

An adjourned meeting of the Board of Supervisors of Albemarle County, Virginia, was held on September 14, 2016, at 3:00 p.m., Lane Auditorium, County Office Building, McIntire Road, Charlottesville, Virginia. The meeting was adjourned from September 12, 2016. The regular night meeting was held at 6:00 p.m.

PRESENT: Mr. Norman G. Dill, Ms. Ann Mallek, Ms. Diantha H. McKeel, Ms. Liz A. Palmer, and Mr. Rick Randolph.

ABSENT: None.

OFFICERS PRESENT: County Executive, Thomas Foley, County Attorney, Greg Kamptner, Clerk, Claudette K. Borgersen and Senior Deputy Clerk, Travis O. Morris.

Agenda Item No. 1. Call to Order. The meeting was called to order at 3:02 p.m. by the Chair, Ms. Palmer.

Ms. Palmer introduced the presiding security officer, County Attorney Greg Kamptner, County Executive Tom Foley, Clerk Claudette Borgersen, and Deputy Clerk Travis Morris.

Mr. Kamptner introduced new Senior Assistant Attorney, Amanda Farley, who recently joined their office and had previously worked in Virginia Beach.

Agenda Item No. 2. **Discussion:** FY17/19 Strategic Plan Objectives.

The Executive Summary presented to the Board states that the County's adopted FY17 Operating and Capital Budget initiated the development of a priority-driven budgeting process, including Board work sessions and community engagement, to determine Board and community priorities in a constrained economic environment. This priority driven budgeting process involves identifying priority services and necessary funding levels to support those services, and then aligning resources and desired services in a sustainable way for the future. The process will result in a balanced Two-Year Fiscal Plan that will provide a framework for decision-making on major financial issues.

The Board began this critical process with a strategic initiatives identification session on May 17, 2016, and continued with a priority setting session on June 7, 2016. Since that time, staff has been working to refine the identified priority initiatives into clarified objectives that will form the basis of the County's FY 17 - 19 Strategic Plan. These clarified objectives will be introduced to the Board on September 14 for a preliminary overview and discussion. The Board will continue with more in-depth discussions of the draft objectives and resource allocation issues at the work sessions scheduled for September 29 and October 11. The Board's feedback and direction will shape the development of the balanced Two-Year Fiscal Plan that will be presented in November.

During work sessions in May and June, the Board identified and prioritized strategic initiatives into three tiers as defined below and directed staff to bring back clarified objectives for further discussion and review.

Tier 1 : Identified by the Board as the most critical and urgent items to be accomplished in the FY17 - 19 Strategic Plan with resources identified and assigned as necessary to complete the expected outcomes.

Tiers 2 and 3: Identified by the Board as important items that should continue at their current level of effort unless some circumstance would cause the Board to reconsider the urgency of the objective.

Desired outcome of this discussion: This agenda item is intended to present the draft recommendations to the Board with the understanding that Board members will want to take some time to review and consider the information before providing feedback and direction. While any immediate response from the Board is welcome on September 14, the September 29 work session is being planned as an opportunity for a full and in-depth discussion after the Board has had adequate time to reflect on the recommendations.

Community feedback: Staff provided a full report on all comments received through the online survey to Board members earlier in September. That full report has been posted to the County website so that it is accessible to the public. Staff will provide a high level summary of the survey results on September 7.

The budget impact of the strategic objectives will be presented as part of the balanced Two Year Fiscal Plan to be adopted in December 2016.

Staff recommends that the Board receive the draft clarified objectives and prepare to discuss them in more detail at the September 29 work session.

Ms. Lee Catlin, Assistant County Executive, addressed the Board and presented PowerPoint slides. She stated that priority-driven budgeting focuses on prioritizing services and doing the most important things well. She said the purpose of the discussion today is to present an introduction of

clarified strategic objectives for Board review and further discussion. Ms. Catlin stated that over the next few weeks she would like the Board to think and reflect on the priorities in preparation for their meeting later this month. She reminded the Board that the FY17 budget includes a priority-driven budget process and formulation of a balanced two-year fiscal plan. She reviewed the budget process year-to-date and steps that have been taken from April through now, noting upcoming discussions planned for September 29, October 11, October 12 and November 9, when the final draft will be presented to the Board in hopes it will be passed by December.

Ms. Catlin reminded the Board that earlier in the year they had established Tiers of priorities, Tiers 1 through 3, with Tier 1 representing the most critical and urgent items, and Tiers 2-3 being important, but not as urgent. She used an analogy of Tier 1 being the “sprint” category and Tiers 2 and 3 representing a “marathon.” She gave several examples of Tier 2 items, broadband and economic development, which are being worked on. However, at some point the Board may wish to make them more urgent items and move them to Tier 1.

Mr. Randolph asked to briefly interrupt the presentation with a comment about question 5 regarding evaluating the potential use of urban service districts. He asked if they could broaden the definition and use the normal terminology to refer to special districts, which would allow them create an overarching special district in rural, underserved, and inaccessible locations to help pay for the costs of a broadband authority. That would allow for more flexibility, whereas the current terminology only permits them to establish a special district in an urban service capacity.

Ms. Catlin welcomed Mr. Randolph’s feedback. Prior to continuing with the presentation, she asked Board members to comment as to what items they believe are most important for discussion so they can make the most of the 30 minutes they have today.

Mr. Foley, addressing Mr. Randolph’s comments, referenced redevelopment of Rio Rd/Route 29 as being Tier 1 and an urban service district and that another item, broadband, could also potentially come under an urban service district. He said the concept of a service district can be applied to many different priority areas.

Mr. Randolph said that to sell Tier 1 priorities, they need to be able to demonstrate to constituents the value of a priority to them. He said they need to look at ways to be as inclusive as possible to obtain public support, and that is why he made his comments about service districts and changing the terminology to make them more inclusive in order to garner broader public support.

Ms. Catlin introduced Mr. Doug Walker, Deputy County Executive, to continue with the presentation.

Mr. Walker first referenced Tier 1 action objectives. He stated the first Tier 1 item is the development of a small area plan, with the objective of having the Board adopt the desired vision by April 2017 as an early outcome of the small area plan process. Mr. Walker said this would be the conclusion of the first phase of this project, and he reviewed a potential 2017 timeline for the further development of a small area plan. He stated that by May, the Board will adopt a completed recodification of the zoning ordinance to improve clarity and encourage by-right implementation of desired urban land use. He said that by December, they will have increased partnership and incentive options to promote business development and expansion. Mr. Walker said that by January 2019, they will be leveraging existing and planned public investment to enhance place-making in Rio/Route 29, which may include aligning the Capital Investment Plan (CIP) to prioritize projects, such as transportation revenue sharing, subsequently repositioning the County’s role with respect to maintaining infrastructure. Mr. Walker stated that by December 2016, the Board will provide direction regarding the use of urban service districts to fund enhanced services in infrastructure, with implementation by July 2018. He said he will come back in a few weeks to discuss specific resources.

Mr. Foley stated that the dates developed have taken into consideration resource development, and he will be prepared to discuss the dates at the next meeting.

Ms. Catlin referenced the materials she had distributed to members of the Board and said the last item is a summary of public feedback, adding that staff is pleased with the thoughtful comments received and will highlight a few examples. She stated that 74% of respondents felt that the identified focus areas either “fairly” or “very well” met goals for the community, and that many made comments about rural areas/natural resources becoming an increasing priority. Ms. Catlin reported that of the 26% of respondents who did not feel the focus areas meet the goals of the community, the majority of comments were about business and economic development. She said that broadband, seniors, accessibility and alternative forms of transportation were other items mentioned by respondents.

Recess. The Board recessed at 3:34 p.m., and reconvened at 3:37 p.m.

Agenda Item No. 3. Joint Meeting with School Board.

School Board Members Present: Ms. Kate Acuff, Mr. Jonathan Alcaro, Mr. Jason Buyaki, Mr. Stephen Koleszar, Ms. Pamela Moynihan, Mr. David Oberg and Mr. Graham Paige.

School Staff Present: Dr. Pam Moran, Superintendent, Mr. Dean Tistadt, Chief Operating Officer,

Mr. Jackson Zimmerman, Executive Director of Fiscal Services, Mr. John Blair, Senior Assistant County Attorney, and Mrs. Jennifer Johnston, Clerk.

At 3:37 p.m., Ms. Acuff called the School Board meeting to order.

Item No. 13a. Context Setting for Two Year Balanced Fiscal Plan/Five Year Financial Plan Process.

The Executive Summary presented to the Board stated that as part of the FY 17 Operating and Capital Budget process, the Board of Supervisors approved the development of a balanced Two Year Fiscal Plan and a longer-range Five Year Financial Plan to help address the ongoing fiscal challenges facing the County. This joint session is intended to provide an overview and to begin shared dialogue on development of the Two Year Fiscal Plan, which will continue as the draft balanced plan is presented in November and reviewed and revised for final adoption in December.

The joint session will provide a high level look at the County's long range financial planning process and will preview major revenue drivers and expenditure pressures that will influence the development of the Two Year Fiscal Plan. Staff will also review strategies from the FY17 Operating and Capital Budget aimed at meeting the ongoing fiscal challenges including priority driven budgeting. The session will provide opportunities for questions and discussion.

No direct budget impact will result from this agenda item.

Staff recommends that the Board of Supervisors and the School Board provide any desired feedback based on information that will be provided at the session.

Ms. Catlin addressed the Board and said she will discuss long-range fiscal planning and policy as they begin the five-year planning process. She said she will first discuss their shared, guiding principles of plan development, and next will be 2017 adopted budget strategies. She said that she will preview the long-range fiscal planning approach and will present the context for developing the balanced two-year fiscal plan and five-year financial plan. She stated that she will provide a preview of the County's financial situation, the funding formula, and review school enrollment growth and demographic changes.

Ms. Catlin said that in the past, they have put together a budget plan with input from both Boards. She reported that at a joint meeting in October 2014, the Boards agreed on the following guiding principles: shared understanding - have a shared understanding of basic facts, clarified assumptions, processes, and the needs of both the local government and school division. Staff capacity - our organizations will have adequate staff capacity across all functional areas with a focus on both performance competencies and the number of employees required to meet service demands. Mandates and obligations - we recognize the continuing challenge of meeting evolving mandates and obligations and their impacts on local resources. Compensation and benefits - strive to maintain salaries and compensation in accordance with the identified market and to principles of commonality. Physical infrastructure - invest in infrastructure that addresses community needs and priorities. Implementation of strategic plans - make progress towards achieving goals in the strategic plans. Prevention - focus on proactive approaches and prevention strategies. Changing demographics - we will anticipate and position ourselves to address current and projected demographics. Public engagement/involvement - actively involve the public in the long-range financial planning processes. Fiscal responsibility - strive to provide quality services within a reasonable tax obligation for County residents, aggressively pursuing additional resources through alternative investment sources that do not rely on real estate taxes. She invited feedback.

Mr. Randolph said that as a former Planning Commissioner, he saw a disconnect between the former comprehensive plan and the current comprehensive plan and that in development of the plans they had numerous discussions and the plan for construction of a new high school on the north end was not part of those discussions. He suggested that the school division utilize a member of the Planning Commission as a liaison to the schools, as their professional expertise can assist the school division with fiscal planning for the future. He said that by working more closely, it will help with the school division decision making and the CIP process, as well as Board planning.

Ms. Acuff addressed Mr. Randolph's comments and said the school division had recently met with Ms. Diantha McKeel and Mr. Tim Keller, and they all agreed that there should be better communication between schools and the Planning Commission.

Ms. McKeel stated there is an effort underway to have both the School Board and Planning Commission convene, which would not replace what Mr. Randolph is suggesting.

Ms. Acuff said that "policy" is left out of the public engagement goal.

Mr. Koleszar suggested they emphasize the importance of prevention and being proactive in solving problems before they get too large, such as the role of family service workers in the schools that save lots of social services dollars.

Ms. Catlin continued her presentation and said she will review the FY17 adopted budget. She reminded the Board that they are trying to find a balance between a realistic level of revenue projections

and expenditures that can be supported by revenue, and how this is a challenge in terms of weighing input from elected officials and community members. She said the budget supports existing services as much as possible while putting building blocks in place to plan for a sustainable future. She stated that one of the main goals was to propose a comprehensive process to determine Board and community priorities and to develop a realistic two-year fiscal plan beginning FY18. She said they have been working on these strategies for the past several months, and while they have always looked at priorities when budgeting, the last recession has forced them to use best practices and emphasize priority-driven budgeting.

Ms. Catlin listed five advantages of priority-driven budgeting: 1) Prioritize Services, 2) Do the Important Things Well, 3) Question Past Spending Patterns, 4) Know the True Cost of Doing Business, and 5) Provide Transparency. She provided an example of another community that has used priority-driven budgeting, Fort Collins, CO. She next showed a timeline of priority-driven budgeting as follows: May–June 2016: the Board identifies and ranks top strategic priorities; July–August 2016: staff drafts clarified strategic objectives and identifies initial resource needs; September–October 2016: the Board provides guidance on objectives, initial resource needs and alternatives; November–December 2016: staff recommends a balanced two-year fiscal plan for Board review and approval; and February 2017: staff recommends the FY18 annual budget for the Board's review and approval.

Ms. Catlin next listed some steps they have taken to improve the County's financial situation. She stated the first step is increased capacity for grant attainment, noting that they have expanded the $\frac{3}{4}$ -time grant management position to full time. Ms. Catlin said this allows for greater focus on grants that provide resources for operational and strategic priorities, as well as providing administrative costs in the grant applications, allowing them to recoup staffing expenses in the grant application process. She said that a second step is a reallocation pool, which has allowed them to assess every staff position and their ability to assist with the strategic priorities. She provided an example within the police department where officers were taken from desk/office duties back to working outside in the community. Ms. Catlin stated that a third step is a technology/productivity assessment, with an example being a drive-up kiosk for financial transactions. Ms. Catlin said the fourth step is the implementation of joint internal efficiency/transformation recommendations; the fifth is increased economic development investment; and the sixth is increased transportation revenue-sharing funding.

Ms. Mallek commented that once there is an investment in the CIP and work has begun, they should set that item in a separate category instead of having everything ready to be rehashed, as they then waste time and money on things they have already invested in.

Lori Allshouse, Director of the Office of Management and Budget, addressed the Board and said she will provide a PowerPoint presentation. She first showed a summary of the County budget process and explained how the five-year plan is critical process, particularly for obtaining a AAA-bond rating. She said that planning is based on assumptions that are often subject to revision.

Mr. Randolph asked if she will provide a statement of the assumptions made in the budget planning process as well as three different scenarios: optimistic, middle, and pessimistic. Ms. Allshouse responded that they will provide the assumptions used and will provide three scenarios.

Ms. Allshouse stated that there is a long-range structural challenge which they are attempting to address with priority-driven budgeting. She said the County and schools continue to collaborate on the five-year financial forecast and the County develops the two-year fiscal plan. She said that schools submit an annual needs-based budget as required by state law, and the County Executive is required to submit a balanced annual budget.

Ms. Allshouse next focused on revenue and expenditure drivers. She showed a graph listing sources of revenue, with local real estate taxes being the largest source, followed by other general property taxes, sales taxes/fees, state funding, and federal funding. The next chart showed how for several years from 2007 to 2013, despite real estate tax rates increasing, tax revenues remained flat. She noted that this was due to declining real estate assessments, which in 2014 began to increase. Ms. Allshouse pointed out some positive economic signs projected for the future, as building permits have been increasing and existing homes are selling faster, and noted sales tax and food and beverage revenue increased. She next showed a graphic showing revised state budget forecasts for FY17 and FY18, as a result of less than expected income tax and sales tax collections and said that her office believes there is the potential for a reduction in aid to localities as well as some agencies, which could come to the County to make up a shortfall.

Mr. Dean Tistadt, Chief Operating Officer for Albemarle County Schools, said that though they do not yet know what the final state budget allocation for the schools will be, they believe it is unlikely they will obtain funding for teacher salary increases. However, he said, last year they set aside about one-half million dollars in case this were to occur, so they are well positioned to deal with it.

