

**Albemarle County Planning Commission  
June 21, 2016**

The Albemarle County Planning Commission held a regular meeting on Tuesday, June 21, 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, Acting Chair; Jennie More, Daphne Spain, Pam Riley, Bruce Dotson and Bill Palmer, UVA representative. Members absent were Tim Keller, Chair; and Karen Firehock, Vice Chair.

Other officials present were John Anderson, Engineering representative; Rachel Falkenstein, Senior Planner; Elaine Echols, Acting Chief of Planning; David Benish, Acting Director of Planning; Sharon Taylor, Clerk to Planning Commission and Greg Kamptner, Deputy County Attorney.

**Call to Order and Establish Quorum:**

Mr. Lafferty, Acting Chair, called the meeting to order at 6:00 p.m. and established a quorum.

**Deferred Item.**

**ZMA-2012-00007 5<sup>th</sup> Street Commercial**

PROPOSAL: Request to amend proffers and application plan of ZMA199900013 for 4.35 acres on property zoned HC – Highway Commercial, which allows commercial and service; residential by special use permit (15 units/ acre) and property zoned LI Light Industrial, which allows – industrial, office, and limited commercial uses (no residential use). No zoning district change and no dwellings proposed. Special Use Permit Request for Drive through Windows on 1.1 acres under Section 24.2.2(12) of zoning ordinance.

ENTRANCE CORRIDOR: Yes

AIRPORT IMPACT AREA: Yes

FLOOD HAZARD OVERLAY: Yes

PROFFERS: Yes

COMPREHENSIVE PLAN: Regional Mixed Use (regional serving retail, service and office uses, non-industrial employment centers and residential up 6.01 – 34 units per acre) and Parks and Green Systems (parks, playgrounds, play fields, greenways, trails, paths, recreational facilities and equipment, plazas, outdoor sitting areas, natural areas, preservation of stream buffers, floodplains and steep slopes adjacent to rivers and streams) in Southern Urban Neighborhood (N5).

LOCATION: The east side of 5th Street Extended just north of its intersection with Interstate 64.

TAX MAP/PARCELS: 0.875 acre portion of 07600-00-00-055A0, 3.041 acre portion of 076M1-00-00-00100, and all of 07600-00-00-055C0

MAGISTERIAL DISTRICT: Scottsville

***DEFERRED FROM THE MARCH 15, 2016 PLANNING COMMISSION MEETING***

(Elaine Echols)

Ms. Echols summarized the staff report for ZMA-2012-00007 5<sup>th</sup> Street Commercial Project - Amendment to ZMA-1999-13 in a PowerPoint presentation.

The Commission received a staff report that included the old staff report as well as some updates to it. This is about the commercial project which is next to the Holiday Inn on 5<sup>th</sup> Street. There was some questions at the last meeting about the zoning and it is a little bit complex

when you try to figure out what all is involved. This parcel of land has two different zoning categories on it, which is Highway Commercial with a proffered plan and Light Industrial. The area under consideration is the Highway Commercial; but, there is an area that is proffered for the green way and also contains some fill. If you think about all of the land shown in blue being in the floodplain and all of the land on the other side of Biscuit Run in all of these kinds of steep slopes you can see that really does not affect the Light Industrial property except for that fill area. The 1999 approved plan is shown on the left on the slide as a reminder to bring you back to remind you about where we were last time. The 2016 proposed plan with revisions is shown on the right. The big changes are in this building and the addition of a building close to I-64.

There were questions about the floodplain in our last meeting and Ms. Echols pointed out where the existing floodplain is and where the proposed floodplain will be. That has been approved by the Board of Supervisors with the special use permit. There were questions about LOMRs and a lack of clarity at the last meeting and she was hopeful that the attachment that our reviewing engineer included helped to clarify these things. There are no outstanding issues with regards to the rezoning right now that would relate to the floodplain. Anything that needs to be done can be done through the site plan process. In other words, the plan that you are looking right now is consistent with the special use permit that was approved prior to now for the fill in the floodplain. So there is consistency now.

At that last meeting the Commission had a number of things you wanted the applicant to address. One was the idea of a bike lane and so the applicant has added a proffer, proffer #10, to provide for a bike lane on 5<sup>th</sup> Street. The Commission wanted to talk a little bit more about relegated parking and the applicant also to talk a little bit more about it as well. There is a special exception request, which she would go over in a few minutes. The applicant was asked to clearly show the floodplain, stream buffer and disturbed slopes on the plan, which he has done.

#### **Mr. Kamptner arrived at 6:06 p.m.**

The Commission asked the applicant to provide for terraced retaining walls at 6'. The applicant has provided for terraced retaining walls at 8' and not 6'. The Commission suggested the applicant should try to provide a walkway from the sidewalk on 5<sup>th</sup> Street and he has shown that the grades don't really work under his existing plan.

One Commissioner had asked about the Monticello Viewshed and the Monticello Viewshed is a little tricky because the folks at Monticello can't tell whether or not it is in the viewshed, which puts everybody in a very awkward position. However, what the applicant has done is to say if in the wintertime it is shown that it is visible, then he will work with Monticello in dealing with their guidelines. The proffer that he has made is a typical proffer that we have received on other projects.

The applicant corrected almost all of his proffered uses, which were on a list of uses that we said needed to have some clarification. However, the idea about gasoline canopies never did get resolved with the applicant. At the last meeting there was some statements made to the effect that there would not be any service stations so we would not need to have a proffer related to the gas canopy. However, that was rethought and the existing proffers include the possibility for gasoline service stations. Staff thinks the applicant needs to either proffer that any canopies will be behind the building or take the gasoline service stations out. The applicant does not want to do either one of those things. Therefore, that one was not adequately addressed.

