

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE THIRD DAY OF NOVEMBER, TWO-THOUSAND AND THREE, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101-C MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

1. ROLL CALL  
A. Joe Poole, III  
John Hagee  
Donald Hunt  
Peggy Wildman  
George Billups  
Joseph McCleary  
Wilford Kale

ALSO PRESENT  
Leo Rogers, Deputy County Attorney  
O. Marvin Sowers, Jr., Planning Director  
David Anderson, Planner  
Toya Ricks, Administrative Services Coordinator

2. MINUTES

The Commission approved the minutes of the October 6, 2003 meeting with a unanimous voice vote.

3. COMMITTEE AND COMMISSION REPORT

- A. DEVELOPMENT REVIEW COMMITTEE (DRC)

Mr. John Hagee, Chairman of the Development Review Committee, presented the report. The committee heard two cases last Wednesday. The first was a fourteen lot subdivision in Kingsmill and the second was a seventy-five lot subdivision in Monticello Woods. Both cases were approved.

In a unanimous voice vote the Commission approved the DRC report.

- B. OTHER COMMITTEES

Mr. Joe McCleary, Chairman of the Comprehensive Plan Steering Committee, presented the report. Mr. McCleary, Mr. Joseph Barra, Community Participation Team Chairman, Mrs. Tammy Rosario, Senior Planner, and Mr. Patrick Foltz, Development Management Technician, attended the Virginia Municipal League (VML) Annual Conference in Roanoke on October 23, 2003. They were presented with the VML President's award for entrepreneurial government on behalf on the County. The award was in recognition of the outstanding job done by the entire County, the entire County staff and principally the planning staff who led the update of the Comprehensive Plan. The Presidents award is the most prestigious award given by VML. There were seventy-five candidates nominated for this award. It was a great honor to be one of those there to receive it.

Mr. Marvin Sowers thanked the Planning Commission and the Steering Committee. He also added that this is the first time this award has been given for a Comprehensive Plan. In addition Dr. Lisa Curry has been named the Virginia Citizens Planner Association's Citizen Planner of the Year. All the members of the Planning Commission as well as most of the Planning Commissioners in the State are members of this organization so Dr. Curry is very distinguished to be recognized by that group. She served on three committees: the Development Potential Analysis Committee, the Community Participation Team, and Steering Committee. Congratulations to Dr. Curry.

Mr. McCleary asked Mr. Sowers to comment on an article in Saturday's Virginia Gazette "Planners to step it up for approvals". Mr. McCleary stated that the planning staff has been reviewing this process for a while.

Mr. Sowers stated that it has been a while since planning staff had looked at its various processes and that it is something that every organization needs to do periodically. The current project is looking at the site plan review process, in particular the administrative aspects of that process and how Planning works with the

local development community

Mr. Sowers pointed out some errors in the article. First, this review is only dealing with the site plan review process and does not also include a review of other processes as the article states. Also, it does not include typical permits that most people are familiar with for example someone seeking to add a deck to their home. The site plan process mainly deals with shopping centers and multi-family developments.

Also, it was unfortunate that the newspaper did not contact staff. They would have found out that instead of a 6-8 week review time period, staff returned plan comments back in less than 30 days in 90% of the cases last fiscal year. This was despite having to update the comprehensive plan and losing 2 senior planners.

Mr. A. Joe Poole, III felt it lamentable that both sides were not covered more fairly. He also felt it is incredibly irresponsible that staff was not contacted. He appreciated the opportunity Mr. Sowers provided to clarify some of those points.

Mr. Poole, III said that we are all excited and thrilled about the awards. It represents a lot of hard work on the part of the staff, Steering Committee, Citizens Participation Team, Board of Supervisors, and citizenry so we all share in the success.

#### 4. PUBLIC HEARINGS

##### A. CASE NO. SUP-16-03 Williamsburg Winery – Gabriel Archer Tavern

Mr. David Anderson stated that Mr. Vernon Geddy, on behalf of Patrick Duffeler, has applied for a special use permit for the continued operation of a restaurant, Gabriel Archer Tavern, at the Williamsburg Winery. Mr. Geddy has requested a deferral of this case until December for more time to work on outstanding issues related to this application. At this time staff recommends deferral of this case until the December Planning Commission meeting.