Ms. Allshouse displayed a list of potential expenditure drivers: revenue sharing with the City; resources to support strategic plan priorities; maintaining market competitive salaries and benefits; and resources to address core capacity issues, population growth, urbanization, and changing demographics. She stated that the approved CIP includes a 1.3% tax rate increase for FY18 and a 2.1% increase for FY19. She next showed how the funding formula for schools is developed, noting that the County shares 60% of the increase/decrease in available shared local tax revenues with the School Board. Ms. Catlin said that available shared local tax revenues are additional or reduced tax revenues that can be used for County and school division operations after subtracting any increases and adding any decreases in debt

service, capital improvement funding, City of Charlottesville revenue sharing, tax relief for the elderly and disabled, tax refunds, and any shared reserves for contingencies. She mentioned that examples of shared revenues are general property taxes, sales taxes, consumer utility taxes, business license tax, vehicle registration, recordation tax, transient occupancy tax, food and beverage tax, and personal property tax relief. She also showed what is “taken off the top,” which includes the following: transfer to capital and debt service, city revenue sharing, tax relief for elderly and disabled, tax refunds, shared contingency reserves, the portion of telecommunications tax dedicated to 911 service, funding dedicated to the fire services fund, and the water resources mandate.

Mr. Randolph asked for clarification that the CIP is not part of the revenue agreement between the School Board and the County. Ms. Allshouse confirmed this and continued her presentation. She emphasized that the funding formula serves as a starting point and it can be adjusted to address budgetary needs.

Ms. Mallek asked for confirmation that when property tax revenues declined as a result of the recession, this also impacted the funds provided to the schools. Ms. Allshouse confirmed this.

Dr. Pam Moran, Superintendent of Albemarle County Schools, addressed the Board regarding enrollment growth and demographic changes. She addressed the concept of equity and access, in that all children have the opportunity for a high-quality education regardless of zip code or financial status. She said they have been doing an analysis of how changing demographics of the County would impact the schools, with particular emphasis on how some schools would be more affected by at-risk and special needs students than others. She said that over the years they have seen increases in the number of students receiving free/reduced lunch, English language learners, special education and students with handicaps. Dr. Moran said she would like them to look at the funding formula and ways to properly allocate resources so that those schools with higher concentrations of special needs students obtain what they need.

Ms. Rosalyn Schmitt, Assistant Director of Facilities Planning for County Schools, addressed the Board and said her presentation analysis is a collaboration of instruction, facilities, and fiscal services. She outlined her presentation and said it will focus on enrollment growth, demographics, financial and facility impact, and demographics, a school-by-school comparison. She said she will demonstrate that enrollment is growing in specific categories, and is not evenly distributed, noting that there is an increasing gap between affluent and poorer schools. She displayed a graph showing City and County population growth from 1970-2014, which has almost doubled over this time. Ms. Schmitt stated that as a result of an aging population, the percentage of the population representing school-age children has seen a small decrease, and although school enrollment is growing and will continue to grow, it will happen at a slower rate in the future than in the past. She stated that previously the schools have done these projections themselves, but have recently contracted with the Weldon Cooper Center, demographers affiliated with University of Virginia, to further refine enrollment projections by school and by demographic group. She next showed a graph depicting elementary school enrollment and areas of the County where it has increased and decreased, as well as projections for 5 and 10 years.

Mr. Oberg stated that 1,000 new homes have just been approved for the western portion of the County and asked why this likely increase in school population is not shown. Ms. Schmitt responded that they had an asterisk for the Crozet section of the map, pending the outcome of this approval, although it is not reflected on the maps displayed.

Mr. Randolph suggested that she include estimates of private school enrollments so that they can track the ratio of public/private students, as this would be valuable for the Planning Commission, the Board of Supervisors, and the School Board.

Ms. Schmitt said they have included public/private enrollment in their projections. Dr. Moran stated that through the Title I program, they are required to assess public and private school enrollment as well as home-schooled students.

Ms. Schmitt next showed a map of current and future enrollment projections at middle schools and high schools.

Mr. Sheffield asked to what she attributes the decline in enrollment at Walton School over the past five years. Ms. Schmitt responded that it is the result of no new development.

Mr. Randolph said it could be due to smaller families resulting from declining incomes from the recent depression.

Ms. Palmer said that neighborhoods often have a cycle, and that areas in southern Albemarle are at a different point in their cycle. Mr. Koleszar agreed, adding that developments like Mill Creek now produce fewer middle school students than they once did.

Dr. Moran said that in anticipation of the Biscuit Run development they did redistricting, and Burley picked up some Walton students, so this has contributed to the enrollment decline.

Ms. Schmitt said she will now focus on demographics and lists three categories: English learners, economically disadvantaged, and special education (SPED). She showed a chart depicting increases in SPED costs from 2010–2016. She discussed how school instruction has changed over the years, with the need for additional and smaller classrooms for differentiated learning. She said the next chart depicts a

12% increase in English language learners over five years, with projections of future increases. Ms. Schmitt noted that this population is concentrated in certain schools in the urban ring, with Greer Elementary having the highest number among elementary schools at 39% of their student population; Jouett Middle School has 18% English learners and is the highest among the middle schools; at the high school level, Albemarle High School has the highest percentage with 8%.

Mr. Sheffield asked if English language learning is taken into consideration in redistricting. Ms. Schmitt replied that it is one of many factors they consider.

Mr. Randolph stated that the presentation demonstrates the need for diversification in the western part of the County and that adding affordable housing there would be a forward step, adding that there is an imbalance with most non-English speakers located in the north and south ends of the County. He also wonders if some planned Habitat for Humanity housing would increase the number of English language learners at Cale Elementary.

Ms. Schmitt next showed a graphic depicting free/reduced school lunch students, with eligibility requirements based on household size and income. She reported that 10 years ago, 21% of students were economically disadvantaged, and this has increased to 29% today; urban ring schools have the highest percentage, with Greer Elementary having the most at 73%; the urban ring schools represent 34% of the total school population but 57% of free/reduced lunch population. She stated that the most affluent elementary schools have an average of 10% free/reduced lunch students, whereas the least affluent have 69% free/reduced lunch students. She also reviewed statistics for middle and high schools, which show similar trends.

Ms. Mallek said that the map provided is a good example that rural areas also have homes in poverty, they are just not as concentrated as those in the urban ring.

Mr. Oberg said that Henley has a particularly large gap between poor and affluent students, which is reflected in the classrooms where there is disconnect among students.

Ms. Schmitt next showed a chart of SPED enrollment at elementary, middle, and high schools, which she pointed out has remained steady. She said the chart does not reflect the severity of need, which has increased. She also presented data on the increasing number of classrooms dedicated for SPED. She concluded her presentation with two questions: 1) Are we willing to accept the growing demographic differences between schools? If not, what might be considered to more equally balance the demographics? 2) What actions might be considered to ensure all students have access to equitable resources, experiences and facilities?

Ms. McKeel commented that after this presentation, one can see why some have a sense of urgency, particularly with school capacity issues.

Ms. Palmer said she would like to see information on how the formula to determine free/reduced lunch qualification has changed over the years.

Ms. Allshouse returned to the podium to address what the next steps will be: September 29 and October 11 will be Board work sessions to review priority based budgeting; October 12 will be a joint session on compensation and benefits; November 9 will be the draft two-year plan and presentation; November 10-17 will be work sessions and a public hearing; December will be adoption of the two-year fiscal plan.

At 5:04 p.m., Ms. Acuff adjourned the School Board portion of the meeting.

Agenda Item No. 4. Closed Meeting.

At 5:05 p.m., Mr. Dill offered a **motion** that the Board go into Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia under subsection (7), to consult with and be briefed by legal counsel and staff regarding specific legal matters requiring legal advice relating to: 1. The acquisition of real property in conjunction with the Barracks Road sidewalk project; 2. The repair of drainage improvements and the acquisition of a related easement on Commonwealth Drive; 3. Consideration of negotiating the lease of office space for an entity created as the result of a public private partnership; and 4. The pending special use permit application for Restore'n Station. Mr. Sheffield **seconded** the motion.

Roll was called and the motion carried by the following recorded vote:

AYES: Ms. McKeel, Ms. Palmer, Mr. Randolph, Mr. Sheffield, Mr. Dill and Ms. Mallek.
NAYS: None.

Agenda Item No. 5. Certify Closed Meeting.

At 6:12 p.m., the Board reconvened into open meeting and Mr. Dill **moved** to that the Board certify by a recorded vote that to the best of each Board member's knowledge, only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act

and identified in the motion authorizing the closed meeting were heard, discussed, or considered in the closed meeting. Ms. Mallek **seconded** the motion.

Roll was called and the motion carried by the following recorded vote:

AYES: Ms. McKeel, Ms. Palmer, Mr. Randolph, Mr. Sheffield, Mr. Dill and Ms. Mallek.
NAYS: None.

Agenda Item No. 6. Call back to Order. At 6:13 p.m., the meeting was called back to order by the Chair, Ms. Palmer.

Ms. Palmer reintroduced staff members present.

Agenda Item No. 7. Pledge of Allegiance.
Agenda Item No. 8. Moment of Silence.

Agenda Item No. 9. Adoption of Final Agenda.

Ms. McKeel **moved** to adopt the final agenda. Ms. Mallek **seconded** the motion.

Roll was called and the motion carried by the following recorded vote:

AYES: Ms. McKeel, Ms. Palmer, Mr. Randolph, Mr. Sheffield, Mr. Dill and Ms. Mallek.
NAYS: None.

Agenda Item No. 10. Brief Announcements by Board Members.

Mr. Randolph said he would like to announce the recent opening of the All God's Children Child Development Center at Christ Church at Glendower, and is happy to report that they already have an enrollment of 15 students and are discussing potential expansion of the program.

Mr. Randolph said he would like to announce that Scottsville United Methodist Church will host a "Stop Hunger Now" packaging event on Saturday, October 29, 2016 from 9:00 a.m.–12:00 p.m. on East Main Street in Scottsville.

Mr. Randolph announced that on October 29, 2016, Scottsville will celebrate Harry Potter and expects a large crowd with attendees dressed in Harry Potter attire.

Ms. Mallek announced the Boys and Girls Cycling Challenge on September 18, 2016, in Crozet, with 25, 50, 100 mile rides and an 8-mile family ride, noting that the event begins at 10:00 a.m. and the website provides details.

Ms. Palmer announced that the Rivanna Solid Waste Authority and the County will hold a meeting at 6 p.m. on October 29, 2016, at the Murray Elementary School Media Center to present information on the new transfer station to be built at the old Ivy Road landfill site.

Mr. Dill announced a joint City/County Public Hearing regarding a new and expanded bridge at Free Bridge on Thursday, September 22, 2016 at 6:30 p.m. at Burley-Moran School.

Agenda Item No. 11. Proclamations and Recognitions.

Item No 11a. Proclamation recognizing September 17, 2016 as Pride Festival Day.

Mr. Randolph read the proposed proclamation recognizing "Pride Festival Day," and **moved** to adopt same. The motion was **seconded** by Ms. McKeel.

Roll was called and the motion carried by the following recorded vote:

AYES: Ms. McKeel, Ms. Palmer, Mr. Randolph, Mr. Sheffield, Mr. Dill and Ms. Mallek.
NAYS: None.

PROCLAMATION

WHEREAS, Albemarle County is a community that values human rights, and respects the dignity of each person; and

WHEREAS, the Albemarle County Board of Supervisors is committed to equal rights for all Americans and opposes discrimination in all forms; and

WHEREAS, the cultural diversity and heritage of the Albemarle County has been enriched by the contributions of its lesbian, gay, bisexual, transgender, queer and questioning (LGBTQ) community; and

WHEREAS, the County's LGBTQ community members are integrally and actively involved with the County's health and safety, learning and innovation, economic energy, and quality of life; and

WHEREAS, the Pride Festival celebrates the lesbian, gay, bisexual, transgender, queer and questioning (LGBTQ) community and its proud presence in Albemarle County.

NOW, THEREFORE BE IT RESOLVED, that the Albemarle County Board of Supervisors recognizes with pride the lesbian, gay, bisexual, transgender, queer and questioning community; and

BE IT FURTHER RESOLVED that, the Albemarle County Board of Supervisors, proclaim, Saturday, September 17, 2016, as Pride Festival Day.

Signed and sealed this 14th day of September 2016.

Ms. Palmer asked Ms. Marshall to come forward and accept the proclamation.

Ms. Amy-Sarah Marshall addressed the Board and said the proclamation matters very much to people, and she believes that symbolic gestures carry a lot of weight as they tell people in a visible and vocal way that County leadership values them. She invited people to attend the Pride Festival on Saturday at Lee Park. She said there will also be activities on Thursday and Friday nights as well as two film presentations on Sunday, noting that they had over 100 attendees at their recent youth picnic.

Agenda Item No. 12. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Mr. Tom Loach of Crozet addressed the Board, stating that he will comment further on last week's discussion regarding the proposed Adelaide development. He said they will have three events that will help with planning in Crozet. He said the first will involve the community itself updating its own Master Plan to address ambiguities, and they will need help with some data in order to make decisions. Mr. Loach said the second event will be at next week's Crozet Advisory Committee meeting, where he plans to ask the Board to address the net vs. gross density issue by inviting other CACs in the area to discuss this issue and reach a consensus. He said the third step relates to what Ms. Palmer discussed last week regarding what happens when a growth area becomes large enough to impact a rural area. Mr. Loach said they plan to do a community-wide survey and have conducted surveys in the past. He suggested they add the Ivy area to the survey region to obtain feedback from their neighbors to the east.

Mr. Neil Williamson of the Free Enterprise Forum addressed the Board. He said that while he appreciates the work of the CACs, he is concerned about the increasing role these unelected organizations play and wonders if they are now drafting Comprehensive Plan amendments for the Board. He asked the Board if they believe the process is fair and balanced, and balances all elements of the Comp Plan. He said he encourages all members of the community to become involved in the process, but that it must be fair and equitable to all. He said he is hopeful that the CACs will continue to engage with the Planning Commission and staff as they move forward with concepts that will eventually become part of the County Code.

Agenda Item No. 13. Consent Agenda.

(Discussion: Ms. Mallek and Ms. Palmer pulled their portion of the minutes of May 4, 2016.

Ms. Palmer said the Board needs to pull Item 13.2 - FY 17 appropriations.

Ms. Lori Allshouse stated that she has a change she needs to make. She said the Board has before them an amended 2017 appropriation for funding to support public awareness and education for the General Obligation Bond Referendum pursuant to the BOS action of August 3. Ms. Allshouse said the action is a procedural change, as the School Division must first approve their portion on September 22. She said they will pull out the school portion and consider it at their first meeting in October, which results in a change in the amount.

Ms. Palmer noted that the item no longer needed to be pulled.

Ms. McKeel **moved** to approve Items 13.1 (as read) through Item 13.5, with the change to Item 13.2 (as described) on the Consent Agenda. The motion was **seconded** by Ms. Mallek.

Roll was called and the motion carried by the following recorded vote:

AYES: Ms. McKeel, Ms. Palmer, Mr. Randolph, Mr. Sheffield, Mr. Dill and Ms. Mallek.
NAYS: None.

Item No. 13.1. Approval of Minutes: May 4, 2016.

By the above-recorded vote, the minutes of May 4, 2016 were pulled and carried forward to the next meeting.

Item No. 13.2. FY 2017 Appropriations.

The Executive Summary forwarded to the Board states that Virginia Code §15.2-2507 provides that any locality may amend its budget to adjust the aggregate amount to be appropriated during the fiscal year as shown in the currently adopted budget; provided, however, any such amendment which exceeds one percent of the total expenditures shown in the currently adopted budget must be accomplished by first publishing a notice of a meeting and holding a public hearing before amending the budget. The Code section applies to all County funds, i.e., General Fund, Capital Funds, E911, School Self-Sustaining, etc. The total increase to the FY 17 budget due to the appropriations itemized below is \$8,400.00. A budget amendment public hearing is not required because the amount of the cumulative appropriations does not exceed one percent of the currently adopted budget.

This request is to approve one (1) appropriation (#2017030) to appropriate \$42,000.00 for a General Obligation Bond Referendum Public Awareness and Education Plan pursuant to the Board of Supervisors' action at its August 3, 2016 meeting. Of the total amount, \$16,800.00 will be appropriated from the Reserve for Contingencies, \$16,800.00 from the School Fund, and \$8,400.00 from the General Fund fund balance for a net increase to the budget of \$8,400.00. The School Fund and Reserve for Contingencies portions of the appropriation are existing appropriated sources and will not increase the total County budget.

