

**AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 14TH DAY OF JULY 2009, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.**

**A. CALL TO ORDER**

**B. ROLL CALL**

James G. Kennedy, Chairman, Stonehouse District  
Mary Jones, Vice Chair, Berkeley District  
Bruce C. Goodson, Roberts District  
James O. Icenhour, Jr., Powhatan District  
John J. McGlennon, Jamestown District

Sanford B. Wanner, County Administrator  
Leo P. Rogers, County Attorney

**C. PLEDGE OF ALLEGIANCE** – RayVon Williams, a rising sixth-grade student at James Blair Middle School, led the Board and citizens in the Pledge of Allegiance.

**D. PRESENTATION** – Davenport and Company – Police Building Financing

Ms. Sue Mellen, Financial and Management Services Assistant Manager, introduced Mr. Cortney Rogers and Mr. David Rose from Davenport and Company, Financial Advisor to the County, to present information on the financing for the new Police Building.

Mr. Rogers gave a brief presentation on the Police Building financing and discussed the County's bond rating, the current financial environment and low interest rates, and key financial policy guidelines. He discussed increased bank qualification limits and Build America Bonds under the Stimulus Act, which created a favorable financial environment for the Police Building project. He reviewed the Plan of Finance and illustrated the financing in relation to the Fiscal Policy Guidelines. He outlined potential refunding opportunities for the County and stated that none of the bond issues generate over three percent present value savings, so at this time he did not recommend refunding. Mr. Rogers gave a timetable to complete the financing for the project to be completed by the week of September 14, 2009.

Mr. Icenhour commented on the fiscal policy guidelines related to debt service ratio to revenues. He asked about potential consequences if revenues did not increase in Fiscal Year 2012 and beyond.

Mr. Rose stated that the interest rate that was used to calculate the model was six percent, which was a higher estimate than what was anticipated in order to address increasing rates in the future.

The Board indicated that the process should continue.

**E. PUBLIC COMMENT**

1. Mr. Jack Fowler, 109 Wilderness Lane, presented a petition requesting renovations at Little Creek Reservoir Park, including an upgraded boat ramp.

**F. CONSENT CALENDAR**

Mr. Icenhour made a motion to adopt the items on the Consent Calendar with amendments to Agenda Item Nos. 1-b and 6.

On a roll call vote, the vote was: AYE: Goodson, Jones, McGlennon, Icenhour, Kennedy (5). NAY: (0).

1. Minutes --
  - a. June 23, 2009, Work Session
  - b. June 23, 2009, Regular Meeting
2. Grant Appropriation – Clerk of Circuit Court – \$4,986

**RESOLUTION**

**GRANT APPROPRIATION – CLERK OF THE CIRCUIT COURT – \$4,986**

WHEREAS, the Library of Virginia (LVA) has awarded the Clerk of the Circuit Court a Records Preservation grant totaling \$4,986; and

WHEREAS, there is no local match required.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation amendment to the Special Projects/Grants fund:

Revenue:

LVA - Records Preservation Program 2009B-48                      \$4,986

Expenditure:

LVA - Records Preservation Program 2009B-48                      \$4,986

3. Installation of “Watch for Children” Signs – Ironbound Square Subdivision

**RESOLUTION**

**INSTALLATION OF “WATCH FOR CHILDREN” SIGNS –**

**IRONBOUND SQUARE SUBDIVISION**

WHEREAS, Section 33.1-210.2 of the Code of Virginia provides for the installation and maintenance of signs by the Virginia Department of Transportation, alerting motorists that children may be at play nearby, upon request by a local governing body; and

WHEREAS, Section 33.1-210.2 further requires that the funding for such signs be from the secondary road system maintenance allocation for the County; and

WHEREAS, residents of the Ironbound Square community have requested that “Watch for Children” signs be installed on Watford Lane and Magazine Road as illustrated on the attached map titled “Ironbound Square Subdivision ‘Watch for Children’ Signs.”

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby request that the Virginia Department of Transportation install and maintain two “Watch for Children” signs as requested with funds from the County’s secondary road system maintenance allocation.

4. Installation of “Watch for Children” Signs – Raintree Villas Subdivision

**RESOLUTION**

**INSTALLATION OF “WATCH FOR CHILDREN” SIGNS –**

**RAINTREE VILLAS SUBDIVISION**

WHEREAS, Section 33.1-210.2 of the Code of Virginia provides for the installation and maintenance of signs by the Virginia Department of Transportation, alerting motorists that children may be at play nearby, upon request by a local governing body; and

WHEREAS, Section 33.1-210.2 further requires that the funding for such signs be from the secondary road system maintenance allocation for the County; and

WHEREAS, residents of the Raintree Villa community have requested that “Watch for Children” signs be installed on Allyson Lane and Raintree Way as illustrated on the attached map titled “Raintree Villa Subdivision ‘Watch for Children’ Signs.”

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby request that the Virginia Department of Transportation install and maintain two “Watch for Children” signs as requested with funds from the County’s secondary road system maintenance allocation.

5. Courthouse Maintenance Fund Expenditure – Chiller Unit Replacement

**RESOLUTION**

**COURTHOUSE MAINTENANCE FUND EXPENDITURE – CHILLER UNIT REPLACEMENT**

WHEREAS, James City County and the City of Williamsburg operate a joint courthouse and as permitted by § 17.1-281 of the Code of Virginia (1950), as amended, the City Council of the City of Williamsburg and the Board of Supervisors of James City County have each previously authorized the assessment of a courthouse maintenance fee relative to cases emanating from their respective localities; and

WHEREAS, fees collected are held in a joint City/County Courthouse Maintenance Fund by the City of Williamsburg and, as required, are "subject to disbursements by the governing body for the construction, renovation, or maintenance of courthouse or jail and court-related facilities and to defray increases in the cost of heating, cooling, electricity, and ordinary maintenance"; and

WHEREAS, the Courthouse is experiencing an increasing frequency of HVAC repairs, and currently there are leaking refrigerant circuits in the system and inasmuch as the chiller is near the end of its useful life, replacement has been recommended, the probable cost of which is estimated to be between \$175,000 and 199,000; and

WHEREAS, the cost of repairing the existing chiller is estimated to range between \$65,000 and \$87,000, and staff recommends the more cost-effective approach is chiller replacement.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute, on behalf of the County and subject to similar approval by the City Council of the City of Williamsburg, an expenditure of no more than \$200,000 for replacement of the HVAC chiller unit from the current balance of the Courthouse Maintenance Fund.