The applicant made a request for a special exception, which the Commission has in the packet. The applicant looked at the 3 criteria that would be required for them to address in order to make an application for a special exception, which included low impact design, unique parking or circulation and any target market design. The applicant made a case for the last 2 of those items.

Any parking or circulation plan the applicant are saying that because they have a drive through that they need to push the building back so that the drive through lane can go through the front and that the parking can be in the front and the target market design was a drive through business at the interstate interchange. The Commission had some thoughts about whether or not there was something about the location which would then support a special exception. The Commission asked the applicant to try to find ways to get as close as they could to the 30' setback and to look at alternative plans. So there were several alternative designs. Staff had in the staff report that there were 3 with angled parking, and there were actually 2 with angled parking. Staff would show the Commission clearly what the 4 different options they described are.

In the first alternative design the applicant basically reduced the travel width to 20' by increasing the size of the width of the parking spaces. In the second one the applicant explored angled parking, which really did not give a lot of room for a reduction in the amount of setback they needed. They tried it again in terms of further angled parking and it still resulted in about the same setback as what they were asking for. The last example the applicant sent, option 4, is actually what they showed on the plan, which is a 24' minimum travel islands that were 20' the first time around.

Staff looked at what the Commission had said and noted that you wanted them to try to see if they could use a single row parking of parking in the front and we felt like maybe there were some other options that could be explored. Staff was surprised she did not get a call from anybody about alternatives A and B because they were missing from the staff report. However, she would show them what they are in a minute.

But, one of the concerns that staff had when looking at how do to modify the plan was it is really kind of a complex spiral circulation plan. If you are coming into the site you have to go all the way around and through the parking lot to get into the driving lane to go all the way around the building and then back out to leave the site. So staff looked at ways to perhaps relieve the awkwardness of that.

Alternative A which actually was in the engineering comments, but not labeled as Alternative A, would have moved that whole drive through use to the back building. We just moved the buildings from the back and the front and put the building that was in the middle up here that did not really require the drive through to make a more convenient way to go through a drive through circulation pattern and get back out. Staff felt like that was a more intuitive way to provide for circulation and it did not require as deep a setback. If you wanted to have parking in the front and a driving island in the front it could be done with a runway and also get a few parking spaces in front of the building. This was approximately 44' more than what the standard is.

Alternative B, which the Commission did not see, sort of came out of the Citizen's Advisory Committee (CAC's) suggestions, which Ms. Riley will discuss after this about the CAC meeting that occurred last week. But, some of the suggestions at the CAC had to do with looking at a design maybe like the Chick Filet on Pantops. So she worked on a drawing with a planner and designer to try to convey some thoughts. She apologized for the roughness of the drawing.

Basically, she took a façade that projected a little closer to the setback; but, there are any number of options that could take place and put the drive through in this area so that someone coming in would go through the parking lot and then do the drive through across the front like Chick Filet at Pantops and then come through the drive through window in this area. This is just a concept for any number of ways that one might be able to do this and retain a circulation pattern in front of the buildings. This one did not even require the special exception for setback. It relegated parking, which is what staff would be recommending. But, the Commission said that was perhaps not necessary in this particular circumstance. What staff did with that was just basically say we think that maybe there are other options that could have been explored but were not. The applicant has said that he believes that this kind of an area with a drive through for convenience off of the interstate really does suggest that it should be allowed in the way that they have requested it. Staff has tried to address the Commission's concerns as well as your questions about can something different happen here and shown those in alternatives A and B.

The Commission has to make a decision now on whether or not to support the special exception first. If the Commission supports the special exception, then maybe you also support the plan. But, if the Commission cannot support the special exception, then you cannot support the plan because the plan requires a special exception. Staff requests the Commission to talk about that and make a decision on that. Staff would also like the Commission to look into the situation of whether the retaining walls should be allowed to be up to 8'. One of the reasons staff wanted to stick to 6' is because the Entrance Corridor Guidelines talk about the 6' terraced retaining wall. That is also what our grading standards say if you have to disturb managed slopes. When you regrade you should be regrading back for a 6' retaining wall. Staff thinks that the applicant can achieve that. Our engineer has looked at it and said that should be fairly easy to do. But, the applicant is a little bit worried about not having any margin for error. So that is why they have said 8' because they want to leave some margin for error. Staff is not sure that 8' is the right margin; but, they will let the applicant speak to that. The Commission also needs to decide whether or not the canopy is an important feature. Again, the two ways to deal with the canopy would be to either remove a proffer or add a proffer; but, it would not affect the plan.

In the staff report staff talked about the factors to consider.

#### Favorable Factors

- The use is consistent with the Land Use Plan;
- To approve this would be supportive of expanding the tax base; and
- The plan that was submitted could meet Entrance Corridor (EC) guidelines. That does not mean that a different plan could not meet EC guidelines. Staff worked with the Entrance Corridor guidelines and the design planner to see if there was something about those designs that could not meet the guidelines, and they said no those could meet it, too.

#### Unfavorable Factors

- The plan does not address Neighborhood Model Principle for relegated parking. Staff recognizes the Commission may look at that a little bit differently.
- The applicant hasn't adequately demonstrated why they need the really deep setback of 74'.
- No commitment for canopies behind building closest to 5<sup>th</sup> Street, and
- Retaining wall issues of being over 8'.

#### ZMA Recommendation

Staff does not recommend approval as it is written because of the factors unfavorable.

#### Special Exception Recommendation

Staff does not recommend approval of the setback reduction based on the unique parking and circulation because other alternatives exist. Also, in terms of the unique target market it is really hard to make a case that a drive-through restaurant is a target market because any drive through restaurant then would make the same case or any business that requires most of the clients to access them would be through a car. So staff is not finding the uniqueness there. The Commission may find a uniqueness and staff respects your opinion on whatever you do decide with regards to this.

