

MINUTES
JAMES CITY COUNTY BOARD OF ZONING APPEALS
REGULAR MEETING
James City County Government Center, Building F Board Room
101 Mounts Bay Road, Williamsburg VA 23185
June 2, 2022
5:00 PM

A. CALL TO ORDER

Mr. Mark Jakobowski called the meeting to order.

B. ROLL CALL

Ms. Christy Parrish called the roll:

Present:

Mr. Mark Jakobowski
Mr. William Geib
Mr. David Otey, Jr.
Mr. Andrew Dean

Absent:

Mr. Ron Campana, Jr.

Staff Present:

Ms. Christy Parrish, Zoning Administrator
Ms. Liz Parman, Deputy County Attorney
Mr. Josh Everard, Assistant County Attorney
Mr. Paul Holt, Director of Community Development
Ms. Beth Klapper, Community Development Assistant

C. OLD BUSINESS

None.

D. NEW BUSINESS

Mr. Jakobowski presented the mission statement of the Board of Zoning Appeals (BZA) for those present in the audience. He stated that the BZA was a five-member Board consisting of James City County residents. It has the power to hear and decide appeals to decisions of the Zoning Administrator and applications for special exceptions, such as yard and setback variances. A favorable vote of three members of the Board was always required to pass a motion. Variances are not granted unless the strict application of the Ordinance would unreasonably restrict the utilization of the property, the need for a variance was not shared generally by other properties, and the variance was not contrary to the purpose of the Ordinance. Variances are not granted as a special privilege or convenience. If the variance was requested because the physical condition of the property or improvements thereon restrict the utilization of the property, the following additional requirements must be met: (i) the property must have been acquired in good faith and any hardship cannot be created by the applicant; (ii) the granting of the variance cannot be substantially detrimental to nearby properties; and (iii) the condition or situation cannot be so general or recurring as to make the formulation of an amendment to the Ordinance reasonably practicable to address the condition or situation. If the Board does authorize a variance, it may impose conditions regarding the location, character, or any other features it may deem necessary in the public interest.

1. BZA-22-0002. 6910 Richmond Road - Zoning Administrator's Determination Appeal

Ms. Parrish, Zoning Administrator, stated that Mr. Vernon Geddy, III, Geddy Harris, Franck & Hickman, LLP, representing Action Park of Williamsburg, VA., Inc., was appealing the Zoning Administrator's determination on February 23, 2022, that a "Conceptual Plan Supplied by the Applicant" at the time of the rezoning of the property and issuance of a Special Use Permit (SUP) for Go Karts Plus constituted a binding master plan.

Ms. Parrish stated that this appeal was in accordance with Section 15.2-2311 of the Code of Virginia.

Ms. Parrish stated that Go Karts Plus was located on two separate lots prior to 2011. She further stated that the northern parcel received a SUP in 1989 to allow for an outdoor center of amusement.

Ms. Parrish stated that the southern parcel, originally zoned A-1, General Agricultural was rezoned in 1995 and received an SUP in 1995 to allow for an outdoor center of amusement. She stated that in 1996, the southern parcel received an SUP to extend the commencement of construction associated with Case No. SUP-0034-1994 by one year and removed two conditions that were previously satisfied.

Ms. Parrish noted that while the property line between the southern and northern parcels was extinguished in 2011, the applicable legislative approvals and conditions remain.

Ms. Parrish stated that the Planning Division received a conceptual plan application in 2019 for a proposed elevated go kart track to be constructed on the southern portion of the property. She stated that Section 24-23 of the Zoning Ordinance stated that final development plans may be approved after approval of a master plan by the Board of Supervisors (BOS). All final development plans shall be consistent with the master plan but may deviate from the master plan if approved by the Director of Planning. She stated that after review of the referenced conceptual plan, the Planning Director determined that the conceptual plan was inconsistent with the master plan considered by the BOS, thus, necessitating either a formal amendment request per Section 24-13 of the Ordinance, or an appeal of the Planning Director's consistency determination to the Planning Commission.

Ms. Parrish stated that Section 24-5 of the James City County Code requires the Zoning Administrator to administer and enforce Chapter 24 - Zoning of the James City County Code.

Ms. Parrish stated that a Zoning Administrator's Determination was requested on whether the property was subject to a master plan. She stated that upon reviewing the records for the SUP and rezoning for this portion of the property, a plan entitled "Conceptual Plan Supplied by the Applicant" was identified. She stated that the Plan showed the approximate location of the attractions for the proposed facility and was reflected in the staff report and legislative materials provided to the Planning Commission and BOS.

