

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE SECOND DAY OF JUNE, NINETEEN HUNDRED AND NINETY-SEVEN AT 7:00 PM IN THE COUNTY GOVERNMENT CENTER, BOARD ROOM, 101C MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

1. ROLL CALL

Alexander Kuras
Jay Everson
Martin Garrett
John Hagee
Donald Hunt
Willafay McKenna
A. Joe Poole, III

ALSO PRESENT

Leo Rogers, Deputy County Attorney
John T.P. Horne, Mgr. Development Mgmt.
O. Marvin Sowers, Director of Planning
Gary Pleskac, Planner
Tammy Rosario, Senior Planner
Paul Holt, Planner
Jill Schmidle, Planner

2. MINUTES

Alex Kuras asked that his comment relating to Case No. Z-3-97. Williamsburg Music Theater be added to the minutes. *"Alex Kuras expressed concern that the location of the building would essentially close out consideration of the 607 extension as proposed in the Comprehensive Plan."*

Upon a motion by Willafay McKenna, seconded by Martin Garrett, the minutes of the May 5, 1997 meeting were approved, as amended, by unanimous voice vote.

3. DEVELOPMENT REVIEW COMMITTEE REPORT

John Hagee stated that he had a conflict of interest pertaining to Case No. SP-45-97. Wheat Center and did not participate in voting. He asked that this be added to the minutes. *"John Hagee abstained from voting during the DRC meeting on Case No. SP-45-97. Wheat Center due to a conflict of interest."*

Martin Garrett presented the report and upon a motion, seconded by Alex Kuras, the Development Review Committee Report was approved, as amended, by unanimous voice vote.

4. CASE NO. AFD-8-86. BARNES SWAMP (HAZELWOOD ADDITION).

Gary Pleskac presented the staff report to add approximately 127 acres to the existing Barnes Swamp Agricultural and Forestal District. Staff felt that the addition met the minimum area and proximity requirements for inclusion into the AFD. The additional acreage would be subject to the conditions of the existing district as outlined in the staff report and would be up for review with the entire Barnes Swamp AFD in October, 1998. This case was presented to the AFD Advisory Committee on May 29, 1997 and they concurred with staff's recommendation with a vote of 8-0 to approve this request. Staff recommended the Planning Commission approve this request with the recommendation that all land within 25 feet of the rights-of-way of Fire Tower Road and Old Stage Road be excluded from the addition to allow for sufficient right-of-way for possible future road improvements.

Alex Kuras open the public hearing. There being no speakers, the public hearing was closed.

Martin Garrett made a motion, seconded by Willafay McKenna, to approve this application. By a roll call vote, motion passed. AYE: Garrett, Hagee, McKenna, Hunt, Everson, Poole, Kuras (7). NAY: (0).

5. CASE NO. Z-6-97. AND SUP-13-97. COLLEGE AND UNIVERSITY COMPUTERS, INC.

Paul Holt presented the staff report to rezone approximately 1.28 acres from LB, Limited Business, to B-1, General Business with proffers and for a special use permit to allow for the assembly of computers in an existing building located at 1820 Jamestown Road. Staff felt that the proposal constituted a reasonable and effective means of redevelopment and was consistent with the Comprehensive Plan. Staff recommended the Planning Commission approve this rezoning and special use permit application.

Alex Kuras opened the public hearing. There being no speakers, the public hearing was closed.

Willafay McKenna made a motion, seconded by Martin Garrett, to approve these applications. By a roll call vote, motioned passed. AYE: Garrett, McKenna, Hagee, Hunt, Everson, Poole, Kuras (7). NAY (0).

6. CASE NO. SUP-18-97. OUR SAVIOR'S LUTHERAN CHURCH DAY CARE CENTER.

John Patton presented the staff report for a special use permit for a Day Care Center to be located in the fellowship hall addition of the Church. Staff found the Day Care Center to be consistent with the Comprehensive Plan and surrounding zoning and development. Staff recommended the Planning Commission approve this application with the conditions outlined in the staff report.

Alex Kuras opened the public hearing. There being no speakers, the public hearing was closed.

Don Hunt asked the Commission if he was eligible to vote on this case since he was a member of the congregation of the Church applying for the special use permit.

Alex Kuras felt there was no conflict and informed Don Hunt he could vote on this case.