Staff recommends that the Board adopt the attached Resolution (Attachment B) to approve appropriation #2017030 for local government and school division projects and programs as described in Attachment A.

Appropriation #2017030 \$8,400.00

Source:	School Fund*	\$ 16,800.00
	Reserve for Contingencies*	\$ 16,800.00
	General Fund fund balance	\$ 8,400.00

*The School Fund and Reserve for Contingencies portions of the appropriation are existing appropriated sources and will not increase the total County budget.

Pursuant to the Board of Supervisors' action at its August 3, 2016 meeting, this request is to appropriate \$42,000.00 to Community Relations for a General Obligation Bond Referendum Public Awareness and Education Plan. This will include advance voter awareness/educational materials and polling location materials. This funding will be provided from the following sources:

- \$16,800.00, or 40% of the total amount, from the School Fund's School Board Reserve. The School Board is scheduled to take action on this item at its September 8, 2016 meeting.
- \$16,800.00, or 40% of the total amount, from the Reserve for Contingencies. After the approval of this appropriation, the Reserve for Contingencies balance will be \$303,113.00, of which \$16,400.00 has been reserved for a citizen survey.
- \$8,400.00, or 20% of the total amount, from the General Fund fund balance from expenditure savings in the Registrar Office's FY16 budget. The proposed use of the General Fund fund balance for this item will not reduce the County's 10% unassigned fund balance reserve, however, it does reduce the amount of FY 16 expenditure savings that would be available for other uses in the future.

By the above-recorded vote the Board adopted the following resolution to approve appropriation #2017030 for local government and school division projects and programs:

**RESOLUTION TO APPROVE
ADDITIONAL FY 17 APPROPRIATION**

BE IT RESOLVED by the Albemarle County Board of Supervisors:

- 1) That Appropriation #2017030 is approved; and
- 2) That the appropriation referenced in Paragraph #1, above, is subject to the provisions set forth in the Annual Resolution of Appropriations of the County of Albemarle for the Fiscal Year ending June 30, 2017.

**COUNTY OF ALBEMARLE
APPROPRIATION SUMMARY**

APP#	ACCOUNT	AMOUNT	DESCRIPTION
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2017030	3-1000-51000-351000-510100-9999	8400.00	SA2017030 App GF Balance - Bond Ref Public Ed Plan
2017030	4-1000-12013-412010-600121-1001	25200.00	SA2017030 Bond Referendum Public Education Plan
2017030	4-1000-99900-499000-999990-9999	-16800	SA2017030 Reserve for Contingencies
TOTAL		16,800.00	

Item No. 13.3. Modification to the 2010 Financing for the Greater Charlottesville Habitat for Humanity Inc.

The following letter dated September 13, 2016, was received from the Secretary of the Economic Development Authority of Albemarle County:

"Greater Charlottesville Habitat for Humanity Inc. ("Habitat") has requested that the Economic Development Authority of Albemarle County, Virginia (the "Authority") modify an existing \$6,000,000 note dated December 30, 2010 (the "Original Note") of Southwood Charlottesville LLC ("Southwood"), whose sole member is Habitat, originally entered into in connection with the acquisition of approximately 350 trailer pads for the Southwood Mobile Homepark, which is located on approximately 100.5 acres of land at 387 Hickory Street, Charlottesville, Virginia 22902.

As set forth in the resolution of the Authority attached hereto (the "Resolution"), the Authority has agreed to modify the Original Note as requested. The Authority has conducted a public hearing on modification and has recommended that you approve the modification of the Original Note as required by Section 147(f) of the Internal Revenue Code of 1986, as amended, and Section 15.2-4906 of the Code of Virginia of 1950, as amended.

Attached hereto is (1) a certificate evidencing the conduct of the public hearing and the action taken by the Authority, (2) the Fiscal Impact Statement required pursuant to Virginia Code Section 15.2-4907, and (3) the form of resolution suggested by counsel to evidence your approval."

By the above-recorded vote: the Board adopted the following resolution:

**RESOLUTION
OF THE BOARD OF SUPERVISORS OF
ALBEMARLE COUNTY, VIRGINIA**

WHEREAS, the Economic Development Authority of Albemarle County, Virginia (the "Authority"), has considered the application of Greater Charlottesville Habitat for Humanity Inc. ("Habitat") requesting the Authority's to modify an existing \$6,000,000 note (the "Original Note") of Southwood Charlottesville LLC ("Southwood"), whose sole member is Habitat, originally entered into in connection with the acquisition of approximately 350 trailer pads for the Southwood Mobile Homepark (the "Project"), which is located on approximately 100.5 acres of land at 387 Hickory Street, Charlottesville, Virginia 22902;

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), provides that the governmental unit having jurisdiction over the issuer of private activity bonds and over the area in which any facility financed with the proceeds of private activity bonds is located must approve the issuance of the bonds;

WHEREAS, the Authority issues its bonds on behalf of Albemarle County, Virginia (the "County"); the Project is located in the County and the Board of Supervisors of Albemarle County, Virginia (the "Board") constitutes the highest elected governmental unit of the County;

WHEREAS, the Authority has recommended that the Board approve the modification of the Original Note (the Original Note, as so modified, is hereafter referred to as the "Note"); and

WHEREAS, a copy of the Authority's resolution approving the execution and delivery of the Note, subject to the terms to be agreed upon, a certificate of the public hearing and a Fiscal Impact Statement have been filed with the Board.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF ALBEMARLE COUNTY, VIRGINIA:

1. The Board approves the execution and delivery of the Note by the Authority for the benefit of Habitat as required by Section 147(f) of the Code and Section 15.2-4906 of the Code of Virginia of 1950, as amended (the "Virginia Code"), to permit the Authority to assist in the Project.
2. The approval of the execution and delivery of the Note does not constitute an endorsement to a prospective purchaser of the Note of the creditworthiness of the Project, Southwood or Habitat.
3. This resolution shall take effect immediately upon its adoption.

Item No. 13.4. ZMA-2009-0001. Wegmans Special Exception for Sign Modification.

The Executive Summary forwarded to the Board states that the applicant has submitted a request for a special exception to modify the maximum allowable wall signage for the Wegmans Store, which is part of the 5th Street Station Project and is zoned Planned Development - Shopping Center (PD-SC). Planned development districts in general are intended to promote flexibility through better design principles and to promote economical and efficient use of the land. [Under County Code § 18-8.2\(b\) <http://www.albemarle.org/upload/images/Forms_Center/Departments/County_Attorney/Forms/Albemarle_Co_unt_y_Code_Ch18_Zoning08_Planned_Development.pdf>](http://www.albemarle.org/upload/images/Forms_Center/Departments/County_Attorney/Forms/Albemarle_Co_unt_y_Code_Ch18_Zoning08_Planned_Development.pdf), the Applicant can request a modification of County Code § 18-4.15. Under current PD-SC sign regulations, Wegmans is permitted a maximum of 400 square feet for wall signage. The proposed sign package includes 396 square feet for 2 Wegmans signs, a pharmacy sign and a "Wine and Beer" sign. The stores that are located adjacent to Interstate 64 have two travel ways under the definitions of the Zoning Ordinance, and therefore, the building walls facing both Interstate 64 and Wegmans Way qualify for wall signage. This request is to modify Section [County Code § 18-4.15.11<http://www.albemarle.org/upload/images/Forms_Center/Departments/County_Attorney/Forms/Albemarle_Co_unt_y_Code_Ch18_Zoning04_General_Regulations.pdf>](http://www.albemarle.org/upload/images/Forms_Center/Departments/County_Attorney/Forms/Albemarle_Co_unt_y_Code_Ch18_Zoning04_General_Regulations.pdf) related to the maximum wall signage to allow for an additional 146 square feet for two signs for "Pub and Market Café" signs located in the corner of the building. (Attachments A & B).

Staff can support the increase in maximum area for signage at this location given the unique nature of this particular site and the size of the building. Staff finds that the proposal does not adversely impact any of the review criteria in the planned development regulations or the purpose and intent of the sign regulations as stated in the Zoning Ordinance. (Attachment C).

No budget impact will result from approving this special exception.

Staff recommends that the Board adopt the attached Resolution (Attachment D) to approve the special exception to modify the maximum allowable wall signage.

By the above-recorded vote, the Board adopted the following resolution to approve the special exception to modify the maximum allowable wall signage:

**RESOLUTION TO APPROVE SPECIAL EXCEPTION
FOR ZMA 2009-001 WEGMANS SIGN**

WHEREAS, 5th Street Ventures, LLC (the "Owner") is the owner of Tax Map and Parcel Number 076M1-00-00-00200; and

WHEREAS, the Owner filed a request for a special exception to modify the maximum allowable wall signage set forth in County Code § 18-4.15.11.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the executive summary prepared in conjunction with the special exception request, staff's supporting analysis included in the summaries and the attachments thereto, and all of the factors relevant to the special exception in Albemarle County Code §§ 18-8.2(b), 18-4.15.11, and 18-33.9, the Albemarle County Board of Supervisors hereby approves the special exception to modify the maximum allowable wall signage set forth in County Code § 18-4.15.11 subject to the condition attached hereto.

* * * * *

ZMA 2009-01 Wegmans Sign Special Exception Condition

1. The maximum wall signage shall be five hundred forty two (542) square feet.

Item No. 13.5. Resolution to Support use of VHDA Financing for The Vue in Crozet. (**Deferred from September 7, 2016**) (*White Hall Magisterial District*)

The Executive Summary forwarded to the Board states that the Vue is a proposed 126-unit garden-style apartment community to be built on Blue Ridge Avenue in Crozet. The property consists of two existing parcels (TMPs 05600-00-00-006A0 and 0560000-00-11500). The proposal is a by-right development with an initial site plan approved by the County on April 22, 2016 and the development is not located in a revitalization area as defined by Virginia Code § 36-55.30:2 (A).

Vue Realty Partners LLC (the LLC) has obtained a commitment for the Virginia Housing Development Authority's (VHDA) mixed-income financing for the Workforce 20/80 program. This program requires that 20% of the units to be reserved for households earning not more than 80% of the area median income. Albemarle County's HUD median income for 2016 is \$77,800. To obtain this financing, Virginia Code § 36-55.30:2(B) requires that the governing body adopt a resolution indicating that the Board has determined that including market-rate units in the development would enhance the LLC's ability to provide affordable units and that "private enterprise and investment are not reasonably expected, without assistance, to produce ... decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in the area of the project" and that such a development would create a desirable mix of residents in the area. Attachment A is a letter from Mr. William Park, representing the LLC, supporting these two determinations. Staff agrees with the statements in Mr. Park's letter.

As a by-right development, the Vue would not be subject to the County's Affordable Housing Policy which has a goal of at least 15% of new affordable housing units created through rezoning and special use permits being produced. In addition, the 20% requirement for the mixed-income financing program exceeds expectations set forth in the County's policy.

There is no budget impact associated with actions related to this executive summary.

Staff recommends that the Board adopt the attached resolution (Attachment B) making the determinations requested by the Vue Realty Partners LLC regarding the proposed project known as The Vue.

By the above-recorded vote, the Board adopted the following resolution making the determinations requested by the Vue Realty Partners LLC regarding the proposed project known as The Vue:

RESOLUTION

WHEREAS, the Board of Supervisors of the County of Albemarle, Virginia, desire to make the determination required by Section 36-55.30:2.B of the Code of Virginia of 1950, as amended, in order for the Virginia Housing Development Authority to finance the economically mixed project (the "Project") described as:

The VUE
1166 and 1194 Blue Ridge Avenue, Crozet, VA
TMP 05600-00-00-006A0 and TMP 05600-00-00-11500
A residential community consisting of 126 unit garden-style apartments and,

WHEREAS, the Project is a by-right development with an approved initial site plan.

NOW, THEREFORE, BE IT RESOLVED that the Board determines that:

(1) the ability to provide residential housing and supporting facilities that serve persons or families of lower or moderate income will be enhanced if a portion of the units in the Project are occupied or held available for occupancy by persons and families who are not of low and moderate income; and

(2) private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in the surrounding area of the Project and will induce other persons and families to live within such area and thereby create a desirable economic mix of residents in such area.

Item No. 13.6. VDOT Monthly Report (September), ***was received for information.***

Item No. 13.7. Copy of letter dated July 19, 2016, from Mr. Francis H. MacCall, Principal Planner, to Mr. Charles Fadeley, ***re: LOD-2016-00009 – OFFICIAL DETERMINATION OF PARCEL OF RECORD – Parcel ID 060A0-07-0C-001A0 (Property of C & J FINANCIAL MARKETING INC) – Jack Jouett Magisterial District, was received for information.***

Agenda Item No. 14. **Public Hearing: ZMA-2012-00007. 5th 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.

OVERLAYS: Entrance Corridor, Flood Hazard, Steep Slopes – Preserved Slopes, Airport Impact Overlay.

PROFFERS: Yes.

COMPREHENSIVE PLAN: Regional Mixed Use (regional serving retail, service and office uses, non-industrial employment centers and residential up to 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 07600-00-00-055C0, 3.041 acre portion of 076M1-00-00-00100, and all of 07600-00-00-055A0.

MAGISTERIAL DISTRICT: Scottsville.

(Advertised in the Daily Progress on August 29 and September 5, 2016)

The Executive Summary presented to the Board states that On March 15, 2016, the Planning Commission (the "Commission") heard the Applicant's request for ZMA 201200007 and for a special

exception and provided comments, then continued the hearing to June 21, 2016 to allow the Applicant and staff to address specific issues.

At its meeting on June 21, 2016, the Commission voted 5:0 (Keller, Firehock absent), to recommend approval of ZMA-2012-00007 with the changes to the proffers identified in the June 21 staff report. In addition, the Commission voted 5:0 (Keller, Firehock absent) to recommend approval of a special exception to allow a 74' maximum front setback.

Attachments A - E contain the Commission's action letter, staff reports and minutes from the March 15, 2016 and June 21, 2016 meetings. Staff did not recommend approval of the request for four reasons, including a lack of relegated parking, which is a principle of the Neighborhood Model. The Commission, however, disagreed with staff's recommendation for relegated parking and recommended approval of both the rezoning and the special exception to allow a 74' maximum front setback.

At the June 21 meeting, the Applicant agreed to remedy the other outstanding issues between the Commission meeting and the Board meeting. The Applicant has made all the modifications to the proffers as requested by staff and as noted in the June 21 staff report, and the modified proffers and proffered plan are provided as Attachments F and G. The County Attorney has prepared the attached Resolution (Attachment H) to approve the special exception and the attached Ordinance (Attachment I) to approve the ZMA should the Board wish to approve the Applicant's request.

The Planning Commission recommends that ZMA201200007 be approved with a special exception to allow for a 74' maximum front setback. If the Board wishes to approve this ZMA, staff recommends that the Board adopt the Resolution to approve the special exception (Attachment H) and the Ordinance to approve the ZMA (Attachment I).

Ms. Elaine Echols, Acting Chief of Planning, addressed the Board and stated that this is an amendment to an existing zoning that was approved several years ago, ZMA 1999-00013. Ms. Echols explained that the property is located less than a quarter mile from the interchange of 5th Street and I-64 and is accessed from the Holiday Inn entrance, as well as being located within the flood plain. She showed a blueprint of the property with a 1999 approved development plan and a 2016 proposed plan, noting that the 1999 plan included a special use permit, which was approved in 2007 as it had expired. Ms. Echols said that in 2012, the property owner approached the Planning Commission about modifying the plan and has proposed a new plan with three buildings. She said that since the property is within a floodplain with a plan for a retaining wall in the back of the property, they are required to obtain FEMA approval to move the flood plain boundary, which is a condition of the special use permit.