Mr. McCleary asked Mr. Sowers about the request for deferral. He would have no problem with an applicant requesting any number of deferrals but in fact this is a delinquency on this part of this applicant.

Mr. Sowers stated that there are a number of items staff would like the applicant to address before the Commission is asked to take action on the special use permit. The applicant has agreed with the County what those items are; which include items like connecting to public sewer and paying for prior utility services and testing the water. They have tested their water and filed a plan for sewer. Today the County received partial payment toward back services fees. Therefore progress is being made.

Mr. Hunt asked what the back services fees covered.

Mr. Sowers answered that they were for utility services used by the applicant but not paid for.

Mr. Kale inquired as to whether or not the applicant was currently in violation of any County Codes.

Mr. Leo Rogers said that they are working to correct those violations. They are connecting to the sewer system, which is required. The current restaurant that is operating right now is operating without a special use permit, which is required. They also have the problem of getting sewer service without paying the connection fee and without paying for the sewer service. Building and Fire inspectors have been out to verify that the operations are consistent with the code. For the most part everything that they are doing is consistent with the code. Also the Health Department and the Department of Agricultural have submitted letters to indicate that the winery's operation is currently consistent with the code. The applicant is aware that they are expected to be prepared to present their case in December.

Mr. Kale stated that he hopes there will be no outstanding County violations when the case is heard next month. He does not feel it would be fair to other applicants and citizens who work diligently to prepare

their cases for public hearing.

Mr. Rogers indicated that staff has identified with the applicant certain things that are expected to be done prior to the case coming to the Planning Commission. Some of the items will be satisfied with the development of the expansion to the tavern, and zoning issues are expected to be resolved with this case. The sewer issues should all be resolved prior to coming to the Planning Commission. The public water issue will be addressed with the Certificate of Occupation. Mr. Rogers pointed out that the Winery has been very cooperative in working with staff to resolve these issues.

Mr. A. Joe Poole, III opened the public hearing.

Hearing no requests to speak, Mr. Poole, III deferred the case until the December 8<sup>th</sup> meeting of the Planning Commission.

B. Z-8-03 & MP-9-03 – Norge Neighborhood

Mr. David Anderson stated that Mr. Pete Henderson, on behalf of Henderson, Inc., has applied to rezone approximately 22.4 acres from A-1, General Agricultural to Mixed Use with proffers. The area is located in the 7100 block of Richmond Road and off of Nina Lane. The applicant has requested that the case be deferred until December in order to allow for more time to address outstanding issues. Staff recommends deferral.

Mr. Hunt asked if there will be an access off of Route 60.

Mr. Sowers answered that there will be access off of Route 60.

Mr. Poole inquired about the nature of the outstanding issues.

Mr. Sowers stated that there are issues with the roads as well as some issues with layout and school impacts.

Mr. McCleary added that the developer has held two community meetings to get feedback from the community. He thought they had been very responsible.

Ms. Wildman wanted to know if the developer would be continuing the same style of buildings in a manner consistent with the Norge area.

Mr. Sowers stated that he did not know.

Mr. A. Joe Poole, III opened the public hearing.

Hearing no requests to speak, Mr. Poole, III deferred the case until the December 8<sup>th</sup> meeting of the Planning Commission.

C. SUP-20-03 & Z-9-03 –Community Chapel/Jamestown Hundred.

Mr. David Anderson stated that Mr. Craig Covey has applied, on behalf of Williamsburg Community Chapel to rezone 1.21 acres of the 15.12 acres to R-2, General Residential Cluster with Proffers. The purpose of this rezoning is for the infill development of four single-family residential lots in the adjacent Jamestown Hundred subdivision. The property is located to the rear of the Chapel and is located at 3899 John Tyler Highway.

The proposal also requires a special use permit because the gross density of the proposal exceeds 1 unit per acre. In the R-2 zoning district residential cluster developments with a maximum gross density of more than 1 unit per acre require a special use permit.

The application has been submitted in cooperation between Williamsburg Community Chapel and Hampton Roads Development, the developer of the Jamestown Hundred subdivision. The agreement allows the chapel to potentially construct an access road to the rear of the chapel property from Eagle Way to accommodate a future expansion. It should be noted that the expansion of the church and the construction of the access road would require a special use permit. The Planning Commission will have an opportunity to review this aspect of the agreement when the special use permit is brought forward.

