

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

1. ROLL CALL

Planning Commissioners

Present:

Rich Krapf
Chris Henderson
Joe Poole III
Jack Fraley
Deborah Kratter
George Billups
Reese Peck

Staff Present:

Allen Murphy, Director of Planning/Assistant
Development Manager
Adam Kinsman, Deputy County Attorney
Chris Johnson, Principal Planner
Jason Purse, Senior Planner
Terry Costello, Development Management Assistant

Mr. Rich Krapf called the meeting to order at 7:00 p.m.

2. PUBLIC COMMENTS

Mr. Krapf opened the public comment session.

Mr. Robert Richardson, of 2786 Lake Powell Road, expressed his concerns about the case, Autumn West that was heard the previous evening at the DRC meeting. He felt that citizens were not given enough time to review the revisions to the proposal. He stated that the plans were made available to the public on Tuesday, November 24, 2009, and the DRC meeting was held Tuesday, December 1, 2009. Mr. Richardson stated that the Code provides for five working days for the plans to be reviewed. He requested that the full Planning Commission review the presentation that he made at the DRC meeting. He felt that the applicant should have made the request for a deferral and be required to pay the \$350 deferral fee. Mr. Richardson felt that it was not the fault of the DRC that the applicant came unprepared and that the application was inaccurate, incomplete, and amended continuously. He felt this may be an example of why some citizens state that they do not trust local government when completing a survey.

Mr. Krapf closed the public comment period.

3. MINUTES

A. September 30, 2009 Special Worksession

Ms. Deborah Kratter expressed her concerns about the method in which the public comments are written in the minutes. She felt that the way the minutes are normally written, it appears that the Planning Commission is adopting some of the assertions made by those who comment. She suggested indenting or putting quotation marks around those comments that are made at the meetings. Ms. Kratter volunteered to work with staff on improving the minutes.

Mr. Chris Henderson stated that he felt Ms. Kratter brought up an important issue and maybe the just the topic the speaker is speaking on should be listed, rather than the individual statements.

Mr. Allen Murphy stated that there was a variety of ways to do the minutes and that staff would be willing to change or accommodate what the Planning Commission decides.

Mr. Henderson suggested that this matter be referred to the Policy Committee.

The Commission agreed.

Ms. Kratter suggested deferring the September 30, 2009 special work session meetings until this matter is decided. She moved for deferral until the Planning Commission decides on the method to handle minutes with public comment.

Mr. Joe Poole seconded the motion and stated that he felt the speaker's comment should be captured within quotation marks or some other way to separate it out from the rest of the minutes.

In a voice vote, the motion was approved. (7-0)

B. November 4, 2009 Regular Meeting

Mr. Poole moved for approval of the minutes with a second from Mr. Henderson.

In a voice vote the motion was approved. (7-0)

4. COMMITTEE AND COMMISSION REPORTS

A. Development Review Committee (DRC)

Mr. Poole stated that the Development Review Committee (DRC) reviewed three cases on December 1, 2009. The first, SP-0071-2009, Warhill Community Gymnasium, was reviewed for exterior elevations and building materials. No formal action was required or taken. Comments concerning the perimeter landscaping were made by the Committee. The second case was SP-0064-2008, Autumn West Townhomes. After discussions about the environmental impacts and landscaping concerns, the Committee unanimously recommended deferral to allow the applicant time to further refine submitted documents. Mr. Poole stated that all DRC members have been requested to submit specific concerns to staff to provide the applicant.

There were also two discussion matters. The first was an expansion to Building 900 in New Town by approximately 12,400 square feet with a 3,000 square foot mezzanine to accommodate a fitness center. The expansion would eliminate 50 parking spaces behind the building so the DRC was asked to review the proposal in light of their role in reviewing regular shared parking updates. Mr. Poole stated the DRC reviewed and discussed this conceptual plan.

The second conceptual plan was Williamsburg Crossing, Parcel 24, Zaxby's Restaurant. Preliminary plans for a 3,900 square foot fast food restaurant were reviewed and discussed for use in this B-1 Zoning District and a use consistent with the Williamsburg Crossing master plan. Suggestions were made to the applicant and it was noted that a formal plan review will take place in the future.