Willafay McKenna made a motion, seconded by Martin Garrett, to approve this application. By a roll call vote, motioned passed. AYE: Garrett, McKenna, Hagee, Hunt, Everson, Poole, Kuras (7). NAY (0).

7. CASE NO. Z-7-97. MICHAEL C. BROWN/TOANO BUSINESS COMPLEX.

Gary Pleskac presented the staff report for the rezoning of approximately 7.25 acres from A-1, General Agricultural and B-1, General Business to M-1, Limited Business/Industrial District with proffers and for the rezoning of approximately 2.5 acres from B-1, General Business to B-1, General Business with proffers. Staff stated the applicant proposed a contractor's office and warehouse complex and limited retail uses that would be accessory to the warehouse uses on the property. The complex would be approximately 80,000 square feet of building floor area that would be divided up among several buildings on the site with the interiors of the building being divided into 20,000 square foot bays that could be modified based on the needs of the tenant. The property is located at 8105 Richmond Road across from Hankins Industrial Park. Staff felt the development, with proffers for landscaping, architecture, and limitation on use, made it compatible with the Comprehensive Plan and recommended the Planning Commission approve this request, adding that staff felt the content of the proffers was acceptable with minor revisions to the wording.

Alex Kuras opened the public hearing. There being no speakers, the public hearing was closed.

Martin Garrett made a motion, seconded by Willafay McKenna, to approve this application.

Alex Kuras commended staff and the applicant on a job well done in preserving and laying out the property.

Joe Poole stated he was pleased that, in the staff report, staff noted the additional buffering along Richmond Road as it serves as an entry into Toano.

By a roll call vote, motion passed. AYE: Garrett, McKenna, Hagee, Hunt, Everson, Poole, Kuras (7). NAY (0).

8. CASE NO. SUP-19-97. COBBS STRIPING.

Matthew Maxwell presented the staff report for the application of a special use permit to locate a 6,000 gallon storage tank at 6361 Centerville Road to store Tarconite, a seal-coating material used to seal cracks in asphalt. He added that the parcel was zoned A-1, General Agricultural and had an existing single-family resident and the Marston Mobile Home Park with 16 mobile homes on the site. He stated that the applicant would access the area from Centerville Road approximately once daily to fill a portable Tarconite tank in preparation for the following day's work. Staff felt that the proposed use was inconsistent with the Low Density Residential land use designation; would detract from the residential and semi-rural character of the area; and would be best suited in an area designated for Limited Industry or General Industry. Therefore, staff recommended that the Planning Commission recommend denial of this applications as outlined in the staff report.

Joe Poole asked if the applicant had considered another area within the parcel that was further from the adjacent residents.

Matt Maxwell stated the applicant briefly discussed the idea of locating it elsewhere but did not give any specific area.

John Hagee asked how the sensitivity, relative to noise and odor, would affect the area.

Matt Maxwell stated the applicant would use a 16 horsepower engine to mix the tank, about twice the noise of a lawnmower. As far as the odor, he smelled a tar like odor approximately 20-25 feet away.

John Hagee also asked if any of the adjacent property owners had concerns pertaining to the tank.

Matt Maxwell stated he received two phone calls and they had indicated concern but were not adamantly opposed. Their concerns were of noise, odor and safety for children who might wander towards the tank.

Alex Kuras asked if the applicant had plans to enclose the tank area.

Matt Maxwell stated the applicant wanted to fully enclose the area for both safety and aesthetic reasons.

Jay Everson asked if the tank met all state and federal regulations.

Matt Maxwell stated he did inquire with the state and the tank did have to be registered and permitted through them. He also stated that an annual report to the Department of Environmental Quality was needed.

Jay Everson asked if the site had a containment basin.

Matt Maxwell stated that while the state did not have any specific requirement for a containment basin, the County felt one would be necessary to safeguard against groundwater contamination.

Don Hunt asked what the regulations were concerning storage tanks in A-1 property. He stated he was unaware of any limitation in A-1 district.

Matt Maxwell stated the A-1 district required a special use permit for tanks that have petroleum substances or derivatives thereof and the Zoning Administrator determined that this use was similar. He added that tanks, that are accessory to farm uses, are generally permitted in the A-1 district. He stated that this particular application was not farm related.