This infill development will raise the density of Jamestown Hundred from 1.4 units per acre to 1.45 units per acre. In order to achieve this density the applicant has proffered a cash contribution for recreation facilities and staff has added a condition requiring relocation of required street trees to the recreation lot.

In order to be consistent with the surrounding area the applicant has requested that the buffer behind the infill lots be thirty-five feet. This requires a reduction in the perimeter buffer. The reduction will simply reduce the area where accessory structures can be located on the infill lots from 5 feet from the rear of the property line to 20 feet. Staff feels the reduction is acceptable because at least a 35 foot buffer consistent with the existing buffer will still be provided. Furthermore staff concurs with the request since the property owners on both sides of the buffer are cooperating in the application.

Due to the small nature of this infill development impacts to traffic, public schools, water, sewer and emergency services are minimal. Therefore impact studies were not required with this proposal. The applicant has proffered a cash contribution for water impacts, the Route 5 transportation district, and for recreation.

The proposed zoning designation, density, and use are all consistent with the Comprehensive Plan and with the adjacent Jamestown Hundred Subdivision. In addition, the Comprehensive Plan encourages infill development. Staff recommends the approval of the proposal with the proffers and conditions.

Mr. Kale asked if the Commissioners would be obligating themselves to approve the proposed later special use permit for the chapel expansion and access road by approving this application.

Mr. Rogers answered that with approval of this application the Commission would be approving a plan of development. Therefore they would be indicating that they would be favorably disposed to approve a later application that is required as long as the later application is consistent with that plan.

Mr. Hagee confirmed that this would be no more than the access to Eagle Way.

Mr. Rogers said that this was correct and that it could also be limited as a part of the consideration of this case.

Mr. McCleary stated that the access to Eagle Way would be an advantage to the County because it cuts down on traffic problems.

Mr. A. Joe Poole, III opened the public hearing.

Mr. Craig Covey, President of Hening-Vest-Covey-Chenault, represented Williamsburg Community Chapel. Approximately 1 year ago the Chapel considered a plan to expand to provide additional space for its out-source services. They realized that any development would require turns lane off of Route 5 and majority clearing of trees along Route 5. In looking at public health, safety and general welfare of the community it seemed another way to provide access and egress might be through a connection to Eagle Way. They have indicated a proposed 50 foot right-of-way and worked with staff and the Board of Supervisors by exchanging easements. The two property owners are now working to adjust the two property lines and provide sufficient land to the developer so that he can provide 3 additional lots. Jamestown Hundred has 106 lots approved but were only able to plat 105. The Chapel property will allow for the platting of the last lot plus 3 additional lots. There would still be the open space conservation area between the Chapel and the same 35 feet of buffer.

Mr. McCleary thought the Chapel appeared to be divided into two halves. The front half is the

building and paved parking lot and the other is a gravel parking lot and a grassy area some of which will be swapped with the developer. Mr. McCleary asked if any future expansion will include trying to preserve the amount of impervious cover.

Mr. Covey stated the conceptual plan has the back section of the property for overflow parking that will be gravel so that they can continue to recharge the groundwater. There will be some parking and additional paving in the area near the structure. The provisions of the Chesapeake Bay Ordinance and the 60/40 ratio will be met.

Mr. Covey addressed Mr. Kale's question concerning the future expansion of the Chapel. The thinking at this time is to add the road now. Therefore a site plan application would be brought forward showing the access to the church property. At a subsequent time the Chapel will file for the expansion to the Chapel.

Mr. Billups wanted to clarify the nature of the future expansion.

Mr. Covey said that there are no final plans but they have looked at the extension of the existing structure toward the rear of the site creating a new sanctuary which would allow the front to be converted to potentially some recreation and youth type services.

Mr. Poole asked if the applicant is comfortable with the conditions outlined by staff.

Mr. Covey stated that they were in favor of proceeding that way.

