A G E N D A JAMES CITY COUNTY PLANNING COMMISSION SEPTEMBER 12, 2007 - 7:00 pm.

- 1. ROLL CALL
- 2. Public Comment
- 4. MINUTES (TO BE DISTRIBUTED AT A LATER DATE)
 - A. July 11, 2007 Regular Meeting
 - B. August 1, 2007 Regular Meeting
- 3. COMMITTEE AND COMMISSION REPORTS
 - A. Development Review Committee (DRC) Report
 - B. Other Committee/Commission Reports
- 5. Public Hearings
 - A. Z-10-06/MP-12-06/SUP-37-06 The Candle Factory
 - B. Z-5-07 Ingram Road Rezoning
 - C. Z-9-07 Michelle Point Proffer Amendment
 - D. Z-4-07/MP-4-07 Stonehouse Planned Community Amendment
 - E. SUP-12-07 Verizon Co-location at Brick Bat Road
 - F. ZO-5-07 Zoning Ordinance Amendment Heavy Equipment in M2
 - G. ZO-6-07 Zoning Ordinance Amendment Proffer of Conditions
 - H. ZO-7-07 Zoning Ordinance Amendment Floodplain Ordinance
- 6. PLANNING DIRECTOR'S REPORT
- 7. ADJOURNMENT

AGENDA

DEVELOPMENT REVIEW COMMITTEE

September 5, 2007 4:00 p.m.

JAMES CITY COUNTY GOVERNMENT COMPLEX

Conference Room, Building A

- 2. Minutes
 - A. July 25, 2007
- 3. Public Comment
- 4. Cases and DRC Discussion

A.	C-0097-2007 New Town Shared Parking	Matt Smolnik
B.	C-0094-2007 Moss Creek MP Consistency	Ellen Cook
C.	C-0096-2007 Ironbound Square Phase II-Setbacks	Jose Ribeiro
D.	SP-0036-2007 Depot Street Offices	Dave German

- 5. Public Comment
- 6. DRC Recommendations
- 7. Adjournment

REZONING CASE NO. Z-10-06/MASTER PLAN CASE NO. MP-12-06 The Candle Factory

SPECIAL USE PERMIT CASE NO. SUP-37-06 The Candle Factory Staff Report for the September 12, 2007 Planning Commission Public Hearing

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

<u>PUBLIC HEARINGS</u> <u>Building F Board Room; County Government Complex</u>

Planning Commission:	March 07, 2007	7:00 p.m. (Applicant deferral)
Planning Commission:	April 04, 2007	7:00 p.m. (Applicant deferral)
Planning Commission:	May 02, 2007	7:00 p.m. (Applicant deferral)
Planning Commission:	June 06, 2007	7:00 p.m. (Applicant deferral)
Planning Commission:	July 11, 2007	7:00 p.m. (Applicant deferral)
Planning Commission:	August 1, 2007	7:00 p.m. (Applicant deferral)
Planning Commission:	September 12, 2007	7:00 p.m.
Board of Supervisors:	October 09, 2007	7:00 p.m. Indefinite deferral

SUMMARY FACTS – Z-10-06/MP-12-06 (Rezoning and Master Plan)

Applicant: Mr. Vernon Geddy, III, of Geddy, Harris, Franck & Hickman,

L.L.P. on behalf of Candle Development, LLC

Land Owner: Candle Development, LLC

Proposal: To rezone approximately 64.45 acres of land from A-1, General Agricultural

District, M-1, Limited Business/Industrial District, and MU, Mixed Use zoning district to MU, Mixed Use zoning district, with proffers. The development proposed with this rezoning application will allow the construction of up to 180 residential units and up to 98,900 square feet of

new non-residential uses.

Location: 7551 and 7567 Richmond Road

Tax Map/Parcel: 2321100001D and 2321100001E

Parcel Size: Approximately 64.45 acres

Existing Zoning: A-1, General Agricultural District, M-1, Limited Business/Industrial District,

and MU, Mixed Use District

Comprehensive Plan: Low Density Residential, Mixed Use, and Limited Industry

Primary Service Area: Inside

<u>SUMMARY FACTS – SUP-37-06 (Special Use Permit)</u>

Applicant: Mr. Vernon Geddy, III, of Geddy, Harris, Franck & Hickman,

L.L.P. on behalf of KTP Development, LLC

Land Owner: KTP Development, LLC **Proposal:** To allow the construction of two mixed use, commercial buildings totaling 44,690 square feet. The site contains 183,330 square feet of existing nonresidential uses (the Soap and Candle Factory Commercial Complex.) The addition of the proposed two mixed-use buildings to the site will increase the total site's non-residential square footage to 228,020. Further, KTP Development, LLC also proposes to renovate the façade of the existing commercial buildings on the site. **Location:** 7521 Richmond Road Tax Map/Parcel: 2321100001C **Parcel Size:** Approximately 14.34 acres **Existing Zoning:** M-1, Limited Business/Industrial District **Comprehensive Plan:** Mixed Use **Primary Service Area:** Inside STAFF RECOMMENDATION The applicant has requested indefinite deferral of this case in order to resolve various issues associated with the case. Staff concurs with this request. Staff Contact: Jose Ribeiro, Planner Phone: 253-6685 Jose-Ricardo Linhares Ribeiro

ATTACHEMNTS:

1. Deferral request letter

VERNON M. GEDDY, JR. (1826-2005)

STEPHEN D. HARRIS SHELDON M. FRANCK VERNON M. GEDDY, III

Susanna B. Hickman Richard H. Rizk

ANDREW M. FRANCK

GEDDY, HARRIS, FRANCK & HICKMAN, L.J...P.

ATTORNEYS AT LAW

FAX: (757) 229-5942

WILLIAMSBURG, VIRGINIA 23185 TELEPHONE: (757) 220-6500 NAILING ADDRESS: POST OFFICE BOX 379 WILLIAMSBURG, VIRGINIA 23157-0979

email: vgeddy@gbfhlaw.com

September 4, 2007

Mr. Jose Ribeiro James City County Planning Department 101-A Mounts Bay Road Williamsburg, Virginia 23185

Re: Candle Factory - Z-10-06/MP-12-06/SUP-37-06

Dear Jose:

I am writing on behalf of the applicants, Candle Development, LLC and KTP Development, LLC, to request that the Planning Commission indefinitely defer these cases.

Thanks for your help.

Sincerely,

Vernon M. Geddy, III

Cc: Mr. Peter V. Henderson

Mr. Alex Perkins

Mr. Arch Marston

REZONING CASE NO. Z-0005-2007-Ingram Road

Staff Report for the September 12, 2007 Planning Commission Public Hearing

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

<u>PUBLIC HEARINGS</u> <u>Building F Board Room; County Government Complex</u>

Planning Commission: August 01, 2007 7:00 p.m. (applicant deferral)

Planning Commission: September 12, 2007 7:00 p.m.

Board of Supervisors: October 9, 2007 7:00 p.m. (tentative)

SUMMARY FACTS

Applicant: Mr. Scott Evans, Scott Evans Contracting, LLC

Land Owner: Evans Development Corporation

Proposal: To rezone 0.37 acres from R-8, Rural Residential, to B-1, General Business,

with proffers, for the construction of an approximately 3,978-squire foot,

three-unit office building with storage room

Location: 112 Ingram Road

Tax Map/Parcel: (47-1)(1-23)

Parcel Size: 0.37 acres

Existing Zoning: R-8, Rural Residential

Comprehensive Plan: Mixed Use

Primary Service Area: Inside

STAFF RECOMMENDATION

The applicant has requested deferral of this case to the October 03, 2007 Planning Commission meeting. Staff concurs with the request.

Staff Contact: Jose-Ricardo Linhares Ribeiro Phone: 253-6685

Jose-Ricardo Linhares Ribeiro

ATTACHMENTS:

1. Deferral request letter



Scott Evans Contracting, Inc.

Industrial • Commercial • Residential

August 29, 2007

Mr. Jose Ribeiro, Planner
James City County
Department of Development Management
101-E Mounts Bay Road
P.O. Box 8784
Williamsburg, VA 23187

RE: Z-0005-2007, 112 Ingram Road Rezoning

Dear Mr. Ribeiro:

I would like to request a deferral on the submission of our rezoning application until we can resolve the setback issues the County has raised.

Thank you for all you help on this project and I look forward to working with you further.

Sincerely,

Scott Evans President

REZONING 0009-2007. Michelle Point Proffer Amendment. Staff Report for the September 12, 2007 Planning Commission Public Hearing

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

PUBLIC HEARINGS	Building F Board Room; C	County Government Complex
Planning Commission:	September 12, 2007	7:00 p.m.
Board of Supervisors:	October 9, 2007 (tentative)	7:00 p.m.
SUMMARY FACTS		
Applicant:	Mr. Joel Almquist, Health E	Community Enterprises
Land Owner:	Michelle Point, LLC	
Proposal:	Mr. Almquist has requested revised language for proffer #4, Affordable Housing, to increase the sales price of the affordable units.	
Location:	9001 Barhamsville Road	
Tax Map/Parcel Nos.:	1210100003	
Parcel Size:	38.58 acres	
Existing Zoning:	R-5, Multi-family Residenti	al, Cluster Overlay, with proffers
Proposed Zoning:	R-5, Multi-family Residential, Cluster Overlay, with amended proffers	
Comprehensive Plan:	Low Density Residential	
Primary Service Area:	Inside	
STAFF RECOMMENDA	<u>TION</u>	
The applicant has requested a language. Staff concurs with		ase to allow time to finalize amended proffer
Staff Contact: Kathryn Sipes		Phone: 253-6685
		Kathryn Sipes, Planner
Attachment		
Attachment:		

Deferral Request from Applicant

HEALTH-E-COMMUNITY ENTERPRISES

3606 Acorn Ave • Suite 200 • Newport News • VA 23607 757.928.3434 (Office) • 757.928.0233 (Fax) • www.hec-va.com

September 4, 2007

Kate Sipes Planner James City County 101-A Mounts Bay Rd Williamsburg, VA 23607

RE: Z-0009-2007, Michelle Point Proffer Amendment

Dear Mrs. Sipes,

Due to the need for continued negotiation of the revised proffer language for the *Affordable Housing* proffer for the Michelle Point development, I respectfully request a deferral until the October Planning Commission meeting. Thank you.

