you have to have that historic designation that was part and parcel of how you could even get into the door. That determination is indeed currently predicated on the Historic Landmarks Commission and the DHR, and unfortunately he has enough experience with many DHR's that there is no guarantee. The idea that you think that they are going to be consistent from epic to epic and what is historic is not a guarantee even if it was once upon a time. Furthermore, what actually is the historic feature that is getting that characteristic may not be the same in every case. It may be architectural; it may be a vista; it may be other certain characteristics that go with that. So in which case the proportionate stuff the reason he was kind of a little worried; but, he kind of like what you are suggesting in that you have to take the historic thing and weigh that separately. The county, though, has its own requirements that is also trying to achieve that the DHR is not going to be able to look at successfully in trying for us. So those are two different things and that is why there is this little conflict. He thinks where Chairman Keller is going was important in the sense that it really is up to the applicant to make sure that any modifications they make are consistent to keep their destination. He pointed out that Margaret knows far more than I do about this; and, one evaluator versus the next might come to a different conclusion so he certainly does not want to be the one making the determination that something is historic and is going to stay characterized that way by the governing entity. On the other hand, he thinks that staff does have an awful lot of impact on the use in what is going on with that use in its context and agrees with waiting to phase 2 might be wise since the idea of proportionate has the historic aspect and it also has the ability of what impacts it has if you have a huge restaurant that goes in that is disproportionate regardless of whether it is completely consistent architecturally. He can give you an example of that in it has impact on traffic and the other things you may or may not want to consider in the reason why we allowed this. The example exists in the mid-west; there are a lot of Germanic background buildings built by the immigrants that came in and they often put in things like beer gardens, which are way bigger than the original Germanic structure; but, it is completely consistent and completely historic. It might represent an awful lot of those things in which case your proportionality really depends on what was the character, etc. of what went in. So he would suggest with phase 1 you have a tremendous limitation based on you are already pretty secure in this sort of pilot test with the 3 properties that qualify under it currently. But, he thinks it is probably premature based on what he has been hearing because you are not spelling out what those differences are that address both the historic needs and the county needs in enough detail to go beyond those 3 properties. He hopes that kind of lends a little understanding on why we have been reluctant to determine things like proportionality, etc. at this time.

Mr. Dotson noted that it was very helpful.

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

Mr. Dotson said it seems like what he has heard is when available goes away or at least that is a possibility and the Butler language amendments about the special permits. Those are the 2 things that have stuck with me.

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

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

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

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

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

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

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

Mr. Keller asked for a motion.

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

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

Mr. Blair suggesting doing that separately.

Mr. Lafferty seconded the motion.

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

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

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

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

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

Mr. Lafferty replied yes.

Ms. Riley seconded the motion.

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

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

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

The meeting moved to the next agenda item.

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