Mr. Henderson complimented Mr. Poole on administering the DRC meeting from the previous day due to the amount of public comment that was heard. He stated it was important that the public have confidence in the DRC's review of proposals. He felt that the correct decision was made to ask for the deferral to allow more time for administrative and public review.

Ms. Kratter asked if the Commission should consider charging the applicant the deferral fee of \$350 as was suggested by the speaker during the opening public comment period.

Mr. Poole stated that it was the DRC that requested the deferral so he was unsure as to whether the applicant should be subjected to the deferral fee.

Ms. Kratter suggested that it might be an option if it was due to the applicant's inability to produce the documents needed to make a decision on the case.

Mr. Fraley stated that it was probably not appropriate in this case since the DRC requested the deferral, not the applicant.

Mr. Krapf noted that staff has been working with the applicant on this case for a year and a half. It was the DRC members that requested additional time to review the application. He felt that the request was not due to any action taken by the applicant.

Mr. Henderson moved for approval of the DRC report with a second from Mr. Reese Peck.

In a unanimous voice vote, the report was approved (7-0)

B. Policy Committee

Mr. Henderson stated the Committee met in November to discuss the by-laws. The Committee has received input from the County Attorney's office and will be meeting on December 10, 2009 at 4:00 pm in Building A at the Government Complex to discuss CIP issues in addition to continuing the discussion on the by-laws and external communications. Mr. Henderson stated he will add to the agenda a discussion on how to handle public comments in the minutes.

Mr. Adam Kinsman stated that pursuant to the current by-laws, thirty day notice needs to be given to the Commission before anything new is adopted. He stated that this serves as the thirty day notice and should any changes be proposed to the by-laws, they will be discussed at the January Planning Commission meeting.

Mr. Poole moved for approval of the Policy Committee report with a second from Mr. Peck.

In a voice vote, the report was approved. (7-0)

C. Other Reports

There were no other reports.

5. PLANNING COMMISSION CONSIDERATIONS

A. Initiating Resolution – Initiation of a Zoning Ordinance Amendment to change SUP uses to permitted uses

Mr. Jason Purse stated that staff had previously brought forward Zoning Ordinance amendments that dealt with permitted and specially permitted uses. At that time, the Board of Supervisors approved a portion of the proposed changes. At the direction of the Board of Supervisors, staff is reintroducing the remainder of the changes. Mr. Purse stated that since no other changes are being proposed, and the Policy Committee and Planning Commission voted on the previous changes, staff will be bringing these changes to the January Planning Commission meeting. Staff recommended that the Planning Commission adopt this resolution to initiate consideration of these amendments to the Zoning Ordinance.

Ms. Kratter asked if the individual items that will be considered will be open until they are considered by the Planning Commission in January. She also asked if what is being considered was a limitation on what the Commission must or must not do.

Mr. Purse answered yes it will be open and that the ordinance list will have the sections that are under review, but not the specific uses.

Mr. Henderson moved for approval of the initiating resolution, with a second from Ms. Kratter.

In a unanimous voice vote, the initiating resolution was approved (7-0)

6. PUBLIC HEARINGS

A. Z-0002-2009 / MP-0002-2009 Governor's Grove Section III - Proffer and Master Plan Amendment

Mr. Murphy stated staff's concurrence with the applicant's request for a deferral to the January 13, 2010 Planning Commission meeting.

Mr. Krapf continued the public hearing to January 13, 2010.

B. SO-0001-2009 Subdivision Ordinance Amendment - To amend Section 19-26 of the

Subdivision Ordinance to extend the term of validity for recording a final subdivision Plat

Mr. Chris Johnson stated that at the November Planning Commission meeting, the Commission adopted an initiating resolution to allow staff to pursue an amendment to Section 1-26 of the Subdivision Ordinance to extend the term of validity for preliminary approval of a subdivision plan. This will bring the County Code in conformance with the Virginia State Code. He stated the current Subdivision Ordinance states that a subdivider has no more than one year from the date of preliminary approval to record a final subdivision plat or seek an extension of preliminary approval. The State Code notes that once a preliminary plan has been approved, it shall be valid for a period of five years, providing the subdivider submits for all or a portion of the property within one year of such approval and diligently seeks approval of the final plat. Mr. Johnson stated that staff recommends that the Planning Commission recommend approval of the ordinance amendment to the Board of Supervisors.

