

MINUTES

CITY OF CHARLOTTESVILLE

PLANNING COMMISSION

TUESDAY, 12 JANUARY, 2010 -- 5:30 P.M.

CITY COUNCIL CHAMBERS

Commissioners present:

Mr. Jason Pearson (Chairman)

Ms. Genevieve Keller (Vice-Chairman)

Mr. Michael Osteen

Mr. Dan Rosensweig

Mr. Bill Emory

Mr. Kurt Keesecker

Mr. John Santoski

Mr. David Neuman, Ex-officio, UVa Office of the Architect

Staff Present:

Mr. Jim Tolbert, AICP, Director NDS

Ms. Missy Creasy, AICP, Planning Manager

Mr. Nick Rogers, Neighborhood Planner

Ms. Ebony Walden, AICP

Ms. Mary Joy Scala, AICP

Mr. Brian Haluska

City Council Members Present:

Mr. Dave Norris, Mayor

Ms. Holly Edwards, Vice Mayor

Mr. Satyendra Huja

Ms. Kristin Szakos

Also Present:

Mr. Richard Harris, Deputy City Attorney

II. REGULAR MEETING

Mr. Pearson convened the meeting.

A. COMMISSIONERS' REPORT

Mr. Neuman had nothing to report.

Mr. Santoski had nothing to report.

Mr. Osteen stated the Board of Architectural Review had met in December and discussed 632 Preston Place and the demolition of the storefront at 219 West Main Street. The BAR denied a Certificate of Appropriateness for the after the fact demolition application; action was deferred on the proposed new storefront

Ms. Keller had no report.

Mr. Rosensweig stated the Housing Advisory Committee did not meet in December. The Parks and Recreation Advisory Board met; an update on the construction of both the Smith Aquatic Center and the Forest Hills Park renovation was provided. Also discussed at the meeting was the Athletic Field Allocation Study, which found the diamond field needs were being met while there was a substantial shortage of multipurpose or rectangular fields; one of the biggest needs was for additional lighted facilities. Mr. Rosensweig stated the meeting had ended on a very sad note when Mr. Daley informed the Board that Ben Hair, an outstanding 20 year old man who had served as a lifeguard at City pools for six years, most recently as head lifeguard at the Onesty facility, had died in an auto accident in December. Mr. Daley had commended Ben as an incredibly responsible young person with a rare sense of service. Mr. Rosensweig noted Albemarle High School has set up a memorial scholarship in Ben's honor.

Mr. Keesecker stated the MPO Tech Committee had not met in December but will meet 19 January.

B. UNIVERSITY REPORT

Mr. Neuman stated the first Planning and Coordinating Council Technical Committee meeting will be 21 January at 3:30. The South Lawn occupancy has proceeded despite the snow. The restoration of Pavilion X on the Lawn has continued and the major nine foot tall parapet was hoisted into place by crane. The scaffolding will go down; Mr. Jefferson's Pavilion X will be seen by the public, for the first time in more than 100 years, as it was intended, designed, and built.

Mr. Pearson congratulated Mr. Neuman and the University on the appointment of a new president.

C. CHAIR'S REPORT

Mr. Pearson had nothing to report.

D. DEPARTMENT OF NDS/STAFF REPORTS/WORK PLAN & CENSUS UPDATES

Ms. Creasy stated real estate disclosure forms were due to Jeannie Cox on 15 January. She noted the April CPC meeting would be held on Monday the 12th rather than Tuesday the 13th as City Hall would be closed 13 April for the observance of Thomas Jefferson's birthday. Ms. Creasy stated Commissioners needed to make nominations for the annual Planning Commission Awards by 26 January; voting would be at the February meeting with presentations at the March meeting. She stated the new Housing Planner, Ms. Kathy McHugh, had arrived and was becoming integrated into NDS. Ms. Creasy stated the Neighborhood Leadership Institute would start in February. Ms. Creasy stated the national census bus would be making its first stop in Charlottesville on 15 January. She explained the bus was an interactive display that would have many different kinds of media aspects to encourage folks to fill out the census.

E. MATTERS TO BE PRESENTED BY THE PUBLIC NOT ON THE FORMAL AGENDA

Ms. Kay Slaughter, of the Southern Environmental Law Center, welcomed the Commission's intent to review the critical slope's ordinance. She stated the ordinance needed to be amended as the current criteria are vague. She recommended that the Planning Commission direct Staff to beef up the purpose and intent of the ordinance, specifically adding to the aesthetics portion and to develop a variation of Staff's potential solution.