Ms. Parrish stated that Section 24-9 of the James City County Zoning Ordinance states that "in considering an application for a special use permit in those districts allowing them, the planning commission and the board of supervisors shall give due regard to the James City County Comprehensive Plan, the nature and condition of adjacent uses and structures, and the probable effect upon them of the proposed special use permit. They shall also take into account the special characteristics, design, location, construction, methods and hours of operation, effect on traffic conditions, or any other aspects of the particular use or structure that may be proposed by the applicant."

Ms. Parrish stated that it was concluded that as part of the legislative consideration and approval of Case Nos. SUP-0034-1994 and SUP-0008-1996, the applicant committed to the scope of the proposed development as represented by the Plan submitted as part of Case No. Z-0010-1994. She further stated that in addition, the SUP conditions were drafted in consideration of that proposed development and that the Plan serves as the "master plan" for the current specially permitted use. She stated that the Planning Commission and BOS could not appropriately condition a use different in scope from the development proposed during the legislative process. She stated that after consulting with the Director of Community Development and Planning, and the County Attorney's Office, she determined that the Plan that was submitted and reflected in the staff report and legislative materials for the Property served as the master plan for the current specially permitted use. She stated that the proposed elevated go kart track must be found consistent by the Planning Director as prescribed in Section 24-23 of the Ordinance.

Ms. Parrish stated that staff recommended that the BZA uphold the Zoning Administrator's interpretation regarding this matter.

Mr. Jakobowski opened the Public Hearing.

Mr. Vernon Geddy III, Geddy, Harris, Franck & Hickman, LLP, 1177 Jamestown Road, representing Go Karts Plus, stated that the drawing was conceptual in nature and never intended to be a master plan. Mr. Geddy further stated that a plan can only become a binding master plan in three ways:

1. If the Zoning Ordinance requires a master plan.
2. If it is proffered by the applicant.
3. If a Special Use Permit condition requires a master plan.

Mr. Geddy stated that none of the criteria was met to make the drawing a binding master plan. He stated that submitting the conceptual plan with the rezoning application did not automatically transform it into a master plan. He stated that numerous materials are submitted with rezoning applications, but they do not become binding master plans.

Mr. Geddy stated that while the rezoning application was under review, the applicant decided not to move forward with several of the rides shown on the drawing. He further stated that a revised plan was never requested and that the plan was not referenced in the staff report or in the SUP. He stated that if the intent was to make the drawing a binding master plan, it would have been discussed in the staff report and incorporated in the SUP.

Mr. Geddy stated that when you compare the development currently on the parcel, it does not look anything like the conceptual plan. He further stated that when the Disk'O ride was proposed, it was discussed extensively; however, a master plan was never mentioned. He stated that the conceptual plan was never a master plan as referenced in the Zoning Ordinance.

Mr. Jakobowski noted that the Public Hearing would remain open and that the Board members would be able to ask questions of the applicant or staff.

Mr. Geib inquired if the issue of a master plan was brought up with the conceptual plan submitted in 2019.

Ms. Parrish stated that when the 2019 conceptual plan was reviewed, the drawing was found among the legislative documents for the property. She stated that a determination was made that the proposal was not consistent with the conceptual plan drawing. She stated that the case was then scheduled to go before the Development Review Committee (DRC) for review of the Planning Director's determination that the proposal was not consistent with the master plan. She stated that the message has been consistent from 2019 forward.

Mr. Geddy stated that comments had been returned well before the issue of a master plan came forward.

Mr. Geib inquired if the proposed elevated go kart track would be an appropriate deviation from a master plan.

Ms. Parrish stated that it was considered a deviation based on the Director of Planning's interpretation of the master plan that was submitted with the rezoning materials. She stated that the Director of Planning determined that it deviated from the master plan and found it not to be consistent.

Mr. Geib inquired how this ride could be found not consistent when the current development differs from what was shown on the master plan.

Ms. Parrish stated that the Director of Planning found that the three-tiered go kart track deviated from the conceptual plan submitted in the 1990s. She further stated that decision could be appealed to the DRC to determine if the Director of Planning's decision was correct. She stated that the reason the matter is before the BZA was because the applicant believed that the conceptual plan did not apply as a master plan and that the Director of Planning did not have the right to find that it was not consistent.

Mr. Geib inquired whether the decision point was that there was no master plan or that the ride was inconsistent with the master plan.

Mr. Geddy stated that the applicant's position was that there was no master plan.