Sincerely,

Joel Almquist

Planner

Health-E-Community Enterprises



REZONING 0004-2007/MASTER PLAN 0004-2007. Stonehouse Amendment Staff Report for the September 12, 2007, Planning Commission Public Hearing

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

PUBLIC HEARINGS

Building F Board Room; County Government Complex

Planning Commission:

September 12, 2007 7:00 p.m.

Board of Supervisors:

October 9, 2007 7:00 p.m. (tentative)

SUMMARY FACTS

Applicant:

David Guy

Land Owner:

David Guy (GS Stonehouse Green Land Sub, LLC)

Proposal:

Amendment of the master plan and proffers to accomplish the following: change land use designations within the development; make revisions to the approved proffers related to traffic improvements, environmental protections, and other matters; incorporate tax parcels 0630100001, 1310100008A, 1310100019, all currently zoned A-1, General Agricultural, into the Planned Unit Development Zoning District; and

adjust the boundary line between PUD-Commercial and PUD-

Residential.

Location and Tax Map/Parcel Nos.:

3820 Rochambeau Drive, also known as tax parcel: 1310100008A.

170 Sand Hill Road, also known as tax parcel: 1310100019.

3900, 3600 Mt. Laurel Road, also known as tax parcels: 1310100022, 130100021.

9100, 9150, 9250, 9300, 4051, 9400, 9650, 9700, 9750, 9800, 9801, 9751, 9601, 9501, 9404, 9451, 9301,

9251, 9475, 9101, 9455, 9770 Six Mount Zion Road, also known as tax parcels: 0540100013,

0540100012, 0540100011, 0540100009, 0630100003, 0540100010, 0630100001, 0630100003,

0630100002, 0610100002, 0610100001, 0630100002, 0540100009, 0540100008, 0540100007,

0540100006, 0540100005, 0540100004, 0540100014, 0540100002, 0530100021, 0640100001.

4100, 4130, 4150, 4170 Ware Creek Road, also known as tax parcels: 0630100004, 0640100002,

1320100028, 1320100027.

9551, 9501, 9675, 10251 Sycamore Landing Road, also known as tax parcels: 0740100020 and 0740100022, 0740100029, 0740100021, 0710100001.

9020 Westmont Drive, also known as tax parcel: 1210100048.

9225, 9300, 9354, 9235, 9360, 9370, 9354, 9415, 9423, 9431, 9451 Fieldstone Parkway, also known as tax parcels: 0440100028, 0440100027, 0440100025, 0440100029, 0440100030, 0530100009, 0440100025, 0530100025, 0530100024, 0530100023, 0530100022.

9400, 9760, 3029 Mill Pond Run, also known as tax parcels 0440100025A, 0530100010, 0530100020. Unaddressed parcels which are tax maps 1210100047, 0440100026.

Parcel Size:

Approximately 4,537 acres

Existing Zoning:

PUD, Planned Unit Development, A-1, General Agricultural

Proposed Zoning:

PUD, Planned Unit Development

Comprehensive Plan:

Mixed Use (Majority), Conservation Area, Rural Lands, and Low Density

Residential development

Primary Service Area:

Inside

STAFF RECOMMENDATION

The applicant has requested a deferral to the October 3, 2007 Planning Commission meeting. Staff concurs with the request.

Staff Contact: Ellen Cook

Phone: 253-6685

SPECIAL USE PERMIT CASE NO. SUP-12-07 Verizon Tower Co-location- Brick Bat Road

Staff Report for the September 12, 2007 Planning Commission Public Hearing

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

PUBLIC HEARINGS Building F Board Room; County Government Complex

Planning Commission: May 2, 2007 (applicant deferral)

June 6, 2007 (applicant deferral) July 11, 2007 (applicant deferral)

August 1, 2007 (applicant indefinite deferral)

September 12, 2007 7:00 PM October 9, 2007 (tentative) 7:00 PM

Board of Supervisors: October 9, 2007 (tentative)

SUMMARY FACTS

Applicant: Ms. Jessica Wright, Verizon Wireless

Land Owner: Ms. Donna M. Morgan

Proposal: To construct a 14 foot extension on an existing 185 foot tower-mounted

wireless communication facility.

Location: 3470 Brick Bat Road

Tax Map/Parcel: (44-2)(1-18)

Parcel Size: 8.083 acres

Existing Zoning: A-1, General Agricultural

Comprehensive Plan: Rural Lands

Primary Service Area: Outside

STAFF RECOMMENDATION

Staff finds the proposal, with the attached conditions, to be generally consistent with surrounding land uses, the Land Use policies of the Comprehensive Plan, and the Comprehensive Plan Land Use Map designation. Staff recommends the Planning Commission recommend approval of the special use permit application for the Verizon Tower Co-location on Brick Bat Road with the attached conditions to the Board of Supervisors.

Staff Contact: Leanne Reidenbach, Planner Phone: 253-6685

PROJECT DESCRIPTION

Ms. Jessica Wright, Verizon Wireless, has applied for a Special Use Permit to add a 14 foot extension to an existing 185 foot tower-mounted wireless communication facility (WCF). The extension will result in a total height of 199 feet. The property is located at 3470 Brick Bat Road. The purpose of the extension is to allow co-location of one additional antenna array on the existing American Tower. Communications towers over 35 feet require a special use permit in the A-1, General Agricultural District. On January 27, 1998, the Board of Supervisors approved JCC Case No. SUP-11-96, which permitted two towers on this site with maximum heights of 185 feet each. The extension of any existing tower on this site also requires a special use permit. There is currently James City County equipment located on the tower at 183 feet which is no longer in use by the County. If this were to be removed, Verizon would be able to locate at this height without extending the tower. Furthermore, there is additional space for one more co-location on the existing tower at a lower height without the removal of County equipment.

The applicant previously requested an extension of 30 feet, which would have resulted in a 215 foot lighted tower, but has since lowered the requested height to below 200 feet to avoid the need to add lighting.

Verizon Wireless has expressed that this application is the result of feedback from customers regarding inadequate coverage in the area. The applicant has also noted that the extension will provide more reliable "in-home" coverage to customers in Governor's Land. The Governor's Land Foundation was contacted regarding the proposal and provided a letter of support for the application (see attachment 8).

PUBLIC IMPACTS

Environmental

Watershed: Gordon Creek

Staff Comments: The Environmental Division has no comments at this time given the limited impact of this project.

Public Utilities and Transportation

The extension of the existing WCF would not generate additional needs for the use of public utilities or significant additional vehicular trips in the area.

Visual Impacts

To simulate the proposed height of the tower extension, the applicant conducted a publicly advertised balloon test at a height of 215 feet on April 10, 2007. A balloon test was also held at the same height on November 17, 2005 as part of the pre-application process. A third publicly advertised balloon test was conducted at the new proposed height of 199 feet on August 21, 2007. Staff's observations from the third test are outlined below and on the photo location map (attachment 7) and associated pictures (attachment 6).

Due to surrounding topography and wooded buffers on Brick Bat Road and Route 5, the tower was not extremely visible from either road, aside from directly in front of the tower site on Brick Bat Road. Staff has proposed condition 9 to prune and maintain the buffer at the front of the property line to more effectively screen the visual impact of the tower from Brick Bat Road.

The balloon was not visible at the 199 foot height along the Route 5 corridor; however, there was a short area along Route 5 approximately 600 feet from the entrance to Governor's Land where the balloon was slightly visible at the 215 foot height. This may have been due to differences in seasonal tree coverage in addition to the lower height. Wooded areas served to screen the majority of the view; however, the majority of these wooded areas are on adjacent properties rather than on the same site as the tower. Staff has proposed condition 10 to ensure that existing small pine trees are left undisturbed in order to create a mature tree buffer on-site.

Governor's Land itself is relatively low lying in comparison to the tower site and the balloon was not

visible within the development.

At the intersection of Route 5 and Monticello Avenue, the balloon was visible through the wooded buffer at a distance of approximately ½ mile from the site.

At the Pet Resort, which is approximately 0.3 miles off Monticello Avenue, the existing tower and balloon were extremely visible above the tree line from most areas on the property. The balloon height in the August test was skewed by wind, but the extension would be visible from the property regardless of the height. During the balloon test, staff spoke with the property owner, who did not express any reservations with the existing tower or the proposed extension.

At the entrance to Greensprings West at the intersection of Manor Gate Road and Centerville Road, the balloon was slightly visible, but the existing towers could not be seen (see photo 3 on attachment 6). The intersection is approximately 1.2 miles from the tower but is situated on a small hill. Staff does not feel that the balloon in this instance was representative of what Greensprings West residents will be able to see due to the fact that at the higher height (215 feet), the balloon was only visible during the February test. Due to this discrepancy, staff feels that the balloon may have been flying at a height higher than 199 feet for this test. To verify height and visual impacts, staff also used the existing County whip antennas located on the tower, which are approximately 20 feet high, as a guide. The extension will be approximately the same height as the existing whip antennas, which are to be removed with condition #1. These whip antennas were not visible from Greensprings West.