F. CONSENT AGENDA

1. Site Plan and Subdivision approval list
2. Minutes -- December 8, 2009 -- Regular meeting
3. Minutes -- December 8, 2009 -- Pre meeting

Mr. Rosensweig asked that the regular meeting minutes include "Specifically he expressed frustration at the City's recently adopted ordinance on affordable housing doesn't allow Council to consider location of affordable housing, adjacency of affordable housing to employment centers, and the integration of mixed incomes into communities" after the sentence "Mr. Rosensweig realized there are odd entanglements related to the SUP and there was very little within the Commission's purview" on page seven. Mr. Emory asked that page six of the 12/8/09 minutes state he had recommended Council revisit and possibly adopt the Water Resources Protection Program Utility. He asked that the minutes (again, the 12/8/09 minutes) reflect the verbal endorsement of this recommendation by 5 of 7 Commissioners (Commissioners Rosensweig and Santoski abstained).

Mr. Pearson stated he would entertain a motion on the Consent Agenda inclusive of the comments received. Ms. Keller moved approval. Mr. Emory seconded the motion. The motion carried unanimously.

Mr. Pearson provided the Commissioners with a document they may have received electronically mid-afternoon; it was in anticipation of their discussion of the steep slopes ordinance later in the meeting. He also provided a copy to Ms. Slaughter.

Mr. Pearson called for a brief recess until 6 o'clock.

Mr. Pearson reconvened the meeting.

III. JOINT PUBLIC HEARINGS

G. JOINT PUBLIC HEARINGS

1. SP-09-11-22 -- (632 Preston Place) An application for a special use permit for the property at 632 Preston Place. This request is for a seven bedroom boarding house in the R-3H zoning district. This property is further identified on City Real Property Tax Map Number 5 as parcel 124 having approximately 70 feet of frontage on Preston Place and containing approximately 10,366 square feet of land or 0.24 acres. The property is zoned Multifamily with Historic Overlay and the Land Use Plan generally calls for Multifamily.

Ms. Walden gave the staff report. The applicant is seeking a Special Use Permit to use an existing seven bedroom house as a boarding house for University students. The site also contains a cottage. She provided the Commissioners and Councilors with the definition of boarding house: "A Boarding house means a building, or portion thereof, other than a hotel, which contains three (3) or more guest rooms designed or intended to be used, let or hired out for occupancy, for monetary compensation, where the rental or leases are for definite periods of time. Meals may or may not be provided, but there is one (1) common kitchen facility. No meals are provided to outside guests. Also commonly known as a rooming house. Boarding houses are allowed by special permit in R-3 zones." The existing house was constructed in 1932 and is a contributing structure in an historic district. The house was previously used as a sorority. The applicant is not proposing any changes to the external portions of the site and structure. Use of the house as a boarding house is harmonious with the existing patterns of use and development. Staff finds the proposal will impact the neighborhood through traffic and congestion. The structure is currently vacant and once occupied traffic will increase. It is likely residents will require more parking spaces than can be provided on site. It is likely there will be property maintenance issues. Ms. Walden stated the Board of Architectural Review had reviewed the Special Use Permit for impacts on the historic district; the Board had recommended approval with the condition that City Council request the applicant to submit a site plan amendment which would reduce the front yard parking area so it would be more in conformity with current regulations and to provide bicycle parking. Staff recommends: the occupancy be

limited to 14 persons; the applicant make any changes required by the building code official; the cottage shall be used as a separate site once it is brought up to building code standards; the applicant provide at least three parking spaces; the applicant provide landscaping in the front yard as visual buffers for the parking area; the City's property maintenance office shall be provided with contact information of a local representative; and the applicant should submit a site plan which includes bicycle parking as was recommended by the BAR. Staff recommends approval with these conditions.

Mr. Rosensweig, noting the BAR's condition regarding parking, wanted to know if the site plan showed parking consistent with the general ordinance. Ms. Walden explained that was the applicant's attempt to reduce the front yard parking. She felt a better job could be done to allow compliance with the ordinance.