Ms. Kratter asked if the County was required to make this change.

Mr. Johnson stated it is not mandated by the State, but given the inconsistencies between the County Ordinance and State Code, it is a potential conflict. By not changing it, it could put the County in a position to defend its ordinances that are not consistent with the State Code. The County would be obligated to follow the time frame in the State Code.

Ms. Kratter stated that she thought that the language in the State Code could be improved and wanted to make sure that everyone was aware that it was not staff's language that was used; it was taken from the State Code.

Mr. Murphy stated that the language in the Code does create a mandate for this change. He stated that the County has to comply.

Mr. Krapf opened the public hearing.

Mr. Robert Richardson, of 2786 Lake Powell Road, questioned whether the County could use sunset clauses for certain situations. He was asking for clarification. He would like to see some discussion on what "diligently" means when referencing the applicant pursuing final approval of a plat.

Mr. Krapf closed the public comment period.

Mr. Kinsman stated that there is a conditional use permit for Autumn West. He stated that based on case law, sunset clauses are difficult when it comes to conditional use permits. A conditional use permit is a change in zoning of a particular parcel which is attached to the land. A sunset clause is a time based notion. There could be a contradiction between a land-based issue and a time sensitive issue. He stated that sunset clauses are looked at unfavorably in the courts and are more applicable to temporary uses. Mr. Kinsman stated that the Virginia Code defines "diligently" as "that the subdivider has incurred extensive obligations or substantial expenses relating to the final subdivision plat or modifications thereto."

Ms. Kratter asked if there was a way to create sunset provisions that would meet the provisions of State Code.

Mr. Kinsman stated he did not believe there was a way to create a sunset clause with regards to conditional use permits.

Mr. George Billups asked if the update to the Zoning Ordinance was to take place now that the Comprehensive Plan was adopted. He noted that it might be worth adding something more specific with regards to the requirements of "diligently pursuing final approval." He asked if there were any benchmarks that could be set up to make this more specific.

Mr. Kinsman answered that the County needs to adhere to the definition in the State Code. He stated that there is an effort to update the Zoning Ordinance now that the Comprehensive Plan is adopted so hopefully everything will be up to date.

Mr. Poole moved for approval with a second from Mr. Peck.

In a roll call vote the motion was approved. (7-0, AYE: Henderson, Billups, Poole, Fraley, Kratter, Peck, Krapf)

C. SUP-0024-2009 Hospice House Wireless Communications Facility Tower

Mr. Poole stated that due to his affiliation as a member of the Board of Directors for Hospice House, he will be abstaining from voting on this proposal.

Mr. Purse stated that Ms. Gloria Freye has applied for a Special Use Permit to allow for the construction of a 124 foot wireless communications facility located at 4445 Powhatan Parkway. The parcel is zoned R8, Rural Residential, and has a Comprehensive Plan designation of Low Density Residential and Conservation Area. The proposed tower would be located on the same parcel as the Hospice House of Williamsburg, which is located internal to the Powhatan Secondary subdivision. The proposed site of the tower will be located in a low-lying area near the Resource Protection Area (RPA). The applicant is proposing a 100 foot buffer around the tower site that will remain undisturbed, except for the tower site and the access road. The applicant is offering to provide additional buffers to screen the access drive and has proposed to preserve the berm in front of the Hospice House. The trees surrounding the site are between 60 and 70 feet in height. The proposed tower is approximately 200 feet from the Hospice House and approximately 490 feet from the closest home in the Powhatan Secondary Subdivision. The closest home in Ford's Colony appears to be approximately 550 feet away to the north.

The combination of topography, tree cover, and the distance from the site to the neighborhood makes the proposed tower visible from a number of locations in Powhatan Secondary, including Powhatan Parkway, West Providence Road, East Providence Road, Cold Spring Road, Old Regency Road, Powhatan Secondary, Settlers Mill Crossing, and parts of Pleasant View Drive. The tower is not anticipated to be visible from any of the streets in Ford's Colony, but the applicant was informed by at least two property owners that it was visible from their backyards.