Ms. Echols showed a list of issues regarding the proposal that were considered by the Planning Commission: they looked at circulation and accepted the applicant's proposal for traffic circulation; they requested bicycle access, and the applicant has proffered a bicycle lane; and they asked for pedestrian access to the greenway, which the applicant has proffered. She said the Planning Commission was concerned with some aspects of the retaining walls, and the applicant has made modifications to have the walls be lower. She noted that they also expressed concern with the visual aspect of the roof, and the applicant has proffered a revised roof that will conform to Monticello's guidelines. Ms. Echols said that staff had an issue with relegated parking and the 74-foot setbacks, as the setbacks do not meet new requirements.

Ms. Echols summarized the factors to consider with favorable and unfavorable factors. She stated that the favorable factors include: the project is generally consistent with the land use plan; it is supportive of expanding the tax base; and the Architectural Review Board believes the proffered plan can meet Entrance Corridor guidelines. Ms. Echols said that unfavorable factors include the following: it does not address the Neighborhood Model principle for relegated parking; the applicant has not adequately demonstrated the need for 74-foot setback; there is no commitment for canopies behind the building closest to 5th Street; and the retaining walls are over 8 feet, with Entrance Corridor and managed slopes regulations saying 6 feet. Ms. Echols reported that the Planning Commission recommended approval providing the following changes were made: add a sidewalk-connecting bridge over Moore's Creek to 5th Street; remove gas stations as an allowable use; limit retaining walls not in the entrance corridor to 6-8 feet; and provide a brownstone roof. She said the Planning Commission recommends approval of a special exception as the property is near an I-64 interchange and the nearest entrance ramp, with expectations of drivers stopping for food/coffee. She said the Board's consideration is whether to approve a 74-foot setback as well as to approve the ordinance with the proffers and the proffered plan.

Ms. Palmer opened the public hearing for discussion of the project.

Mr. Katurah Roell of the Piedmont Development Group addressed the Board on behalf of the applicant and offered to address any questions or concerns they may have about the project. He said the plan is from 2012 and the special use permit for the fill will expire next year, so they would like to begin work. He described parking and traffic circulation on the property, which he said they have worked on diligently to come up with a workable plan in conformance with regulations. Mr. Rowell said they have received a letter of approval from FEMA and are required to begin work within six months of the approval date, so they are awaiting Board approval.

As there were no other questions or comments from the public, Ms. Palmer closed the public hearing and opened up for Board discussion or motion.

Mr. Randolph stated that the developer has been exceedingly patient, and he is happy that they are at a point where they can make a decision and provide the level of modification necessary, as they have lost some potential businesses at the site that would have been assets for the County. He said the proposal does not encroach on longstanding, historic neighbors and their privacy, the proposal is not for a truck stop or gas station that is inappropriate for the location, and the applicant is not proposing buildings that are out of scale or inappropriate for the site.

Mr. Randolph **moved** to adopt the proposed Ordinance to approve ZMA-2012-00007. 5th Street Commercial. The motion was **seconded** by Ms. Mallek.

Roll was called and the motion carried by the following recorded vote:

AYES: Ms. McKeel, Ms. Palmer, Mr. Randolph, Mr. Sheffield, Mr. Dill and Ms. Mallek.

NAYS: None.

Mr. Randolph **moved** to adopt the proposed resolution to approve the special exception that allows a 74-foot maximum front setback in conjunction with ZMA 2012-00007 5th Street Commercial for the reasons of a unique target market and unique parking and circulation pattern. The motion was **seconded** by Ms. Mallek.

Roll was called and the motion carried by the following recorded vote:

AYES: Ms. McKeel, Ms. Palmer, Mr. Randolph, Mr. Sheffield, Mr. Dill and Ms. Mallek.

NAYS: None.

(The adopted ordinance is set out below:)

ORDINANCE NO. 16-A(6)
ZMA 2012-00007

**AN ORDINANCE TO AMEND THE ZONING MAP FOR TAX MAP
AND PARCEL NUMBERS 07600-00-00-055A0, 076M1-00-00-00100, and 07600-00-00-055C0**

WHEREAS, the application to amend the zoning map for Tax Map and Parcel Numbers 07600-00-00-055A0 ("Parcel 76-55A") (portion), 076M1-00-00-00100 ("Parcel 76M1-100"), and 07600-00-00-055C0 ("Parcel 76-55C") (portion), collectively, the "Property", is identified as ZMA 2012-000007 5th Street ("ZMA 2012-00007"); and

WHEREAS, Parcels 76-55A (portion), 76M1-100, and 76-55C (portion) are zoned Highway Commercial (HC), subject to the Proffers and a Plan, which were approved on July 3, 2002 in conjunction with ZMA 1999-00013; and

WHEREAS, ZMA 2012-00007 proposes to amend the Proffers and the Plan to allow commercial uses on the Property; and

WHEREAS, on June 21, 2016, after a duly noticed public hearing, the Planning Commission recommended approval of ZMA 2012-00007, subject to four conditions being met prior to the Board meeting, which have since been satisfactorily addressed; and

WHEREAS, on September 14, 2016, the Albemarle County Board of Supervisors held a duly noticed public hearing on ZMA 2012-00007.

BE IT ORDAINED by the Board of Supervisors of the County of Albemarle, Virginia, that upon consideration of the transmittal summary and staff reports prepared for ZMA 2012-00007 and their attachments, including the proffers and the proffered plan, the information presented at the public hearing, the material and relevant factors in Virginia Code § 15.2-2284, and for the purposes of public necessity, convenience, general welfare and good zoning practices, the Board hereby approves ZMA 2012-00007 with the proffers dated September 1, 2016, and the proffered plan entitled "5th Street Development Application Plan" last revised July 28, 2016, and the zoning map for Tax Map and Parcel Numbers 07600-00-00-055A0 (portion), 076M1-00-00-00100, and 07600-00-00-055C0 (portion) are amended accordingly.

Original Proffers _____
Amendment X

PROFFER STATEMENT

Rezoning Application Number: ZMA No. 201200007

Tax Map and Parcel Number(s): TMP 07600-00-00-055A0; and portions of TMP 076M1-00-00-00100; and of TMP 07600-00-00-055C0, consisting of 0.430 acres, more or less, as shown on Attachment A.

Zoning: HC Highway Commercial to HC Highway Commercial

Owner of Record: FTV Investments, LLC, a Virginia limited liability company

Date of Proffer Signature: September 1, 2016

FTV Investments, LLC, a Virginia limited liability company, is the owner (the "Owner") of Tax Map and Parcel Number: TMP 07600-00-00-055A0; and portions of TMP 076M1-00-00-00100, and of TMP 07600-00-00-055C0 {the "Property"} which is the subject of rezoning application ZMA No. 201200007, a project known as "5th Street Development" (the "Project").

Pursuant to Section 33 of the Albemarle County Zoning Ordinance (Chapter 18 of the Albemarle County Code), the Owner hereby voluntarily proffers the conditions listed below which shall be applied to the Property if it is rezoned to the zoning district identified above. These conditions are proffered as a part of the requested rezoning and the Owner acknowledges that the conditions are reasonable. Each signatory below signing on behalf of the Owner covenants and warrants that it is an authorized signatory of the Owner for this Proffer Statement.

1. The location of buildings, including orientation, walkways, retaining walls and access point to greenway shall be in the general locations shown on the attached conceptual plan entitled "5TH STREET DEVELOPMENT APPLICATION PLAN" dated December 9, 2013, as updated and last revised July 28, 2016; prepared by Collins Engineering (hereinafter the "Conceptual Plan"), as determined by the Director of Planning and Zoning Administrator. Minor modifications to the plan which are in general accord with the general locations of buildings, walkways, retaining walls and access points to greenway may be made to ensure compliance with the Zoning Ordinance. Modifications are to be considered in terms of minimizing or improving impact on adjoining properties and roadways, to address Architectural Review Board requirements, or to comply with the Flood Hazard Overlay District.

2. The uses of the Property shall be limited to those listed in Attachment B.

3. Vehicular access from 5th Street to the Project shall be provided via a shared entrance with the existing use on the remainder of TMP 07600-00-00-055C0. This entrance shall be modified to be used for left turn movements from 5th Street and right-in/right out traffic movements only, as shown on the Conceptual Plan. The modified entrance shall meet Virginia Department of Transportation ("VDOT") standards for commercial entrances and will be constructed in conjunction with

improvements shown on the first final site plan. The Owner shall provide for an additional interconnection and ingress and/or egress for the use on the remainder of TMP 07600-00-00-055C0, as shown on the Conceptual Plan, in conjunction with improvements shown on the first final site plan.

4. All off-site traffic improvements and on-site improvements designed to manage ingress and egress to 5th Street shown on the Conceptual Plan shall be completed prior to the first certificate of occupancy, provided that any off-site traffic improvement shown on the Conceptual Plan shall not be required if VDOT determines that the particular off-site traffic improvement is not required.

5. By Deed of Dedication and Easement and Bill of Sale dated April 1, 2008, recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia in Deed Book 3580, pages 497-505 ("Easement"), Owner granted an Easement to the County of Albemarle providing access over the Property to the County's Greenway Trail.

- A. In addition to the screening requirements of the Albemarle County Architectural Review Board and Section 32.7.9 of the Albemarle County Zoning Ordinance, the Owner shall provide a vegetated buffer for the purposes of screening the development from the Greenway Trail shown on the Conceptual Plan. This vegetated buffer shall be provided in a manner consistent with Section 32.7.9 of the Albemarle Zoning Ordinance and the landscaping shall be shown on the final site plan and installed as part of any construction shown on the final site plan for development of the Property.
- B. The Owner shall construct a vehicular and pedestrian travel way ("Travel Way") from the proposed parking area to the edge of the Greenway Trail, in the approximate locations shown on the Conceptual Plan. The Travel Way shall be constructed to meet Class A (low maintenance multi-use/shared use path) standards in accordance with the County's Design Standards Manual. The Travel Way shall be shown on the first final site plan and installed by the Owner in conjunction with the improvements shown on the first final site plan approved for development of the Property. The Travel Way shall be maintained by the Owner.
- C. To the extent the location of the Travel Way on the Conceptual Plan is inconsistent with the locations shown on the Easement, the Owner shall, at its sole expense, prepare and execute an easement and accompanying easement plat, if necessary, in a form acceptable to the County of Albemarle, to correct the location of the Easement.

6. The Owner shall select and use roof materials on Buildings A, B and C, as shown on the Conceptual Plan, that are non-reflective earth tone or brown stone colors, and that are in general accord with the Monticello view shed guidelines as promulgated by the Thomas Jefferson Foundation.

7. The Owner shall provide for bicycle access to the Property by inclusion of bicycle lanes in its improvements to the frontage of 5th St. The bicycle lanes shall be shown on the first final site plan and installed by the Owner in conjunction with the improvements shown on the first final site plan approved for development of the Property.

8. The Owner shall grant an easement to the County for the "Primitive Trail Connection" as shown on the Conceptual Plan, provided that the deed of easement to the County may include a provision in which the County holds the Owner harmless as provided in Virginia Code § 29.1-509(E). The easement shall be granted within 90 days of the County's request for the trail easement. The Primitive Trail Connection shall be for pedestrian access only and shall be constructed to meet Class B (primitive nature trail) standards in accordance with the County's Design Standards Manual. The Primitive Trail Connection shall be shown on the first final site plan and installed by the Owner in conjunction with the improvements shown on the first final site plan approved for development of the Property. The Primitive Trail Connection shall be maintained by the Owner; however, at its discretion, the County may assume maintenance of the Primitive Trail Connection by informing Owner in writing that it will take over maintenance of the Primitive Trail Connection.

OWNER:

FTV Investments, LLC, a Virginia limited liability company

By: E. Randall Ralston

Its: Manager

COMMONWEALTH OF VIRGINIA:

CITY/COUNTY OF ALBEMARLE, to-wit:

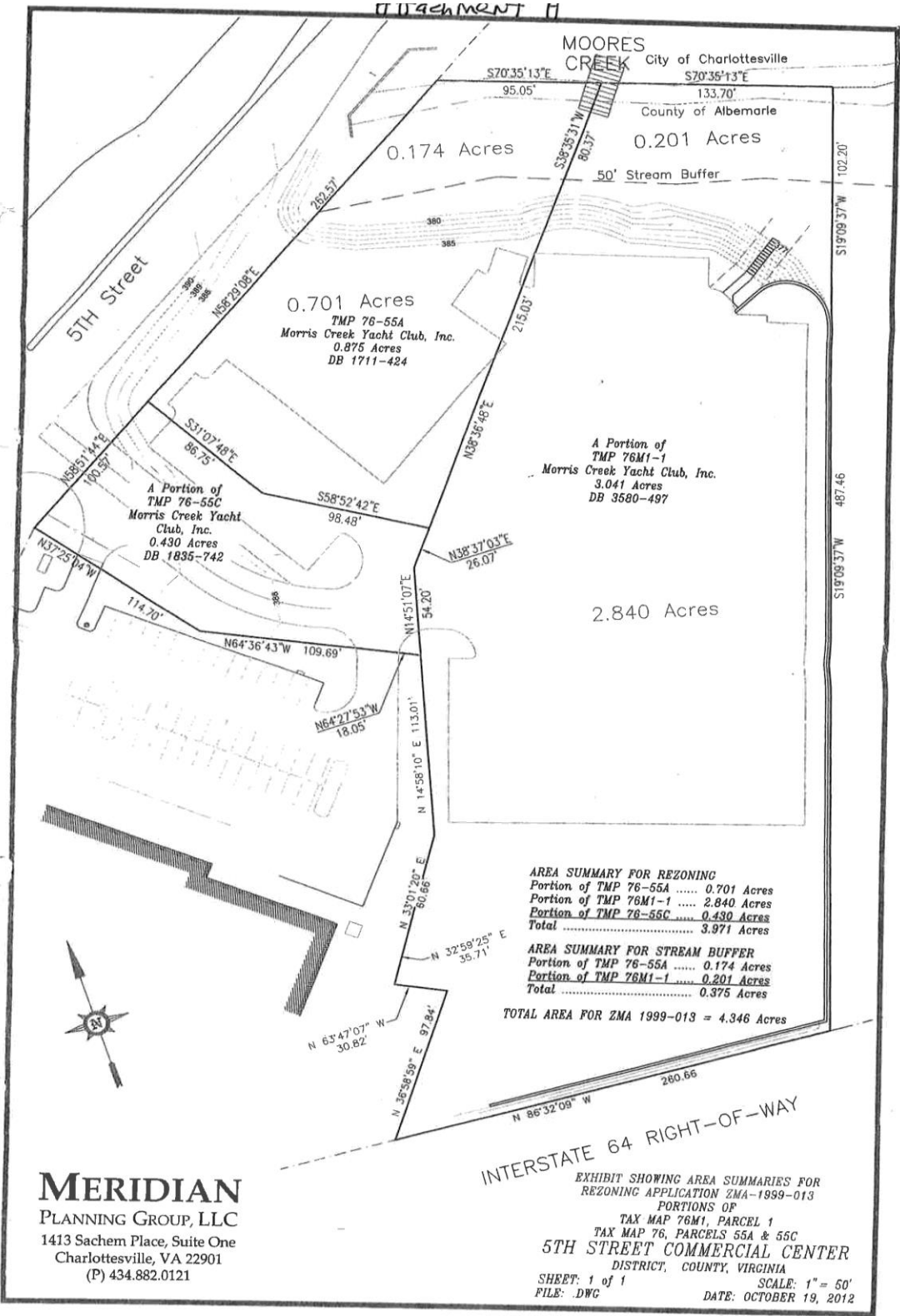
The foregoing Proffer Statement was acknowledged before me this 1st day of September, 2016, by E. Randall Ralston, as Manager of FTV Investments, LLC, a Virginia limited liability company.

My commission expires: August 31, 2019.



Betty C. Dickenson
Notary Public

7102546
Notary Registration Number



ATTACHMENT B

24.2 PERMITTED USES

24.2.1 BY RIGHT

The following uses shall be permitted in any HC district, subject to the applicable requirements of this chapter. The zoning administrator, after consultation with the director of planning and other appropriate officials, may permit, as a use by right, a use not specifically permitted; provided that such use shall be similar to uses permitted by right in general character, and more specifically, similar in terms of locational requirements, operational characteristics, visual impact and traffic generation. Appeals from the zoning administrator's decision shall be as generally provided in section 34.