Federal Aviation Administration (FAA) requirements

Per Federal requirements, all structures greater than 200' above ground level (AGL) must be marked and/or lighted. Owners/developers of all structures greater than 200' AGL are required to provide notice to the FAA, which will then conduct an aeronautical study for the specific project. Structure marking may consist of alternating bands of orange and with paint (for daytime visibility) and red obstruction lights (for night visibility). As an alternative to this combination, the FAA may allow a dual lighting system featuring red lighting at night and medium intensity white strobe lighting during the day. Because this extension would be less than 200 feet, a marking system would not be required by the FAA.

COMPREHENSIVE PLAN

Land Use Map

Land Use M	ap
Designation	Rural Lands (Page 119-120):
	Land uses in this designation are located outside the PSA and include farms, forests, scattered
	houses, and appropriate accessory uses. Appropriate primary uses include agricultural and forestall
	activities, together with certain recreational, public, or semi-public and institutional uses that
	require a spacious site and are compatible with the natural and rural surroundings.
	A few of the smaller direct agricultural or forestall-support uses and certain uses which require
	very low intensity settings relative to the site in which it will be located may be considered on the a
	case-by-case basis, provided such uses are compatible with the natural and rural character of the
	area.
	Staff Comment: There are several wireless communications facilities located in the land
	designated Rural Lands throughout the County, including two existing towers on the site in
	question. Staff believes that since the tower with the extension is not required to be lighted and
	would minimally add to the existing towers visibility, it is consistent with the rural character of the
	surrounding area.
Development	Rural Land Use Standard #1- Page 135: Preserve the natural, wooded, and rural character of
Standards	the County. Particular attention should be given to locating structures and uses outside of sensitive
	areas; maintaining existing topography, vegetation, trees, and tree lines to the maximum extent
	possible; discouraging development on farmland, open fields, and scenic road vistas limiting the
	height of structures to an elevation below the height of surrounding mature trees utilizing
	lighting only where necessary and in a manner that eliminates glare and brightness.
	Rural Land Use Standard #2-Page 135: Site non-agricultural/non-forestall uses in areas
	designated Rural Lands so that they minimize impacts or do not disturb agricultural/forestall uses,
	open fields, and important agricultural/forestall soils and resources. Sufficiently screen such uses
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to preserve open spaces and rural character and to minimize visual impact from public roads.

Staff Comment: The proposal is for a tower extension rather than a new tower, which serves to concentrate the use on a single existing site rather than clearing additional land or creating additional visual impacts. This serves to preserve other open space and due to its small size, staff finds that this use does not interfere with surrounding forestall activity. This is further promoted by conditions X and Y, which promote the preservation of undisturbed areas on-site and increase landscaped buffering. The reduction in height of the extension negates the need for lighting and brings the tower height more into alignment with heights of existing mature trees when viewed from off-site. As discussed above, there is anticipated to be a limited visual impact on Brick Bat Road and Route 5 due to the existing mature tree buffer, but the balloon was visible from points along Monticello Avenue, a portion of Greensprings West, and some adjacent properties.

Goals, strategies and actions

Goal #3-Page 138: Enhance and preserve farm and forestall lands and the predominantly wooded, natural, and small-town character of the County.

Strategy #2-Page 138: Ensure development is compatible in scale, size, and location to surrounding existing and planned development. Protect uses of different intensities through buffers, access control, and other methods.

Staff Comment: As stated above, the proposal is for an existing site and so does not involve any additional land clearing and so will not interfere with the preservation of farm or forested land. Access to the site continues to be limited to one driveway designed in a way to reduce views of the tower from Brick Bat Road.

Community Character

General

Wireless Communications Facilities-Page 94: In 1998, the increasing need for new wireless communications facilities prompted the County to establish Performance Standards for Wireless Communication Facilities and add a new Division in the Zoning Ordinance to address them. The decision to regulate WCFs stemmed from the intent of the County to:

- Protect health, safety, and general welfare of the community
- Preserve the aesthetic quality of the community and its landscape
- Protect property values
- Protect the historic, scenic, rural, and natural character of the community
- Minimize the presence of structures that depart from existing and future patterns of development, especially in terms of scale, height, site design, character, and lighting.
- Provide for adequate public safety communications
- Allow the providers of WCFs to implement their facilities in a manner that will fulfill these purposes, encourage their co-location, and allow them to fulfill their Federal Communications commission licenses.

Staff Comment: Staff strongly encourages co-location options in order to mitigate impacts to additional land. The 14 foot extension would be compatible with existing tree buffer and wooded areas on adjacent properties serve to further screen the view of the towers from Community Character Corridors such as Route 5.

Comprehensive Plan Staff Comments

Overall, staff feels that this application, as proposed, is in general compliance with the Comprehensive Plan. The limited nature of this project helps to limit the impact it has on open space and farmlands and co-location eliminates the need to disturb and potentially increase the impacts at an additional site.

PERFORMANCE STANDARDS

On May 26, 1998, the James City County Board of Supervisors adopted several performance criteria for WCFs (see attachment #1). Please note that when the original SUP for the two existing towers on this site was approved in January of 1998, the Performance Standards Policy had not yet been adopted by the Board of Supervisors.

Section 24-124 of the Zoning Ordinance states that "In considering an application for a special use permit for a WCF, the planning director shall prepare a report identifying the extent to which the application takes into account the 'Performance Standards for Wireless Communications Facilities'.... In general, it is expected that all facilities should substantially meet the provisions of these performance standards."

These performance criteria note that tower mounted WCFs should be located and designated in a manner that minimizes their impacts to the maximum extent possible and minimizes their presence in areas where they would depart from existing and future patterns of development. While all standards support the goals outlined in the Comprehensive Plan, some may be more critical to the County's ability to achieve these goals on a case-by-case basis. Therefore, some standards may be weighed more heavily in any recommendation or decision on a special use permit and a case that meets a majority of the standards may or may not be recommended for approval. To date, towers requiring a special use permit have substantially met these standards, including those pertaining to visibility.

A. Co-location and Alternatives Analysis

Standard A1 encourages co-location. Since this extension is a co-location on an existing tower and eliminates the need for constructing a new tower, staff feels this meets the co-location standard.

Standard A2 pertains to the demonstration of a need for the proposal and the examination of alternatives, including increases in transmission power and other options. With regards to demonstrating the necessity for the tower, the applicant submitted propagation maps, based on outside cellular coverage, for no antenna and location at heights of 185 and 199 feet (see attachments #3, 4, and 5). The applicant has expressed that the extension proposal stemmed from service complaints of customers in the Governor's Land development regarding their "in-house" coverage. The applicant has indicated that, while not ideal, the lower tower extension height will supply additional coverage to this area.

Staff feels that all alternatives, including locating on the tower at a lower height and erecting a new tower within the Governor's Land development, have been adequately explored and that a 14 foot extension is the most viable option.

Standard A3 does not pertain to this application as there are already two existing towers on the site.

Standard A4 regarding allowance of future service providers to co-locate on the tower extension is addressed at the site plan stage through requirements in Section 24-128(3) of the Zoning Ordinance.

B. Location and Design

Performance Standard B1(1) states that towers and tower sites should be consistent with existing and future surrounding development and the Comprehensive Plan. More specifically, towers should be compatible with the use, scale, height, size, design and character of surrounding existing and future uses. Staff finds that a tower extension in this location and at the proposed height is generally compatible with surrounding existing sturctures and feels that this standard has been adequately met and supplemented by the attached conditions.

Performance Standard B1(2) states that towers should be located in a manner to protect the character of scenic resource corridors, historic and scenic resource areas, and viewsheds. Staff finds that the proposal may be partially visible from multiple locations, including Monticello Avenue, Route 5, and Greensprings West. Both Monticello Avenue and Route 5 have been designated Community Character Corridors. The applicant has proposed to co-locate on an existing tower rather than constructing a separate tower closer to the target service area (Governor's Land). Co-location is preferable to the construction of a new free-standing tower and could better serve to protect the viewshed from Route 5. Staff feels that the increase in tower height will not adversely affect the towers' visual impacts on nearby scenic resources. Furthermore, condition 8 specifies that a copy of

the report submitted to the Virginia Department of Historic Resources in fulfillment of Section 106 of the Historic Preservation Act be submitted to the Planning Division for approval. This review will ensure that historic resources are not negatively impacted by the extension.

Performance Standard B2 states that for areas designated Rural Lands that are within 1,500 feet of the tower, the design should be camouflaged or result in minimal intrusion on residential areas, historic and scenic resource areas or roads in such areas, or scenic resource corridors. The upper portions of both existing towers are clearly visible from the Pet Resort, which is less than 1,500 feet from the tower, and does not currently meet this standard.

For Rural Lands more than 1,500 feet from the tower, no more than the upper 25% of the tower should be visible. The majority of the existing tower may be visible from Route 5 and Monticello Avenue when there is little foliage on the trees; however, this provision is satisfied for Governor's Land and Greensprings West.

Performance Standard B3 states that towers should be less than 200 feet to avoid lighting. This application meets this standard.

Performance Standard B4 states that towers should be freestanding and not supported by guy wires. This application meets this standard.

C. Buffering

The Performance Standards state that towers should be placed on a site in a manner that maximizes buffering from existing trees, including a recommended 100-foot wide wooded buffer around the base of the tower and that the access drive should be designed in a manner that provides no off-site view of the tower base or related facilities.