Should the Commission choose to recommend approval of this zoning map amendment staff has provided a motion about recommending approval with proffers and for denial recommends stating the reasons. If the Commission wants to recommend approval staff would ask that they address any of the outstanding proffer issues at least in the discussion.

Staff does not recommend that the special exception be approved. However, if the Commission wants to recommend approval of that special exception, then you would need to recommend the approval for the reasons of unique target market and/or unique parking and circulation; or, if the Commission recommends denial state the reason for the denial. The Board of Supervisors ultimately makes the decisions about special exceptions, and they would not always come to the Commission. But, if there is not a recommendation for approval, then the special exception comes to the Commission for a recommendation that then goes on to the Board of Supervisors. If there are any questions, she would try to answer them.

Mr. Lafferty invited questions for staff.

Mr. Dotson said he had a number of questions. He said staff did not mention the trail connection from the neighborhood to the north across the existing bridge. He could not tell from the staff report and the exhibits whether that is being proposed to connect into the pad of the development or not.

Ms. Echols replied that there is nothing extra that they are proposing to do. Going back to the plan she pointed out the bridge that is on the city side that goes over the creek. She pointed out what has always been proposed is a path that then comes up to the parking lot. This path is also helpful because it provides for the possibility for some kind of vehicle getting down to the creek should that be necessary. So this has not changed. The Commission may or may not be able to see that there is some kind of funny grades in this particular area and the grading that is going to take place up to this hill. When staff looked at the different alternatives one that they wondered about was whether or not you could get a sidewalk from 5<sup>th</sup> Street up to the site more easily and that is actually at the top of the hill. That might be a possibility. But, the applicant has said in terms of his proposal he does not believe he can make grades work to do anything more than what you saw on the plan, and she was going to go back to that plan so you have it to refer to.

Mr. Dotson said so there is a path connection, but it connects to the neighborhood and not to 5<sup>th</sup> Street.

Ms. Echols replied that is right.

Mr. Dotson said he had a process question on proffer 5 about the gas station canopies. If we approve the rezoning tonight with a concept plan that shows no canopies and if at a future point the applicant wanted to include a gas station with canopies would that require a follow up zoning map amendment. That seems to go beyond the planning director discretion.

Ms. Echols said she would try to explain it the way she believed it would work. She said with the current proffers and plan if the applicant wanted to put a canopy in this area and make this a gasoline station or a service station with a convenience store and have gas pumps in this area they would not have to make any changes; they could do that with this plan. That is why staff thinks in order to meet Entrance Corridor standards and guidelines it would make more sense to make sure that the canopy goes in the back if indeed they want to turn that into a gas station. That was the principle issue with the 1999 ZMA. It was that the canopies should be in the back and that is what that plan showed. She asked if that answered his question.

Mr. Dotson replied that it did and an opinion is that it would be a significant change from what is shown here to have a canopy there with gas pumps. So the question perhaps of the County Attorney is could that be placed as a condition that in the event that the applicant sought to have this allowed use that would require a zoning map amendment to modify the concept plan.

Mr. Kamptner replied that you could amend proffer 1 to identify the location of the canopy as a key element and that any change that would include a gasoline station canopy would require that. But, that would be something that the applicant would need to proffer.

Mr. Dotson suggested that may be the applicant can consider that and comment on it. In reading over the engineering letter there seemed to be a concern about U-turns and he could not figure that out. He asked if staff perhaps with the site plan could explain what the concern about U-turns would be.

Ms. Echols pointed out the reviewing engineer was in the audience; but, she was not sure he was prepared to speak to that. She introduced John Anderson, the reviewing engineer, who is going to a different department in our county organization. He has been a real asset to Community Development and so we will miss him.

John Anderson asked what the question was.

Mr. Dotson replied that the question was in reading over the engineering letter there was mention of concern about people making U-turns and he could not figure out where those U-turns were and what the concern was.

Mr. Anderson explained if your patriots are coming in off 5<sup>th</sup> Street the driver habit is going to lead some people to want to go just beyond the median. They are not going to want to take the long path, but they are just going to want to duck around the median right quick. He pointed out the movement that drivers might be tempted to take, which is a pretty serious conflict point because everything goes out the window at that point the sight distance and it has sort of creeping effect back on out into 5<sup>th</sup> Street. It is just VDOT was very determined with their design to have that traffic carry on. So it is sort of a real overriding goal to try to prevent that motion and how can you do that because people with their habits and everybody is a little bit different. But, that was the main concern that was important in VDOT's comments and in their thinking. He asked if he missed what he was getting at.

Mr. Dotson replied no, you have responded and he would guess the question is would that actually be wide enough for somebody to make a U-turn.

Mr. Anderson replied that they would give it a try.

Mr. Dotson said so they would end up making a K-turn or something if they were intent on it.

Mr. Anderson pointed out that you see a whole variety of things.

Mr. Dotson said they would be going up a one way down street.

Mr. Anderson replied that he thinks that was the spiraling motion that Ms. Echols traced out pretty effectively in kind of a pinwheel line, the long path. He said there are things that he does not understand about marketing and how to lay out a site for optimal commercial success. However, that spiraling motion really adds considerable length. So that is where he thinks the people are going to think if I want to get to that drive through lane I am going to do it whether cars can do it or not.

Mr. Dotson suggested that perhaps the applicant could respond when it is their turn as to how they might try to mitigate that. He said those are my questions, thank you.

Mr. Lafferty invited further questions.

Ms. Spain pointed out she was confused about the Entrance Corridor wording that says this design can meet. She asked is there some distinction there between “can” meaning they have to meet certain criteria or “can, but”. Why doesn’t the sentence just say it meets the guidelines?