6. Compensation Board Pay Increase for the Sheriff

**RESOLUTION**

**COMPENSATION BOARD PAY INCREASE FOR THE SHERIFF**

WHEREAS, in February 2009, the Williamsburg-James City County Sheriff's Office received accreditation status from the Virginia Law Enforcement Professional Standards Commission; and

WHEREAS, the State Compensation Board sets the Sheriff's salary based on population and whether or not the office is accredited; and

WHEREAS, the Compensation Board included a pay increase for the Sheriff of \$8,551 in its May 1 approved budget for achieving accredited status; and

WHEREAS, the total cost of the increase including fringe benefits is \$10,530.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation amendment to the County General Fund:

Revenue:

State Compensation Board-Sheriff's Office	<u>\$9,580</u>
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Expenditures:

Sheriff's Office Salary and Fringe Benefit Accounts	\$10,530
City of Williamsburg Share of Sheriff Expense	(\$168)
James City County Contingency	<u>(\$780)</u>
Total	<u>\$9,580</u>

**G. PUBLIC HEARINGS**

Mr. Kennedy recognized Mr. Jack Fraley in attendance on behalf of the Planning Commission.

1. Case No. SUP-0008-2009. CVS at Norge

Ms. Sarah Propst, Planner, stated that Mr. David Todd of The Rebkee Company has applied on behalf of KTP Development, LLC for a Special Use Permit (SUP) to allow the construction of a drive-through pharmacy/retail store (the "CVS") on a property located at 7521 Richmond Road, further identified as James City County Real Estate Tax Map Parcel No. 2321100001C. She stated that the 14.36-acre property, formerly known as the site for the Williamsburg Soap and Candle Factory Company, will be subdivided to accommodate the proposed CVS on a 2.09-acre parcel.

Staff found the project generally consistent with surrounding land uses, the Land Use policies of the Comprehensive Plan, and the Comprehensive Plan Land Use Map designation.

At its meeting on June 3, 2009, the Planning Commission recommended approval of this SUP request by a vote of 6-1.

Staff recommended approval of the application.

Mr. Icenhour asked if the SUP was required for the property because the development was over 10,000 square feet and because the peak traffic generation was over 100 units per hour.

Ms. Propst stated that was correct.

Mr. Icenhour asked for confirmation that if the development was reduced to below 10,000 square feet, the project would be permitted as a by-right use. He asked what level of traffic was required to bypass the requirement for an SUP.

Ms. Propst stated that the traffic engineer would have more detailed information.

Mr. Icenhour asked if the Soap and Candle Factory had additional property near the front of the property.

Ms. Propst stated that the map provided to the Board was supplied by the applicant, who got the information from a realtor.

Mr. McGlennon asked about how this property would fall into compliance with the Norge Community Character Area.

Ms. Propst stated that the development met the Community Character Area requirements.

Mr. McGlennon asked if the structure of the building was a focus for these considerations.

Ms. Propst stated that it was considered.

Mr. McGlennon asked if this property was considered for alternate transportation, including a bus stop.

Ms. Propst stated that the property had a bus stop, but it was being moved to the post office by the Williamsburg Area Transit Authority (WATA).

Mr. Kennedy asked if limited hours of operation were adopted.

Ms. Propst stated that the conditions limit the hours of operation to 7 a.m. - 10 p.m.

Mr. Kennedy asked if any Leadership in Energy and Environmental Design (LEED) design elements have been considered.

Ms. Propst stated that the applicant will address that in his presentation.

Mr. Kennedy asked about the increased impervious cover proposed by the applicant.

Ms. Propst stated that 55 parking spaces were required by the parking ordinance, and the applicant is suggesting 59 parking spaces.

Mr. Kennedy asked about potential additional development in this area and how that would affect traffic in the area.

Mr. Allen Murphy, Planning Directory, stated that any additional development such as a grocery store would require another SUP and another traffic study.

Mr. Kennedy stated that different residential and commercial uses have been discussed for this property, but no master plan was in place. He asked if there was anything that could be considered to unify the development on the parcel.

Mr. Murphy stated that the application before the Board is in relation to a two-acre piece of property as a redevelopment opportunity. He stated that it is integrated with the existing development and meets the criteria for the Community Character Corridor. He stated that staff felt it was consistent with the Comprehensive Plan. He stated that the applicant has been very responsive to staff and members of the

Planning Commission. He stated that this was an opportunity to enhance the existing commercial portion of the development and stated that the existing traffic analysis took into account additional development in the area. He stated that if there was significant additional commercial development in this area, a new SUP with another traffic analysis would come before the Board.

Mr. Kennedy opened the Public Hearing.

1. Mr. Paul Gerhardt, on behalf of the applicant, stated that the project was designed to be in compliance with the Norge area and the community character. He stated that the applicant met with members of the community and that though it was not the purpose of the meeting, the applicant helped address concerns with the Candle Light Restaurant. Mr. Gerhardt noted that this project was part of a larger site and existing development was being integrated with new development. He explained that the applicant planned to implement stormwater management facilities and enhanced landscaping. He stated that bio-retention and rainwater harvest systems will be implemented for irrigation, environmentally friendly paints, LED lighting; and will recycle demolition materials. He noted that approximately 30 employees would be hired for the pharmacy location. He requested approval of the application.