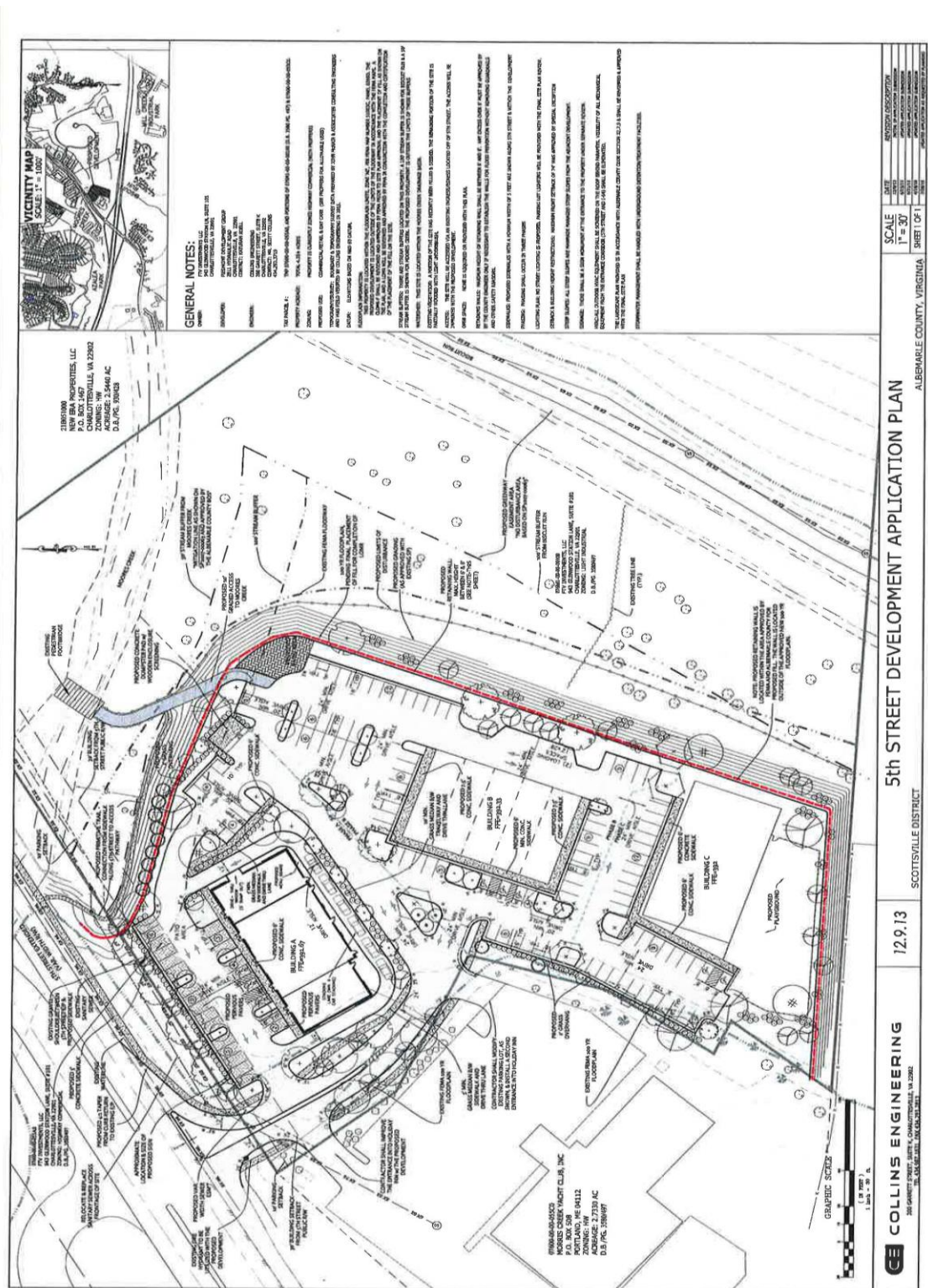
- ERR
1. Automobile laundries.
 2. Automobile, truck repair shops.
 3. ~~Automobile service stations (reference 5.1.20).~~
 4. Building materials sales.
 5. Churches, cemeteries.
 6. Clubs, lodges (reference 5.1.02).
 7. Convenience stores.
 8. Educational, technical and trade schools.
 9. Factory outlet sales - clothing and fabric.
 10. Feed and seed stores (reference 5.1.22).
 11. Financial institutions.
 12. Fire extinguisher and security products, sales and service.
 13. Fire and rescue squad stations (reference 5.1.09).
 14. Funeral homes.
 15. Furniture stores.
 16. Food and grocery stores including such specialty shops as bakery, candy, milk dispensary and wine and cheese shops.
 17. Home and business services such as grounds care, cleaning, exterminators, landscaping and other repair and maintenance services.
 18. Hardware.
 19. (Repealed 6-3-81)
 20. Hotels, motels and inns.
 21. Light warehousing.
 22. Machinery and equipment sales, service and rental.
 23. Mobile home and trailer sales and service.
 24. Modular building sales.
 25. Motor vehicle sales, service and rental.
 26. New automotive parts sales.
 27. Newspaper publishing.
 28. Administrative, business and professional offices.
 29. Office and business machines sales and service.
 30. Eating establishment; fast food restaurants.
 31. Retail nurseries and greenhouses.
 32. Sale of major recreational equipment and vehicles.
 33. Wayside stands - vegetables and agricultural produce (reference 5.1.19).
 34. Wholesale distribution.
 35. Water, sewer, energy and communications distribution facilities.

36. Public uses (reference 5.1.12).
37. Temporary construction headquarters and temporary construction storage yards (reference 5.1.18).
38. Indoor theaters.
39. Heating oil sales and distribution (reference 5.1.20).
40. Temporary nonresidential mobile homes (reference 5.8).
41. Uses permitted by right pursuant to subsection 22.2.1 of section 22.1, commercial, C-1.
42. Indoor athletic facilities.
43. Farmers' market (reference 5.1.47).
44. Stormwater management facilities shown on an approved final site plan or subdivision plat.
45. Tier I and Tier II personal wireless service facilities (reference 5.1.40).
46. Storage yards.
47. Laboratories/Research and Development/Experimental Testing; gross floor area of the establishment does not exceed 4,000 square feet per site; provided that the gross floor area of the establishment may exceed 4,000 square feet per site by special exception approved by the board of supervisors.
48. Manufacturing/Processing/Assembly/Fabrication and Recycling; gross floor area of the establishment does not exceed 4,000 square feet per site; provided that the gross floor area of the establishment may exceed 4,000 square feet per site by special exception approved by the board of supervisors.
49. Storage/Warehousing/Distribution/Transportation; gross floor area of the establishment does not exceed 4,000 square feet per site; provided that the gross floor area of the establishment may exceed 4,000 square feet per site by special exception approved by the board of supervisors.
50. Drive-through windows (reference 5.1.60). (Added 3-2-16)

24.2.2 BY SPECIAL USE PERMIT

The following uses shall be permitted by special use permit in the HC district:

1. Commercial recreation establishment including but not limited to amusement centers, bowling alleys, pool halls and dance halls.
2. Septic tank sales and related service.
- ~~3. Livestock sales.~~
4. Veterinary office and hospital (reference 5.1.11).
- ~~5. Drive-in theaters (reference 5.1.08).~~
6. Energy and communications transmission facilities (reference 5.1.12).
7. Hospitals, nursing homes, convalescent homes (reference 5.1.13).
8. Auction houses.
9. Unless such uses are otherwise provided in this section, uses permitted in section 18.0, residential - R-15, in compliance with regulations set forth therein.
10. Commercial kennels - indoor only (reference 5.1.11).
11. Stand-alone parking and parking structures (reference 4.12, 5.1.41).
12. (Repealed 3-2-16)
13. Uses permitted by right, not served by public water, involving water consumption exceeding four hundred (400) gallons per site acre per day. Uses permitted by right, not served by public sewer, involving anticipated discharge of sewage other than domestic wastes.
14. Warehouse facilities not permitted under section 24.2.1 (reference 9.0).
15. Animal shelter (reference 5.1.11).
16. Tier III personal wireless service facilities (reference 5.1.40).
17. Body shops.



(The adopted resolution is set out below:)

RESOLUTION TO APPROVE SPECIAL EXCEPTION FOR ZMA 2012-007, 5TH STREET COMMERCIAL

WHEREAS, FTV Investments, LLC (the “Owner”) is the owner of Tax Map and Parcel Numbers 07600-00-00-055A0 and 076M1-00-00-00100, collectively, the “Property”; and

WHEREAS, the Owner filed a request for a special exception to amend the Plan approved in conjunction with ZMA 1999-00013 to increase the maximum front setback on the Property.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the transmittal summary and staff reports prepared in conjunction with the special exception request, staff's supporting analysis and the Planning Commission's recommendation included in the summaries and the attachments thereto, and all of the factors relevant to the special exception in Albemarle County Code §§ 18-4.20(a) and 18-33.9, the Albemarle County Board of Supervisors hereby approves the special exception to increase the maximum front setback on the Property, subject to the condition attached hereto.

* * * * *

ZMA 2012-07, 5th Street Commercial Special Exception Condition

1. Parcels 07600-00-00-055A0 and 076M1-00-00-00100 shall have a maximum front setback of seventy-four (74) feet.

Agenda Item No. 15. **Public Hearing: SP-2016-00003. West Glen.**

MAGISTERIAL DISTRICT: White Hall.

TAX MAP/PARCEL: 055C00300000A0; 055C00300000A1; 056A1010002500, 056A10100026A0, 05600-000011500.

LOCATION: Southwest of Cling Lane and northeast of Peach Tree Drive and Orchard Drive.

PROPOSAL: Construction of stream crossing of Powell's Creek with box culvert and roadway in floodplain.

PETITION: Fill in the Flood Hazard Overlay under section 30.3.11 ZONING: R-6 Residential – 6 units/acre.

OVERLAY DISTRICT: FH – Flood Hazard Overlay.

COMPREHENSIVE PLAN: Neighborhood Density Residential – 3-6 units /acre, supporting uses such as religious institutions, schools and other small-scale non-residential uses; Greenspace – public parks, open space, environmental features.

(Advertised in the Daily Progress on August 29 and September 5, 2016)

The Executive Summary presented to the Board states that at its meeting on June 21, 2016, the Planning Commission voted 3:1:3 to recommend approval of SP201600003 with the conditions recommended by staff.

Attachments B, C and D are the Planning Commission's action letter, staff report, and minutes from the June 21, 2016 meeting. The County Attorney has prepared the attached Resolution reflecting the recommendation of the Planning Commission.

Staff recommends that the Board adopt the attached Resolution (Attachment A) to approve SP201600003 with the conditions attached thereto.

Ms. Rachel Falkenstein, Senior Planner, addressed the Board. Ms. Falkenstein stated the special use permit is a request to construct a stream crossing of Powell's Creek requiring fill in the floodplain. She said that special use permits are required for fill in the flood hazard overlay under Section 30.3.11 of the Zoning Ordinance. She showed a blueprint of the property, which consists of five parcels located south of Cling Lane, northeast of Peach Tree Drive and Orchard Drive. She stated that it is zoned R-6 residential. Ms. Falkenstein reported that SP1990-103 was approved in 1990 for fill in the floodplain that allowed for existing crossing of Powell's Creek and construction of Cling Lane, and a condition of SP1990-103 was that the stream crossing would provide access to 30 lots, with no development of residue property or access to adjacent properties allowed until second access was provided to Orchard Drive. She said the applicant proposes to extend Cling Lane across the property to cross the floodplain at its narrowest point and provide access to Orchard Drive as required. She noted that it would be a 10' x 10' triple box culvert, which the applicant has demonstrated would not cause a rise in the base floodplain. She said that if the special use permit is approved, the applicant proposes to develop the property by-right in accordance with R-6 residential zoning, which would require further approval of a sub-division plat, as per County zoning and subdivision requirements.

Ms. Falkenstein presented a list of mitigation measures the applicant proposes, including removal of an existing dam and restoration of a stream bank, mitigation plantings, and a greenway. She said the mitigation plan will require approval by the County Engineer, and displayed a map showing where the property is located within the Crozet Master Plan. She provided the Board with a list of four factors favorable and two factors unfavorable to consider, stating that favorable factors include the following: the proposed stream crossing would not cause any rise in the base floodplain elevation; the stream crossing would allow for development of the property consistent with the Crozet Master Plan; the applicants are proposing a greenway dedication in an area identified for greenway within the Crozet Master Plan, which will help ensure preservation of the stream buffer; and the stream crossing in this location promotes interconnectivity and disperses traffic onto a road system that is able to handle the additional traffic load. She said that unfavorable factors include the following: the Crozet Master Plan does not identify a road with a stream crossing in this location, and the Comprehensive Plan recommends that roads with stream crossings only occur in areas shown in the Master Plans; and the stream crossing will impact environmental features such as the floodplain, stream buffer and preserved slopes. Ms. Falkenstein noted that proposed mitigation measures will help alleviate these impacts.

Ms. Falkenstein said the Planning Commission held a public hearing on June 21 and recommended approval consistent with staff recommendations from the staff report as presented and with the following conditions: 1) The culverts under Cling Lane Extended shall be in general accord with the attached drawing titled "Special Use Permit Plans for West Glen Subdivision," prepared by Dominion Engineering with a revision date of June 3, 2016. To be in general accord with the plan, the development shall reflect the general size, arrangement and location of the culverts, as well as maintaining no increase of the 100-year flood elevation outside of the West Glen Subdivision property. Modifications to the plan, which do not conflict with the elements above, may be approved subject to the review and approval of the County Engineer; 2) Prior to final road plan approval or permitting of a land disturbance in the floodplain, the applicant shall obtain from the Federal Emergency Management Agency (FEMA) a conditional letter of map revision (CLOMR), and prior to road acceptance the Applicant shall obtain from FEMA a letter of map revision (LOMR). In addition, the Applicant shall copy the County Engineer on all correspondence with FEMA. Construction and installation of the culverts shall be in compliance with the approved road

plans and FEMA approved CLOMR; 3) Any residential lots and associated streets resulting from the subdivision of the property, with the exception of the stream crossing and roadway identified on the attached plan, as Cling Lane Extended, shall be located outside of the 100-foot stream buffer, Flood Hazard Overlay and preserved slopes on the property. Lots may be permitted to be located within the landward 10 feet of the 100-foot stream buffer only if the lots are adjacent to approved storm water management facilities located within the landward 50 feet of the stream buffer. Approval of lots located within the stream buffer shall be subject to Subdivision Agent approval; 4) The net density of the property shall not exceed six units per acre, in accordance with the Crozet Master Plan. Net density shall be calculated by subtracting the area within the Flood Hazard Overlay District, the 100-foot stream buffer and areas of preserved slopes from the total acreage of the property; 5) Prior to issuance of a grading permit to allow installation of the stream crossing or with submittal of the final subdivision plat, whichever comes first, the applicant shall submit an easement plat dedicating to the County the area identified for a greenway trail on the attached plan; and 6) If the construction of the stream crossing for which this special use permit is issued is not commenced by September 14, 2021, the permit shall be deemed abandoned and the authority granted there under shall thereupon terminate.

Mr. Randolph said he received an email communication from Charlie Armstrong, which he has distributed to Board members, proposing a modification. Mr. Randolph suggested the wording be modified and provided a description of his suggested wording. He said this would provide the applicant with sufficient time to complete Phase 2 and ensure the County that they would not be placed in jeopardy regarding the soil conditions that are unearthed through the Phase 2 analysis of what is onsite. Mr. Randolph suggested that Factor #1 be rewritten to say: "It is expected under a 500-year flood scenario that the proposed stream crossing would not cause any rise in the base floodplain elevation." He pointed out inconsistencies between the Crozet Master Plan and the Comprehensive Plan, using page 4, paragraph 3 as an example where the Crozet Master Plan does not show a stream crossing, and noted the lack of synchronicity between the two and the fact they may not be achieving the necessary level of detail.

Ms. Palmer asked if, when the Crozet Master Plan was produced, they were aware of the conditions on this property. Ms. Falkenstein replied that she believes so, and that roads were put in that particular location to avoid the stream crossing. She said there are some extenuating circumstances considered by staff, one of which was the existing special use permit condition that discusses not developing more of the property without a second access point, which implies that a second stream crossing could occur. She agreed with Mr. Randolph in that there was not a total alignment of what the special use permit condition said, which is zoning, along with the Master Plan. She said the Master Plan anticipated or tried to avoid environmental impacts when it was created.