Mr. Osteen stated the zoning ordinance stipulates that high density residential shall be screened from low density residential by a 20 foot, type S-2 screening or buffer. He then wanted to know if a 14 person boarding house was considered high density residential. Ms. Walden stated that really applied to new construction. She felt this application was more of a medium density.

Ms. Keller wanted to know if Staff was aware of how many other boarding houses were in the vicinity of the University. Ms. Walden was unaware.

Mr. David Kariel, of 102 Tripper Court, was present on behalf of the applicant. He stated the intention was for the applicant to use the cottage as an apartment whenever she was in town. He stated parking had been adjusted from six spaces to five. Landscaping has shifted parking away from the neighboring single family house.

Mr. Pearson opened the public hearing.

Mr. Richard Crozier, of 624 Preston Place, stated the proposal to issue a Special Use Permit raises red flags for the neighborhood, which he characterized as being fragile and vulnerable. He expressed concern about parking. He thought the infrastructure of the house was not up to handling that many people. He also expressed concern about the possibility of high density creeping into the neighborhood. He urged the Commission to not grant the Special Use Permit.

Mr. Art Kiser, of 1872 Edgewood Lane, spoke in opposition of the proposal. He stated the Venable neighborhood had worked hard to preserve and encourage single-family, owner-occupied housing. He asked the Commission to use its power to ensure the quality of the neighborhood and deny the Special Use Permit.

Mr. Mike Bevier, of 712 Rugby Road, spoke in opposition of the proposal. He stated the single family residences along Preston Place up to and including this property had placed in their deeds a covenant which restricted occupancy to an even greater extent than the then-existing R-1 zoning. He stated the residents had been concerned for decades about the amount of density permitted on the properties along Preston Place. He stated the neighbors had had recourse to the University IFC and to the National Greek Societies when there were nuisances with the properties; the Special Use Permit would make the neighbors lose those forms of recourse. He asked the Commission to not give a special dispensation to further increase the density and the attendant problems on that.

Ms. Beth Turner, of 630 Preston Place, spoke in opposition of the proposal. She stated she lived in a beautiful historic house on a beautiful, picturesque street. She begged the Commission to not grant this special exemption.

Mr. Greg Kendrick, of 622 Preston Place, expressed his agreement with his neighbors concerns about the property and parking congestion. He asked the Commission to not grant the Special Use Permit.

Ms. Creasy clarified the Special Use Permit process. She stated any application for a Special Use Permit in an historic district, goes to the BAR for advisory comments prior to coming to the Planning Commission; this does not require public notice.

Ms. Jody Berndt, of 805 Cavalier Drive, Virginia Beach, thanked her potential neighbors for their comments. She stated her understanding of why the Preston Place residents would not want another huge group of students. However, she noted the three-story house which has fraternities on two sides would not realistically be occupied by a single family. She explained she was in a position to hand pick the girls who would live in this home. She felt this would offer a buffer between the fraternities and the really high density housing and the single families.

Mr. Ken Wallenborn, of 700 Rugby Road, hoped the Commission would not grant permission to use this building for 14 occupants. He expressed concern about the parking. He hoped the Commission would help them protect the neighborhood from being overwhelmed.

Mr. Murdoch Matheson, of 620 Preston Place, spoke in opposition of the proposal. He stated the street provided a cut through for University students. He stated the Phi Mu sorority house had added a tremendous amount of traffic and parking was problematic. Citing his profession as a real estate agent, he stated the house being used as a single family dwelling was not out of the realm of possibility.

With no one else wishing to speak to the matter, Mr. Pearson closed the public hearing and called for discussion among the Commissioners.

Mr. Rosensweig sought clarification that, as one member of the public had suggested, without the designation of boarding house, this property would by right allow up to 14 people in the house. Ms.

Walden stated that was not true; if not a boarding house, this property would need to be used as a single family house. Mr. Osteen stated it was zoned R-3 and could be split into apartments. Mr. Osteen then noted for the public that the SUP would give some control where the Planning Commission could impose various mitigating conditions which might make it more livable for the neighborhood.

Ms. Keller wanted to know if the Commission could request a smaller number of residents. Ms. Walden stated her understanding was the Commission could put conditions on time and use with that possibly falling under use and occupancy.

Mr. Pearson wanted Staff's perspective on the relevance of the historic overlay district to the Commission's considerations of the Special Use Permit. Ms. Walden stated any changes to the property would be reviewed by the BAR.