Alex Kuras opened the public hearing.

Steve Cobb addressed the Commission on some statements that were presented in the staff report. He stated that the product he used was not a petroleum product nor a petroleum derivative. It was a derivative from a product called "Coak" which is a by-product of steel or aluminum. He also added that the products coal tar and ball clay were hazardous components when they stood alone, but when mixed together they are no longer hazardous. In regards to any spills, he stated Tarconite was a very thick substance that was not easily absorbed into dirt or sand. He asked if any Commission members had any questions.

Willafay McKenna asked about the tank construction and how long it took to fill it.

Steve Cobb stated that it was a single-thick wall made of steel and was approved for the type of product he used. He stated that the monthly fill time was approximately 35-40 minutes and that the daily fill time and mixing of the solution took approximately 15-20 minutes.

Jay Everson stated if this were approved, there does not appear to be any condition that limits the storage to Tarconite only. He felt a condition should be placed on this SUP. He asked if the tank was presently in compliance with all state and federal regulations.

Steve Cobb stated as far as he knew it was in compliance.

Greg Smith, a resident at the end of Marston Lane, spoke of his concern of the product for health and safety reasons. He read a letter from James and Molly Slater who could not attend the meeting. It stated they were concerned about water safety, since most residents in the area were using shallow wells. Another concern was that residents living in the trailer park did not have a say in this matter because they did not own the land and could be subject to any problems related to any spills. He also asked if the Health Department and the EPA had been involved. He added that, if all concerns were addressed properly, he felt there would be no need to oppose this application.

The applicant stated that the Environmental Department of the County and the James City County Fire Department have spoken to the them and were aware of this application.

There being no further speakers, Alex Kuras closed the public hearing.

Martin Garrett stated that this clearly was not an A-1 use, but a commercial use and asked how it be could justified.

Don Hunt stated that there were several other businesses within the area and saw no contrast that would altered the present residential area.

Willafay McKenna felt that this was a storage facility and not a location where the customer came to the site to purchase the product. She felt it was not necessarily the product that poised a problem, but the use of the land. She indicated that, looking at the definition of A-1 and the latitude given in the zoning area, this could be accommodated but should be restricted to the Tarconite chemical only and possibly given a period of time to see if it was a feasible location.

Alex Kuras stated it was not usually a policy to put a time limit on a special use permit, but felt this might be an instance where a five-year limit be considered.

Joe Poole stated there was a larger issue that concerned him and that was the Comprehensive Plan. The area is designated Low-Density Residential and it states in the Comprehensive Plan that non-residential uses should not alter but rather compliment residential uses. He also had concern towards the residents of the trailer park who were renting space on the property, and who could not feel free to speak against the case.

John Hagee stated he had no problem with the application because it was in an A-1 zone and they were not changing the A-1 use. He added that the A-1 district had very few restrictions and felt this application was a suitable for the site.

Willafay McKenna commented that the area was accessed only once a day with the pump running approximately 20 minutes and felt this was not intrusive to the surrounding area.

Jay Everson was against placing a time restriction and moved for approval of this application with the addition of condition #10 which would limit the tank to Tarconite only and no more than 12,000 gallons per month.

John Hagee seconded Jay Everson's motion. By a roll call vote, motion passed. AYE: Garrett, McKenna, Hagee, Hunt, Everson, Kuras (6). NAY: Poole (1).

9. CASE NO. SUP-17-97. J. R. CHISMAN DEVELOPMENT / ACCESSORY APARTMENT

Paul Holt presented the staff report for a special use permit to allow an accessory apartment within a residence to be constructed at 169 Wellington Circle in St. George's Hundred Subdivision. He stated that the apartment would be used for the homeowners' physically challenged parents, who could live independently, but still with their children. He added that the proposal was consistent with the Comprehensive Plan and met all Zoning Ordinance requirements. Staff recommended the Planning Commission approve this special use permit with the condition that the accessory apartment receive a final certificate of occupancy within 12 months, otherwise, the permit becomes void. Staff requested that a new condition be added that stated, "the Planning Commission shall grant conditional approval of this case pending the change in covenants that would allow accessory apartments prior to the final Board of Supervisors consideration."

Martin Garrett questioned whether this was the County's policy to favor so called mother-in-law accessory apartments. He requested additional information from staff and asked if the County's philosophy had changed.