Ms. Mallek stated the Master Plan map shows a real street connecting several properties from the north end down to Jarman's Gap, as opposed to just having an individual street. She said she disagrees with the characterization that the crossing provides interconnectivity, as the crossing is an entrance to this project and the residents of Cling Lane do not need it because they already have their own road. She speculated that the developer wants the road to be in the wetland in order to build housing on the high ground, and that this is what the County tries to avoid under the Water Protection Ordinance.

Ms. Palmer said the road cannot go to the east because the road bridge is not adequate.

Ms. Mallek said the road was completely fine for the 126 units of apartments next door. She said that while the road can be improved, the neighbors to the north and east were never asked about constructing another connection.

Ms. Palmer asked Ms. Falkenstein or Ms. Echols to comment about The Vue and how they are okay with using Blue Ridge Avenue, which is not a good road for this one. Ms. Falkenstein responded that The Vue is a proposed by-right development and will have access to Blue Ridge Avenue. She said Blue Ridge Avenue does not meet current standards in terms of width and grading, and they prefer to see the road either upgraded or used for alternative access to the site. She displayed a diagram of The Vue and West Glen proposed developments, which are side by side.

Ms. Mallek stated that the road crossing was improperly transferred to The Vue to increase the acreage and allow for more apartments on the high ground, and she asked for confirmation of this, as the property transfer was "strange," and not what was presented to the community. Ms. Falkenstein said the stream is half within The Vue's property and half within West Glen's property, and the rest of the roadway will lie within the property of The Vue down to Orchard Acres.

The Chair opened the public hearing.

Mr. Charlie Armstrong of Southern Development addressed the Board and said the staff report was excellent and detailed. He said the property is still owned by the original landowner, who has contracts with The Vue and West Glen to divide the property upon approval. He said the property is the residual after development of Crozet Crossing in the 1990's. He said the original subdivision plat describes Crozet Crossing as Phase I and shows a conceptual road location through Orchard Drive. He said this is a request to complete development that was envisioned in the 1990's, and it is zoned R-6 and within the designated growth area, which calls for 3-6 units per acre. He said the proposal is for density of 4.5 units per acre. He said that even if streams and buffers are removed from the density calculation, they would still be under the by-right zoning and within the Comp Plan maximum density of 6 units per acre.

Mr. Armstrong stated that one of their first concerns with the property was environmental because of the stream running through it, and they have done wetland studies and toured the property with the County Natural Resources Manager, and have consulted with the Army Corps of Engineers, as well as a couple of environmental consultants. He said their proposed removal of the dam in the stream is a big opportunity as it will enable stream organisms to move back and forth. He also pointed out that they will remove accumulated sediments from behind the dam that could contain contaminants. He said the Army Corps of Engineers has written a letter indicating that the removal of the dam coupled with the new stream crossing will result in a net ecological benefit for the stream. He said they have done a Phase I environmental study that involves surface investigation and plan a Phase II environmental study, which is more detailed and includes sub-surface investigation, adding that they plan to follow any recommendations resulting from the study. He stated that they welcome any conditions specified by the Board to a special use permit that will involve requiring an environmental study, following the recommendations of such a study and calling for removal of sediment behind the dam.

Mr. Armstrong said he will address questions posed by the Board. As to the comment that residents to the east not being asked about an access road, he said this is patently false and that they have met with them three times, although they could not come to an agreement. As to the suggestion by Mr. Randolph about adding wording regarding a 500-year floodplain, he said he is not an expert on this and will ask his colleague to comment. He said there are two upstream box culverts that restrict the flow of the stream and are similar in size to what they propose, except they are proposing three culverts, that for a flood to have an impact it would have to go over Cling Lane, which would be a major event.

Ms. Mallek asked for the number of units and the price points. Mr. Armstrong said the current plan calls for 70 units and the special use permit condition suggested would limit them to a maximum of 74 units by regulation. He said they have not yet established prices, though it will likely be middle income. He said they have agreed with the property owner to make 15% of them affordable housing.

Ms. Nicola McGough of Wild Danger Field Services addressed the Board. She said she prefers not to begin the Phase II assessment until after the leaves have fallen and there is good visibility on the site, and she expects the study to take six months.

Mr. Mike Myers of Dominion Engineering addressed the Board and stated that he will address the floodplain issue brought up earlier. He described the double box culverts on Cling Lane and said that further upstream is a railroad bridge with an arched culvert, and these upstream culverts should choke the water in a 500-year storm. He said they propose 10' x 10' triple box culverts on the site. He said that just downstream from Jarman's Gap Road has 8' x 8' double culverts, which could flood in a 25–50 year storm. He said he has never come across a requirement for a 500-year storm rise, although 100-year storm requirement is common.

Ms. Penny Chang, resident of Cling Lane, addressed the Board. She said that when they moved to the area, they were told that the forested land behind her property is common land that would be preserved to protect the stream. She said they knew there was a possibility of building behind Cling Lane, but they thought it would remain a dead-end street. She stated the Crozet Master Plan commits to preserving⁷ the character of existing neighborhoods, and the Crozet Advisory Committee voted against this plan for fear of roads being built on steep slopes. She said there is already too much traffic in the neighborhood, and this development will destroy the character of the neighborhood as it is much denser. She said the surveyors told her neighbors that the land around the stream is unstable and shifts and they do not understand how houses could be constructed on both sides. She asked that the Board not approve the stream crossing. She said that many of her neighbors are also concerned about the project, but could not attend the meeting.

Ms. Cynthia Chase, a 25-year resident of Peachtree Road, addressed the Board. She said that when she purchased her property, she was told there is a 100-year floodplain and that nothing would be developed. She said that some property owners in Orchard Acres paid for a soil test of contaminants, and one property required cleanup of layers of toxic dirt under Superfund requirements. She stated that she wonders about the land and if the soil is potentially contaminated. Ms. Chase noted that there are blue herons, buzzards, red foxes, deer and other animals that nest or live on the property. She requests that the Board not approve the development.

Ms. Robin Luecki, resident of Cling Lane, addressed the Board. She said that when the Planning Commission held a vote in June, there were four members who did not vote. She stated that it should be publicly known that there is a history of lead/arsenic toxicity in Orchard Acres, which required EPA Superfund cleanup in the 2000s of eight lots, and she offered to send members of the Board links to the EPA reports. She said that once the environmental study has been completed, she wants to review the report and know what the management plan will be if the report shows lead/arsenic toxicity on the property. She said that many children play and ride bicycles on Cling Road and requests that, in the event the proposal is approved, they require sidewalks and bike lanes as the development is expected to result in an additional 750 vehicle trips per day.

Mr. Tom Loach, resident of Crozet, addressed the Board. He said the previous night, the Planning Commission approved a new development in Crozet consisting of 180 units on 39 acres. He said the development was consistent with the Master Plan and supported by the community. He said that in this case, where the property owner has manipulated land use regulations to have two developments, one which would not exist if there were re-zoning, if it gets down to a consideration for the developer, the consideration should not be given.

Mr. Mike Marshall, resident of Crozet and owner of property to the east of the proposed development, addressed the Board. He described the plan for the stream as being "pretty ugly," suggesting that they leave the dam and sediments alone and not remove them. He confirmed that he met with the applicant, Charlie Armstrong, and that his attitude was that "you cannot stop us and this is the stream crossing." He said they requested another meeting with Mr. Armstrong and suggested allowing a road through his property that goes to Jarman's Gap, but this did not get anywhere. He said they had a third meeting at the suggestion of Planning Commissioner, Jennie More, and there was still no offer of anything. He said the problem with access for the east is that The Vue does not want a road passing through its property, as they would have to give up apartments. He stated that the developers of The Vue and West Glen agreed on a boundary line change so they could both maximize density, gaming the zoning rules. Mr. Loach said if they want to be fair to existing residents, they could reopen the 1990 special use permit, allow 60 units, and let McComb Street be a backup fire/rescue access. He urged the Board to not approve the proposal.

Mr. Saj Vaska, resident of Cling Lane, addressed the Board. He said he is against the proposal; however, in the event it is passed, he asks that Cling Road be blocked and remain as a dead end only open to emergency vehicles so that it would not add to traffic, as there are many children in the neighborhood. He suggests the land be used as a park.

Ms. Palmer closed the public hearing and opened discussion to the Board.

Mr. Dill said he would like to learn more about the pollution aspect of the property and how it would affect approval/disapproval. He asked if the concern of pollution is during construction or for future residents.

Ms. Mallek replied that she has sent all members of the Board a copy of the EPA report referenced by Ms. Luecki. She said she is concerned about the identification of the chemicals in the EPA documents, and that one mistake could lead to contaminants flowing to the wetland recently constructed at a cost of \$1.5 million, as well as Licking Hole Basin, which cost several million dollars to build to preserve water quality for the South Fork. She described the property as being a high-risk area with fast-flowing water.

Mr. Mark Graham, Director of Community Development, said he will address Mr. Dill's question. He said the environmental review process is under both state and federal EPA regulations under the Resource Conservation and Recovery Act, and that Virginia does not permit local governments to enact environmental constraints. He said the EPA came in 2006 to address arsenic resulting from pesticide use at the apple orchards. He said that arsenic is a metal that readily absorbs into sediment and tends to be very stable and does not migrate into ground water. He provided two scenarios under which arsenic can move: one scenario is when there is a lack of oxygen absorption whereby sediment breaks down and the arsenic can float with the water; the other scenario is when sediment is washed out, which could occur with the current proposed project. Mr. Graham said that eventually the dam will age and break down and the sediment will wash downstream, and they have the opportunity with the current proposal to prevent this by doing the work now. He said the Phase II study will determine if there are issues such as hot spots with high concentrations, as this would call for removing and disposing of the sediment in a special landfill.

Ms. Mallek asked if the environmental study would be available to the public. Mr. Graham replied that once it goes to Department of Environmental Quality, it becomes public information, and the only information that could remain confidential would be if they were using a proprietary method to treat the issue.

Mr. Randolph, addressing Mr. Dill's questions, said that he has experience working with this issue with watershed organizations, and that the level of the lead must be determined and then the bio-availability, i.e., absorption potential of the lead, as some lead could be inert with benign levels of toxicity whereas some lead could be highly bio-available and highly toxic. He said there are likely children playing in the stream area and picking up dirt that includes lead, so they are being exposed. He stated that it would be very important to obtain the results from the Phase II study, and this would be beneficial to both the community and to the developer as site removal of toxic chemicals can be very expensive, so the sooner they know, the better.

Mr. Graham said that an additional reason for the developer to have the study completed is that no bank would lend without the results of the environmental study, as they would assume some liability under Superfund law. He said that right now they do not know if there are environmental issues on the site and if there are, it is in everyone's best interests to take care of them.

Ms. Palmer said she was surprised when studies were done of the South Fork reservoir sediment and appreciable levels of toxins were not found, especially since many acres of orchards drained into it. Ms. McGough said it is her understanding that there is little risk of arsenic/lead from an airborne perspective compared with the risk from it being found in soil.

Ms. Mallek said that DEQ had indicated the stream would be better off without the forest, and that tearing down the forest and doing something with the stream would be beneficial, which she finds to be counterintuitive. Ms. McGough said the developer had mentioned that the Army Corps of Engineers had written a letter of support for the project, which included dam removal and a new culvert.

Mr. Armstrong said the conclusion reached by the Army Corps of Engineers was that putting in the stream crossing and dam removal together would be a net benefit to the ecology of the stream. He said a representative from Army Corps was not looking at the development overall or bigger land use patterns, and said they would not apply to the Army Corps for a permit until entitlements and zoning, and the special use permit were in place. However, he said, the representative from the Army Corps had told him that it would likely be approved. He said that the road crossing, under a regulatory standpoint, would be permissible under a nationwide permit, which does not require extra permissions if it is less than 300 feet, and the dam removal would be an added benefit.

Ms. Mallek stated that it is very important that proper testing be done. She added that the Water Protection Ordinance indicates they should not be doing this, and that roadways should be placed on high ground and should not cover all high ground with houses. She said they should not be putting in roads that cross streams and fill in the floodplain just because it is expedient. Ms. Mallek stated that if she approves this project, it would be difficult to deny any similar future projects. She said that constituents have asked her why they have rules when nobody pays attention to them, and noted that the most important regulatory responsibility for the County is the water protection ordinance. She described the project as "a huge construction of a road."

Mr. Graham stated that under the Water Protection Ordinance Section 600, there are provisions for stream crossings, and that over the years this section has been broadened to make it easier to allow stream crossings. He said if the Board approves the special permit, it would be understood by staff as a clear indication that there is an interest in having a road; whereas if the Board denies the special permit, it would be an indication that there would not be a road. He said the ordinance says the program authority may authorize a stream crossing and the Board has discretion.

Ms. Palmer asked Mr. Kamptner to comment regarding the setting of a precedent if the Board were to approve this. Mr. Kamptner stated the stream crossing regulations and the Water Protection Ordinance were amended in 2008 to allow the program authority, which is the Department of Community Development, discretion, subject to performance standards. He noted that this resulted in the case-by-case review process being replaced by performance standards laid out in the regulations.

Ms. Echols stated that she would like to discuss how the Comprehensive Plan looks at competing goals, as there is an expectation that there must be a balance in how the Board decides what is most important to achieve in a particular circumstance. She said you cannot always have both interconnectivity and environmental preservation working equally, and the benefits and drawbacks must be weighed. She stated they have a higher standard for stream preservation in the rural area vs. the development area, though it is still important in the development area.

Mr. Randolph reminded the Board that remediation can improve the condition and water quality of a creek or a stream, and he agrees with Mr. Armstrong that they would be better off having this remediated as soon as possible rather than allow this potential pollution to lie there. He said if they were to have a 500-year flood, most of the pesticides would wash down. Mr. Randolph agreed that it can be difficult to deal with change in a neighborhood, and while there can be disadvantages, such as traffic, there can be advantages as well, such as meeting new people. He said he believes the developer should set aside money for a maintenance fund in case additional testing would be required after remediation, as well as addressing additional testing necessary if there were to be a major flood. He said that people moving in to the neighborhood would feel more comfortable with these safeguards.

Ms. Mallek stated that she has a lot of concerns about the development and does not think it is particularly nice; however, she does appreciate the chance for a remediation, and as the issue is about the stream crossing and not the development, she would vote for approval.

Mr. Randolph proposed that they change the word "prior" to the word "first" and insert "within 90 days of approval of this special use permit the applicant shall..." He said this would give the developer sufficient time.

Mr. Armstrong said it is a stretch to do it within 90 days, assuming good weather, and he would prefer if the motion were to allow some discretion in the case of inclement weather. He referenced mention of a bond in the motion and asked for clarification, as he has not had to post a bond in the past. He said he hopes the work plan for the remediation, which would involve oversight of various agencies, such as Department of Game and Inland Fisheries, Virginia Marine Resource Commission, Department of Environmental Quality and Army Corps of Engineers, would be sufficient instead of a bond.

Ms. McKeel commented that there will be so much oversight on this project and asked Mr. Randolph if he would be willing to remove a bond requirement.

Ms. Mallek requested that the final wording be put off until they have the right input from the right people, and that they not place conditioning on the fly and instead allow the County Attorney to consult with the agencies involved to make sure they are getting something meaningful. She said this project is too much in a very small location, with damaging consequences for the neighborhood and potentially for the environment; however, since it is likely to be approved, she would like the best possible result. She stated that she had spoken with the representative of the Army Corps of Engineers, who told her he would need the results of the Phase II study before he could properly impose conditions for approval.

Ms. Palmer asked Mr. Kamptner, to comment on what Ms. Mallek has said. Mr. Kamptner said that Ms. Echols, Ms. Falkenstein, and Mr. Graham would need to confirm that the language to allow the

developer the discretion to add additional time beyond 90 days to complete the environmental study in the case of inclement weather is acceptable.

Ms. Mallek asked that they strike “onsite,” as she said the sediment cannot be put onsite because the property is too narrow and is in the floodplain.