Performance Standards indicate that towers should be compatible with the use, scale, height, size, design, and character of surrounding existing and future uses. Because of the topographical changes between different phases, some of the homes are at a grade near the tops of the trees on the Hospice House property and will therefore be looking directly at the tower.

While the applicant has researched a number of potential sites in this part of the County and has demonstrated a need for additional coverage, the proposed tower will have a visual impact on the surrounding area. Because of this, the application is not in compliance with the Comprehensive Plan and does not meet the Board of Supervisors adopted Performance Standards for Wireless Communications Facilities. Staff recommends that the Planning Commission recommend denial of this application to the Board of Supervisors. Mr. Purse stated that should the Planning Commission wish to recommend approval of this application, staff recommends including the conditions attached to the staff report.

Mr. Krapf opened the public hearing

Ms. Gloria Freye of McGuire Woods gave a presentation on behalf of the applicant, Ntelos. Representatives from Ntelos were also present for questions. Ms. Freye showed pictures of the tower, which is a slick stick design. She showed diagrams of the areas that are currently covered by Ntelos and the area where the proposed tower would cover. She stated that additional coverage is needed due to the fact that there are more cell phone-only users than land line-only users. Individuals use their cell phones for wireless services, internet connections and wireless data. Ms. Freye stated that residents in Powhatan Secondary and Ford's Colony expressed their concerns about getting more reliable wireless coverage. She stated that AT&T and Sprint will be co-locating at this proposed tower and have the same issues regarding gaps in coverage. She stated that research has been done as to what would be the best site with the most coverage and it was determined that the Hospice site was the best location. Ms. Freye noted that there are difficulties in finding a site that is close enough to neighborhoods for service and on a site that is non-residential in use and has adequate buffers. She stated that this site comes the closest to substantially meeting the County's wireless communications goals, guidelines, and standards.

The Hospice House property is approximately eleven acres, heavily wooded, and is separated from the residential neighborhood by RPA and a common stormwater area, neither of which can be developed. This site meets the coverage needs of three providers. The pole would also be located in the woods and the wires would all be self-contained. Ms. Freye stated that the residents who have a view of the pole are in the minority compared to the residents who have no view and are being served by the wireless carriers. The pole will be a stealth design. She stated that Ntelos met with and gave demonstrations to the residents of Powhatan Secondary and Ford's Colony. She also stated that all of the revenues generated by the tower would be going to Hospice House. Ms. Freye requested that the Planning Commission recommend approval of the application to the Board of Supervisors with the attached conditions that staff has provided.

Mr. Fraley expressed his appreciation for the public meetings that the applicant had held. He stated that when discussing towers he felt it was important to discuss service and the level of

service as opposed to coverage. He felt it would be helpful to know the service and the level of service that will be provided by the proposed tower. He felt it was important to display the simulations with the leaves off of the trees. Mr. Fraley asked if there were any considerations given to alternative distribution systems that might be less obtrusive.

Ms. Freye answered that those systems such as Distribution Antenna System (DAS), are not designed to take the place of a main facility. They are designed for areas where there may be tall buildings or utility poles where antennas and cells can be attached. These types of systems will not work for Powhatan Secondary or Ford's Colony because there are no poles or structures to which to affix the antennas.

Mr. Fraley suggested a system where the poles would be much smaller and connected through fiber optics.

Ms. Freye stated that it was her understanding that the utilities in Powhatan Secondary and Ford's Colony were underground, and that a system such as this would introduce many poles above ground, as opposed to one pole that is proposed in this application.

Mr. Fraley stated that he believed that Ford's Colony could probably be served by three or four smaller poles that would fit in the tree line and would be less noticeable.

Mr. Henderson stated that he believed that the homeowners' association (HOA) at Ford's Colony had adopted a wireless policy that had identified some sites for antenna locations. He asked whether any of these locations were suggested by Ford's Colony, the HOA, or Realtec.

Ms. Freye stated that all the carriers involved were in discussion with Ford's Colony, but could not come to an agreement for a site that would work.