Mr. Stephen Bacon, 3220 Reades Way, stated they chose their particular lot because there would be no neighbors behind or in front of them. The site agent representing Virginia Enterprises assured them that nothing would be built across the street or in the 19 ½ acre conservancy adjacent to Eagle Land Williamsburg Chapel. Upon opening the newspaper on Saturday he found out that the builder, without consulting the property owners, struck a deal to develop lots 4 & 5 and 11 & 12 to construct four more houses. They could then manipulate zoning laws to sell the property in the conservancy to the Chapel. Just over a year ago Virginia Enterprises tried to acquire land from the church to make lot 5 larger to accommodate a larger home and the church said no. It makes no sense that three months ago Virginia Enterprises stopped construction on phase 3 in Jamestown Hundred. What does make sense is that by delaying construction on phase 3 Virginia Enterprises assures itself sole representation of the Homeowners Association for another 2 to 3 years because there will not be 80% occupancy to allow property owners to act alone as the Homeowners Association. That fits into the timeline of the Chapel. The underhandedness continued when only 5 property owners received notification of the hearing a week ago out of 50 families. We are the neighbors of the Williamsburg Community Chapel not Virginia Enterprises. He urged the Chapel to reconsider their application until they can sit down with the real homeowners of Jamestown Hundred and work out a solution.

Mr. Bacon suggested several solutions. One would be to install a traffic light. Another is to sit down with the Homeowners Association. Will the Chapel be agreeable to letting the homeowners run a road connecting their Eagle Way project for the folks who live in phase 3? Perhaps a park area will suit both the Chapel and the homeowners. He would prefer a true green space that both could use. Mr. Bacon urged the members to do the right thing without wasting court time with injunctions and lawsuits.

Ms. Debra Gillilan, of lot 100 in Jamestown Hundred, stated that she is five homes away from the referenced property. Ms. Gillilan provided a copy of the brochure given to homeowners that indicated the conservancy space in green. The subdivision is still being marketed that way today. She opposed the proposal. Ms. Gilliland does not believe that the \$620 proffered for recreation was adequate. A picnic table could not be purchased for this amount. She also questioned why Virginia Enterprises is not willing to follow the streetscape guidelines listed in the Comprehensive Plan. Instead they intend to transfer required trees to the recreation lot. Ms. Gillilan said there is no recreation lot, there is no lot where the children can play, no picnic table. She asked if they planned to dig up trees for this transfer. She also felt that \$750 per lot is not enough for impacts to water. Significant plumbing repairs could not be obtained at that price. Ms. Gillilan asked if the 42.9 acres of open space includes the land given away for the access road. She encouraged the Commission to vote no.

Mr. Anderson indicated that the amount of money proffered for the recreation lot was derived from the Park and Recreation Comprehensive Plan. Also in lieu of providing actual recreation facilities for smaller developments, which these 4 infill lots are considered, they outline specific dollar amounts. The recreation area will be in the next phase of development.

Mr. Hagee asked for the location of the area to be developed.

Mr. Covey indicated the location on the plan.

Mr. Hagee asked about rights of the Chapel to access Reades Way and if the land adjacent to the Chapel will be part of the conservation area.

Mr. Anderson answered that there is currently no right to access Reades Way and that the land would be part of the conservation area along with additional areas that are not currently part of the Williamsburg Chapel property.

Mr. Doug Harshbarger, 3252 Reades Way, stated that he was appointed by the homeowners to be their liaison with Hampton Roads Development. He was told by the developer that there are no plans for recreation facilities on the recreation lots. He observed tonight that the left hand turn onto Reades Way may stack up about 10 cars, on Sunday mornings there are considerably more than 10 cars backed up on Route 5. He feels the proposal only moves the congestion from in front of the Chapel to in front of Eagle's Way. Mr. Harshbarger stated that a drawing provided to him by the developer shows a watershed area in the vicinity of St. Eric's Turn. He also questioned the need for a variance to reduce the buffer to 20 feet when the application states that there will be a 35 foot buffer.

Hearing no other requests to speak, Mr. Poole, III closed the public hearing.

Mr. Hunt asked what buffering rules govern Williamsburg Community Chapel.

Mr. Anderson said that it is 35 feet to the back of the Chapel property. He also explained that when Jamestown Hundred was approved there was a 35 foot buffer requirement. Since then the ordinance has changed. There is now a 35 foot perimeter buffer and a 35 foot yard requirement. There is no provision to get a waiver or a reduction to the yard requirement so the applicant is requesting a reduction in the perimeter buffer. But in effect they are still providing the 35 foot that is there currently. This proposal pushes the yard requirement back further on the lots. Therefore; future owners of these lots will only able to locate accessory structures 20 feet from the back property line instead of 5 feet. The buffer will remain at 35 feet.