Mr. Graham asked if he could clarify the process for the Board. He explained that they have completed Phase I, which is a review of literature and evidence that indicates whether there is a need for additional testing; Phase II involves the testing of soil and is not a corrective action plan. He stated that Phase II would be submitted to DEQ for evaluation, and DEQ will decide if remediation is necessary and direct the property owner to prepare a corrective action plan. Mr. Graham stated that the corrective action plan will be specific about what is to be done, and said that if DEQ decides corrective action is not needed, the County cannot require it. He said the County’s role is to assure a Phase II study is completed and reaches DEQ, adding that they should be careful not to step into the state’s role.

Ms. Palmer asked if the wording regarding the applicant’s offer is reasonable. Mr. Graham said that in his opinion the wording is satisfactory, as it assures completion of Phase II and review by DEQ.

Mr. Kamptner referenced a sentence that refers to the removal and disposal of sediment and the Phase II ESA recommendation, and asked if this should refer to the corrective action plan. He also asked about disposal of sediment onsite and Ms. Mallek’s request to not allow this. Mr. Graham responded that he does not know if there would be a corrective action plan, and said it is possible that DEQ could determine that disposal onsite is the safest thing to do.

Ms. Mallek said it would be simple enough to take “onsite” out. Mr. Armstrong said he wishes to emphasize that they do not know if there are any contaminants on the site and that they are voluntarily taking an extra step, and they could learn that there is nothing there. He said that Ms. McGough just informed him that if the toxicity is within certain levels, the DEQ requires that it remain onsite and that it would be put upland, away from flood areas, and spread as a thin layer. He requested that they be provided with the latitude to follow regulatory agency requirements.

Mr. Kamptner asked if it would be fair to include that if it were to be deposited onsite it would be deposited outside of the stream buffer. Mr. Armstrong replied that he would be happy to include this.

Ms. McKeel asked Mr. Armstrong if he would accept 90 days with potential for an additional 90 days at Mr. Graham’s discretion. Mr. Armstrong responded that he would accept this.

Ms. Mallek asked about Mr. Randolph’s suggestion to have the applicant establish a contingency fund and if they would be adding this to the resolution.

Ms. Palmer said there is no way to estimate the amount that would be needed for this so it will not be added.

Mr. Randolph then **moved** to adopt the proposed Resolution to approve SP 2016-00003 with the conditions outlined in the staff report and amended by the Board. The motion was **seconded** by Ms. McKeel.

Roll was called and the motion carried by the following recorded vote:

AYES: Ms. McKeel, Ms. Palmer, Mr. Randolph, Mr. Sheffield and Mr. Dill.

NAYS: Ms. Mallek.

(The adopted resolution is set out below:)

**RESOLUTION TO APPROVE
SP 2016-03 WEST GLEN**

WHEREAS, Crozet Development Solutions, LLC is the owner of Tax Map and Parcel Numbers 055C0-03-00-000A0, 056A1-01-00-02500, 056A1-01-00-026A0, 05600-00-00-11500, and 055C0-03-00-000A1, collectively, the “Property”; and

WHEREAS, a special use permit was approved by the Board for this property on July 1, 1991 (SP 1990-103 Orchard Acres) to allow fill in the floodplain for the construction of the existing stream crossing across Powell’s Creek and the construction of Cling Lane, including a condition requiring that a second access to Orchard Drive be provided prior to further development of the property; and

WHEREAS, the Owner filed an application for a special use permit to allow fill in the floodplain to construct a second stream crossing over Powell’s Creek in order to further develop the Property in accordance with the above-referenced SP 1990-103 condition, and the application is identified as Special Use Permit 2016-03 West Glen (“SP 2016-03”); and

WHEREAS, on June 21, 2016, after a duly noticed public hearing, the Albemarle County Planning Commission recommended approval of SP 2016-03; and

WHEREAS, on September 14, 2016, the Albemarle County Board of Supervisors held a duly noticed public hearing on SP 2016-03.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the transmittal summary and staff report prepared for SP 2016-03 and all of their attachments, the information presented at the public hearing, and the factors relevant to a special use permit in Albemarle County Code §§ 18-30.3.11 and 18-33.8, the Albemarle County Board of Supervisors hereby approves SP 2016-03, subject to the conditions attached hereto.

* * * * *

**SP-2016-03 WEST GLEN
Conditions**

1. The culverts under Cling Lane Extended shall be in general accord with the attached drawing titled "Special Use Permit Plans for West Glen Subdivision" (the "Plan") prepared by Dominion Engineering with a revision date of June 3, 2016. To be in general accord with the Plan, development shall reflect the general size, arrangement, and location of the culverts, as well as maintaining no increase of the 100 year flood elevation outside of the West Glen Subdivision property. Modifications to the plan, which do not conflict with the elements above may be approved subject to the review and approval of the County Engineer.
2. Prior to final road plan approval or permitting of a land disturbance in the floodplain, the applicant shall obtain from the Federal Emergency Management Agency (FEMA) a conditional letter of map revision (CLOMR or CLOMA), and prior to road acceptance the applicant shall obtain from FEMA a letter of map revision (LOMR or LOMA). In addition, the applicant shall copy the County Engineer on all correspondence with FEMA. Construction and installation of the culverts shall be in compliance with approved road plans and the FEMA approved CLOMR or CLOMA.
3. Any residential lots and associated streets resulting from the subdivision of the Property, with the exception of the stream crossing and roadway identified on the attached plan as Cling Lane Extended, shall be located outside of the 100 foot stream buffer, Flood Hazard Overlay District and preserved slopes on the Property. Lots may be permitted to be located within the landward 10 feet of the 100 foot stream buffer only if the lots are adjacent to approved stormwater management facilities located within the landward 50 feet of the stream buffer. Approval of lots located within the stream buffer shall be subject to Subdivision Agent approval.
4. The net density of the Property shall not exceed 6 units per acre, in accordance with the Crozet Master Plan. Net density shall be calculated by subtracting the area within the Flood Hazard Overlay District, the 100 foot stream buffer, and areas of preserved slopes from the total acreage of the Property.
5. Prior to issuance of a grading permit to allow installation of the stream crossing or with submittal of the final subdivision plat, whichever comes first, the applicant shall submit an easement plat dedicating to the County the area identified for a greenway trail on the Plan.
6. If the construction of the stream crossing for which this Special Use Permit is issued is not commenced by September 14, 2021, the permit shall be deemed abandoned and the authority granted thereunder shall thereupon terminate.
7. By December 14, 2016, the applicant shall conduct a Phase II Environmental Site Assessment (ESA) in accordance with ASTM standards. The Phase II ESA shall include sampling and testing of accumulated sediment behind the dam that exists on the Property. The applicant shall be required to comply with all recommendations of the Phase II ESA prior to issuance of the first building permit on the Property. The applicant shall also be required to remove accumulated sediment from behind the dam prior to demolition of the dam and dispose of the sediment, either on site but out of the stream buffer or off site, in accordance with the approved Phase II ESA recommendations. The Director of Community Development may extend the 90 day period for up to an additional 90 days upon demonstration by the applicant that the ESA could not be completed within the 90 day period due to weather or other circumstances beyond the control of the applicant.

Recess. The Board recessed at 8:16 p.m., and reconvened at 8:30 p.m.

Agenda Item No. 16. **Public Hearing: PROJECT: SP-2015-00032. ReStore N Station (amendment of SP 200900034).**

MAGISTERIAL DISTRICT: White Hall.

TAX MAP/PARCEL: 055B0000000100 LOCATION: 6115 Rockfish Gap Turnpike.

PROPOSAL: Construct approximately 20,000 square feet of additional commercial space and amend fuel dispensing conditions, hours of operation and overnight parking limitations. Proposed uses include Convenience/Retail, Food retail, Retail Auto Parts, Auto Repair Shop, Office and a drive-through window.

PETITION: Amend the existing conditions of SP200900034 to allow approximately 20,000 square feet of additional building, amend conditions related to fuel dispensing and conditions

limiting overnight parking and limitations on hours of operation. The conditions of SP200900034 were established during the review of a request to permit water consumption exceeding four hundred (400) gallons per site acre per day as permitted under Section 24.2.2(13) of the zoning ordinance. No change in permitted water use is proposed.

ZONING: HC, Highway Commercial– retail sales and service; residential by special use permit (15 units/ acre).

OVERLAY DISTRICT: EC- Entrance Corridor.

PROFFERS: No.

COMPREHENSIVE PLAN: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/residential density 0.5 unit/acre in development lots.

(Advertised in the Daily Progress on August 29 and September 5, 2016)

The Executive Summary presented to the Board states that a special use permit was issued to this property to allow water consumption in excess of 400 gallons per acre per day on November 3, 2010. That approval, SP 2009-34, limited water consumption to 1,625 gallons per day, building size and activities on site. The applicant is not proposing to change the amount of water that may be used. The applicant is requesting that the building size be increased and an expansion of the activities that may occur on site.

On June 7, 2016, the Planning Commission recommended denial by a vote of 6:0 (Spain)

The Planning Commission recommended denial of the changes to the original conditions of SP 2009-34. The Commission stated that the original conditions control the recharge and intensity of the use on the property, and that they were tied to the water consumption.

The Commission expressed concern that expanded uses and increased customer traffic could accelerate water use, and that data from comparable businesses is not available. The Commissioners stated that some increase in building size could be accommodated, but were not sure how much. The Commission also expressed concern that the mix of uses made predictions of water use difficult, and stated that the limitation on the hours of operation should remain on the businesses, but that hours of operation of the gas pumps could be expanded.

The Planning Commission recommends denial of this application for the reasons stated above. Staff recommends approval based on no requested or expected change in water use, and staff's belief that groundwater recharge will remain adequate based on a groundwater study and that the application is consistent with the criteria for issuance of a special use permit.

Mr. Bill Fritz, Chief of Special Projects, addressed the Board and stated that the applicant proposes to amend the conditions of a previous special use permit to eliminate restrictions on the hours of business activity, a prohibition on overnight parking, limitations on fuel dispensers, and to allow for additional construction. He said what is not being requested are changes to the amount of water that may be consumed, metering requirements, a requirement for a flow restriction device to limit water consumption, or requirements for rainwater use. He stated that the issue under review is limited to the impact on water resources resulting from: increased building size, increased impervious area, expanded hours of operation, and an increase in the types of fueling stations.

Mr. Fritz displayed an aerial photograph of the property and surrounding properties. He next showed an architectural drawing submitted by the applicant of the proposed development, stating that the special use permit application was reviewed for compliance with Section 33.8 and is consistent with the provisions of the ordinance. He said that with the expanded development, the rate of groundwater recharge exceeds the rate of groundwater removal, according to an analysis submitted by a professional engineer. Mr. Fritz stated that the proposal is consistent with the Comprehensive Plan due to previous approvals and no change in the use, which is water consumption. He indicated that staff recommends approval.

The Chair opened the public hearing.

Ms. Jo Higgins addressed the Board regarding the application. She displayed a timeline dating back to September 2008 when the site plan was submitted, noting that it was approved in March 2013 and the store was opened in September 2014. She said the issue before the Board is the impact on water use, and she will present documentation indicating the existing development only uses 16% of the allowable by-right water. Ms. Higgins showed a photograph of the existing building and an architectural rendering of the proposed addition, and showed a photograph that shows the entrance and turn lanes. She said that Re-Store'N Station is located outside of the growth area, but is in the vicinity of many commercial/ industrial buildings along Route 250. Ms. Higgins reported that the special use permit has nine conditions, and they are requesting the deletion of Conditions 4, 5, 6 and 8, and that Condition 9 be updated to reflect the concept plan submitted December 7, 2015 and last revised February 25, 2016. She noted that special use permit Conditions 1, 2, 3 and 7 would remain and are as follows: 1) Requires a water meter, 2) Limits water use to 1,625 gallons per day, 1 gallon more than the by right amount of 400 gpd/acre, 3) Requires a flow restriction device; and 7) Allows rain water collection to be used for landscaping.

Ms. Higgins next provided reasons for the proposed changes to conditions: Condition 4 – "The total building footprint square footage shall not exceed 3,000 square feet." She stated that: this condition does not relate directly to water usage but rather indirectly, and is not needed to ensure compliance with

the water limitation with numbers 1, 2, 3 and 9 imposed; this condition was intended to keep the store small so the water use would be less; and it is proven that the existing C-Store and office use only a fraction of the allowed water at 16%. Ms. Higgins said the wording has been problematic because “footprint” is not defined in the Zoning Ordinance so reliance on the building and fire code occurred, which is not typical. She said if the Board keeps this condition it is redundant because the square footages are stated on the concept plan tied to this application in Condition 9. Ms. Higgins said that this is to request clear wording to avoid misunderstandings and rely upon language that is customary: “The gross first floor building square footage shall not exceed 13,600 square feet and the gross second floor square footage shall not exceed 11,000 square feet. This does not limit porch roofs.”

Ms. Higgins next addressed Condition 5 – “The hours of operation shall not exceed 16 hours per day.” She stated that: this limitation has imposed a market constraint on the business and impacts how to best serve customers on their way to work and late evenings when large grocery stores are closed; it is known that there are far fewer customers during off hours, but convenience store service is suited for that purpose; and this condition is not necessary because the flow restrictor in place limits water usage and should be left up to the store operator. Ms. Higgins said that if the Board keeps this condition, the applicant requests wording to increase the hours of operation from 16 to 20 and confirm that fuel pumps, which use no water, can operate when the store is closed to serve travelers who exit I-64 looking for fuel at night. She said that the auto repair business hours’ limit is also added: “The convenience store shall not operate from 12:30–4:30 a.m. except the fuel pumps may remain operational without restriction. The auto repair business shall not operate from 10 p.m. – 4:30 a.m.

Ms. Higgins next addressed Condition 6 – “There shall be no more than nine fuel pump stations, of which seven are limited to serve only two vehicles at any time, one is off-road fuel that serves only one customer at any time, and one is for kerosene that serves only one customer at any time.” She said that as written, this condition has complicated wording that prevents a flexible alternative fuel dispenser from being installed, and the industry standard fuel dispensers require a separate hose/nozzle to dispense alternative fuels. Ms. Higgins noted that only one vehicle on each side of the dispenser can operate the pump/pay control panel, and this means that only two vehicles at a time can purchase fuel.

Ms. Higgins addressed Condition 8 – “Except vehicles for auto repair customers.” Because obviously if someone brings their car in to be worked on and a part has to be ordered, they would be parked in that area of the site, but that would be explicitly auto repair customers. Otherwise, it would remain the same.

Ms. Higgins addressed Condition 9 – “Development of this site shall be in general accord with the concept plan dated December 7, 2015 and last revised February 25, 2016.” She said that permitted modification may include those required by the Architectural Review Board, those necessary to satisfy the conditions of the special use permit, and additional landscaping/screening approved by the site plan agent. She addressed the condition provision that “No building permit for the expansion of the existing building shall be issued until the water usage of less than 80% of 1,625 gpd or 1,300 gpd has been confirmed by submission to the Zoning Administrator of meter reading data over a six-month period.” Ms. Higgins said the applicant would prefer to not have this restriction because it would pose an inconvenience to his customers to endure two periods of construction, but this approval is extremely important. She stated that the parcel is 4.06 acres, and a convenience store typically uses one acre so this single use does not support the 4x greater land cost and related development requirements, so the additional income is needed for this business to be successful.

Ms. Higgins stated that at the Planning Commission meeting, the request for deleting the conditions was denied, and there was no discussion with or recommendation to the Board. She said she was asked if comps had been considered, and provided the Board with three reasons why this was not done with a slide that explained why they could not use comps. Ms. Higgins next showed a list of complaints made by local residents about the business and responses to address these issues, and said these were related to lighting, traffic at the entrance, concern about runoff contamination, mosquitoes breeding in a muddy pond at the rear of the property, and nearby businesses that did not want competition. She concluded her remarks and invited questions.

Ms. Mallek asked why they are only using 16% of the water they had planned to use six years ago. She said that her second question was what would happen in the event of an emergency where a large amount of water is needed, but is not available. Ms. Higgins responded that it was the County that had projected a much greater use of water, and that the property owner projected a much lower amount. She said they are using less than half of the water compared to the comps that were used at the time, noting that low-flow fixtures are a major factor in reduced water usage. Ms. Higgins said that in response to the second question, this is a responsibility the owner would assume; and in the event of a fire, there is a fire hydrant across the road that the fire department could use.