Mr. Icenhour asked about the level of service that could be expected for the Richmond Road-Croaker Road intersection.

Mr. Jeff Feeney, Kimley Horn and Associates Traffic Engineer for the applicant, stated that trips were factored in with the Henderson property and the Stonehouse property being developed without the CVS present in 2015.

Mr. Icenhour asked if the second column of the traffic report summary integrated road improvements from the other developments and the third included the CVS development.

Mr. Feeney stated that was correct.

Mr. Icenhour stated that he understood levels of service grades A through D were acceptable and that those below them were not acceptable.

Mr. Feeney stated that was correct.

Mr. Icenhour asked if levels E and F were inevitable with the improvements.

Mr. Feeney stated that with the CVS development and the planned improvements, there were no F's.

Mr. McGlennon asked about the necessity of the increased impervious cover on the site.

Mr. Gerhardt stated that the impervious cover would increase from 61 percent to 63 percent. He stated that even at that level, it was exceeding requirements and that it would not be worse than the current situation.

Mr. Bill Cain, James City County Environmental Division, stated that Chapter 23 of the Code stated the impervious cover should not go over the prescribed limit unless mitigating factors were present. He stated that stormwater management efforts and site improvements would address the increased impervious cover and mitigate the effects.

Mr. McGlennon asked the difference between the effects of redevelopment versus the existing stormwater runoff.

Mr. Cain stated that the current impervious cover is 47 percent and it will be increased to 63 percent. He stated that with improvements, the stormwater management projects would redirect stormwater to a low-impact design facility on one portion of the property.

Mr. McGlennon asked if this was the dry pond.

Mr. Cain stated the dry pond would be behind the CVS development. He stated that the bio-retention area would treat some of the impervious cover in front of the CVS site. He stated that underground cisterns would be used for irrigation. He stated that positive progress was being made on the property.

Mr. McGlennon stated that he was not sure how much improvement would occur with redevelopment, rather than mitigating the increase to current levels.

Mr. Cain stated that water quality would improve with the stormwater management practices and treatment. He stated that peak rate of post-development and volume could be decreased.

Mr. Murphy stated that one of the SUP conditions required the applicant to mitigate stormwater runoff to 60 percent.

As no one else wished to speak to this matter, Mr. Kennedy closed the Public Hearing.

Mr. Icenhour asked Mr. Larry Foster, General Manager of JCSA, about the current private pump station at the site.

Mr. Foster stated that the pump station agreement is being revised to protect the new users of the pump station. He stated that it is a privately owned pump station, and will continue to be a privately owned pump station, but that it would serve multiple homes. He stated that JCSA asked for an agreement between the applicant, the new owner, and the existing owner to allow for sewer to be available to the new facility. He stated that the request for the provision was to protect the new property owner.

Mr. Icenhour asked if this had to do with the difference in pipe size.

Mr. Foster stated that he understood that there was no other access to sewer except through this pump station at this time. He stated that as the property is developed, additional opportunities may be available.

Mr. Goodson made a motion to adopt the resolution. He noted that this was an SUP for a property that was already zoned for business. He stated that this was done to address public impacts and to make sure they are mitigated. He stated that he felt these have been done, including traffic improvements and stormwater management.

Mr. McGlennon stated that several redevelopment proposals will likely come forward in the future, and that he hoped to see these facilities improve the development area. He stated that the building design was good, but there was not currently a clear sense of what the final development would be. He stated that the final impervious cover and final development potential were still unknown. He stated that redevelopment was a good opportunity.

Mr. Icenhour stated that there were many drug stores and that he was not sure the community was underserved in this area at this time. He said that the facility was a standalone store when the goal was to create a walkable community with multiple destinations in one area. He stated that he was concerned about the



increase of impervious cover to 63 percent. He commented on water quality in relation to impervious cover. He stated that he would like to see it come down to 60 percent. He commented on the piecemeal development and the lack of an overall master plan for the area. He commented on traffic levels of service. He stated that he could not support the application at this time.

Mr. Kennedy stated that he understood this area was an area in need of redevelopment. He stated that this property was once a family-owned manufacturing facility that was being replaced by corporate retail. He stated that there was a great deal of potential for the property including interconnectivity and intensive potential uses in the area. He stated that drug stores were akin to convenience stores and that he did not believe that this was the profile for a community character area. He stated that he supported the project because it met the criteria. He stated that projects on the site would be scrutinized and that he wished to see an overall conceptual master plan for the area.

On a roll call vote, the vote was: AYE: Goodson, Jones, Kennedy (3). NAY: McGlennon, Icenhour, (2).

## RESOLUTION

### CASE NO. SUP-0008-2009. CVS AT NORGE

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a Special Use Permit (SUP) process; and

WHEREAS, Mr. David Todd has applied on behalf of The Rebkee Company for an SUP to allow for the construction of a drive-through pharmacy/retail store on an approximately 2.09-acre parcel of land zoned M-1, Limited Business/Industrial District; and

WHEREAS, the proposed development is shown on a plan prepared by Kimley-Horn and Associates, Inc. dated May 6, 2009, (the "Master Plan") and entitled "JCC-SUP-0008-2009"; and

WHEREAS, the property is located at 7521 Richmond Road and can be further identified as James City County Real Estate Tax Map Parcel No. 2321100001C (the "Property"); and

WHEREAS, the Planning Commission, following its public hearing on June 3, 2009, voted 6-1 to recommend approval of this application; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this use to be consistent with the 2003 Comprehensive Plan Use Map designation for this Property.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-0008-2009, as described herein with the following conditions:

1. **Master Plan:** This SUP (the "SUP") shall be valid for the construction of an approximately 13,225 square foot, 1-story-high drive-through pharmacy/retail store building (the "CVS" store) on the property located at 7521 Richmond Road and further identified as James City County Real Estate Tax Map Parcel No. 2321100001C (the "Property"). Development and use of the Property shall be generally in accordance with and bound by the Master Plan entitled "JCC-SUP-0008-2009", prepared by Kimley-Horn

and Associates, date stamped May 6, 2009 (the "Master Plan") with such minor changes as the Development Review Committee determines does not change the basic concept or character of the development.