Ms. Echols replied that there are some outstanding items related to the rear of the structure and so they were not ready to say your plan can be approved. They wanted to see the final plan because of the retaining walls. She thinks that the design as it is now there is nothing that is jumping out and saying it could not be approved.

Ms. Spain said she had one other question although this may be for the applicant. She asked is there a great deal of cost involved in meeting the Monticello view shed color palate and why wouldn’t any company that is even possibly in the view shed go ahead and paint the roof the color that complies with their concerns, and why does it have to wait until the leaves are off the trees to figure that out.

Ms. Echols replied it was because it may or may not be visible and typically we don’t ask people to work with those guidelines unless it actually is visible. If the applicant had not made this proffer we would not have pressed the issue because it really only affects what is truly visible. If there is a big question mark, it sounds like it probably isn’t visible and so Monticello would not make that call. So the applicant decided that he would go ahead and proffer that if it is visible they will do it.

Ms. Spain said that was where she was confused about whether it is more expensive to meet those guidelines than whatever the roof would be initially. Is that the concern that would cost extra if he has to do the color in compliance with Monticello and why couldn’t it just be a default color, which is all she is asking.

Ms. Echols replied that she would have to ask the applicant that question.

Ms. Riley said she had a couple of questions about pedestrian access to the site. If she was understanding staff correctly this current plan does not allow a connection for pedestrians to come off of 5<sup>th</sup> street down onto the sidewalk and to connect to the pathway or the bridge over Moore’s Creek, and is that correct.

Ms. Echols replied that is correct; you have to go through the site. Basically, if you are coming south you take the sidewalk and then curve around and hit the sidewalk here in this one and then you get over through the parking lot to get there if you are going north. If you are coming south from this, then you would come up here and she thinks there is also an opportunity to get onto the greenway that is proposed in this area. Basically the pathway takes you into the parking lot and if you want to get on the sidewalk, then you have to go through the parking lot to get up to 5<sup>th</sup> street and then to get on the sidewalk there.

Ms. Riley said in the alternatives A and B that staff proposed is there better access from 5<sup>th</sup> Street for a pedestrian.

Ms. Echols replied that she thinks there is; but, it has not been engineered. It looks like there should be because it is at the top of the slope where they have already proposed to do grading and to have a flat area. However, she thinks they would have to ask the applicant whether or not that is a possibility.

Ms. Riley said she had another question. The applicant's argument for a special exception included the case for unique target market and within that was a criteria saying that close proximity to Interstate 64; the fact that no major housing subdivisions or apartment complexes are located within easy walking distance of the property; and that there is minimal neighborhood pedestrian traffic in the area.

She said staff showed me at our CAC meeting there was a lot of discussion about the existing pedestrian traffic, which is pretty heavy, but is there not a new apartment complex going in just across I-64 and was that taken into account. Does the planning staff ever go out and actually do any kind of counting of what pedestrian traffic is when you made evaluation of this criteria.

Ms. Echols replied that staff actually does not because we take the principles of the Neighborhood Model at face value, there should be pedestrian access. So staff looks at that and we think that the development areas all need to have good pedestrian access. If the Commission thinks though that for some reason the interstate interchange proximity though is a reason why you would want to do something differently that is certainly your prerogative.

Ms. Riley said she again would ask is there not a new apartment complex going in for something like 200 units just on the other side of I-64, and Ms. Echols replied yes, there is

Ms. Riley said she just wanted to point that out.

Mr. Benish pointed out one other perspective in our transportation planning we do assessments and whether there was evidence of pedestrians crossing or walking along trails. As we make our transportation recommendations 5<sup>th</sup> Street is identified as a roadway needing improvements to address existing and future demand. It is somewhat sporadic, but we have evidenced pedestrian traffic out there. Some of it is actually employee traffic, too, going from one place to another.

Ms. More said in the staff report from the March 15<sup>th</sup> meeting there was a unfavorable factor to the plan does not clearly show consistency with prior approvals to disturb the stream buffer, and she does not see that as a unfavorable factor. She asked is that addressed in the map that staff showed that also talks about the floodplain.

Ms. Echols replied yes, they have clearly shown where things are and so they do match up now and so it is no longer an unfavorable factor.

Ms. More asked to clarify that we can find that in the image you showed, and Ms. Echols replied yes.

There being no further questions, Mr. Lafferty opened the public hearing and invited the applicant to come up and address the Commission.

Katurah Roell said he was representing the applicant and would address some of the things he just heard recently as well as the staff report. He pointed out the ARB has approved this plan in this arrangement. We know that the newer ordinance that was passed reduced the setback for relegated parking. He thinks one of the things that Ms. Riley pointed out about the pedestrian access that were not able to be incorporated into the plans in a short enough period for a review to get back to the Commission. Since the laser pointer did not work, he asked Ms. Echols to put the pointer on the greenway trail. He explained that the bridge is built and as that comes up to the parking lot everyone has expressed concern about how you would get to 5<sup>th</sup> Street. The problem with turning to the right and coming up the road is that you have a 2:1 slope in that area and we don't want to impact the buffering anymore. So it would either require steps, which is not pedestrian friendly. But, once we got to the top of that hill we could just follow that blue line on grade right up to 5<sup>th</sup> Street and make a connecting sidewalk off the edge of the parking lot and tie into 5<sup>th</sup> Street at the end of the sidewalk that we are actually building on 5<sup>th</sup> Street. He thinks that would satisfy everyone's concern for direct access for a pedestrian to the trail. He hopes you would find that favorable. It also provides for the vehicular access for maintenance to get materials to the bridge, which Rivanna Trails and Dan Mahon is requesting.