Mr. Pearson noted for the public and his colleagues that he may strike some of the considerations raised by the public because the Commissioners had to make their decisions on the basis of good legal standing. He stated if they were to take into consideration any factors that were not within their purview, they would jeopardize any judgment they would make.

Mr. Osteen thought this applicant would be better than the average absentee landlord. He stated the established quotient of parking for a boarding house didn't really apply to this housing type. He felt it was going to be close to one car per person. Mr. Osteen thought that it would be hard to find two people per room based on his own rental properties. He suggested trying to reduce the impervious surface to get it to a compliant number of parking spaces. Mr. Osteen suggested the applicant provide tree canopy.

Mr. Rosensweig stated he was in general agreement about having a conversation about reducing the number of allowable residents on site because of the potential impacts caused by parking and traffic. He agreed with Mr. Osteen that parking should be pushed to the higher density lot.

Mr. Osteen noted one single family home saw fit to put an eight foot fence along their side of the property to try to mitigate what they were separating. He stated the onus should be on the property that's associated with the problem and not on the adjacent property owner.

Ms. Keller stated she would like to see the Commission pursue something along the lines of what Mr. Osteen suggested. She thought seven or eight people would have much less impact.

Mr. Pearson stated his understanding of what his colleagues had said: by-right use would be relatively intense, Special Use Permit gives the Commission an opportunity to condition a use that would be not as intense as the by-right use, the Commission would like to condition the number of occupants and possibly be more restrictive than the staff recommendation of 14 residents in this structure, and the Planning Commission would like to condition the number of cars that could be brought within the city limits by the residents of this structure.

Mr. Keesecker wanted to know if the BAR would be looking at a site plan-like drawing and be able to determine where the parking and buffers are. Ms. Walden stated if City Council chose to incorporate the Board of Architectural Review's comments in their resolution, that would require the applicant to submit a site plan amendment on which details and dimensions would have to be shown.

Mr. Neuman stated Community Affairs had a hotline for any disturbances in neighborhoods that are believed to be caused by students. He stated the University had a building inspector to focus on student oriented housing in the city; this proposal would fall in that category. He also stated there was an open policy that any student can buy a parking permit from the University to park their car.

Mr. Santoski liked the idea of limiting the number of people living in the boarding house. He wondered about the enforceability of limiting parking.

Ms. Creasy noted owners are eligible for a certain number of parking permits and must obtain them and provide them to the residents. Mr. Osteen wondered whether a boarding house qualified for that since a bed and breakfast did not. Mr. Tolbert stated that for anything other than a single family, they would get the difference in what they had on site and what they would be required to have if they were new. This application would be eligible for zero.

Ms. Keller stated it would seem reasonable to pursue restricting the number of people and restricting the number of cars in a lease that has to be approved as part of the Special Use Permit. She noted if this was truly a boarding house, there would be much less need to have an individual private car because meals would be served, students wouldn't need to drive to grocery stores. If it was truly a boarding house, it should work because students would be walking to class and walking to their entertainment.

Mr. Pearson recognized the applicant for feedback on the idea of restricting the number of residents below the 14 in the Staff report and the idea of restricting the parking through a lease.

Ms. Berndt stated they had chosen the number 14 because the house was marketed as a 21 unrelated occupant building. She stated the economics of the building indicated a need for more than seven occupants. She stated they had hoped to offer six parking spaces to the tenants to allow one space for the smaller building, four spaces for residents, and one space for visitor parking. She did not think they were legally required to put any buffers up, but Ms. Berndt added she wanted to be a good neighbor and would be happy to comply with that along the side line with the single family home. She stated there was already a provision in the lease that there were to be no more than four cars on the property.

Mr. Osteen felt there should be a deferral so the applicant could develop a plan that meets her business needs since he did not feel they could come up with a number that would work.

Mr. Keesecker suggested the number of occupants be determined by the number of cars that are available to park on the site.

Mr. Pearson stated he was not as concerned about moving forward because this was the place in the city where there would be relatively high density housing. He stated this seemed like the right use for the right location. He thought the Commission should look at it as does it conform with their expectation of where this type of use should go in the City. Mr. Pearson thought it was.

Ms. Keller noted the neighbors had consistently expressed concern about the parking so it seemed the number of cars should be brought down to the absolute minimum of what was available on site. She stated this was an area where they wanted people but not vehicles.