2. **Architectural Review:** Prior to final site plan approval, the Planning Director, or his designee, shall review and approve the final building elevations and architectural design for the CVS. Such building shall be reasonably consistent, as determined by the Planning Director or his designee, with the architectural elevations titled "CVS James City County, VA" submitted with this SUP application and prepared by The Rebkee Company, date stamped June 10, 2009.
3. **Free-Standing Sign:** Prior to final site plan approval, the Planning Director, or his designee, shall review and approve the design and location of the ground-mounted sign for the Property for consistency with the Norge Community Character Area, as described in the James City County Comprehensive Plan. The sign base shall be made of brick and the colors shall be similar to the CVS building.
4. **Dumpsters/HVAC Units:** All heating and cooling units visible from any public street or adjoining property shall be screened from view with landscaping or fencing. Dumpsters shall be screened from view by a brick enclosure (exclusive of doors). All screening devices must be approved by the Planning Director, or his designee, prior to final site plan approval.
5. **Water Conservation:** The Owner shall be responsible for developing and enforcing water conservation standards to be submitted to and approved by the James City Service Authority (JCSA) prior to final site plan approval. The standards may include, but shall not be limited to such water conservation measures as limitations on the installation and use of irrigations systems and irrigations wells, the use of approved landscaping materials including the use of drought tolerant plants, warm season grasses, and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources.
6. **Irrigation:** In the design phase, the developer and designing engineer shall take into consideration the design of stormwater systems, including rain tanks, which can be used to collect stormwater for irrigation use for the entire site. Only surface water collected from surface water impoundments may be used for irrigating the site.
7. **Private Pump Station Maintenance Agreement:** A private pump station maintenance agreement shall be submitted to and approved by the JCSA prior to final site plan approval. The agreement shall address the maintenance of the proposed pump station and guarantee access to all parcels served by the pump station.
8. **Best Management Practice (BMP) Discharge:** Overflows from any proposed BMP(s) shall discharge to an adequate channel in accordance with State Minimum Standard No. 19 and shall not be conveyed through any of the adjacent parcels without an offsite drainage easement. All associated easements shall be of an appropriate width to permit access for maintenance of the channel and any associated appurtenances such as outlet protection, flow control devices, channel linings, etcetera. Said easement shall be in place prior to the issuance of a Land Disturbing Permit.

9. **Landscape Plan:** Prior to final site plan approval, the Planning Director, or his designee, shall review and approve a landscape plan for this project. The landscape plan shall meet all applicable zoning ordinance requirements and shall include at a minimum: (i) enhanced landscaping within the northern 50-foot landscape buffer along Richmond Road, (ii) enhanced landscaping within the western 30-foot landscape buffer along Croaker Road, and (iii) enhanced landscaping along the southern property line. Enhanced landscaping is hereby defined as 125 percent of the size requirements of the James City County Landscape Ordinance.
  
10. **Impervious Coverage:** Prior to final site plan approval, the applicant must demonstrate compliance with the provisions of Section 23-9(b)(1)(b) of the County's Chesapeake Bay Preservation Ordinance. Demonstration of equivalent water quality will be through compliance with guidelines established by the Environmental Director.
  
11. **Exterior Lighting:** All new exterior light fixtures, including building lighting, on the Property shall have recessed fixtures with no lens, bulb, or globe extending below the casing. In addition, a lighting plan shall be submitted to and approved by the Planning Director, or his designee, which indicates no glare outside the property lines. All light poles shall not exceed 20 feet in height unless otherwise approved by the Planning Director, or his designee, prior to final site plan approval. "Glare" shall be defined as more than 0.1 foot-candle at the property line or any direct view of the lighting source from the adjoining properties.
  
12. **Internal Traffic Signage Plan:** The applicant shall include, along with the materials submitted as part of the site plan review process for this project, an internal signage plan indicating the location of internal traffic signs and the orientation of vehicular flow within the Property. The internal signage plan shall be reviewed and approved by the Planning Director, or his designee, concurrently with the site plan submission for this project.
  
13. **Roadway Improvements:** Prior to issuance of any Certificate of Occupancy (CO) for the Property, the road improvements listed below shall be provided at the following intersections:
  - a. At the intersection of Richmond Road (U.S. Route 60) and Croaker Road (State Route 607):
    - (i) The existing eastbound Richmond Road left-turn lane shall be extended to provide a 200 foot full width lane with a 200-foot taper; and
    - (ii) A right-turn lane on Richmond Road eastbound with a minimum of 200-foot taper must be provided.
  
  - b. At the intersection of Richmond Road (U.S. Route 60) and the Candle Factory Center Entrance:
    - (i) A 200-foot, right-turn lane with a 200-foot taper on eastbound Richmond Road shall be provided at this entrance.