Staff finds that while there is not a 100 foot wooded buffer around the tower sites, the application meets the standard as best as possible as it was originally approved prior to the adoption of these Standards. The site is wooded along Brick Bat Road and along the side and rear property lines. The existing tower base and associated equipment sheds are only visible from the approximately 530 foot access drive. However, it is also important to note that a significant amount of the wooded buffers exist on adjacent properties. The side property line to the north has about a 58 foot wooded buffer along its length, but the adjacent property is also significantly wooded. The side property line to the south does not have significant buffer, but again, the adjacent parcel is partially wooded. The rear of the lot has an approximately 50 foot buffer. The 122 acre lot adjacent to the rear of the tower site extends to Route 5 and is entirely wooded. In this respect, it is important to consider that additional development on any of these adjacent properties may result in a reduction of the existing buffer and increased visibility of the towers. Condition 10 proposes to further maintain on-site areas adjacent to the side and rear property lines as undisturbed natural areas to promote the growth of additional buffer.

RECOMMENDATION

Staff finds the proposal, with the below conditions, to be generally consistent with surrounding land uses, the Land Use policies of the Comprehensive Plan, and the Comprehensive Plan Land Use Map designation. Staff recommends the Planning Commission recommend approval of the special use permit application for the Verizon Tower Co-location on Brick Bat Road with the following conditions to the Board of Supervisors. Please note that conditions 11-18 are conditions that were placed on the original SUP to permit the towers.

1. Verizon Wireless shall remove and dispose of all remaining James City County (the "County") communications equipment from the tower prior to final site plan approval. This equipment includes the two (2) transmission lines going from the base of the tower to each of the antennas on top and the two (2) antennas on top of the tower.

- 2. A maximum of two (2) towers shall be permitted at this site. The towers and supporting equipment shall be located as generally shown on the overall site layout plan, prepared by Kimley-Horn and Associates, Inc., titled "Brick Bat Co-Location Overall Site Layout" dated July 26, 2007 ("Master Plan").
- 3. All towers shall have a finish that is grey in color as approved by the Planning Director. Lighting, beacons, and other similar devices shall be prohibited unless required by the FCC or FAA. When required by the FCC or FAA, a red beacon light or lights of low-medium intensity shall be used rather than a white strobe light. Should the regulations and requirements of this subsection conflict with any regulation or requirement by the FCC or FAA, then the regulations of the FCC and FAA shall govern. At the time of site plan review, a copy of the FAA and/or FCC findings shall be provided to the County.
- 4. Maximum height of the tower labeled as "existing 185' self-support tower (to be extended to 199')" ("Tower") on the Master Plan shall not exceed 199 feet from existing grade.
- 5. Maximum height of the tower labeled "existing tower" ("Existing Tower") and which is located furthest from Brick Bat Road on the Master Plan, shall not exceed 185 feet from existing grade.
- 6. Within 30 days of the issuance of a final Certificate of Occupancy by the County Codes Compliance Division, certification by the manufacturer, or an engineering report by a structural engineer licensed to practice in the Commonwealth of Virginia, shall be filed by the applicant indicating the tower height, design, structure, installation and total anticipated capacity of the tower, including the total number and type of antennas which may be accommodated on the tower, demonstrating to the satisfaction of the County Building Official that all structural requirements and other safety considerations set forth in the 2000 International Building Code, or any amendment thereof, have been met.
- 7. Prior to preliminary site plan approval for the improvements shown on the Master Plan, a letter from the current owner of the Tower indicating permission to use the Tower for co-location and to extend the height of the Tower shall be submitted to the Planning Division.
- 8. Prior to preliminary site plan approval for the improvements shown on the Master Plan, a copy of the report submitted to the Virginia Department of Historic Resources ("VDHR") in fulfillment of Section 106 of the Historic Preservation Act shall be submitted to the Planning Division. Evidence that the James City County Historical Commission has reviewed and approved the package must also be submitted prior to preliminary site plan approval. The Planning Director may require the implementation of any recommendations of VDHR and the Historical Commission prior to final site plan approval.
- 9. Prior to the issuance of any Certificate of Occupancy for the Tower, all plantings in the existing landscape buffer along Brick Bat Road shall be pruned (including, but not limited to the removal of all dead wood and vines) to the satisfaction and approval of the Planning Director or his designee.
- 10. A buffer along the Property's entire border with the adjacent parcel located at 3542 Brick Bat Road and further identified as JCC RE Tax Map No. 3540100014B shall be provided and an approximately 1 acre area between the Existing Tower and the Property's entire border with the parcel located at 2900 Monticello Avenue and further identified as JCC RE Tax Map No. 4420100005 as shown on attached Exhibit A shall remain undisturbed and in its natural state with respect to natural leaf litter or other ground-covering vegetation, understory vegetation or shrub layer, and tree canopy, except as approved by the Development Review Committee.
- 11. All towers shall be designed and constructed for at least three (3) users and shall be certified to that effect by an engineering report prior to the site plan approval.
- 12. A statement from a registered engineer that NIER (nonionizing electromagnetic radiation) emitted from any equipment on or serving the facility does not result in a ground level exposure at any point outside such facility which exceeds the lowest applicable exposure standards established by any regulatory agency of the U.S. Government or the American National Standards Institute shall be submitted prior to preliminary site plan approval.
- 13. Towers shall be located on 3470 Brick Bat Road, further identified as JCC RE Tax Map No. 4420100018 ("Property") in a manner that maximizes the buffering effects of trees. Tree clearing shall be limited to the minimum necessary to accommodate the tower and related facilities. Access drives shall be designed in a manner that provides no view of the tower's base or related facilities. A

minimum buffer of 100 feet in width shall be maintained around the tower. Where existing vegetation on the site is not of sufficient depth to provide this buffer, enhanced landscaping shall be provided within the 100 foot buffer area. A screening and landscaping plan for the enhanced buffer shall be provided for approval by the Planning Director or his designee prior to final site plan approval.

- 14. A final Certificate of Occupancy shall be obtained from the James City County Codes Compliance Division within one (1) year of approval of this special use permit, or the permit shall become void.
- 15. The towers shall be freestanding and shall not use guy wires for support.
- 16. Any supporting structures, such as equipment sheds and huts, shall be of a similar design and material to that generally used on a single-family residence, including the use of a gable or shed roof, and shall be approved by the Planning Director prior to final site plan approval.
- 17. The fencing used to enclose the lease area shall be vinyl-coated and shall be dark green or black in color. Any fencing shall be reviewed and approved by the Planning Director prior to final site plan approval.
- 18. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

Leanne Reidenbach, Planner

ATTACHMENTS:

- 1. Performance Standards for WCFs Policy
- 2. Preliminary site plan
- 3. Propagation map showing existing area coverage
- 4. Propagation coverage map with location at 183 feet
- 5. Propagation coverage map with location at 199 feet
- 6. Balloon test photos
- 7. Photo location map
- 8. Governor's Land Foundation letter of support
- 9. Exhibit A

PERFORMANCE STANDARDS FOR WIRELESS COMMUNICATIONS FACILITIES MAY 26,1998

In order to maintain the integrity of James City County's significant historic, natural, rural and scenic resources, to preserve its existing aesthetic quality and its landscape, to maintain its quality of life and to protect its health, safety, general welfare, and property values, tower mounted wireless communications facilities (WCFs) should be located and designed in a manner that minimizes their impacts to the maximum extent possible and minimizes their presence in areas where they would depart from existing and future patterns of development. To implement these goals, the Planning Commission and the Board of Supervisors have adopted these performance standards for use in evaluating special use permit applications. While all of the standards support these goals, some may be more critical to the County's ability to achieve these goals on a case by case basis. Therefore, some standards may be weighed more heavily in any recommendation or decision on a special use permit, and cases that meet a majority of the standards may or may not be approved. The terms used in these standards shall have the same definition as those same terms in the Zoning Ordinance. In considering an application for a special use permit, the Planning Commission and the Board of Supervisors will consider the extent to which an application meets the following performance standards:

A. Collocation and Alternatives Analysis

1. Applicants should provide verifiable evidence that they have cooperated with others in colocating additional antenna on both existing and proposed structures and replacing existing towers with ones with greater co-location capabilities. It should be demonstrated by verifiable evidence that such co-locations or existing tower replacements are not feasible, and that proposed new sites contribute to the goal of minimizing new tower sites.

2. Applicants should demonstrate the following:

- a. That all existing towers, and alternative mounting structures and buildings more than 60 feet tall within a three-mile radius of the proposed site for a new WCF cannot provide adequate service coverage or antenna mounting opportunity.
- b. That adequate service coverage cannot be provided through an increase in transmission power, replacement of an existing WCF within a three mile radius of the site of the proposed WCF, or through the use of a camouflaged WCF, alternative mounting structure, or a building mounted WCF, or a system that uses lower antenna heights than proposed.
- c. The radii of these study areas may be reduced where the intended coverage of the proposed WCF is less than three miles.
- 3. Towers should be sited in a manner that allows placement of additional WCF facilities. A minimum of two tower locations, each meeting all of the requirements of the Zoning Ordinance and these standards, should be provided at all newly approved tower sites.
- 4. All newly permitted towers should be capable of accommodating enough antennas for at least three service providers or two service providers and one government agency. Exceptions may be made where shorter heights are used to achieve minimal intrusion of the tower as described in Section B.2. below.