Mr. Roell said he would address another item about the glass canopies Mr. Dotson had brought up; and, actually we are willing as long as the plan is approved to completely remove that entire principle of gas stations/ gas canopies and delete it from the site. Star Bucks as well as Cracker Barrel and numerous tenants that have looked over this site over the last 6 years all want to have some parking in the front. They do not want to have just a drive through; and, it is a multi-tenant building and not a single user like at Chick filet where you can create that front. So we ask for some consideration to that; and, again when we talk about what we think this area's particular intent is in a large traffic vehicle area there are 57,000 trips going on in the interstate as well as a projected 36,000 trips a day on 5<sup>th</sup> Street. There may be 100 or 200 pedestrians and we will do everything in our site plan and provide trail and pedestrian access, but it is a vehicular driven area and even if there are 200 more apartments he would guess that most of those folks will have cars that they will use to drive to work and would need vehicular access.

Mr. Roell said in addressing the U-turn situation that John Anderson has pointed out and again address that that is why the median is now been extended from literally 5<sup>th</sup> Street all the way to the narrowest point where it is at that point a mere 20 feet wide and it is impossible to make a U-turn in, and we are purposely directing traffic around the site to get back to that front entrance. He understands people's impatience and people do stupid things. When he did Hollymead and built the CVS there was no cross over so for a while people literally pulled out the CVS and turned left into the incoming lane even with a no left turn sign in front of them. So things happen and so we put up a bigger no left turn sign and we will put a no U-turn sign there; but, as we pointed out we necked it down and extended that another 60' with a concrete median to where it would be nearly impossible to do unless you are on a bicycle.

Mr. Roell said some of the other concerns as far as just pedestrian use and access he pointed out that having an attractive building that services the clients of the community and the passers on the interstate and meeting the ARB's approval is paramount in both our tenants and the siting of the building. The drive through, as far as Star Bucks is concerned, is not in the program if they are in the middle back building; they want to be on the frontage and want to be seen

when you come off the interstate and pull in there. We have done everything to work with them, their engineers, the county engineer and our engineer to engineer a site that is feasible, practical, and well thought out. We spent four years working this plan, and it has not been a whimsical thought.

Mr. Roell said to address the Monticello view shed the simplest way to do that is to put a brownstone gravel roof on top of the building. We are happy to do that and would have to put stone ballast on top of there and instead of gray pebbles it would be brown stone. He asked Ms. Echols to go back to the topo map that shows the hillside and the floodplain, which was in the first overview. He pointed out that they were very low in the hill and then behind them is the stream. They are also going to be meeting with Piedmont Environmental Council to collaborate on a trail that would come possibly from the Biscuit Run direction along that far side of the stream at the base of the big hill. Most importantly you see we are sitting about 60' below a hillside that is directly to our rear that makes it nearly impossible to see Monticello. We cannot see the top of Monticello Mountain from our site; but, we are more than happy to put a brown stone roof on just as a condition of design as he helped to deal with Giant at Pantops in Monticello's view shed. That would be a simple resolution to that given an earth tone and the rest of the building exterior wall would be earth tone materials and subdued. He asked if there were any other questions he can address.

Ms. Riley asked to further clarify what kind of multi-modal access is on the site and how it connects 5<sup>th</sup> Street, the Moore's Creek Bridge and now the referenced trail, which she is assuming he is saying is the proffered trail for 5<sup>th</sup> Street Station. This is one of the things that has been very difficult even at the CAC level for people to understand how the interconnectivity really would work with this site.

Mr. Roell replied that is a good question and we are here to do what we can to pin it down and to understand it. He said to try to create direct access to 5<sup>th</sup> street if you image right along Moore's Creek on the very top edge at the floodplain there is a cut path that goes straight along Moore's Creek that goes all the way back to Biscuit Run and there is a collapsed bridge that use to cross that. That is one of the things they are talking about rebuilding to make that connection. The owner is anticipating dedicating all of the rest of the rear of the property into green space and making it available for improvements and trail connections, and we think it will benefit the entire area.

Ms. Riley asked if he can then address how someone coming on that path from Biscuit Run would actually be able to get up to 5<sup>th</sup> Street.

Mr. Roell replied not on that side unless someone builds a bridge across that stream that collapsed about ten years ago. That was a part of Biscuit Run and/or 5<sup>th</sup> Street Stations proffers; and, when Biscuit Run became a park that actual proffer went away from them.

Ms. Riley said but then on your site if someone was traversing down from the city on 5<sup>th</sup> Street on their bike and they wanted to go across Moore's Creek Bridge on your site are they going to be able to come down.

Mr. Roell replied that they are absolutely going to be able to cross Moore's Creek Bridge. He pointed out we repaired that bridge about three years and contributed funds to make that happen.

Ms. Riley pointed out that she just saw in the application that you were saying that it was not possible to connect the sidewalk up to 5<sup>th</sup> Street there. She asked if he was now saying that it was now possible.

Mr. Roell replied yes, because once they came up with a process to do that we could not get the plan turned around, back into review and then still make this deadline for the date of this hearing. So we are willing to add that proffer that we will follow that direct course at the northern edge of our parking lot directly to 5<sup>th</sup> Street from the trail.

Mr. Dotson said just to pin it down you are suggesting that were this to be approved tonight between now and the Board of Supervisors meeting you would revise the proffers to include the sidewalk roughly following the blue line and delete the gas station as an allowed use.

Mr. Roell replied yes, sir.

Mr. Dotson said the other question was the 6' retaining wall.