Mr. Santoski stated the neighborhood already had fraternities and thought this proposal made a lot of sense for that area; however, he was also sensitive to the neighbors who were right on the edge of that zone. He stated he was struggling with finding a happy medium.

Mr. Rosensweig stated if the applicant was prepared to give the Commission a number of residents that would work, he would be prepared to vote on it. Short of that, he did not want to permit something yet condition an intensity of use so low as to in effect, disallow this use as this was a proper use for this property. Mr. Rosensweig sought the applicant's input as to deferring. Ms. Berndt stated she would prefer not to defer so that work could begin on the property. She stated she would be prepared to have a motion for ten residents and four parking spaces.

Ms. Keller wanted to know if it would be appropriate to require on-site management for the boarding house since staff report had a condition requiring contact information for a local representative. Mr. Harris preferred the condition as written.

Mr. Rosensweig moved to recommend the approval of this Special Use Permit application SP-09-11-22 with the following conditions, exceptions and/or modifications: one, the occupancy shall be restricted to ten persons in the primary structure; the applicant shall make changes to the building as required by the building code official to meet the current building code requirements for this use. These changes shall be installed prior to occupancy; three, the cottage shall be used as a separate unit from the boarding house upon meeting the required building code requirements. Parking for this unit shall be provided on site; number four, only four cars may be parked on site at a given time; number five, the applicant shall install landscaping in the front yard to provide visual buffers for the parking area. These changes shall be approved by the BAR; number six, the property owner shall provide the City's property maintenance office with the contact information of a local representative responsible for addressing property maintenance issues; number seven, the applicant shall provide a site plan amendment that reduces the amount of parking in the front and side yards in an effort to bring this property toward conformity to current front and side yard parking regulations. These changes are subject to approval by the BAR; number eight, the inclusion of bicycle parking equivalent to one bicycle space per 500 square feet of bedroom area -- on the basis that this proposal would serve the interest of the general public welfare and good zoning practice. Mr. Osteen seconded the motion. Ms. Keller offered a friendly amendment that number eight be modified to the inclusion of bicycle parking equivalent to one bicycle space per occupant. Mr. Rosensweig accepted the friendly amendment. Ms. Keller offered another friendly amendment that a ninth condition be added to state that an appropriate landscape buffer will be developed and maintained to provide adequate separation and privacy for the adjacent single family neighbor subject to BAR approval. Mr. Rosensweig accepted the friendly amendment. Mr. Osteen accepted the friendly amendments. Mr. Santoski sought clarification as to whether, in the future, the applicant was locked into the Special Use Permit. Ms. Creasy stated they could go back to by-right. Mr. Emory noted for the neighbors that the Comprehensive Plan was coming up for review and encouraged them, if they wished to realign the R1-R3 zoning district boundary, to bring that issue to the Commissions' attention and participate in the Comprehensive Planning process. Ms. Walden stated there was a section of the City Code which provided a maximum number of bicycle spaces but she could not remember the amount. Mr. Harris, citing 34-881, stated the requirement was one space per 500 square feet of bedroom area and no such facilities may be required in excess of the following standards. Mr. Pearson stated the amendment would be to maximum bicycle parking requirements. Mr. Rosensweig agreed. Ms. Creasy called the roll. The motion carried unanimously.

Ms. Keller noted for the record her dissatisfaction with the definition of a boarding house. She asked that perhaps as the matrix consideration they revisit boarding house and rooming house and other kinds of group living.

2. ZT-09-11-23 - (Veterinary clinics and animal boarding/grooming facilities in Highway Corridor) An ordinance to amend and reordain Section 34-796 of the Zoning Ordinance of the Code of the City of Charlottesville, 1990, as amended, to allow for veterinary clinics and animal boarding/grooming facilities (both without outside runs or pens) in the Highway Corridor Mixed Use Corridor.