B. Location and Design

1. Towers and tower sites should be consistent with existing and future surrounding development and the Comprehensive Plan. While the Comprehensive Plan should be

consulted to determine all applicable land use principles, goals, objectives, strategies, development standards, and other policies, certain policies in the Plan will frequently apply. Some of these include the following: (1) Towers should be compatible with the use, scale, height, size, design and character of surrounding existing and future uses, and such uses that are generally located in the land use designation in which the tower would be located; and (2) towers should be located and designed in a manner that protects the character of the County's scenic resource corridors and historic and scenic resource areas and their view sheds.

2. Towers should be located and designed consistent with the following criteria:

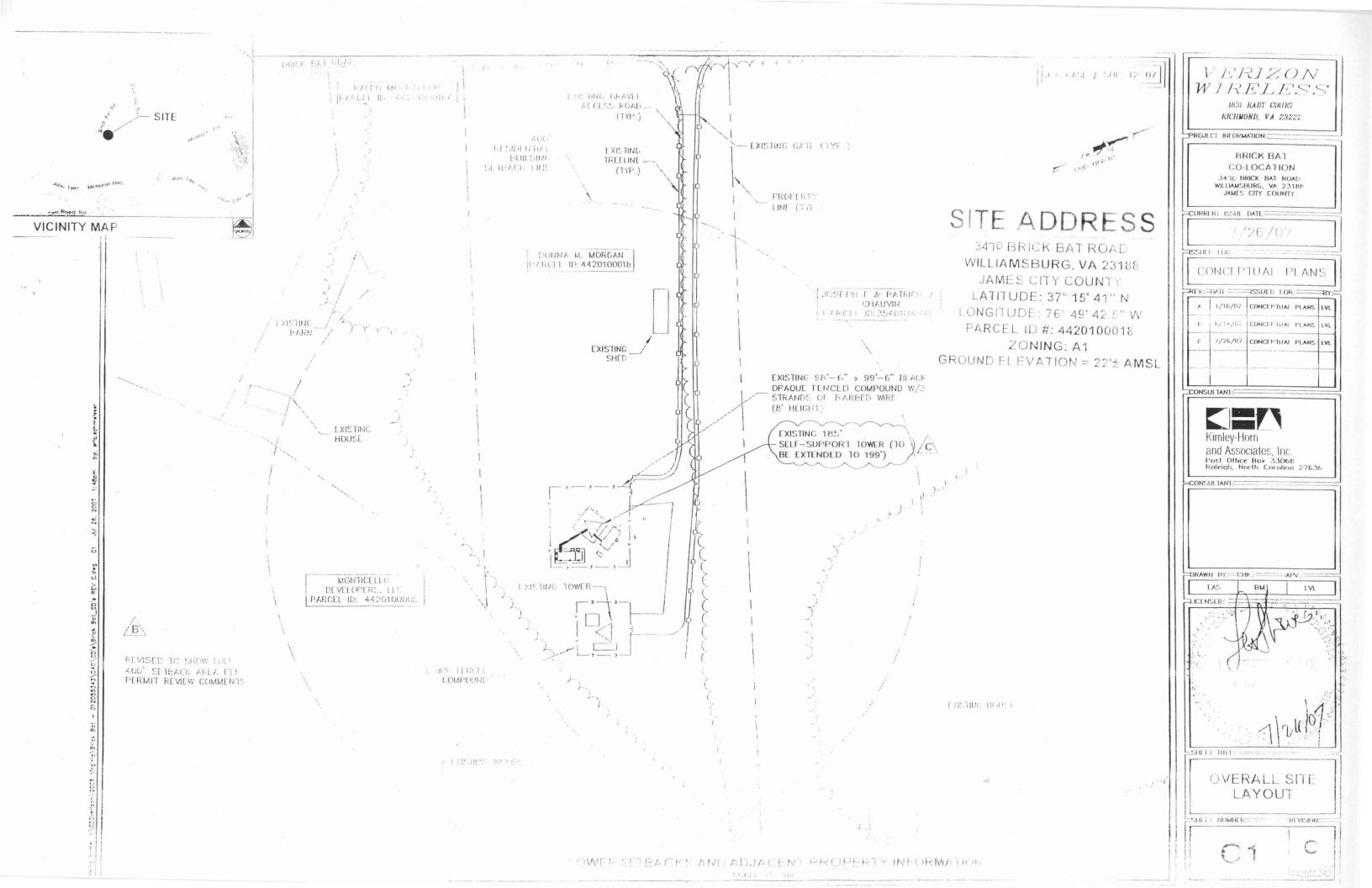
Proposed Location of	Impact Criteria
Tower	<u></u>
a. Within a residential zone	Use a camouflaged design or have minimal intrusion on to
or residential designation in	residential areas, historic and scenic resources areas or roads in
the Comprehensive Plan	such areas, or scenic resource corridors.
b. Within a historic or	Use a camouflaged design or have minimal intrusion on to
scenic resource area or	residential areas, historic and scenic resources areas or roads in
within a scenic resource	such areas, or scenic resource corridors.
corridor	
c. Within a rural lands	For areas designated rural lands in the Comprehensive Plan
designation in the	that are within 1,500 feet from the tower, use a camouflaged
Comprehensive Plan	design or have minimal intrusion on to residential areas,
	historic and scenic resources areas or roads in such areas, or
	scenic resource corridors.
	For rural lands more than 1,500 feet from the tower, no more
	than the upper 25% of the tower should be visible.
d. Within a commercial or	Use a camouflaged design or have minimal intrusion on to
in an industrial designation	residential areas, historic and scenic resources areas or roads in
in the Comprehensive Plan	such areas, or scenic resource corridors.

Notes for the above table:

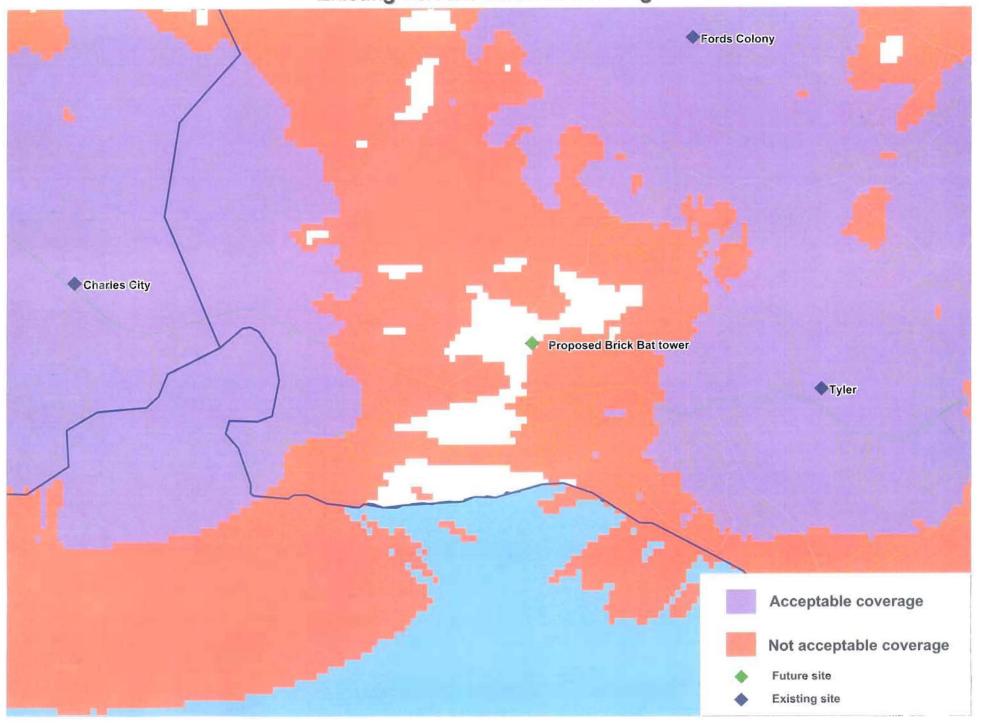
- 1. Exceptions to these criteria may be made on a case by case basis where the impact of the proposed tower is only on the following areas: (1) An area designated residential on the Comprehensive Plan or zoning map which is not a logical extension of a residential subdivision or which is a transitional area between residential and nonresidential uses, (2) a golf course or a golf course and some combination of commercial areas, industrial areas, or utility easements, provided the tower is located on the golf course property, or (3) a scenic easement.
- 2. A tower will meet the minimal intrusion criteria if it is not visible off site above the tree line. Such tower should only be visible off-site when viewed through surrounding trees that have shed their leaves.
- 3. Camouflaged towers having the design of a tree should be compatible in scale and species with surrounding natural trees or trees native to Eastern Virginia.
- 3. Towers should be less than 200 feet in height in order to avoid the need for lighting. Taller heights may be acceptable where views of the tower from residential areas and public roads are very limited. At a minimum, towers 200 feet or more in height should exceed the location standards listed above.
- 4. Towers should be freestanding and not supported with guy wires.