Mr. Roell replied that there is an anticipated amount of 12' of fill and the most you can do is a 2 to 1 slope on any fill, which they know the county engineering's standard for it. He said a 6' slope and then a 6' wall would kind of get you to the edge of the parking; but, then there are curb issues and we would really like to have a slight barrier to that back edge that is more obvious that we can then mount a rail to keep it safe. So our design would really would like to have at least the ability to go up to 8' if necessary. He pointed out that none of that wall is visible from any Entrance Corridor anywhere and it is a solid back of woods behind it. We have no wall on the north side as you come south off of 5<sup>th</sup> Street and a very short wall on the I-64 side which you are not going to be looking 40' down from the bridge at 60 miles an hour to see a 6' wall there. So we would ask that you would give us that little bit of lead way on the wall height to make sure that we can fall under the 8'. We are 6' to 8' in places because of the slope and grade. As he said it is not visible and it is not like looking down the entrance to 5<sup>th</sup> Street Station and seeing a 20' wall or the lowest wall on 29, which addresses that question.

Ms. Spain asked so is the only issue that we really are discussing tonight the setback for the parking.

Mr. Roell replied yes, it really is we need some parking in the front. He asked staff to go to the one plan that shows it. Again, one of the things we also want to avoid is coming out of that entrance we want to be able to have a two-way travel way in front of the building so that if folks do park in the front they can back up and they can come back through the site because we have a full width travel way to get internal to the site. We do not want to then if you get in that front parking lot force you to go back out into 5<sup>th</sup> Street in order to return to anywhere on the site go back down 5<sup>th</sup> Street, do a U-turn and come back in and then try to re-enter the site. That is not vehicular or pedestrian friendly and it is not safe. They will just be creating more traffic on 5<sup>th</sup> Street trying to make U-turns. So it is paramount to that. As you also see in that plan largely it is made up of handicaps with about four useful spots that other people can use. We all know if you have been to a Star Bucks there is a dozen cars parked out front because they are waiting with the rest of them in line and we have doubled the length of our drive through in order to accommodate that after seeing the fiasco in Pantops. So we are trying to accommodate what we can and given the fact that they are only the small building on the right and there are two other larger buildings to the left we want to be able to provide some parking for some of those other tenants and users or a possible restaurant that might sit there. We feel that this is a commercial district and it is not downtown and we understand the process in the Neighborhood Model; but, given 36,000 cars a day on 5<sup>th</sup> Street and 57,000 cars on I-64 we are going to be

attracting some of that traffic. We will do everything we can on the site to make it trail friendly, pedestrian friendly; but, we also want to make it vehicular friendly given the amount of traffic in the area.

Ms. Riley said she would like to follow up with a little bit more of exploring these other alternatives because she is having a difficult time comprehending why this auto circulation plan is better than, for example the Chick Filet kind of modal, the alternative that was put forth. She did not know if it was alternative A or B.

Ms. Echols explained this is the one where we have the drive through across the front and coming down the side. It is the alternative circulation where you come through here and she asked the ARB planner about a drive through here and she said no that the ARB prefers it to be on the side. That is why this little area here is to imply that would be the drive through.

Ms. Riley noted what she is trying to understand is this seems to allow you to if that be within the setback it would make the setback lower; it would still give your client a pretty good visibility and so this last point that you brought up, which maybe she is beginning to wonder is more of the issue that is you needed to have a circular auto pattern for more loaded and more cars to be waiting. She asked is that really the purpose of your design since she really was trying to understand the utility and the aesthetic of it.

Mr. Roell said he understands. It is also to have adequate parking and a building that actually is useful and faces the street. The architectural feature of the front of the building is where the people are going to and it needs to face the street. We don't need to have an artificial back of a building facing there, and then the other problem that concerns is how we get product into whatever those buildings are because now we have no real loading space, rear entrance and how do you get supplies and things into the building other than bringing them in the front door. It is a great concept and sometimes it applies; but, generally it is one shoe does not fit every person and we need to be able to consider what works in here. If the Commission is just determined to reduce the setback on what is a commercial interstate strip, then the most we could do would be to eliminate the front set of parking space, but still maintain a double travel way and allow for some parking up along the face of the building. That is both our tenant's desire and the property owner's desire in a practical engineering access point.

Ms. Riley asked what the setback would become if you did that.

Mr. Roell replied the setback would be 58' instead of 74' and he would be able to eliminate 16' of the front row of parking.

Ms. Riley asked if that would give you one row of parking in the front.

Mr. Roell replied that is you drew a line right across there and slide that up until it hits the green space so that the landscape would be parallel to the travel way and that whole front row of parking would go away. Then we lose 16' for that set of cars and it leaves us with 4 spaces in front of the buildings that are not handicap. So then you are creating something that we have to locate those spaces in the back and then in order to people to get in you are forcing everybody to park in the back and then walk all the way around to the front. He did not know if that is pedestrian friendly either.

Ms. Riley thanked Mr. Roell.

Mr. Lafferty said his concern about the multi-modal transportation is that this whole area will be a connector between Avon Street and 5<sup>th</sup> street and it will be heavily used by bicyclists. He pointed out that putting a bicyclist in this circular traffic patten looks like problems.

Mr. Roell pointed out that a bicyclist can travel those lanes as easily as anything and we will have a bicycle lane on 5<sup>th</sup> Street once they approach. But, again if they are coming across 5<sup>th</sup> Street on the far side on a bicycle he did not know how they would do it. If they are coming north they would be able to turn there.

Mr. Lafferty noted that they would be cutting through one way or the other.

Mr. Roell noted that he did not want to put a bicycle lane along our entrance road given that it is basically for local traffic because, again, he did not want to make that U-turn possible area any wider because that adds 5' and now you are inviting.

Mr. Lafferty said as a bicyclist he would rather ride on the highway than ride in a parking lot.

Mr. Roell said there is plenty of adequate travel way and flat 3 percent grade throughout the property so it is very accessible from that standpoint. He said you can take it and ride it right off the edge and down into the trail if you have a mountain bike.

Mr. Lafferty asked if there are any further questions.

Mr. Dotson said just to follow up on the comment that you made with this exhibit on the screen how would the products and services come into the buildings as you've proposed them here.