Mr. Rogers gave the staff report. He reminded the Commissioners they had been approached in the fall by representatives of the property owner of 1615 Emmett Street. The owner has been in negotiations with Petco to bring the pet care retail sales merchant to that site. The potential tenant would like to supplement the retail aspect with veterinary, grooming, and pet training services; none of these ancillary uses are permitted in the Highway zone. A zoning text amendment was initiated unanimously by the Planning Commission. Staff conducted a study and felt that the use of a boarding and grooming facility, a kennel and a veterinary clinic conformed to the spirit of the Comprehensive Plan as well as the 2025 Land Use Plan. Staff is comfortable with these particular uses being added to the matrix of the Highway Corridor; however, Staff encouraged the Commission to think broadly, beyond this petitioner to the other two portions of the City and think about the various impacts related to these uses where they would not be ancillary. Staff felt these uses would be best permitted by Special Use Permit.

Ms. Keller wanted to know if the uses as defined by Staff would include doggie daycare. Mr. Rogers offered his opinion that something like a doggie daycare would fall under the definition of an animal boarding and grooming facility.

Mr. Rosensweig wanted to know the rationale for excluding outside pens and runs. Mr. Rogers stated it was because the petitioner had specifically tailored their request to keeping those uses for within the existing structures. Mr. Rogers stated that given the purposes and intent of the Highway Corridor to be the most intense commercial zone in the City and given the fact that a kennel or grooming facility is going to need that additional acreage for outside runs and pens, Staff feels that additional acreage would be an inefficient land use for those particular zones and thus would not be compatible with the vision for that corridor.

Mr. Emory wanted to know if there was a noise ordinance that currently applied to the Highway Corridor. Mr. Rogers stated there was a noise ordinance that applied throughout the entire city.

Mr. Pearson called for comments from the petitioner.

Mr. Stuart Rifkin was present on behalf of Slayman Enterprises. Ms. Salina Fisher-Guy, District Manager for Petco, was also present. Ms. Fisher-Guy stated doggie daycare was not their intention. She also explained the veterinary services were for low cost vaccinations only.

Mr. Rogers clarified that the noise ordinance applied to a noise that originates from the Downtown Business Zone, from restaurants, and from residential areas. Noise that would originate from any of the Mixed-Use Corridors would not be subject to that noise ordinance.

Mr. Emory wanted to know if a SUP request could be conditioned that the decibel level at the property line will be no more than 75 or 65, whatever would be reasonable. Mr. Rogers stated it would be wise to look at a specific application before speculating on specific decibel levels. Mr. Pearson asked if hypothetically an application could be so conditioned. Mr. Rogers thought so.

Mr. Pearson opened the public hearing. With no one wishing to speak to the matter, he closed the public hearing and called for discussion among the Commissioners.

Mr. Rosensweig moved to recommend approval of this zoning text amendment to amend and reordain Section 34-796 of the Code of The City of Charlottesville, 1990, as amended, to allow animal boarding and grooming facilities, kennels and veterinary clinics by special use permit in the Highway Corridor on the basis that the changes would serve the interests of general public welfare and good zoning process. Mr. Osteen seconded the motion. Ms. Creasy called the roll. The motion carried unanimously.

IV. REGULAR MEETING ITEMS (Continued)

H. Entrance Corridor

1. Carver at Preston 701 Preston Avenue

Ms. Scala gave the staff report. On June 12, 2007, this project was approved. Approval is good for one year unless the applicant comes before the expiration date to renew it for an additional year. The applicant had asked for an extension which was granted. That expired in June, 2009. Ms. Scala stated the applicant had been diligent in trying to proceed with the proposal. The applicant is requesting a Certificate of Appropriateness for a new 27 unit residential condominium building with its main pedestrian entrance on Preston Avenue. A parking entrance will be on Dale Avenue as well as a parking level that contains parking for 37 cars. The Dale Avenue level will have approximately 1800 square feet of office space while the top three floors of the building are residential condominium units. A material board was present for the Commission to review. The preliminary site plan was approved August 14, 2007. The final site plan was awaiting the easement from the railroad. This is a challenging site. The architect should be commended for making their main pedestrian entrance on Preston Avenue. The landscaping and activity at street level will make the pedestrian experience more welcoming. Staff recommends this proposal as submitted.

Mr. Alexander Dotson, of 15470 Spottswood Trail, had no additional comments. He reiterated this was a resubmittal with no changes having been made from the previously approved proposal.

Mr. Pearson noted this application was the same application that had been before the Commission two years ago. That application had been approved after a lengthy process of discussions with the applicant; that application had been commended by the Commission for the high quality of the submission.

Mr. Emory suggested the applicant consider looking at a large canopy tree which was native to Virginia.