14. **Shared Access Easement:** Prior to issuance of any CO for the Property, the applicant shall demonstrate to the satisfaction of the County Attorney that shared access easements have been obtained and recorded, as applicable, allowing vehicular access to the Property from the existing entrances on Richmond Road (U.S. Route 60). This includes those entrances currently serving the parcel located at 7521 Richmond Road (U.S. Route 60), and the existing entrance located across from Croaker Road (State Route 607).
15. **Bike Lane:** Prior to issuance of any CO for the Property, a Virginia Department of Transportation (VDOT) standard shoulder bike lane along the front of the Property adjacent to Richmond Road (U.S. Route 60) shall be provided. This bike lane shall be depicted in the site plan for the Property.
16. **Shared Use Path:** Should the construction of the proposed CVS building start in the property prior to construction of any building at adjacent parcels located at 7551 and 7567 Richmond Road, The Rebkee Company, developers of the proposed CVS store shall provide and construct along the length of the northwestern property line a portion of the eight-foot-wide, concrete or asphalt shared use path referenced by the Master Plan entitled "Master Plan for Rezoning of Candle Factory Property for Candle Development, LLC", prepared by AES Consulting Engineers and date stamped January 29, 2009. Construction shall be hereby defined as obtaining permits for building construction and installation of footings and foundations.
17. **Hours of Operation:** The daily hours of operation for both the retail store and drive-through shall be limited to the hours of 7:00 a.m. to 10:00 p.m.
18. **Commencement of Use:** Use of the Property as described in this SUP shall commence within 36 months from the date of approval of this SUP or this permit shall be void. Use shall be defined as obtaining business license(s) for permitted uses, opening for business with regular business hours, and/or obtaining permits for building construction and installation of footings and foundations.
19. **Severance Clause:** This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

2. Case No. S-0012-2009. Chanco's Grant Vacation of Recreation Area Designation

Ms. Christy Parrish, Acting Zoning Administrator, stated that Mr. and Mrs. Coronado are requesting to vacate and amend the "Recreation Area" designation, as shown on subdivision plat entitled "CHANCO'S GRANT SECTION II SUBDIVISION PLAT," dated April 4, 1987, recorded in Plat Book 45, Pages 58-59, and prepared by Rickmond Engineering, Inc. on May 29, 1987. The property owners request the designation be changed to "Lot 35-A" as shown on a new plat entitled "Plat To Change Parcel Designation From "Recreation Area" to "Lot 35-A" Chanco's Grant, Section II, Standing In The Names of Gualberto T., Joanna M., and Jennifer Coronado", prepared by Land Tech Resources, Inc. and dated March 10, 2009. This request is made for the purpose of constructing a single-family dwelling on the property.

This parcel was platted as part of Chanco's Grant Section II and designated as a "Recreation Area" in 1987. The recreation area met the Subdivision Ordinance standards and was approved by the James City County Subdivision Review Committee. The developer of Chanco's Grant Section II (DCI Homes) retained

ownership of this area until 2004, at which time the current owners purchased this area at public auction. The property was never developed as a recreation area and is currently wooded and undisturbed.

The property is located in the R-8, Rural Residential, District. The Chanco's Grant Subdivision is nonconforming due to current R-8 lot size requirements of three acres. At the time of subdivision, the property was zoned A-2 and the minimum lot size requirement was 17,500 square feet. It has been determined by the Zoning Administrator that the proposed use of the lot is permitted in the current zoning district and this request does not affect the nonconforming lot size status.

A Declaration of Covenants and Restrictions for Chanco's Grant Section II were recorded on May 29, 1987 (the "Declaration"). Article III, Section 2 of the Declaration states that the common area was to be transferred to an Association and "every Member shall have a right of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot or Unit." It is staff's understanding that a Homeowners Association for Chanco's Grant was never established and that the Recreation Area was never transferred to a Homeowners Association. Article VI, Section 2(a) of the Declaration states that "All Lots or Units within the Property shall be developed and maintained in accordance with the approved subdivision and site plan." Approval of the vacation of the "Recreation Area" designation would alter the recorded plat so that the "Recreation Area" would instead be a numbered lot labeled "Lot 35-A."

Staff finds the proposal consistent with the Comprehensive Plan and recommends that the Board of Supervisors adopt the attached ordinance vacating the recreational area to allow for the construction of one housing unit. Due to the private ownership and absence of a Homeowners Association, the realistic possibility of this lot being developed as a recreation area is small. Staff does not believe that approval of this request will set a negative precedent and believes that the proposed use is consistent with surrounding properties.

Staff recommended adoption of the ordinance.

Mr. Goodson asked if, when the plat was recorded, the ordinance required a recreation area in the subdivision to be platted or to submit a fee to the County's Parks and Recreation department.

Ms. Parrish stated that is correct.

Mr. Goodson asked why the recreation area was not built.

Ms. Parrish stated that at the time, there was no requirement for the developer to put forth a homeowners association prior to the recordation of the plat as the County does now. She stated that the developer kept control of the property and that there was no homeowners association to which the developer would turn over the land.

Mr. Goodson stated in 1987 the developer would have had to pay a fee if the recreation area was not platted in the subdivision.

Mr. Rogers stated that since Chanco's Grant was built under the subdivision process rather than a rezoning, the developer would not have to pay a fee. He said that the developer would only need to show recreational amenities.

Mr. McGlennon asked how the property was sold.

Ms. Parrish stated that the property was sold at public auction to compensate for unpaid taxes.

Mr. McGlennon asked for confirmation that the County was the entity that sold the property.

Ms. Parrish stated that was correct.

Ms. Jones stated that the Board should have been notified of the nature of the property prior to its sale.

Mr. Rogers stated that he understood that the transfer of property was from DCI Homes to Mr. and Mrs. Coronado. He stated that he does not know there was any tax sale for this property.

Mr. McGlennon stated that based on the staff report, he understood all homeowners in Chanco's Grant have a share in the property.

Mr. Goodson stated that the taxpayers had a share in the property because the benefits of the recreation area were not fulfilled.

Mr. Rogers stated that in other neighborhoods at this time, a tax exemption could be applied to recreation properties even if there was no mandatory homeowners association. He stated that in this case there was no homeowners association to apply for the exemption, but the Board could have exempted the property.

Ms. Jones asked if the current property owners were aware of the zoning and intent of the parcel.

Mr. Rogers stated that he could not speak to that, but that this parcel has been brought to staff's attention by different purchasers. He stated that it is documented in the Courthouse and that there was constructive notice to the property owners about the lot and its status with the County.

Mr. Goodson asked if the taxes were paid in full.

Ms. Parrish stated that was correct.