Marvin Sowers stated that this type of SUP had been considered in the past and staff recommended approval. He stated that language had been added in the 1997 Comprehensive Plan which suggested the County make it easier for affordable housing and accessory apartments were one type of affordable housing cited in the Plan.

Martin Garrett stated he was not opposed to this change but asked if residents in subdivisions had any control if they did not want this type of accessory apartment.

John Hagee responded by stating they could have it written into their covenants.

Martin Garrett said it was his understanding that covenants needed 100% approval from the homeowners in order for a change to be made and felt this would not be approved.

Leo Rogers stated it depended on the terms of the covenants. He said he had not thoroughly read them and did not know what percentage of homeowners was needed to approve a change or if they even restricted an accessory apartment.

John Horne stated that the Board of Supervisors had a policy that they would not grant approval of a land use that was not consistent with covenants of the property.

Alex Kuras opened the public hearing.

Jimmy Chisman, the developer for St. George's Hundred, stated that he did not want the covenants amended. He felt this was a unique situation where a husband and wife wanted to provide an independent living facility for their handicapped parents. He stated that there would be no barrier walls between the accessory apartment and the main house, the shared walls on the first floor would have handicap rails, and the cabinets and the bathroom would be handicapped accessible. He said his intention for the community was for single-family residence and desired to maintain homes in excess of \$150,000.00. He added that presently there was a home for sale listed at \$135,000.00 and the applicant requesting this special use permit was spending \$228,000.00 for their "nuclear" family, a man, his wife and her parents. He said he heard the remark "duplex" and he wanted to reinforce his statement that he did not wish to violate the covenants which states that the subdivision would be strictly a single-family residence.

Martin Garrett asked what prevented the neighbor next door from doing the same thing, but renting out to an unrelated individual.

Jimmy Chisman said he could not answer that question but hoped that they would be treated in the same manner as this applicant with each application being considered on their own individual merit.

Paul Holt stated that staff did not find anything that could prohibit someone from renting out a room to a college student or anyone else. He added this particular case was before the Commission because they were asking for a second kitchen area in the home.

John Hagee stated that the reference of a duplex, for this application, was incorrect and this was considered an accessory apartment. He added that the covenants would have to be amended in order for this request to be permitted.

John Home suggested this case be either deferred or acted upon with a condition that would be added to the staff report. If the Commission determined approval would violate the covenants, this information could be brought before the Board of Supervisors. He added that, based on past actions, the Board would not approve this application if it violates the covenants.

Martin Garrett stated that he would like continue to hear this case before it was taken to the Board and requested the Commission defer until their next meeting.

Alex Kuras felt, since the home was presently under construction, a deferral of thirty days would not be practicle to the applicant.

Jimmy Chisman stated that the owners wanted the home whether or not it had the additional dishwasher and stove.

Leo Rogers said he was not convinced as to whether this application did or did not violate the covenants. He felt this was the first question that needed to be answered.

Jimmy Chisman read a section of the covenants which stated "each lot shall be used exclusively for residential purposes and no building shall be erected, altered, placed, or permitted to remain thereon other than one single-family dwelling, hereinafter, referred to collectively as dwellings or singly as dwelling." He said that was what he was asking of the Commission to approve, a single-family residence, be it a "nuclear" family or a husband, wife, and two children.

Alex Kuras inquired as to what would happen to the property in the future stating that it could be rented out to someone else.

Jimmy Chisman felt that, due to the handicapped facilities, whomever purchased this home would likely be in similar situation as the present buyers.

Mark Odekirk of 164 Wellington Circle first commended the property owner for trying to provide for their handicapped parents. He felt the main issue of concern was the potential impact it had on the remainder of the neighborhood in the future. He stated if a family, in an unlike situation, purchased the home it would have a functional obsolescence which could decrease the value of the properties in the neighborhood. In addition, he stated the exterior of the home would have handicapped ramps and would be built on a slab rather than have a crawl space. He hoped that landscaping would be done to keep the curb appeal compatible with the other homes. He stated that there was a question as to whether written approval for this home was ever received from the Homeowners' Association prior to the commencement of construction, as required in the Associations' documents. He also read from the document that "all lots shown on said plat shall be residential lots and no structure shall be erected thereupon other than a detached single-family dwelling." He felt that the covenants were very clear for the use intended. He told the Commission that there were not enough residents in this neighborhood to object to this application, since many of the lots were unsold. He requested that the Commission deny this application.