Mr. Hagee asked to see the sales brochure referred to by Ms. Gillilan.

Mr. Billups asked if the existing infrastructure for the 4 infill lots were sufficient to build 4 homes.

Mr. Anderson confirmed that the additional land would be required to be acceptable under the ordinance.

Mr. Poole was very sympathetic that members of the community were given some sort of expression from an entity and then found it to be different in the field. He does not feel it's limited to real estate transactions; however it is particularly egregious when it becomes ones home. Mr. Poole felt a lot of important questions were raised tonight. He would like to see a discussion between the applicant and the homeowners before Commissioners make a recommendation on the application.

Mr. Sowers assured the members that staff was not aware of the disparities before the meeting. An attempt would have been made by staff to try to bring the two sides to together.

Mr. Poole expressed concern that only adjacent property owners immediately adjacent to property receive written notification. He reiterated that he would like to see some sort of discussion outside of this meeting before it comes to the Commission.

Mr. Kale concurred with Mr. Poole and asked that those discussions include the developer. He felt the developer has allowed the Williamsburg Community Chapel, which has an excellent reputation in this community, to carry some water that is dirty perhaps not as clean as the Chapel may have thought it was. He stated that the developer has as much as if not more to gain in the long run with the proposal.

Mr. Billups wanted to see any grandfather clauses or other legal protections that were granted to the association even though the Comprehensive Plan has been updated.

Mr. Hunt would like to see some accommodations made but does not want to see another traffic light installed on Route 5 unless it was absolutely necessary.

Mr. McCleary echoed Mr. Kale's sentiments that the developer should have been in attendance at tonight's meeting. He reminded members and citizens that the Commissioners cannot force them to participate in any discussions.

Mr. Hagee felt it unfortunate that the developer was not present. He thought the proposed access road has a lot of very practical assets. He would like to see that worked out. Mr. Hagee said that there were some clear misrepresentations and that the homeowners may have an opportunity to gain some amenities in negotiations with the applicants. He suggested that homeowners focus their thought on what they absolutely want.

Mr. McCleary commended the Chapel for attempting to mitigate traffic impacts.

Mr. McCleary moved to defer the application.

Mr. Kale seconded the motion.

Mr. Poole urged all parties to get together and to involve staff if possible.

In a roll unanimous roll call vote, the application was deferred.

## 6. PLANNING DIRECTOR'S REPORT

Mr. Sowers presented the report. He pointed out that there will be a very lengthy agenda for December's meeting. He indicated that he has had some discussions with Commissioners on how to proceed and for recommendations.

The Commission discussed possible solutions.

Mr. Kale asked if any of the cases were nearing the cut off date to be heard by the Commission.

Mr. Rogers answered that 100 days after a case is ready to be heard there needs to be a decision made. After that time the case must go to the Board of Supervisors with the assumption that a favorable recommendation was made by this Commission. That has never happened and the Board has the option of referring the case back to the Commission.

Mr. Hunt asked those Commissioners who attended the Norge Neighborhood meetings if there were any objections by residents.

Mr. McCleary said there were some in the first meeting that were addressed in a satisfactory manner at the second meeting.

Mr. Poole motioned to reschedule the December 8<sup>th</sup> meeting to 5:30pm and continue without breaking for dinner. If necessary the meeting will be adjourned until December 11<sup>th</sup> at 7:00 pm.

Mr. McCleary seconded the motion.

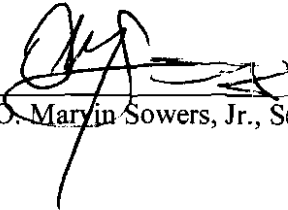
In a unanimous voice vote the December meeting was rescheduled.

Mr. Hagee informed the members that he does not intend to seek reappointment when his term expires in January.

7. ADJOURNMENT

There being no further business, the November 3, 2003, meeting of the Planning Commission was adjourned approximately at 8:45p.m.

  
A. Joe Poole, III, Chairman

  
O. Maryin Sowers, Jr., Secretary