Mr. Icenhour stated that the owner of the property platted and designated a parcel for recreation and gave each homeowner in the subdivision partial ownership of the property. He stated that the rights to the property would not go away if there was no homeowners association. He stated that the person who bought the property should have known the limitations of the property. He stated that if the property owners were yielding their rights to the property, he would not have a problem with the application. He said that at this time if the case were approved, the Board would be taking property rights away from the members of the community. He stated his concern for this case and that he did not understand how the sale went through.

Mr. Rogers stated that the ordinance has been amended to prevent similar situations in the future by requiring homeowners associations. He stated that when this was being subdivided, the Subdivision Ordinance was being used as a consumer protection provision. He stated that what should have happened was that the developer would have a homeowners association to which it would turn over the property and the homeowner's would maintain it. He stated that in this case, that did not happen due to the absence of the homeowners association. He stated that was the root of the problem.

Ms. Jones stated that she had spoken to several residents of Chanco's Grant who expressed concern over this property. She stated her concern about long-term community goals for open space and recreation areas for new developments. She stated that the property owners she had been in contact with wished for the property to remain as a recreation area.

Mr. Goodson stated that he believed that at some point, the property transferred over to a builder prior to being sold to the current owner.

Ms. Parrish stated that she had a listing of a transfer between James Windsor, a special commissioner, and DCI Homes in 2004.

Mr. Goodson asked if this was the last transfer.

Ms. Parrish stated that was correct.

Mr. Goodson stated that he saw the property was sold for \$30,000 at that time.

Ms. Parrish stated that she believed that the current owner paid DCI Homes \$31,000 for the parcel.

Mr. Rogers stated that at the time, Mr. Windsor represented the County on these types of foreclosure sales, so there may have been a tax sale by the County.

Ms. Parrish stated that was her understanding of the nature of the sale.

Mr. McGlennon asked for confirmation that it was sold as a tax sale.

Mr. Rogers stated that if Mr. Windsor was the person who conducted the sale, it was more than likely a tax sale.

Ms. Jones asked if in similar instances would there be steps the neighborhood could take to remedy the situation. She asked if this would require the neighborhood to form a homeowners association.

Mr. Rogers stated that a non-mandatory homeowners association could be formed and that the property could be acquired from the property owner, the property owner could get an agreement between the owners to have the recreation designation removed, or this could be done by ordinance by the Board of Supervisors.

Ms. Jones asked if the assessed value of the property would change as a residential lot versus a designated recreation area lot.

Mr. Rogers stated that it should be, as a recreation lot is usually valued at a very low amount and in many cases when a homeowners association was present, the recreation area may be tax exempt. He stated that this was possible, but that it has not been done in this case.

Mr. Goodson stated that it has been assessed similarly to residential lots.

Ms. Parrish stated that the Real Estate Assessments Office confirmed that the property is assessed as a single-family lot.

Mr. Goodson stated that the property has been assessed as if it was buildable, but that it was not.

Ms. Jones stated that the purchaser of the property paid for the property as if it were a single-family residential lot and that if the neighborhood wanted to transfer the property back to a recreation area, the value was higher than the assessment should be.

Mr. McGlennon stated that the neighborhood did not have any financial obligation to purchase the property.

Mr. Kennedy opened the Public Hearing.

1. Mr. Mark DellaPosta, on behalf of the applicants, stated that his clients purchased the property with the intent of building on the parcel. He stated that there was no homeowners association and the property was sold by the County to the current owners. He stated that he had been in contact with the neighbors to discuss the matter.

Ms. Jones asked if the property owners were aware of the zoning when it was purchased.

Mr. DellaPosta stated that they were aware, but that they were not aware of the process required to build on the lot. He stated that his clients were willing to take on the process because they wanted to purchase and build on the lot.

Ms. Jones asked if a neighborhood meeting was held beyond speaking with neighbors of the parcel.

Mr. DellaPosta stated that he did not do that, but did speak with adjacent property owners at the suggestion of the County Attorney's office.

2. Mr. Todd Cox, 2908 Richard Grove South, spoke on behalf of the property owners, Ward and Trudy Cox, and stated opposition to the parcel becoming a residential site. He stated that the property should be developed as originally intended as a recreation area for the neighborhood to use. He commented that none of his neighbors were in favor of the residential development and that the general feeling was to use the property as it was intended. He stated that there was never any community input on this project. He requested denial of the project.

3. Ms. Mary Pugh, 2908 Francis Chapman West, stated her opposition to the project and stated that she wished to preserve the viewshed of the lot. She stated that she did not wish to have a homeowners association in the subdivision. She stated that property owners in the subdivision were not compensated for the sale and that they should not have to buy it back to prevent the construction of a house on the lot.

4. Ms. Barbara Correll, 2908 Richard Buck North, stated that she was never made aware of what was necessary to create a recreation area. She stated that several neighbors had contacted her in opposition to a potential homeowners association, but that she felt another kind of association may be a better choice. She stated that given the opportunity, an organization could be established to allow for a recreation area.

5. Mr. Mark Goodell, 2900 Richard Pace South, stated concern that the neighbors or volunteers would need to invest in the property if it was turned into a recreation area for insurance and other needs. He stated that the residential lot would increase tax revenue for the County. He stated his support of turning the property into a residential parcel.

6. Mr. Bence Nakowsky, applicant, stated that he was unaware of the background and wanted to build an environmentally friendly home on the parcel. He stated that he felt that it would enhance property values in the area.

As no one else wished to speak to this matter, Mr. Kennedy closed the Public Hearing.



Mr. Icenhour asked how much the sale was for and what happened to the proceeds.

Mr. Rogers stated that the parcel was sold for \$31,000, but that he was not aware where the proceeds of the sale went.

Mr. Icenhour stated that he believed that part of the money went to pay taxes, but that some likely went to the original owner. He asked how to restore to the members of the community what was rightfully due to them.