Mr. Santoski stated he was impressed with the way the project would fit on the property.

Mr. Pearson temporarily adjourned the Planning Commission and opened a meeting of the Entrance Corridor Review Board.

Mr. Osteen moved to approve the Entrance Corridor Certificate of Appropriateness Application for the Carver at Preston condominiums as submitted. Mr. Keesecker seconded the motion. Ms. Creasy called the roll. The motion carried unanimously.

Mr. Pearson adjourned the Entrance Corridor Review Board and called for a brief recess. Mr. Pearson reconvened the Planning Commission meeting after a ten minute recess.

I. Work Plan Discussion

1. Steep Slope Waiver

Ms. Creasy gave the staff report in the absence of Mr. Haluska. She noted updates to the work plan would be included in the members' packets whenever necessary. There were three sections to the memo prepared by Mr. Haluska: concerns that have been identified through the current steep slope ordinance; a grouping of potential solutions; and a recommendation that Staff thought would be the best direction to go. She noted this was the direction they wanted the Commission to look in for the

next step while certain situations had been eliminated because they were not possible. Ms. Creasy stated comments had been received including questions from Mr. Pearson concerning the original intent of the steep slopes ordinance; information from the minutes showed that it was passed as a package of changes that were done and it closely mirrors the slope ordinance that Albemarle County has. The focus of the original intent seemed to be narrow but it could be broadened depending on the direction the discussions go. Members' packets also included a letter from Ms. Slaughter. Commissioners had been sent a copy of the current ordinance with criteria highlighted. Commissioners were also sent a listing of slope waiver applications that have come before the Commission since May, 2006.

Mr. Keesecker noted that, as an architect, sometimes what they found was that what they thought was commonsense runs counter to what the ordinance tells them they have to deal with. He stated he had been trying to resolve what would be a broadly applicable level of review that would give the City some ability to protect natural resources in some way but at the same time allow developers, architects, and engineers some predictability about how they could work with sites. He stated it would be helpful to know what the intentions are behind saying these areas are protected almost to the degree of identifying certain steep slope areas and protect them with an overlay. He suggested the next level down would be steep slope areas that could be worked on and the impacts would be mitigated. The third level down would be certain parcels have steep slopes but don't meet the criteria of needing to be reviewed.

Mr. Keesecker left the meeting.

Mr. Emory noted there were four conditions for granting a steep slopes waiver and currently only one needed to be met. Ms. Creasy stated that was the main crux of the issue.

Mr. Rosensweig thought criterion three was problematic. It seemed almost contradictory to the other three criteria. He expressed a preference tying the restrictions to the impacts for a process that exhibits where the slope is located a certain distance or topography to a stream, disturbing the slopes would have tangible negative impacts.

Ms. Keller thought they needed to strengthen the steep slope ordinance. She wanted to see it go beyond where it was now and to recognize ecosystem services and values. She thought they needed to strengthen the purpose and intent. She had appreciated Mr. Rogers' suggestion that the steep slope waiver be considered as to whether public purpose would be served by the waiver. She thought Kay Slaughter's letter had been very thoughtful and offered guidance on how to combine some of the criteria and eliminate others.

Mr. Osteen stated he would be in favor of a stronger ordinance. He liked the idea of one of the criteria being an aesthetic resource. He did not think man-made slopes should not be thrown out of consideration.

Mr. Santoski liked the aesthetic idea since in some situations the sloping area is what made the area unique. He thought the ordinance should be strengthened and not eliminated. He agreed with Mr. Osteen that man-made slopes should remain.

Mr. Emory asked Mr. Harris to share with the Commission the empowering legislation. Mr. Harris cited Virginia Code § 15.2-2241(5), specifically noting the wording "for structures necessary to ensure stability of critical slopes."

Mr. Emory did not think they could restrict this ordinance to certain parts of town. He stated that the slopes provided environmental services to nearby residents, that all citizens should be subject to the beneficial results of critical slopes code and that to geographically limit the application of the ordinance would be patently unfair.

Mr. Pearson took from the enabling legislation that the state recognizes inherent value in critical slopes and that any locality would want to protect their critical slopes. Mr. Pearson thought that the locality needed to know why it was a good idea to protect it. He felt the City did not have good language to say why it was being protected. He thought they would be well served if they spoke clearly in the Code about whether they saw critical slopes as an end in themselves, and for what reasons whether that be as aesthetic asset or habitat, or as means to an end.