Mr. Roell replied that they, again, would park over on the side lot and there will be a sidewalk that will go there because the white space between the travel way and the back of the building is a paved area for product access and worker access.

Mr. Dotson asked if somebody with a hand truck would come across the drive through lane to the area at the rear of the buildings, and Mr. Roell replied yes, sir.

Mr. Dotson asked to go to staff's alternative B and asked how the loading would take place here.

Mr. Roell replied only through a front door, and, again that does not allow for a bypass lane that we also have incorporated into our design that is required.

Mr. Dotson said one other comment comparing this that this afternoon he went up and looked again at the Chick Filet on Pantops and it struck me that it is very visible from the roadway because it is close to the roadway. If you moved it back 40' or whatever distance it would be less visible. But, you seem to be saying that moving closer detracts from visibility and he did not understand.

Mr. Roell replied from the standpoint of moving the building closer to the road and not providing any building and having an actual front of a building Chick Filet can have its front dining room up there and let their drive through pass around it and enter from the back; but, that is a unique model and it is stand-alone single user floor plain design. This is a multi-modal multi-use building of multiple tenants that require different services, accesses, pedestrian and vehicular access, and again you figure there is going to be a fair number of people that are going to get

off the interstate and want to grab a sandwich, grab a coffee, get back out and get back down the road. If you have ever driven anywhere we have all experienced that.

Mr. Dotson thanked Mr. Roell.

Ms. More asked staff to go back to the part of the property that only shows one of the buildings that traffic also will feed back through to the red lines. She asked is that correct.

Mr. Roell replied that is correct everything exits out that point.

Ms. More asked if they have to go all the way around.

Mr. Roell replied that they don't have to loop around, no, they won't have direct access. He pointed out if you are getting ready to go and she says I want to get a cup of coffee then you have a building to turn right and go pull in and you can either loop around and get in the drive through or pull up around front or you can go ahead and exist because it is two lanes.

Ms. Riley noted the most bottom building is the day care center with the people who want to zip in and drop their kids off and zip out, and asked how they feed into this auto pattern since they are the people that are probably in the biggest rush.

Mr. Roell replied that they can go drop their kids off and then go towards the entrance which would take them back out, and then because of that 25' – 30' radius off the exiting lane they can then make a U-turn because it is a wide enough radius. So you can go up that way and turn in and come right into the drive through lane. If you see it stacked up in front of the building, then you will drive around that way and pull into the front of it. So back to Mr. Dotson's point and the engineer's standpoint that is 20' there and it is 24' at the entrance. That is about a 25' radius which is adequate for a car to make a U-turn directly into the site. So any of those folks in that back lot have good access and turning radius to enter into that. He tried to think of as many things to satisfy as many groups and as many conditions that can possibly be squeezed into the same box. He appreciates all your consideration in this matter.

There being no further questions for the applicant, Mr. Lafferty invited public comment. There being no public comment and no applicant rebuttal, the public hearing was closed to bring the matter back to the Planning Commission for discussion and action. He invited further discussion.

Ms. Riley said she would like to report from the 5<sup>th</sup> and Avon Street CAC that met last week and the meeting was primarily just to discuss this project. After a pretty lengthy discussion there were probably three or four residents that live right in 5<sup>th</sup> Street area in Willoughby, Redfields and Southwood. So there were some residential representation as well as a developer from the area. Most of the conversation took place between the people in the 5<sup>th</sup> Street area and not Avon. There was a little bit of confusion about the auto circulation proposal. She thought that people had difficulty in understanding it just in terms of how the whole site would work. In general she thinks the group is very interested in having more pedestrian oriented development. For those that have been tracking the city side that this may be an area and 5<sup>th</sup> Street may become a city small area plan and we want to make sure we are connecting well to the city. In the end she thinks people realize that there is a lot of existing development there that does not conform to this new setback requirement and they realize this is a new setback requirement previously established. But, she would say in the end the balance was towards we should be trying to establish the Model Neighborhood principles and pedestrian multi-model orientation on sites from here on. If we don't start doing it now when will we do it? So their resolution was that

they wanted to ask the developer to please adhere as closely as possible to the 30' setback in a new design.

Mr. Lafferty asked how about the relegated parking, and Ms. Riley replied that they listened to what the Planning Commission gave in terms of direction at the last meeting and felt that the relegated parking would be nice to have given that it would support pedestrian orientation, but that really the setback was more of the issue.

Mr. Dotson said at our previous meeting on this application he thinks a number of Commissioners were sort of on the fence, they could see that this was not an in town location, it was an edge of the interstate location and were not sure maybe they could maintain more of a setback than the 30'. He was one who because the ordinance was fairly new wanted the applicant to look at some alternatives to see could in fact the site work with the 30'. He would like to commend the staff for going the extra mile and adding alternatives to what the applicant presented to us. Having said all of that he is very concerned that we not set a precedent that would sort of undo this 30' setback community wide, but it does seem that there is an argument that could be made that this is a site that has a unique target market because it is within a quarter of a mile of the nearest ramp of the interstate. If that was our rationale it would certainly limit any precedent in terms of being jurisdiction wide if we were clear that this was because it was within a quarter of a mile of the nearest ramp of the interstate. So those are some of my thoughts on the special exception.

Ms. Spain agreed with Mr. Dotson, she also remember the discussion from the last meeting and several of us were more concerned about the multi-modal which the applicant is addressing and perhaps the gas station canopy which he is also addressing. If the model is going to attract a large restaurant chain and/or Starbucks the lack of an adequate setback and parking in front could discourage that. Even though she endorses the Neighborhood Model she feels in this instance that it is a special case and that the applicant has also done a great deal on every other issue that we raised in trying to meet every other concern that we raised at the other meeting.