Mr. Rogers stated that the County did not create this problem. He stated that there should have been some entity to develop the property accordingly. He stated that the Treasurer is obligated to tax each parcel of the County and that after many years the back taxes required her to take action and sell the property. He stated that the designation of recreation was a restriction on the lot itself. He stated that this created an expectation, but that there was no ownership interest in the property.

Mr. Goodson stated that the lot was called "Recreation Area" rather than assigned a lot number, and it was sold for taxes levied. He stated that if it had come to the Board, it would likely have been vacated and dedicated to the neighborhood.

Mr. McGlennon stated that he believed the property owners in Chanco's Grant had more than an expectation as noted in the Declarations, which indicated that there was an actual claim to the land.

Mr. Rogers stated that an additional step needed to be taken.

Mr. Goodson stated that the County sold the lot.

Ms. Jones stated that if the community had been aware, they would have taken an active role.

Mr. Icenhour stated that the residents, who were the victims in this situation, were being held responsible for purchasing the property.

Mr. Kennedy requested a motion for deferral of the application. He requested additional information from the Treasurer about where the money went. He recommended a neighborhood meeting for communication purposes.

Mr. Rogers noted that the public hearing has been closed. He stated that when the case came back before the Board, the case should be readvertised and should likely be pushed back until the fall to allow for community meetings and additional research.

Mr. McGlennon made a motion to defer action on this application until the fall.

On a roll call vote, the vote was: AYE: Goodson, Jones, McGlennon, Icenhour, Kennedy (5). NAY: (0).

3. Ordinance to Amend Chapter 24, Zoning, Section 24-650, to Eliminate the Term "Approaching Confiscation" from the Requirements for Granting Variances

Mr. Nicholas Bolash, Law Intern, stated that the 2009 Session of the Virginia General Assembly approved an amendment to Section 15.2-2309 of the Code of Virginia. This section pertains to the powers and duties of local boards of zoning appeals to grant variances. Currently, the Code of the County of James City

("County Code") allows the Board of Zoning Appeals to grant variances to properties only when the applicant can show a "clearly demonstrable hardship approaching confiscation."

At its meeting on July 1, 2009, following the required public hearing, the Planning Commission approved the proposed amendment to the Zoning Ordinance to eliminate the words "approaching confiscation" to conform with the recent change in the Code of Virginia.

Staff recommended adoption of the ordinance.

Mr. McGlennon stated this item was bringing County Code into compliance with the State Code.

Mr. Bolash stated that was correct.

Mr. Kennedy opened the Public Hearing.

As no one wished to speak to this matter, Mr. Kennedy closed the Public Hearing.

Mr. Goodson made a motion to adopt the ordinance amendment.

(0). On a roll call vote, the vote was: AYE: Goodson, Jones, McGlennon, Icenhour, Kennedy (5). NAY:

4. Ordinance to Amend Chapter 24, Zoning, to Replace the Term "Mentally Retarded" with the Term "Intellectually Disabled"

Mr. Nicholas Bolash, Law Intern, stated that during the 2008 Session of the Virginia General Assembly, the Legislature approved HB 760, which replaced the terms "mentally retarded" and "mental retardation" in the Code of Virginia with the more sensitive term "intellectually disabled" and "intellectual disability."

At its meeting on July 1, 2009, following the required public hearing, the Planning Commission unanimously approved the proposed amendment to the County's Zoning Ordinance to conform to the Code of Virginia.

Staff recommended adoption of the ordinance.

Mr. Kennedy opened the Public Hearing.

As no one wished to speak to this matter, Mr. Kennedy closed the Public Hearing.

Mr. McGlennon made a motion to adopt the ordinance amendment.

(0). On a roll call vote, the vote was: AYE: Goodson, Jones, McGlennon, Icenhour, Kennedy (5). NAY:

**H. PUBLIC COMMENT - None**

**I. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Wanner stated that Parks and Recreation Director Ned Cheely had announced his retirement from local government service after 19 years with the County and 35 years with local government. He stated that a press release has been provided to the media which highlighted Mr. Cheely's accomplishments with the Division of Parks and Recreation. Mr. Wanner recommended that the Board adjourn to 4 p.m. on July 28, 2009, for a Joint Work Session with the Planning Commission on the Comprehensive Plan.

**J. BOARD REQUESTS AND DIRECTIVES**

Mr. Icenhour noted a recent meeting on the State Water Commission and stated that he had information available for all the Board members. He commented on problems that may continue after the State Water Plan was adopted.

Mr. McGlennon commented on discussions about an ordinance regarding a no-wake zone if presented by property owners.

Ms. Jones stated her support.

Mr. Goodson stated that he felt that the petitioner had to be a property owner who was on the waterway.

Mr. McGlennon stated that the intention was to allow for property owners to post a no-wake zone for their own properties.

Mr. Rogers stated that under the current proposal, the property owner could apply and it would come before the Board.

Mr. Goodson stated that it was his intention.

Mr. McGlennon stated that it would come forward as a public hearing for the Boards consideration.

Mr. McGlennon stated on July 11, 2009, that he toured the Emergency Operations Center and Emergency Services. He thanked staff for a good event.

Ms. Jones stated that she also attended the open house at the Emergency Operations Center and thanked staff.

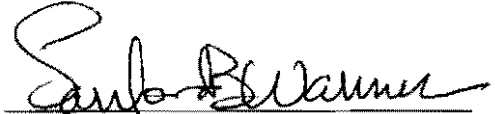
Mr. Kennedy noted that he attended a recent Green Building Council meeting.

**K. ADJOURNMENT** to 4 p.m. on July 28, 2009.

Mr. Goodson made a motion to adjourn.

On a roll call vote, the vote was: AYE: Goodson, Jones, McGlennon, Icenhour, Kennedy (5). NAY:  
(0).

At 9:07 p.m., Mr. Kennedy adjourned the Board to 4 p.m. on July 28, 2009.