C. Buffering

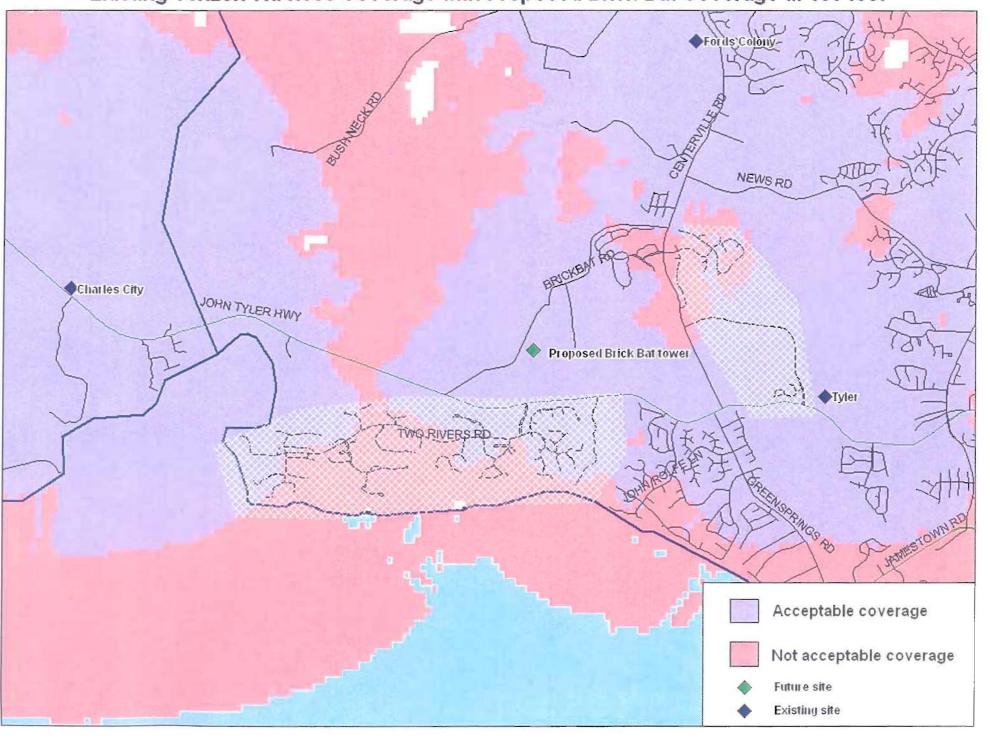
- 1. Towers should be placed on a site in a manner that takes maximum advantage of existing trees, vegetation and structures so as to screen as much of the entire WCF as possible from view from adjacent properties and public roads. Access drives should be designed in a manner that provides no view of the tower base or related facilities.
- 2. Towers should be buffered from adjacent land uses and public roads as much as possible. The following buffer widths and standards should be met:
 - a. In or adjacent to residential or agricultural zoning districts, areas designated residential or rural lands on the Comprehensive Plan, historic or scenic resource areas, or scenic resource corridors, an undisturbed, completely wooded buffer consisting of existing mature trees at least 100 feet wide should be provided around the WCF.
 - b. In or adjacent to all other areas, at least a 50 foot wide vegetative buffer consisting of a mix of deciduous and evergreen trees native to Eastern Virginia should be provided.



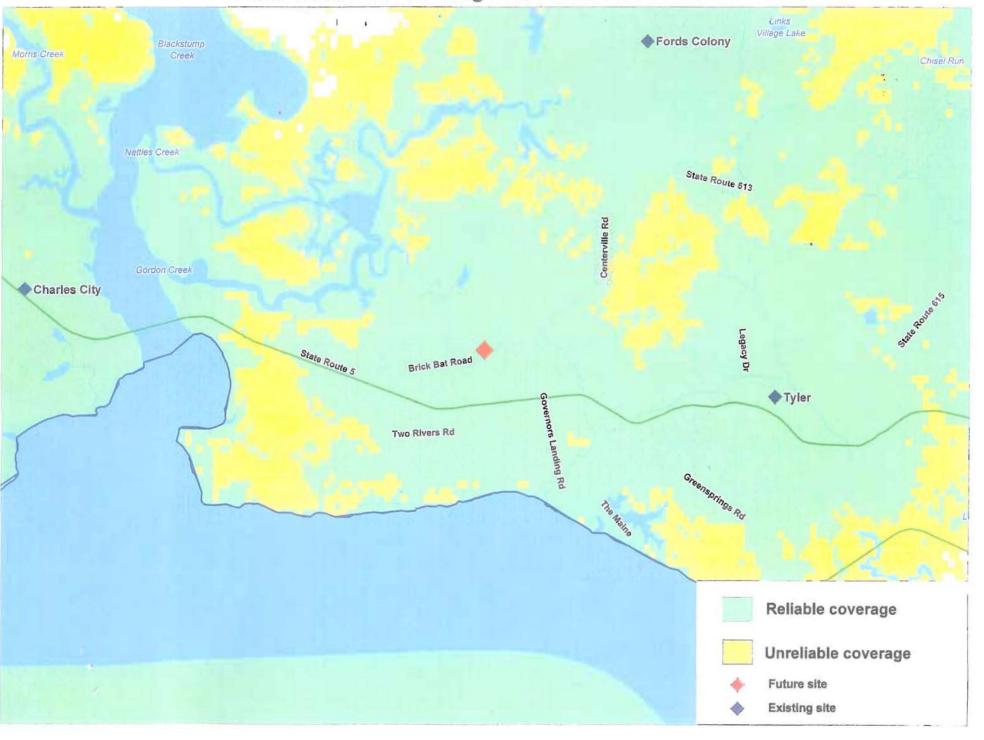
Existing Verizon Wireless Coverage



Existing Verizon Wireless Coverage with Proposed Brick Bat Coverage at 183 feet



Verizon Wireless Coverage with Brick Bat at 195 feet



Photos from August 21, 2007 Balloon Tests



Photo 1: (A) Pet Resort off of Monticello Avenue

(please note that balloon was not flying at appropriate height in this photo due to wind)

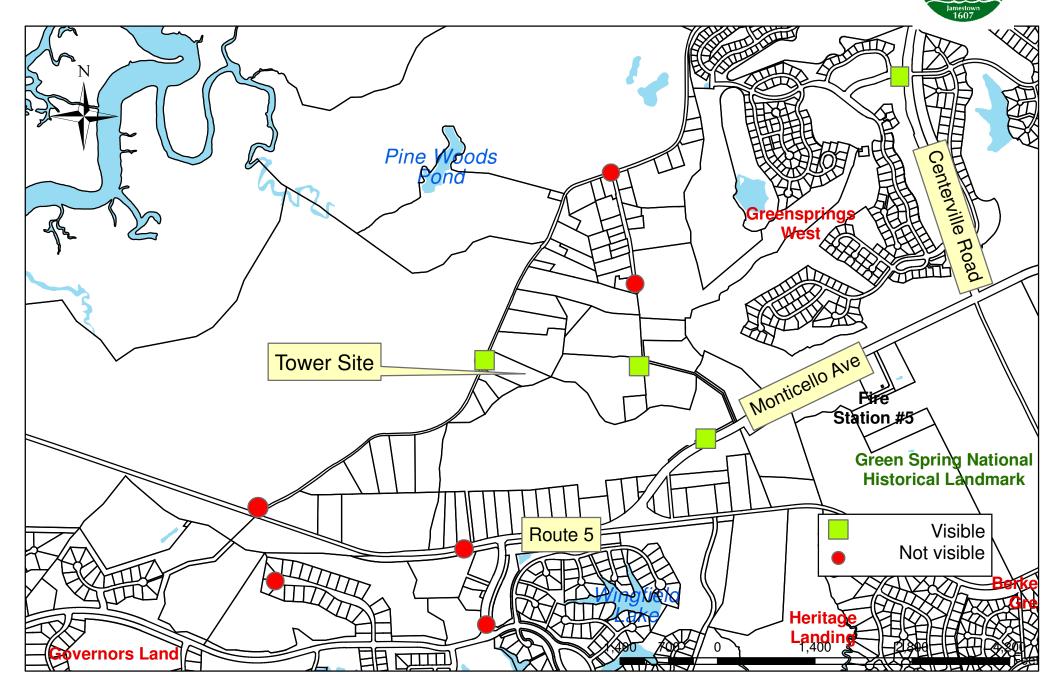
Photo 2: (B) Monticello Avenue near entrance to Pet Resort





Photo 3: (C) Main entrance of Greensprings West near intersection of Manor Gate Road and Centerville.

JCC-SUP-12-07 Verizon Co-location at Brick Bat Rd Photo Location Map



GOVERNOR'S LAND FOUNDATION

February 16, 2007

James City County Planning Department 101-A Mount Bay Road Williamsburg, Virginia 23187

Dear Sir or Madam:

The Board of Governor's Land Foundation met with representatives of Verizon Wireless on November 20, 2006 regarding the proposed 30' height extension for the existing American Tower Corporation tower located at 3405 Brick Bat Road. This is to advise you that the Board has no objection to Verizon's requested tower height extension. We believe Verizon's installation will have minimal impact on the surrounding properties and will significantly enhance basic wireless phone coverage and address essential public safety issues for the community.

We respectfully request that you circulate our letter to members of the Planning Commission and Board of Supervisors. Please do not hesitate to call me if you have any questions.

Sincerely,

David R. King General Manager

JCC-SUP-0012-2007 Verizon Tower Co-location at Brick Bat Road Exhibit A





MEMORANDUM

DATE: September 12, 2007

TO: The Planning Commission

FROM: Melissa C. Brown, Deputy Zoning Administrator

SUBJECT: Case No. ZO-0005-2007, Heavy Equipment Sales and Service in the M-2,

General Industrial, District

Staff has received a request to forward an amendment to permit "heavy equipment sales and service, with major repair limited to a fully enclosed building or screened with landscaping and fencing from adjacent properties" in the M-2, General Industrial, district. Currently, the ordinance allows this use by-right in the M-1, Limited Business/Industrial, and MU, Mixed Use, districts. The James City County Planning Commission voted to approve the initiating resolution for this request at the July 12, 2007 meeting and forwarded the issue to the Policy Committee for review and recommendation. The Policy Committee unanimously voted to recommend approval of this amendment at its August 17, 2007 meeting.