Ms. Parrish stated that if the Board upheld the Zoning Administrator's interpretation of the Zoning Ordinance, the applicant could then appeal that decision to the courts or go before the DRC to see whether or not they agreed with the Planning Director's determination that it does not comply with the master plan.

Mr. Geib inquired if the applicant could also choose to move forward with a master plan amendment.

Ms. Parrish stated that if the Board upheld the Zoning Administrator's decision and the applicant chose to go to the DRC and they upheld the Planning Director's determination, then the next step would be to pursue a master plan amendment.

Mr. Geib noted that under the process of doing the master plan amendment, they would actually create a formal master plan.

Ms. Parrish reminded the Board that the question before them was whether the conceptual drawings constituted a master plan.

Mr. Geib noted that with Case No. SUP-3-89, the applicant stated that none of the eight SUP conditions referenced plans for future development of the property. He inquired if it would have been necessary to reference the plans and incorporate drawings for there to be a master plan.

Mr. Geddy stated that it would be necessary and a normal part of the process.

Mr. Geib inquired if it the applicant would have voluntarily presented formal plans or would it have been left to reviewing staff to require them.

Mr. Geddy stated that staff would generally have asked for plans if they were necessary and intended to form a master plan.

Mr. Geib inquired if it would be reasonable for staff to have accepted the drawing as a valid representation of the plans for development.

Mr. Geddy stated that it was likely considered to be a general representation of the property. He further stated that the BOS would have had to make it binding by incorporating it in the SUP conditions.

Mr. Geib inquired if the BOS would have seen the drawing since it was referenced in the staff report.

Mr. Geddy stated that the BOS might have seen the drawing, but again they did not make it binding with the SUP conditions.

Mr. Geib stated that what he is trying to determine is whether, since this drawing accompanied several legislative submissions and was not superseded by another drawing, could staff have deemed it to be a master plan.

Mr. Geddy stated that it does not meet the three criteria for it to become a master plan and several of the rides shown conceptually were never installed, yet they received approval.

Mr. Geib inquired if the site plan accurately showed the rides.

Ms. Parrish noted that the BOS did not review site plans.

The BZA, Mr. Geddy, and staff discussed what the requirements for the property had been over time and the previous site plan review process. They also discussed the various legislative submittals and the documentation provided with those applications.

Mr. Geib inquired that since no subsequent or other renderings were submitted, the conceptual drawing could have become a master plan by default.

Mr. Geddy stated that a document could only become an official master plan by one of the mechanisms previously noted and which none of these had occurred.

Mr. Otey inquired if there had ever been anything submitted generally called a master plan.

Ms. Parrish stated that nothing had been formally identified as such.

Mr. Otey inquired if master plans were part of land use law at the time the conceptual drawing was provided.

Ms. Parrish stated that she believed they were. She further stated that staff's position was that when the rezoning and SUP were approved, the approval could not be made without seeing some representation of the development and the conceptual drawing is what had been presented to the BOS. She stated that staff considered it a master plan by virtue of being presented to the BOS.

Mr. Otey inquired if Ms. Parrish agreed with Mr. Geddy's criteria for how master plans are formalized.

Ms. Parrish stated that staff considers it a master plan by virtue of being presented to the BOS and that it acted as a master plan for the legislative review.

Mr. Geddy stated that it needs to be referenced in the resolution.

Mr. Geib asked for Ms. Parman's opinion on whether the drawing needed to be referenced in the resolution.

Ms. Liz Parman, Deputy County Attorney, stated that she represents Ms. Parrish and was unable to provide legal advice to the BZA; therefore, she had nothing to add to the discussion.

Mr. Jakobowski stated that it appeared that the conceptual drawing has accompanied all of the legislative submissions to be used as a tool to determine if an SUP or rezoning would be granted.

Ms. Parrish stated that when the property was zoned A-1, General Agricultural, outdoor centers of amusement were not included in the potential uses and therefore, a rezoning was initiated. She further stated that since the use was not by-right an SUP was required which is when the conceptual drawing was submitted.

Mr. Jakobowski stated that he understood that the drawing had been presented several times.

Ms. Parrish stated that it came with the legislative application; however, she could not confirm or deny whether it was reviewed with every site plan application for the property.

Mr. Jakobowski inquired about the plan that was submitted in 2019.