Ms. Kratter stated that the HOA had looked at some sites, but there were none that were determined as suitable.

Ms. Freye stated that this process has taken four years, but stated that due to topography, the site at the Hospice House was determined to be the best suitable. All three carriers were involved in this process. She further stated that this site meets all of the County's standards.

Mr. Henderson mentioned a prior application that was at the Windsor Meade Marketplace, which was withdrawn. He asked if there was any knowledge of the application since it was to serve the same general area that this proposal is attempting to serve.

Ms. Freye answered that she was aware of that proposal and that a representative from AT&T was present and will speak to that previous application.

Ms. Lisa Murphy spoke on behalf of AT&T. She stated that the proposal at Windsor Meade Marketplace was withdrawn because the original developer placed a restrictive covenant that would have required the developer's approval of anything over a certain height. In this case, the developer was not willing to grant the waiver.

Mr. Henderson noted that it would be helpful to have some of the sites that were investigated as being potential candidates for the cell tower, and the comparisons why the current proposed site was more suitable.

Ms. Freye mentioned the sites that were also reviewed as being potential locations. These included the radio tower site on Monticello Avenue, James City Service Authority water tank on Longhill Road, property on Windsor Meade Way, existing towers at 1118 Ironbound Road, Eastern State Hospital property at 4601 Ironbound Road, Virginia United Methodist Homes on Windsor Meade Way, Ford's Colony sites, Powhatan Enterprises at Powhatan Parkway, Granger property on Centerville Road, property at New Town, property at AIG Baker, property on Casey Boulevard, News Company on Monticello Avenue, James City County Mid-County Park, Monticello Marketplace Associates, property located at 4409 Powhatan Parkway, and property at the Hospice House.

Ms. Lisa Murphy spoke on behalf of AT&T. She displayed maps of existing sites for AT&T. She also displayed maps on coverage areas and how this proposed tower would service AT&T and fill a gap in coverage. She stated that with co-locating on this tower, there was a large area that would now have "in-building" service. Ms. Murphy showed what the tower would look like as a slick stick. She stated that the feedback that AT&T has received from citizens is that the slick stick design is more preferred over other designs.

Ms. Connie B Reitz, 4048 Powhatan Secondary, stated that her home is one of the ones that will have the most impact should this application be approved. She stated that she prefers the slick stick design if it is approved. She would like to know how many customers this tower will serve if this application is approved.

Mr. John Reitz, 4048 Powhatan Secondary, stated that the Hospice House is a wonderful organization. From his residence, they will be looking directly at the top of the tower. He hopes that the Planning Commission considers the concerns of the residents in the area when making their decision.

Mr. Aaron Small, 108 Ewell Place, stated that he represented the Board of the Powhatan Community Services Association. He stated that approximately 10% of the 850 homeowners would be able to view the tower. He stated that some of the homeowners have concerns regarding the height of the tower, the area around the tower that will be disturbed, potential health concerns relating to a tower, and the ability to view the access road to the tower. He also stated that a petition against the tower has been signed by over 200 residents. He showed pictures of the tower that would be visible from some of the homes. Mr. Small stated that the Board of Directors for the Powhatan Community Services Association unanimously voted in opposition to this proposal.

Ms. Beth Emerson, 4052 Powhatan Secondary, stated that the proposed tower will be visible from every room in the back of their home. She was disappointed that the meeting scheduled between the applicant and the homeowners was scheduled during a storm and most residents were not able to attend, nor was it rescheduled. She expressed her concerns of the

destruction of trees, disturbance of wildlife, and the destruction of the view shed.

Mr. Lawrence Beamer, 110 Powhatan Overlook, stated he did not feel that property values would be affected by this cell tower. He suggested that the Hospice House site would be a good site for the tower. He believes that the tower will be visible but that the design lends itself not to be so obtrusive. He would like to see this proposal approved.

Mr. Jim Easton, the Chairman of the Board of Directors for Hospice House, spoke on behalf of this application. He explained the level of consideration, preparation, and research that went into this proposal. He stated that the revenue that would be generated would greatly help their operations. He stated that due to limited resources, revenue such as this would take on a higher level of importance.