Background:

Tidewater Express Incorporated currently has offices and repair facilities in Hampton and Chesapeake. The company provides repair and towing services for heavy-duty vehicles such as semi-trailers that are typically utilized by the shipping and distribution industry. The company's owner would like to locate a division of the company in the Greenmount Industrial Park of James City County in order to provide services to the existing manufacturing, shipping and distribution industry in that area. The business consists of a repair facility with some outdoor storage of equipment. Approximately 75% of the business consists of repair of equipment and 25% of the business consists of outdoor storage related to towing. The outdoor storage would primarily consist of trailers that either have been repaired and were waiting for pick-up or trailers waiting to be serviced. There will be no vehicle painting at this facility.

Recommendation:

Staff finds this amendment provides consistency and flexibility within the industrial zoning districts. In staff's opinion, this use would provide needed support to the existing manufacturing and distribution businesses located in the General Industrial district. Staff believes that the current ordinance screening requirements located in Section 24-41 in conjunction with the additional requirement for screening of equipment being actively repaired will mitigate any negative impact to surrounding properties. Water quality issues will be addressed through the site plan process as any new development is required to conform to the requirements of the Chesapeake Bay Ordinance as well as other

applicable state and local requirements. Staff recommends that the Planning Commission recommend approval of this ordinance to the Board of Supervisors.

Attachments:

1. Ordinance

ORDINANCE NO.

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE V, DISTRICTS, DIVISION 12, GENERAL INDUSTRIAL DISTRICT, M-2, SECTION 24-436, 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 Article V, Districts, Division 12, General Industrial District, M-2, Section 24-436, Permitted uses.

Chapter 24. Zoning

Article V. Districts

Division 12. General Industrial District, M-2

Sec. 24-436. Permitted uses. DRAFT

In the General Industrial District, M-2, buildings to be erected or land to be used shall be for one or more of the following or similar uses:

Heavy equipment sales and service, with major repair limited to a fully enclosed building or screened with landscaping and fencing from adjacent property.

	John J. McGlennon Chairman, Board of Supervisors
ATTEST:	
Conford D. Wonner	
Sanford B. Wanner	
Clerk to the Board	

Adopted by the Board of Supervisors of James City County, Virginia, this 25th day of September, 2007.

MEMORANDUM

DATE:	September 12, 2007	
TO:	The Planning Commission	
FROM:	Adam R. Kinsman, Deputy County Attorney Melissa C. Brown, Deputy Zoning Administrator	
SUBJECT:	Amendment of Section 24-16, Proffer of Conditions, of the James City County Code	
Code of Virgini alternate form o	session, the General Assembly approved House Bill 2500 amending Section 15.2-2298 of the a, which permits high-growth localities such as James City County the option of adopting an f conditional zoning. Although the two forms of conditional zoning are similar, the alternate operty owners greater flexibility in what they may legally proffer to the County in conjunction I rezoning.	
Section 15.2-22 conditions a pro These limitation conditions, (2) t in conformity w of real property	rently accepts proffered conditions pursuant to the conditional zoning authority granted by 298 of the Code of Virginia. This section places several important limitations on what operty owner may legally proffer to the County in conjunction with a rezoning proposal. In include the following: (1) the rezoning itself must give rise to the need for the proffered the conditions must have a reasonable relation to the rezoning, and (3) the conditions must be ith the Comprehensive Plan. Furthermore, if the proffered conditions include the dedication or payment of cash, neither may be accepted by the County until the facilities are included in apital Improvement Program (the "CIP").	
only applicable none of the rest	07, the conditional zoning authority granted by Section 15.2-2303 of the Code of Virginia was in northern Virginia localities. The "northern Virginia" form of conditional zoning contains rictions listed above. Importantly, proffered conditions need not be directly related to the e, nor must the facilities or cash be contained within the County's CIP.	
proffered to the	"northern Virginia" form of conditional zoning may not result in great changes to conditions County pursuant to a rezoning application. The change will, however, give property owners offering new, innovative conditions in conjunction with a rezoning.	
	that the Planning Commission recommend approval of the attached Ordinance amending f the County Code.	
	Haukusuau Adam R. Kinsman	
	Melissa C. Brown	

ARK/nb Sect24_16amend.mem

Attachment

ORDINANCE NO.

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 24-16, PROFFER OF CONDITIONS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that the county shall utilize the conditional zoning authority granted pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended; and

BE IT FURTHER ORDAINED that Chapter 24, Zoning, is hereby amended and reordained by amending Section 24-16, Proffer of conditions.

Chapter 24. Zoning

Article I. In General

Section 24-16. Proffer of conditions.

The owner or owners of property making application for a change in zoning or amendment to a zoning map, as part of their application, may voluntarily proffer in writing reasonable conditions, prior to a public hearing before the board of supervisors, which shall be in addition to the regulations provided for in the zoning district or zone sought in the rezoning petition. The conditions shall be proffered as a part of the requested rezoning or amendment to the county's zoning map. It is expressly provided, however, that the conditions so proffered are subject to the following limitations:

(1) The rezoning itself must give rise to the need for the conditions;

Ordinance to Amend and Reordain Chapter 24. Zoning

Page 2

Such conditions shall have a reasonable relation to the rezoning; (2)

(3) All such conditions shall be in conformity with the Comprehensive Plan of the county;

(4) No proffer shall be accepted by the county unless it has adopted a capital improvement program

pursuant to Virginia Code, section 15.2 2239. In the event proffered conditions include the

dedication of real property or payment of cash, such property shall not transfer and such payment of

eash shall not be made until the facilities for which such property is dedicated or eash is tendered are

included in the capital improvement program; provided, that nothing herein shall prevent the county

from accepting proffered conditions which are not normally included in such capital improvement

program;

If proffered conditions include the dedication of real property or the payment of cash, the proffered (5)

conditions shall provide for the disposition of such property or cash payment in the event the

property or cash payment is not used for the purpose for which proffered.

State law reference - Code of Va., § 15.2-2303.

John J. McGlennon Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner

Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 25th day of September, 2007.

Ordinance to Amend and Reordain Chapter 24. Zoning Page 3

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MEMORANDUM

Date:	September	12.	2007

To: Planning Commission

From: Darryl E. Cook, County Engineer

Subject: Amendment to the Zoning Ordinance – Floodplain Regulations

The Zoning Ordinance, which contains the County's floodplain management regulations, needs to be amended to meet the requirements of the National Flood Insurance Program (NFIP). James City County participates in the NFIP, which enables County property owners to purchase insurance protection against losses from flooding. This insurance is designed to provide an insurance alternative to disaster assistance to meet the escalating cost of repairing damage to buildings and their contents caused by floods.

The Federal Emergency Management Agency (FEMA), which oversees the program, has completed updates to the County's Flood Insurance Study and Flood Insurance Rate Map. These two updated documents have an effective date of September 28, 2007. In order to continue participation in the NFIP, the County must ensure its floodplain management measures are compliant with the federal regulations so that FEMA can approve them by the effective date.

The proposed amendment consists of changes required to remain compliant with federal regulations. The nature of the amendment is essentially one of "housekeeping" with changes such as referencing the updated documents and modifying definitions. There are no substantive changes in the study or map. All the same properties that are currently eligible to participate in the NFIP will still be eligible under the amended program.

Staff recommends approval of the attached amended Zoning Ordinance.

Darryl E. Cook	

ORDINANCE NO.

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 BY AMENDING ARTICLE VI, OVERLAY DISTRICTS, DIVISION 3, FLOODPLAIN AREA REGULATIONS, SECTION 24-586, STATEMENT OF INTENT; SECTION 24-588, COMPLIANCE AND LIABILITY; SECTION 24-589, DEFINITIONS; SECTION 24-590, DESIGNATION OF FLOODPLAIN DISTRICTS; SECTION 24-591, OFFICIAL MAP; SECTION 24-596, REGULATIONS FOR SUBDIVISIONS AND SITE PLANS; SECTION 24-600, REGULATIONS FOR FILLING IN FLOOD FRINGE AND APPROXIMATED FLOODPLAIN DISTRICTS; AND SECTION 24-602, EXISTING STRUCTURES IN FLOODPLAIN DISTRICTS.

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 Article I, In General, Section 24-2, Definitions; and by amending Article VI, Overlay Districts, Section 24-586, Statement of intent; Section 24-588, Compliance and liability; Section 24-589, Definitions; Section 24-590, Designation of floodplain districts; Section 24-591, Official map; Section 24-596, Regulations for subdivisions and site plans; Section 24-600, Regulations for filling in flood fringe and approximated floodplain districts; and Section 24-602, Existing structures in floodplain districts.

Chapter 24. Zoning

Article I. In General

Section 24-2. Definitions.

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

Base flood elevation. The Federal Emergency Management Agency (FEMA) designated 100-year

water surface elevation.

Basement. A story having part but not more than one-half of its height below grade. A basement shall

be counted as a story for the purpose of height regulations if it is used for business purposes or for

dwelling purposes by other than a janitor employed on the premises. Solely for the purposes of Article VI,

Overlay District, Division 3, Floodplain Area Regulations, this term shall mean any area of the building

having its floor subgrade (below ground level) on all sides.

Flood or flooding. The terms include:

(1) A general or temporary condition of partial or complete inundation of normally dry land areas

from the overflow of inland or tidal waters, or the unusual and rapid accumulation or runoff of

surface water from any source.

(2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of

erosion or undermining caused by waves or currents of water exceeding anticipated cyclical

levels or suddenly caused by an unusually high water level in a natural body of water,

accompanied by a severe storm, or by an unanticipated force of nature such as a flash flood or an

abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in

flooding as defined in paragraph 1 of this definition.