Sanford B. Wanner  
Clerk to the Board

071409bos\_min

ADOPTED

JUL 14 2009

ORDINANCE NO. 31A-243

BOARD OF SUPERVISORS  
JAMES CITY COUNTY  
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF JAMES CITY COUNTY, VIRGINIA, BY AMENDING ARTICLE VIII, APPEALS, DIVISION 2, BOARD OF ZONING APPEALS, SECTION 24-650, POWERS AND DUTIES; GRANTING OF VARIANCES.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, is hereby amended and reordained by amending Section 24-650, Powers and duties; granting of variances.

Chapter 24. Zoning

Article VIII. Appeals

Division 2. Board of Zoning Appeals

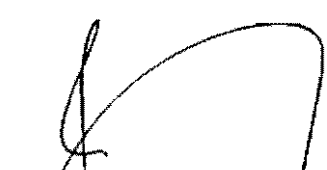
Sec. 24-650. Powers and duties; granting of variances.

The board of zoning appeals shall have the following powers and duties:

- (2) To authorize upon appeal or original application in specific cases such variance from the terms of this chapter as will not be contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship; provided, that the spirit of this chapter shall be observed and substantial justice done, as follows:
  - a. When a property owner can show that his property was acquired in good faith and where, by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of this chapter, or where by reason of exceptional

topographic conditions or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjacent thereto, the strict application of the terms of this chapter would effectively prohibit or unreasonably restrict the use of the property, or where the board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship ~~approaching~~ ~~confiscation~~, as distinguished from a special privilege or convenience sought by the applicant; provided, that all variances shall be in harmony with the intended spirit and purpose of this chapter.

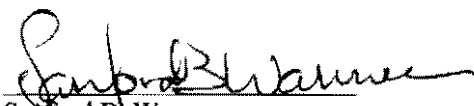
- b. No such variance shall be authorized by the board unless it finds:
  - 1. That the strict application of this chapter would produce undue hardship;
  - 2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
  - 3. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
- c. No such variance shall be authorized except after notice and hearing as required by section 15.2-2204 of the Code of Virginia.
- d. No variance shall be authorized unless the board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this chapter.
- e. In authorizing a variance the board may impose such conditions regarding the location, character and other features of the proposed structure for use as it may deem necessary in the public interest and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with.



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James G. Kennedy  
Chairman, Board of Supervisors

ATTEST:



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Sanford B. Wanner  
Clerk to the Board

SUPERVISOR	VOTE
GOODSON	AYE
JONES	AYE
MCLENNON	AYE
ICENHOUR	AYE
KENNEDY	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 14th day of July, 2009.

Sec24-650\_ord

ADOPTED

JUL 14 2009

ORDINANCE NO. 31A-242

BOARD OF SUPERVISORS  
JAMES CITY COUNTY

VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, IN GENERAL, SECTION 24-2, DEFINITIONS; AND ARTICLE V, DISTRICTS, DIVISION 2, GENERAL AGRICULTURAL DISTRICT, A-1, SECTION 24-213, USES PERMITTED BY SPECIAL USE PERMIT ONLY; DIVISION 8, RURAL RESIDENTIAL DISTRICT, R-8, SECTION 24-349, USES PERMITTED BY SPECIAL USE PERMIT ONLY; DIVISION 15, MIXED USE, MU, SECTION 24-521, PERMITTED USES.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, is hereby amended and reordained by amending, Section 24-2, Definitions; Section 24-213, Uses permitted by special use permit only; Section 24-349, Uses permitted by special use permit only; and Section 24-521, Permitted uses.

Chapter 24. Zoning

Article I. In General

**Sec. 24-2. Definitions.**

For the purposes of this chapter, the following words and phrases shall have the meaning respectively ascribed to them by this section:

*Home care facility.* A residential facility for the care of four or more persons who require the protection of a supervised group setting or nine or more persons who are mentally ill, ~~mentally retarded~~ *intellectually disabled*, or developmentally disabled.



Article V. Districts.

Division 2. General Agricultural District, A-1

**Sec. 24-213. Uses permitted by special use permit only.**

In the General Agricultural District, A-1, buildings to be erected or land to be used for the following uses shall be permitted only after the issuance of a special use permit approved by the board of supervisors in accordance with the procedures, guides and standards of sections 24-9 and 24-10 and such other guides and standards as may be contained in this chapter.

Family care homes, foster homes, or group homes serving physically handicapped, mentally ill, ~~mentally retarded~~ *intellectually disabled*, or other developmentally disabled persons, for more than five such persons.

Division 8. Rural Residential District, R-8

**Sec. 24-349. Uses permitted by special use permit only.**

In the Rural Residential District, R-8, structures to be erected or land to be used for the following uses shall be permitted only after the issuance of a special use permit approved by the board of supervisors in accordance with the procedures, guides and standards of sections 24-9 and 24-10 and such other guides and standards as may be contained in this chapter:

Family care homes, foster homes, or group homes serving physically handicapped, mentally ill, ~~mentally retarded~~ *intellectually disabled*, or other developmentally disabled persons for more than five such persons.

Division 15. Mixed Use, MU

**Sec. 24-521. Permitted uses.**

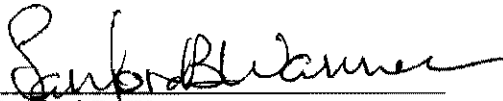
In the mixed use districts, all structures to be erected or land to be used shall be for one or more of the following uses:

(2) *Nonresidential uses:*

Family care homes, foster homes or group homes serving physically handicapped, mentally ill, ~~mentally retarded~~ *intellectually disabled* or other developmentally disabled persons, for more than five persons.

James G. Kennedy  
Chairman, Board of Supervisors

ATTEST:

  
Sanford B. Wanner  
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
GOODSON	AYE
JONES	AYE
MCGLENNON	AYE
ICENHOUR	AYE
KENNEDY	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 14th day of July, 2009.