Rhonda Howard of 171 Wellington Circle, adjacent to the property in question, stated she respected and appreciated the fact that the applicant wished to provide this accessory apartment for elderly parents but, when she and her husband purchased their home and read the covenants they understood that the subdivision was for single-family homes only. Her concern was for the future, in that another property owner could rent the accessory apartment out and possibly devalue the price of her home. She requested that the Commission deny the application.

There being no other speakers, Alex Kuras closed the public hearing.

Willafay McKenna voiced a real concern about this type of application. She stated with the kitchen included, it clearly made it an accessory apartment. She wanted the Commission to think very carefully about the way the Country was changing and the attitude toward the elderly in families. She stated we were no longer warehousing family members and did not have a health care system that provided a place for them. She felt this type of living arrangement was coming in the future and to address this in an equitable way, would be to say, "If you build this home to accommodate a single family, including children, grandparents, etc., exclude the kitchen and share the cooking facilities." It would no longer be an accessory apartment that could be rented out in the future. She understood the concern of the homeowners and felt this was a fair way to deal with this matter. She stated her concern that facilities for the handicapped needed to be addressed by the County.

Martin Garrett agreed with Willafay McKenna in this matter. He stated a large part of the time, the parents are ready to be cooked for rather than having a separate kitchen.

Alex Kuras felt that, as long as the area was being built, the kitchen should be included, adding that parents might not necessarily be ready to rely on their children.

Jay Everson asked if there could be a condition that would prohibit the rental of the property.

Joe Poole stated it unfair to the applicant and the Commission to act upon this application without some clarity of the covenants and felt it should be deferred or acted upon, subject to the condition of the covenants.

Martin Garrett made a motion, seconded by Joe Poole, to defer this application until the July 7, 1997 meeting. By unanimous voice vote, motion passed.

10. Casey New Town and Rezoning Briefing

Tammy Rosario began her presentation to familiarize the Commission with the New Town rezonings which would be coming before them. The first rezoning was proposed for 23 acres of Mixed Use and 540 acres of R-8 with proffers. The second was an application by Virginia Power for proposed rezoning of seven acres to Mixed Use. The third case was brought forward by James City County for the courthouse property of approximately ten acres and was also proposed for Mixed Use. She stated the Comprehensive Plan designated the area as Mixed Use and the existing zoning was a mixture of R-8 and M-1. The main elements submitted included the Master Plan and design guidelines, the primary tools to set in place the vision of the winning town design. She stated that copies of both the town plan and the master plan were given to the Commission for their review. She continued stating that as each phase came in for future rezonings, the design guidelines would be updated and expanded to accommodate the specific standards of the Mixed Use district. She added that staff was currently working with the applicant on a variety of issues, including consistency of the Master Plan with the winning Town Plan, transportation, proffers, and the inclusion of additional properties to the master plan.

Willafay McKenna asked what percentage was dedicated to open space.

Tammy Rosario stated that the Master Plan called for six percent of open space. She stated she would contact the designer to confirm the percentage, since it seemed to be a smaller percentage than usually required.

Marvin Sowers informed the Commission that they would be receiving materials as they become available prior to the next meeting.

11. PLANNING DIRECTOR'S REPORT

Marvin Sowers reported on two items. First, he stated there was a scheduled public viewing meeting on the I-64 study that VDOT was conducting. He added they were in the process of looking at alternatives to improve the I-64 corridor. The meeting will be held on June 4 at the Magruder Elementary School and he encouraged the Commission to attend. Second, he spoke about the two Site Selection Committees. One being the School Site Selection Committee, which Jay Everson was a member, and the Fire Station Selection Committee, which Alex Kuras was a member. He stated that, if any Commission members had interest in the selection sites, contact the respective Commission representative for an update.

Alex Kuras reminded the Commission of the June 11, 1997 balloon test at the Brick Bat Road site for the proposed communication tower.

12. ADJOURNMENT

There being no further business, the June 2, 1997 Planning Commission meeting adjourned at approximately 9:30 PM.



Alexander Kuras, Chairman



O. Marvin Sowers, Secretary