Ms. Keller thought they needed to be careful about the aesthetic qualities because what one person finds aesthetically pleasing can be seen by someone else as an eyesore. She thought they needed to quantify and qualify what the aesthetic benefits were -- because of the flora and fauna, or topographic variation. Ms. Creasy was not sure that could be done.

Mr. Haluska joined the meeting.

Mr. Santoski stated he had struggled with the phrasing "for the public good" because almost anything could be made an argument for the public good. He thought it should be very clear as to what the public good was.

Ms. Creasy stated the Commission could define public good so its interpretation was more narrow than it currently was.

Mr. Pearson stated he was inclined to defer to the historical record. If a lengthy public process resulted in a broad intent, then that was that the Commission had to work with. If a lengthy public process resulted in a narrow intent, then that was what they worked with. If the public process failed to answer the question, then the Commission would need to provide some opportunity for public discussion of narrow versus broad intent of this ordinance prior to suggesting changes to correct it. He stated he was more comfortable with a narrow interpretation based on the Comprehensive Plan. However, if there was a way to structure a process that would protect steep slopes on the basis of their inherent value,

and it could be done in a procedurally efficient way, he thought that would be great. He thought Mr. Keesecker's suggestion might be a direction toward that.

Mr. Santoski thought they needed to be careful that they did not take it out because someone may come up with a unique and wonderful way to do something with a steep slope that enhances what it does and maintains it in such a way they could not currently envision.

Mr. Rosensweig expressed concern about protecting steep slopes as aesthetic resources. He also did not think that a steep slope waiver was the right way to protect green space.

Mr. Osteen expressed concern about doing things with the steep slopes to turn nature upside down to accomplish what they were trying to accomplish in a narrow ordinance.

Mr. Pearson expressed a preference for the Loudon County example for being clear about intent. However, it didn't have the habitat piece in it. He suggested they get that kind of itemized clarity of intent in the Code. He suggested that the conditions for granting a waiver would be that whatever was being proposed as an alternative met or exceeded the intent that was behind the code.

Mr. Pearson cited the questions Mr. Haluska's memo to see if the Commissioners had made any progress. What should the steep slope ordinance aim to accomplish? A prohibition on building on steep slopes that in very rare cases can be waived? Or an extra layer of review for projects that propose to disturb steep slopes? Mr. Pearson thought the discussion had been strong towards a prohibition that in rare cases could be waived rather than a layer of review.

Mr. Haluska stated the questions about the intent of the ordinance had been discovered as staff reviewed the waiver process.

Mr. Emory stated he would like to see the bar set higher for review of waivers.

Ms. Keller stated that raising the bar may not make it impossible to build on every steep slope, but would raise the standard of how those steep slopes were developed.

Mr. Pearson thought they may want to ask the question as: Did they want to significantly raise the standard of requirement on steep slope waivers or did they want to leave it where it was? He stated they did want to make the ordinance clearer either way.

Mr. Rosensweig stated it seemed like a false dichotomy. He thought the mitigation was the critical part.

Mr. Pearson thought they needed to strengthen it.

Ms. Keller also thought they needed to strengthen it. She thought they needed to think about preservation consciously and deliberately and go for good quality development that works with what they have.

Mr. Osteen wanted to see the bar set higher.

Mr. Santoski thought it should be harder to get a waiver rather than easier.

Mr. Emory thought the bar should be higher.

Mr. Pearson stated the second question from the memo wanted to know what was the public purpose.

Mr. Haluska stated there was a lot of different perspectives on what a public purpose is at it relates to the steep slope ordinance. In Staff review, Mr. Haluska had seen steep slope waivers where people had successfully argued on behalf of a public purpose that he saw that section of the waiver being put in there for. He stated sometimes the bar was lowered in situations where the public was doing some sort of work on behalf of the public good.

Mr. Pearson wondered if there should be some sort of tiering or levels of priority. He stated he could see some type of tiering applying to process where 25 percent slopes have to come before Commission; 15 to 25, the criteria are the same but Staff can handled these.

Ms. Keller thought a tiered approach made some sense particularly if there was much more explicit, straightforward criteria.

Mr. Emory moved that they adjourn until second Tuesday in February. Mr. Pearson declared the meeting adjourned.