Ms. More agreed with comments both of the other commissioners have said. She sort of came in thinking that a lot of the issues were not addressed and after hearing the applicant speak it sounds like some of the concerns can be addressed with proffers. She agreed with particularly what Commissioner Dotson said that she did not think that everything is going to fit into the same box and that a case could be made here to allow for the greater setback. With that said she thinks we want to be careful about the language we put into that as to why the Commission would feel moved to do that. That would be her comment on that to make sure it is not setting a precedent.

Mr. Lafferty asked if everybody is comfortable with the 8' versus 6' retaining wall.

Mr. Dotson said a question for staff is the 6' he believes comes from guidelines from the ARB, which is not necessarily a requirement but a target of desirability, and he thinks that is reflected also in the comprehensive plan.

Ms. Echols replied it is in both instances, yes. It is also the new grading standards if you are going to be disturbing managed slopes also requires 6' terraces. Our engineer who looked very closely at the plan might also be able to speak to you on margins and ability to meet that. She talked to the zoning administrator about that and they do leave a little bit of margin for error in that but not as much as 2' since 2' would be much larger than they would be comfortable with.

Mr. Dotson said a question for the county attorney is could it be that the requirement was 6' but could be adjusted for a demonstrable reasons with a maximum of 8' with the approval of the planning director.

Mr. Kamptner replied that they could work on some proffer language with the applicant that might build in that flexibility.

Ms. Echols noted that she thinks the proffer actually the way it is written does that. Actually, it is not a proffer it is shown on the plan as 8' retaining walls. What staff had asked is that they change the note on the plan to say 6' retaining walls, which they could do and put that small margin that is allowed by zoning. They could change the plan to say 7' or say the maximum of 8' but with approval of the county engineer or something like that, which would then say you don't just get it you have to demonstrate that you need it. It being a proffered plan and not a planned district that wouldn't be something that was available for a variation of a special exception. But, there could be a note on the plan that does that. However, right now what they get is a maximum of 8'.

Mr. Dotson commented that he would be comfortable if it showed on the plan 6' allowing the county engineer to modify it up to 8' if necessary.

Mr. Lafferty pointed out we have an affirmative sign from the applicant on that.

Ms. Riley said she was generally comfortable with what was proposed; but, she thinks it is really important if we are going to make the special exception under unique target market that we clearly define and limit that to a quarter of a mile of the nearest ramp of an interstate. She thinks it is really important that it not be really broad, and she wants to see that the multi-modal access and the connection to 5<sup>th</sup> Street to Moore's Creek in the attempt to try to connect to the Biscuit Run be through proffer. It is a compromise of trying to make it accessible, but recognizing that this is a site where this auto centered design is acceptable.

Mr. Dotson asked the applicant to speak to that.

Mr. Roell said to address that we are glad to add something to the proffer language where we will be happy to cooperate with any improvements to a Biscuit Run connection and/or path or trail way and provide easements based on our property for that. He would be happy to work with you in that community area in order to finalize some of those designs and make sure those paths are clear and accessible.

Mr. Lafferty asked about the 6' to 8' retaining walls.

Mr. Roell replied if they can have it as not to exceed 8' and between the 6' and 8' range, again those variances, and the last point of that those areas where we are going to put a retaining wall are not managed slopes, they don't exist yet because we are going to fill them and grade them.

There being no further comments, Mr. Lafferty asked for a motion.

Mr. Kamptner suggested addressing the special exception first.

Mr. Dotson commented that he believed the applicant said they could live with a 58' setback with a single row of parking. But, he was going to recommend the 74' because he does see that it would put the parking and inconvenience the pedestrian at a greater distance to move it from the front of the buildings. So that is the rationale for going specifically to 74' instead of 58' and

so the minutes can reflect that. Mr. Dotson moved to recommend approval of a 74' maximum front setback in conjunction with ZMA-2012-00007 5th Street Commercial for the reasons of the unique target market within a quarter of a mile of the nearest ramp of the Interstate 64.

Mr. Lafferty asked if the quarter of a mile is a condition, and Mr. Dotson replied that it is a rational.

Mr. Benish agreed that it was a rational.

Ms. Spain seconded the motion.

Mr. Lafferty asked for a roll call.

The motion passed unanimously by a vote of 5:0:2. (Keller, Firehock absent)

Ms. Echols asked for a motion on the rezoning request. She said the Commission can make a recommendation to approve with conditions that the applicant will make the changes that they talked about before the Board meeting.

**Motion:** Mr. Dotson moved for approval of ZMA-2012-00007 5<sup>th</sup> Street Commercial as stated by staff. He believed the conditions are the addition of the sidewalk connecting to 5<sup>th</sup> Street; the deletion of gas stations as an allowable use; and, the modification of the plan to show the retaining walls to be between 6' and 8' with any access over 6' to be approved by the county engineer. He said those are the conditions that he captured.

Ms. Spain added the multi-modal condition.

Mr. Kamptner asked if there is any particular criteria that the county engineer should be applying and that might be as demonstrated to be necessary to establish the walls without removing guardrails and whatever for the safety reasons that were stated by the applicant.

Mr. Dotson replied yes, that should be added.

Ms. Echols said she did not know if he was finished; but, there was also the roof and whether the Commission wanted to have the brown stone on the roof regardless of whether it is in the Monticello view shed.

Mr. Dotson replied yes, on the roof he wanted the brown stone regardless of consulting with Monticello.

Ms. More seconded the motion.

Mr. Lafferty asked for a roll call.

The motion passed unanimously by a vote of 5:0:2. (Keller, Firehock absent)

Mr. Lafferty noted the motion carried and ZMA-2012-7 5<sup>th</sup> Street Commercial will be forwarded to the Board of Supervisors with the recommendations on a date to be determined.

**The Planning Commission recessed at 7:18 p.m. and reconvened at 7:25 p.m.**

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