Mr. Randolph stated that a missing piece is a detailed, use-specific listing of the locations and applications where water would be used, broken down by category. Ms. Higgins replied that this information is in the packet provided under Re-Store’N Station Phase II Water Uses Analysis, dated 12/8/15. She said the analysis was done to comply with both Virginia Department of Health and EPA regulations, and said the conclusions reached as a result of the analysis are on the third page and referred to estimated water usage figures.

Mr. Randolph asked if there is an implicit assumption in the analysis that customers would pay at the pump using a charge card. He said that customers who pay for gas have to enter the store and are more likely to use the bathroom and use water and wonders if the assumptions used in the analysis were

biased to customers using charge cards. Ms. Higgins said the actual analysis was based on metered data of the existing store, which has been operational for two years, as well as projected use of the additional square footage. She said the number of customers that come into the store is low compared to the number that purchase gas, and pointed out that the business owner has every incentive to stay within the permitted water usage limit.

Mr. Randolph said he has a question about Condition 5 that they wish to remove, which would allow the business owner to determine hours of operation. He posed a rhetorical question to Ms. Higgins as to whether she thinks the owners of wineries and breweries should have the same authority to determine hours of operation and operate when they wish to operate, and not be limited by hours established by a Planning Commission or Board of Supervisors. Ms. Higgins responded that in this case they are discussing water, and it should be up to the operator to judge how many customers he can let in his store and how long he would remain open. She said if he is getting close to the water use limit, he can reduce the hours. She said that wineries are in the rural area, and how their staying open could affect neighbors is different because in this case they are dealing with highway commercial zoning.

Mr. Randolph posed a scenario of a residential area behind a business and whether she thinks local government should have the ability to express concern about operating hours if the operations of the business could affect the health, safety, welfare, or sleep of the residents of a community that pre-existed the business. Ms. Higgins referred to the Noise Ordinance and the Lighting Ordinance to deal with these issues, and emphasized that, in this particular case, they are just reviewing water usage. She said they have larger than required setbacks, and there is 300 feet between the store and the nearest house.

Mr. Randolph mentioned the noise that trucks make and how this could affect nearby residents if they are pulling in and out of the gas station all night, and asked her how she would feel if she lived in an area subject to 24-hour-a-day truck noise. Ms. Higgins responded that the ordinance should be addressed to deal with these issues, and the property owner is following the rules established by the ordinance.

Mr. Randolph asked about Condition 8, which the applicant wishes to remove. He suggested that if the fence around the repair shop were six feet tall, then residents of nearby homes could see vehicles parked from their second floor windows. He also asked about car alarms being set off at night and how that would affect the customary peace and right of residents to enjoy their homes. Ms. Higgins stated that there is a large auto body shop immediately to the east of the property that has been there for years, so this issue already exists and is within the character of a highway commercial zone.

Hearing no other questions for the applicant, Ms. Palmer opened the public hearing up to other meetings of the public.

Mr. John Savage, resident of Crozet and member of the CAC, addressed the Board. He noted that he has distributed copies of a resolution to members of the Board opposing this proposal. He said the original approval of the Re-Store'N Station was a long and contentious process and opposed by many community members. He said the special use permit they wish to amend was crafted specifically to mitigate the impact of this project, and the changes proposed contradict what had been agreed to before. He stated the size and scale of the proposal are not in keeping with trying to preserve the 250 West corridor. Mr. Savage stated that the prior approval and court decision specifically limited the building's size to 3,000 square feet on the first story and 1,000 square feet for the second story. He said the proposal to almost quadruple the square footage and expand the site plan will cause additional congestion, visual impact, noise and light pollution in the area. He also said that the restrictions on hours of operation should remain. He said the Planning Commission rejected the special use permit by a 6-0 vote.

Mr. Tom Loach, resident of Crozet, addressed the Board. He said the proposal should be rejected because it is in the rural area, and he cited a long history with the applicant and a court case.

Ms. Sandra Mears, a resident of Freetown, addressed the Board. She stated that none of the agreements made in 2010 have been kept and said she can hear trucks going in and out all night. She said they are asking for more office space when they have not even used all of the existing space. Ms. Mears said they have self-monitored their water usage and could have doctored this. She stated that there is an open air drainage system on the property that promotes mosquitoes, and they have said they would close this, but neighbors have been waiting since 2014 for it to be closed. She referenced traffic and accidents at the location.

Ms. Marilyn Whiting, a resident of Freetown, addressed the Board. She confirms everything that Ms. Mears has said. She said she would add that she fears coming out of her driveway and that her mailbox has been knocked down three times since the gas station opened. She added that she is hoping they will reduce the speed limit, which is 45 mph.

Mr. Jason Crutchfield, a resident of Crozet, addressed the Board. He said that he lives near Re-Store'N Station and said the buffer is not really a buffer. Mr. Crutchfield said Ms. Higgins' claim that there is 300 feet from the store to his house is not correct, and that it is more like 50-100 feet. He said in its two years of operation, Re-Store'N Station has had three violations, including using unauthorized space, overnight pump usage and overnight parking. Mr. Crutchfield said the Comprehensive Plan and Crozet Master Plan are supposed to be reassessed to complement one another, and they should do this before approving Re-Store'N Store. He said if the owner would work with the community, they could probably find a solution.

Ms. Erica Haskins, a resident of Freetown, addressed the Board and said she and her family reside behind the gas station. She expressed concern that the gas station will be a truck stop with 24-hour service and multiple trucks coming and going at all hours. She said she is a business owner herself and is not against them as a business. Ms. Haskins said she and her husband moved to the area 12 years ago to raise a family in a peaceful environment, but the station has noise and glaring lights and lacks adequate screening. She referred to the County ordinance regarding noise and light pollution and requested that the Board consider the welfare of residents of the community.

Ms. Mary Rice, a resident of Whitehall, addressed the Board. She stated that the applicant and staff have said the special use permit is only about water, but that some of the requested amendments have nothing to do with water. She referred to public hearings in 2010 before the Board to address the SUP for Re-Store'N Station and how many community members attended, and how there were factors that had nothing to do with water. She stated there is no way that 20,000 square feet, with a restaurant and body shop, can be added to a 3,000-square-foot building and not exceed 1,625 gpd of water usage. She referred to the sparse attendance at the meeting and said this is not because residents do not care, but they have become overwhelmed with zoning issues and have entrusted their concerns with the Crozet Advisory Committee. Ms. Rice asked the Board to strongly consider its opinion on this matter.

Mr. Mike Marshall, a resident of Crozet, addressed the Board. He stated that Ms. Higgins' saying the issue is about water is a misdirection and that all of the conditions in the SUP were willingly agreed to by the applicant at the time. He said the applicant is asking that the County keep its side of the agreement, but allow changes to the applicant's side of the agreement. Mr. Marshall posed a hypothetical scenario that the Board allows the amendments and the station expands and then exceeds the permitted water usage and then returns to the Board allowing for an exception. He summarized the main principle of the Crozet Master Plan that calls for density downtown and limits commercial development along Route 250. He said if Route 250 gets too busy, there is not room to construct a bypass. He asked that the Board not approve the request.

Mr. Holmes Brown, a resident of Batesville, addressed the Board. He stated that he has lived in the area on and off since 1956. He said that Freetown is a historic African-American community, and the County should do everything it can to preserve and honor this community and that this project will have a very negative impact. He stated that if the SUP is granted, it will set a precedent, and the Board will likely be presented with many additional requests. Mr. Brown said that he has been dedicated for a long time to preserving the rural nature of the County and has placed his own land in conservation easement, sacrificing his own development rights, so that it cannot be developed. He asked that the Board do its part to preserve the rural nature of the County.

Ms. Higgins stated the applicant is aware of many of these issues and said she did not say that conditions must pertain to water usage, but this is what the ordinance says and what the County Attorney reinforced three times during earlier discussion. She said that concerns of citizens were heard when the conditions were composed. Ms. Higgins said that in this case, the issue is financial success vs. financial failure of the business.

Addressing concerns about lighting, she said she has spoken with the Architectural Review Board coordinator about the potential for different fencing to provide better screening. She said they can address the lighting issue with shorter poles or moving the tall pole to the front, though it meets County standards as full cut off and dark skies. She said the angle of a nearby house is hitting it in the wrong way. Addressing the traffic issue, she said that VDOT required them to extend the right-turn deceleration lane past the entrance to Freetown Road, and it allows drivers to exit the through lane and slow down to avoid rear-end collisions. She said VDOT also required them to record an easement so Freetown Lane could connect to the entrance and to the property to the west, though residents were against this. She said that reducing the speed limit is beyond their control. She said the owner of the Brownsville Store hired attorneys and consultants to prevent the original approval for the business and that old, stale zoning is a difficult issue. She addressed the drainage pond issue, acknowledging the presence of mosquitoes, and said it will be removed once the development is complete, but is required to be kept in place. Ms. Higgins explained how it is part of the design as part of a perforated system that supports recharge of water collected onsite, and there are sand filters to filter oil before it goes to underground storage from where it is piped to a receiving stream. Regarding a statement by a community member about buffers, she said she did not say there is a 300-foot buffer, but that all the setbacks, which are measured from buildings to the property line, have been exceeded with this plan. She said that when the buffer and setback are added together, it becomes 300 feet. She referenced a petition that she said has 20 pages of signatures in support of the application.

Ms. Palmer closed the public hearing and opened up discussion among the Board members.

Mr. Dill referenced Ms. Mary Rice's comments and asked if they can look at the minutes from the 2010 agreement to see if the applicant had promised they would not have 24-hour truck traffic. He wants to know if the agreements were meant to be permanent and would like to know the legal aspects, adding that the main issue seems to be the big trucks.

Ms. Mallek said that these were conditions in the permit, and there was to be a chain across the entrance to prevent people from entering to park overnight.

Mr. Kamptner said it would take some time to go through the minutes, as the October 13, 2010 meeting minutes are 15 pages.

Ms. Mallek said they are in the packet. She said she finds the recommendation of the Planning Commission to be completely compelling and proposes that they follow it.

Ms. Mallek **moved** to leave the 2010 special use permit and conditions intact. Mr. Randolph **seconded** the motion.

Mr. Dill asked if they need to study the legal issue as to whether the commitments need to be retained, and said that some of the requested changes to the conditions seem reasonable. He said the main concern seems to be about the trucks, and he does not see the property becoming a truck stop as it is not that close to I-64 and there are other truck stops nearby.

Ms. Palmer commented that it is not that far from I-64.

Ms. Mallek said that when it was introduced in 2010, it was going to be the first truck stop on this side of the mountain, and this is how it was presented to the community by the owner.

Ms. Palmer said if they approve this, they can ask the applicant and residents to try to work something out.

Ms. McKeel asked if this is the only commercial facility along this stretch of road that would have trucks, as she is trying to figure out truck traffic noise.

Ms. Mallek stated that Brownsville Market has diesel fuel, but is not open all night.

Mr. Kamptner stated there are other highway commercial zoned parcels in the vicinity, including next door, and he mentioned a few nearby businesses.

Ms. Mallek said this is the only facility with lights on at 10:30 p.m., and they are very bright. She has received requests from constituents requesting the lights be less bright.

Ms. McKeel said this area is zoned highway commercial.

Ms. Mallek clarified that this parcel and the one next door are highway commercial, but the rest of this stretch is rural.

Mr. Kamptner stated there are seven parcels designated as highway commercial in this area along Route 250.

Mr. Randolph said it is important to keep in mind that when these sites were zoned as highway commercial, the level of usage was less intensive and there was not an expectation of a 24-hour service station with tractor trailers there. He said that all highway commercial areas are not equal and that over time the implications of highway commercial vary. He said the question to address is whether the scale and nature of this enterprise fit within the parameters of the rural area and the ambience of the community. Mr. Randolph stated that he respects the concerns of the nearby residents and said these are not people who are inclined to complain, but they have a basis to feel that the applicant has not acted in good faith. He said he would like to have a vote on this issue tonight to make it clear to the public where the Board stands.

Mr. Kamptner reminded the Board that what is up for consideration is only the special permit regarding limits on water usage. He said he has had a chance to review the minutes of the October 13, 2010 meeting, and said at that meeting Mr. Davis reminded the Board three times that any conditions must be tied to the water consumption. He said the allowed uses were already decided upon when the property was zoned highway commercial, and the discussion should focus on the issue of water consumption.

Ms. Mallek then **moved** to amend her motion to deny the application to amend the conditions because the existing conditions adopted in conjunction with the Board's approval of SP 2009-000034 are reasonable and were never challenged by the applicant, and for all of the other reasons contained in the record that support the decision. The motion was **seconded** by Mr. Randolph.

Roll was called and the motion **failed** by the following recorded vote:

AYES: Ms. Palmer, Mr. Randolph and Ms. Mallek.

NAYS: Ms. McKeel, Mr. Sheffield and Mr. Dill.

Ms. Palmer invited Ms. Higgins to address the Board.

Ms. Higgins said the application was to request to delete conditions, and in lieu of that the applicant has done a complete presentation and submitted wording to revise the conditions that still limit hours and parking, and the wording proposed reflects awareness of these issues. She said the water usage is at 16% of what is allowed by right, and she referenced comments by then County Attorney, Larry Davis, about SUPs in the ordinance, which says "all conditions attached to a SUP must apply to the use or the permit is void." She asked how they can prevent a business from using a by-right amount of water.

Ms. Higgins stated that things have gotten off track in an unexpected way, and the motion to deny would prevent the applicant from using an amount of water that is permitted by right, which is unfair to the business, so she requests the Board review the revised conditions they have proposed that address the issues raised. She also pointed out that the request is not for a 24-hour service, but to expand hours of operation from 16 to 20 hours per day. She said the issues about lighting and noise are site plan issues and not related to water use. Ms. Higgins stated that at the 2010 meetings, the site plan showed larger buildings and the intention was to expand the business, but they had to show records of 12 months of water usage before they could resubmit, and they have done this and played by the rules.

Ms. Palmer stated that if the request is denied, they can certainly sit down and review what the applicant has submitted again.

Ms. Higgins said the revised conditions allow additional hours and a flexible pump, still restrict overnight parking, and enables the business to be successful.

Ms. Mallek asked if they are requesting 19,000 additional square feet, as this is her understanding from reading the staff report. Ms. Higgins confirmed this.

Mr. Dill said he would support the request with the changes to the conditions, although he thinks they should have a future discussion about highway commercial zoning.

Ms. Higgins requested deferral until the October 12, 2016, Board meeting for additional consideration of the application, with conditions proposed by the applicant in lieu of deleting conditions.

Ms. McKeel **moved** to defer a vote on the application to the October 12, 2016 meeting, at the request of the applicant. The motion was **seconded** by Mr. Sheffield

Roll was called and the motion carried by the following recorded vote:

AYES: Ms. McKeel, Ms. Palmer, Mr. Sheffield and Mr. Dill.

NAYS: Mr. Randolph and Ms. Mallek.

Agenda Item No. 17. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Mr. Sheffield stated the Governor's Transportation Conference will be held in Alexandria, October 19-20, 2016, which he will be attending on behalf of JAUNT, and he invited others to attend.

Mr. Sheffield stated the USDOT is starting a new national academy for non-transportation professionals, mainly local decision makers, so that they can be better informed when making decisions on a local level. He said that communities will nominate a representative to attend the academy and said the County can nominate someone to attend, noting that it is a competitive selection process.

Agenda Item No. 18. From the County Executive: Report on Matters Not Listed on the Agenda.

There were none.

Agenda Item No. 19. Adjourn to September 20, 2016, 6:00 p.m., Room 241.

At 10:03 p.m., Mr. Randolph **moved** to adjourn the Board meeting until September 20, 2016, 6:00 p.m. The motion was **seconded** by Ms. Mallek.

Roll was called and the motion carried by the following recorded vote:

AYES: Ms. McKeel, Ms. Palmer, Mr. Randolph, Mr. Sheffield, Mr. Dill and Ms. Mallek.

NAYS: None.

Chairman

Approved by Board
Date: 08/02/2017
Initials: CKB