Ms. Parrish stated that the 2019 conceptual plan was for the elevated track. She further stated that during the review of that conceptual plan, staff located the documentation for the legislative case which included the subject conceptual drawing. She stated that the matter went to the Director of Planning to determine if the elevated track was consistent with the master plan. She stated that if the Director of Planning determined that it is not consistent, the determination would go before the DRC; however, Mr. Geddy had posed the question of whether the conceptual drawing was a binding master plan.

Mr. Jakobowski inquired about the outcome of the 2019 conceptual plan.

Ms. Parrish stated that review of the 2019 conceptual plan was at a standstill until the question of the master plan was decided.

Mr. Jakobowski stated that prior to 2000, the master plan process was not formalized. He inquired if there were any other master plans prior to 2000 that were not professionally produced.

Ms. Parrish stated that even now there are master plans that are hand drawn or produced by the applicant or staff without the use of a professional engineer or architect.

Mr. Jakobowski noted that it appeared it was not part of the criteria for the master plan to be professionally produced.

Mr. Geddy noted that those plans are, however, mentioned in the SUP conditions and are made binding.

Mr. Jakobowski stated that prior to 2000 staff could have considered this to be the master plan even though it was not designated as such.

Ms. Parrish stated that there was no Zoning Ordinance requirement for a master plan when staff did the research for the 2019 conceptual plan to ensure it was consistent with the SUP, staff located the conceptual drawing and applied it as the master plan from a consistency standpoint.

Mr. Geddy noted that from 1996 until approximately eight months ago there was never any thought that the conceptual drawing was a master plan.

Mr. Jakobowski inquired about staff's legal basis for deciding that it was a master plan.

Ms. Parrish stated that staff viewed it as a master plan because the BOS saw it as part of the legislative submittal for the SUP.

Mr. Geddy noted that by the time the BOS considered the application, the drawing was already outdated.

Mr. Jakobowski inquired if there were any concerns that the actual development that occurred does not match the conceptual drawing.

Ms. Parrish stated that each structure would have come in as a site plan. She further stated that she could not know whether the Zoning Administrator and Planning Director at that time looked at the conceptual drawing to determine consistency. She stated that in this instance the conceptual drawing was brought to her attention and the Director of Planning found that it was not consistent.

Mr. Jakobowski inquired how the current rides came to be constructed.

Mr. Geddy stated that site plans and building plans were submitted and reviewed in accordance with the County's requirements.

Mr. Jakobowski inquired if there should have been something in the 1996 SUP resolution regarding changes to the conceptual drawing.

Ms. Parrish stated that the County does things differently now, so it may or may not have been included in the resolution.

Mr. Geddy stated that the SUP covers a number of issues that the BOS was concerned about but that the conceptual drawing was not one of them.

Mr. Otey inquired when a drawing becomes a master plan.

Ms. Parrish stated that if the drawing had not been included in the SUP application, there would be no master plan.

Mr. Jakobowski inquired if there was anything in the documentation that indicated that the SUP would not have been approved without the drawing.

Ms. Parrish stated that there was no reference in the minutes that she could find. She stated that it was, however, customary to submit some drawing depicting what would be constructed.

Mr. Jeff Miller, Go Karts Plus, provided some background on the property and the County processes for plan review as the property was developed. He further stated that he created the drawing at the request of the County and it was never intended to be a master plan of development.

Mr. Jakobowski closed the Public Hearing.

Mr. Jakobowski opened the floor for discussion by the BZA.

Mr. Otey stated that he does not believe that the conceptual drawing constituted a master plan simply by being included in the legislative materials.

Mr. Geib stated that if he were reviewing the legislative case, he would have considered the drawing a reasonably good indication of what might be developed on the property and used that as a basis for his decision. He stated that he can see how over time staff would look at the conceptual drawing as a master plan for development.

Mr. Otey posed the question of whether it should have been included in the resolution.

Mr. Geib stated that it would have been best practice to do so. He further stated that it might be appropriate for the applicant to go forward now with getting a master plan approved.

Ms. Parrish reminded the BZA that the issue at hand was to determine whether the conceptual drawing constitutes a formal master plan or not. She stated that the vote would be to uphold or overturn the Zoning Administrator's determination that the conceptual drawing is the master plan for the property.

Mr. Otey stated that for the conceptual drawing to have any significance, it needed to be referenced in the SUP resolution.

Ms. Parrish asked that the BZA do a straw vote first which would not be binding so that the applicant could determine whether to ask for a deferral until all members of the BZA could be present.

The straw vote was held with the BZA being inclined to overturn the Zoning Administrator's determination.

Mr. Otey made a motion to overturn the Zoning Administrator's determination.