Ms. Cathy Chambers, a realtor in the James City County area, stated she is a resident of 4063 Powhatan Secondary. This tower will be visible from her home. She would not purchase a home knowing that a cell tower would be nearby.

Mr. Krapf closed the public hearing.

Mr. Fraley stated his concerns about dealing with cell towers on an individual basis. He expressed the need for a master plan for cell towers for the County. He stated that in the updated Comprehensive Plan there is an action item that states the need for a master plan. Mr. Fraley would like to explore the options of other types of services, which may be more costly. He stated that there are ways to obtain coverage with unobtrusive towers. He expressed the need to explore other wireless communications needs such as medical and emergency services. He agrees that the slick stick design is less obtrusive than other designs. Mr. Fraley stated that with this particular proposal, he does find that the proposed tower will be intrusive to the surrounding communities. He felt that this proposal is not compatible with the surrounding areas. He expressed his concerns over the disturbance of the land. Mr. Fraley agrees with staff's recommendation for denial.

Mr. Krapf felt that this proposal is not in compliance with the Comprehensive Plan nor does it follow the standards for wireless communication facilities as adopted by the Board of Supervisors. He felt it was intrusive on the viewshed of a number of citizens near the site. He agreed for the need for a master plan for communication towers. He also supports staff's recommendation.

Mr. Billups stated he found this application to be incomplete. He expressed his concerns over the fact that what is proposed might not be what will actually be at the site. He stated he cannot support this application at this time.

Ms. Kratter stated she could support a delay until more concrete standards are established for evaluating these structures. She was concerned that specifically pointing out the tower makes it more noticeable than if it were not highlighted at all. She stated that on the other hand, there were many people who were directly affected by this tower. Ms. Kratter expressed her concerns over consistency in the decisions being made regarding towers.

Mr. Henderson expressed his concern over specific guidelines when reviewing proposals for cell towers. He felt that while there were some negatives to this proposal, there are some positives in providing service to an area that needs coverage. He felt it might be beneficial to provide acceptable sites so that applicants are aware of the options. Mr. Henderson expressed his concerns that a master plan is needed for towers also.

Mr. Reese Peck stated that staff has said that this proposal is not consistent with the Comprehensive Plan and does not meet the performance standards established. It is important to take into consideration the impact to the homeowners in the area. He does agree with the need for a more comprehensive approach to wireless communication facilities.

Mr. Fraley moved to approve staff's recommendation for denial of the application, with a second from Mr. Billups.

In a roll call vote, the Planning Commission approved staff's recommendation for denial. (6-0, AYE: Henderson, Billups, Fraley, Kratter, Peck, Krapf, Abstained: Poole)

7. PLANNING DIRECTOR'S REPORT

Mr. Murphy expressed his thanks to the Planning Commission for all their work on the Comprehensive Plan, which was adopted by the Board of Supervisors on November 24, 2009. Mr. Murphy extended Happy Holiday wishes for the Planning Commission.

8. COMMISSION DISCUSSIONS AND REQUESTS

Mr. Krapf stated that Mr. Poole was the Planning Commission's liaison for the December meeting of the Board of Supervisors.

Mr. Fraley asked Mr. Kinsman to do some research concerning developing a master plan for wireless communications. He mentioned other localities that had a moratorium on towers until a master plan was developed.

Mr. Henderson expressed his concerns about denying applications without giving the applicants alternative solutions.

Ms. Kratter asked that all future proposals have some kind of fiscal impact study done, especially in light of the current economic conditions.

Mr. Fraley agreed but said that careful consideration should be given to the fact that the Board of Supervisors is the group that determines where the funds should be allocated from.

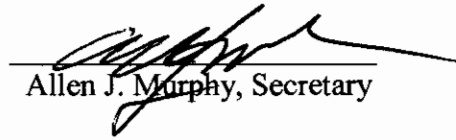
Mr. Krapf wanted to thank staff for all of their work on the Comprehensive Plan. He also wanted to wish everyone a happy holiday.

9. ADJOURNMENT

Mr. Henderson moved for adjournment, with a second from Ms. Kratter.

The meeting was adjourned at 9:00 p.m.


Rich Krapf, Chairman


Allen J. Murphy, Secretary