On a roll call vote, the BZA voted to overturn the Zoning Administrator's determination. (1-3)

E. MINUTES

1. May 5, 2022 Meeting Minutes

Mr. Geib made a motion to Approve the May 5, 2022, Meeting Minutes as presented.

Mr. Dean seconded the motion.

On a voice vote, the BZA voted unanimously to Approve the May 5, 2022, Meeting Minutes.

F. MATTERS OF SPECIAL PRIVILEGE

None.

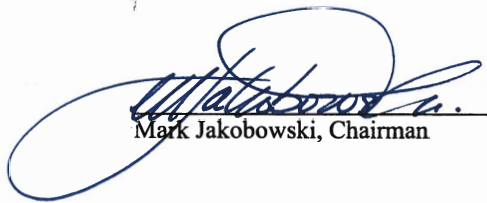
G. ADJOURNMENT

There being no further business, Mr. Geib made a motion to Adjourn the meeting.

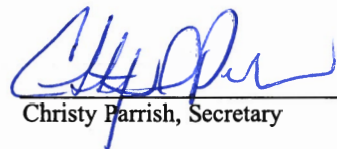
Mr. Dean seconded the motion.

On a voice vote, the BZA unanimously voted to Adjourn the meeting.

The meeting was adjourned at 6:15 p.m.



Mark Jakobowski, Chairman



Christy Parrish, Secretary

RESOLUTION

CASE NO. BZA-22-0002. 6910 RICHMOND ROAD -

ZONING ADMINISTRATOR'S DETERMINATION APPEAL

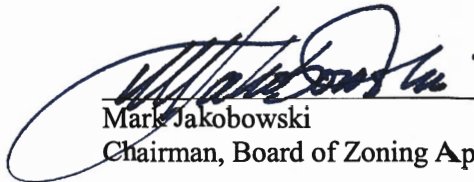
WHEREAS, Mr. Vernon Geddy, III, Attorney at Law on behalf of Action Park of Williamsburg, VA Inc. (the "Appellant"), has appealed the Zoning Administrator's written determination on February 23, 2022, that a "Conceptual Plan Supplied by the Applicant" at the time of the rezoning of the property and issuance of a Special Use Permit (SUP) for Go Karts Plus constitutes a binding master plan for property located at 6910 Richmond Road (the "Property"). The Property is currently located in B-1, General Business and can be further identified as James City County Real Estate Tax Map No. 2430100015; and

WHEREAS, the Board of Zoning Appeals at its meeting on June 2, 2022 held a public hearing and considered the statements made by the public and also reviewed and considered the materials and testimony offered by the Zoning Administrator and the Appellant; and


WHEREAS, the Board of Zoning Appeals is of the opinion that the decision of the Zoning Administrator is not correct and that the Appellant's appeal should be approved.

NOW, THEREFORE, BE IT RESOLVED that the Board of Zoning Appeals of James City County, Virginia, does hereby overturn the Zoning Administrator's written determination on February 23, 2022, that a "Conceptual Plan Supplied by the Applicant" at the time of the rezoning of the property and issuance of an SUP for Go Karts Plus constitutes a binding master plan for property located at 6910 Richmond Road and in consideration of such decision, the Board of Zoning Appeals makes the following specific findings of fact:

1. Section 15.2-2309 of the Code of Virginia, 1950, as amended (the "Virginia Code"), authorizes the Board of Zoning Appeals to hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto.
2. Section 24-5 of the James City County Code requires that the Zoning Administrator administer and enforce Chapter 24- Zoning of the James City County Code (the "Zoning Ordinance").
3. Section 15.2-2309 of the Virginia Code requires that the Zoning Administrator's interpretation is presumed to be correct, and the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence.
4. The Board of Zoning Appeals finds the Zoning Administrator's interpretation is not correct, the appellant has met his burden of proof, and that a "Conceptual Plan Supplied by the Applicant" at the time of the rezoning of the property and issuance of an SUP for Go Karts Plus is not a binding master plan for the Property, and that all future development plans do not have to be found consistent with a master plan as described in Section 24-23 of the James City County Zoning Ordinance.


 Mark Jakobowski
 Chairman, Board of Zoning Appeals

ATTEST:


 Christy H. Parrish
 Secretary

	VOTES			
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	
JAKOBOWSKI	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
OTEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
GEIB	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
CAMPANA, JR.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Absent
DEAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Adopted by the Board of Zoning Appeals of James City County, Virginia, this 2nd day of June 2022.

BZA22-2_6910RichRdOvrtrn-res