Floodplain. A relatively flat or low land area adjoining a river, stream, or watercourse which is subject

to partial or complete inundation, and any area subject to the unusual and rapid accumulation or runoff of

surface water from any source. Any land area susceptible to being inundated by water from any source.

Floodway. The designated area of the floodplain required to carry and discharge floodwaters of a given

magnitude. For the purposes of these regulations, the floodway shall be capable of accommodating a

flood of the 100 year magnitude. The channel of a river or other watercourse and the adjacent land

areas that must be reserved in order to discharge the base flood without cumulatively increasing the

water surface elevation more than a designated height.

Lowest Floor. The lowest floor of the lowest enclosed area including the basement. An unfinished or

flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area

other than a basement area is not considered a building's lowest floor; provided that such enclosure is

not built so as to render the structure in violation of the applicable non-elevation design requirement of

Federal Code 44CFR Section 60.3.

New Construction. For the purposes of determining insurance rates, structures for which the "start of

construction" commenced on or after July 18, 1975, the effective date of an initial Flood Insurance Rate

Map, and includes any subsequent improvements to such structures. For floodplain management

purposes, new construction means structures for which start of construction commenced on or after

August 8, 1977, the effective date of these floodplain management regulations, and includes any

subsequent improvements to such structures.

Substantial damage. Damage of any origin sustained by a structure whereby the cost of restoring the

structure to its before damaged condition would equal or exceed 50 percent of the market value of the

structure before the damage occurred.

Substantial improvement. Any reconstruction, rehabilitation, addition, or other improvement of a

structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the

start of construction of the improvement. This term includes structures which have incurred substantial

damage regardless of the actual repair work performed. The term does not, however, include either:

(1) any project for improvement of a structure to correct existing violations of state or local health,

sanitary, or safety code specifications which have been identified by the local code enforcement

official and which are the minimum necessary to assure safe living conditions, or

(2) any alteration of a historic structure, provided that the alteration will not preclude the structure's

continued designation as a historic structure.

Watercourse. A lake, river, creek, stream, wash, channel or other topographic feature on or over which

waters flow at least periodically. Watercourse includes specifically designated areas in which substantial

flood damage may occur.

Article VI. Overlay Districts

Division 3. Floodplain Area Regulations

Sec. 24-586. Statement of intent.

(a) These regulations are intended to prevent the loss of life and property, the creation of health and

safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary

expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

Ordinance to Amend and Reordain

Chapter 24. Zoning

Page 5

(1) Regulating uses, activities and development which, alone or in combination with other existing or

future uses, activities and development, may cause unacceptable increases in flood heights,

velocities and frequencies;

(2) Restricting or prohibiting certain uses, activities and development within districts subject to

flooding;

(3) Requiring uses, activities and developments that do occur in flood-prone districts to be protected

and/or flood-proofed against flooding and flood damage; and

(4) Protecting individuals from buying land and structures which are unsuited for intended purposes

because of flood hazards.

(b) These regulations comply with the requirements of the National Flood Insurance Program (42

USC 4001-4128) of the Federal Insurance Administration. These regulations are necessary in order for

all property owners within the county to be eligible for the National Flood Insurance Program and thereby

purchase such insurance at nominal rates.

Sec. 24-588. Compliance and liability.

(a) No land shall hereafter be developed and no structure shall be located, relocated, constructed,

reconstructed, enlarged or structurally altered except in full compliance with the terms and provisions of

these regulations and any other applicable ordinances and regulations.

(b) The degree of flood protection sought by the provisions of these regulations is for reasonable

regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur

on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and

bridge openings restricted by debris. These regulations do not imply that districts outside the floodplain

district or that land uses permitted within such district will be free from flooding or flood damage.

(c) Records of actions associated with administering these regulations shall be kept on file and

maintained by the county engineer.

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(d) These regulations shall not create liability on the part of the county or any officer or employee thereof for any flood damages that result from reliance on these regulations or any administrative decision lawfully made thereunder.

Sec. 24-589. Reserved. Definitions

The terms used in these regulations are defined in Section 24-2 of this chapter except for the Board of Zoning Appeals, which is defined in Section 24-645.

Sec. 24-590. Designation of floodplain districts.

(a) The various floodplain districts shall include areas subject to inundation by waters of the 100-year flood. The minimum basis for the delineation of these districts shall be, but not limited to, the February 6, 1991 September 28, 2007, flood insurance study prepared by the Federal Emergency Management Agency (FEMA), Federal Insurance Agency (FIA), since other flood-prone areas exist in the County which are not shown on the floodplain maps. To determine these areas, the 100-year flood elevations and floodways from federal, state and local sources may be used when available. Where the specific 100-year flood elevation cannot be determined for an area by using available sources of data, then the applicant for the proposed use, development and/or activity shall determine this elevation to the satisfaction of the county engineer in accordance with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall consider full development of the watershed and shall be submitted in sufficient detail to allow a thorough review by the county engineer.

Where flood elevations are provided by the FIS, these elevations shall not be changed except with FEMA approval. Local sources of floodplain data include, but are not limited to, the following reports: Drainage Study of Upper Powhatan Creek Watersheds, Camp Dresser and McKee 1987; Mill Creek-Lake Watershed Study, GKY and Associates, 1988.

(b) The floodway district, minimally shown on the maps accompanying the flood insurance study, is established for purposes of these regulations using the criterion that certain areas within the floodplain

must be kept free of encroachment in order that the 100-year flood be conveyed without increasing the water surface areas included in this district.

(c) The flood-fringe district shall be that area of the 100-year floodplain not included in the floodway district. The basis for the outmost boundary of the district shall be the 100-year flood elevations

minimally shown as Zone AE on the maps accompanying the flood insurance study.

(d) The approximated floodplain district shall be that floodplain area for which no detailed flood

profiles or elevations are provided but where a 100-year floodplain boundary has been approximated.

Such areas are minimally shown as Zone A on the maps accompanying the flood insurance study.

Sec. 24-591. Official map.

The boundaries of floodway, flood-fringe and approximated floodplain districts in section 24-590(b),

(c) and (d) above are established as minimum areas, as shown on the flood insurance rate map dated

September 28, 2007, which is declared to be a part of these regulations and which shall be kept on file at

the office of the county engineer.

Sec. 24-596. Regulations for subdivisions and site plans.

The applicant of any subdivision of land or site plan within the county shall submit with his application

a statement by a licensed surveyor or engineer as to whether or not any property shown on the plat or plan

is at an elevation lower than the 100-year flood level. Where a 100-year flood level exists, the extent of

this area shall be shown on the plat or plan. Further, the elevation of the finished surface of the ground at

each building location shall be shown. Lots created after February 6, 1991, which are within a floodplain

district having a 100-year flood elevation greater than 87-1/2 feet, shall contain a natural, unfilled building

site at least one foot above the 100-year flood elevation adequate to accommodate all proposed structures.

All structures shall be constructed solely within such building site.

Sec. 24-600. Regulations for filling in flood fringe and approximated floodplain districts.

No permit shall be issued or approved until the site development plan for such fill meets the following

requirements:

- (1) The filling of land shall be designed and constructed to minimize obstruction to and effect upon the flow of water and more particularly that:
 - a. Such fill will not result in any increase in flood levels during the occurrence of a 100-year flood discharge.
 - b. The flood-carrying capacity of the watercourse shall be maintained.
- (2) Fill shall be effectively protected against erosion by vegetative cover, riprap, gabions, bulkhead or other acceptable method. Any structure, equipment or material permitted shall be firmly anchored to prevent dislocation due to flooding;
- (3) Fill shall be of a material that will not pollute surface water or groundwater;
- (4) Where, in the opinion of the director of code compliance county engineer, additional topographic, engineering and other data or studies are necessary to determine the effects of flooding on a proposed structure or fill and/or the effect of such structure or fill on the flow of water in flood stage, the applicant shall submit such data or studies.

Sec. 24-602. Existing structures in floodplain districts.

A structure or use of a structure or premises which lawfully existed before the enactment of these regulations, but which is not in conformity with these regulations, may be continued subject to the following conditions:

- (1) Existing structures in the floodway district shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed expansion would not result in any increase in the 100-year flood elevation;
- (2) Any modification, alteration, repair, reconstruction or improvement of any kind to a structure and/or use located in any floodplain area to an extent or amount of less than 50 percent of its

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market value shall be elevated and/or flood-proofed to the greatest extent possible to or above the

base flood elevation; and,

(3) The modification, alteration, repair, reconstruction or substantial improvement of any kind to a

structure and/or use, regardless of its locations in a floodplain area, to an extent or amount of 50

percent or more of its market value shall be undertaken only in full compliance with the

provisions of these regulations and the Virginia Uniform Statewide Building Code- and shall

require that the entire structure be brought into full compliance with these provisions.

John J. McGlennon Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 25th day of September, 2007.

 $FloodplainDefs_ord$

PLANNING DIRECTOR'S REPORT September 2007

This report summarizes the status of selected Planning Division activities during the last 30 days.

- Rural Lands Study. Staff has been working with the consultant to translate the
 narrative ordinance into specific ordinance language for the Planning Commission's
 and Board of Supervisor's consideration later this year. Staff reviewed a draft
 ordinance and is working on revisions for the consultant to incorporate into a second
 draft.
- New Town. The New Town Design Review Board reviewed elevations for both the Circuit City store and "National Supermarket and Pharmacy" for the DRC retail portion of Settler's Market at the August meeting. There were no site plans or sign applications on the August agenda.
- <u>Better Site Design</u>. The Better Site Design Committee Report has been included as a Reading file item for tonight's meeting. The Report will be discussed at the September 25th Board of Supervisors Work Session.
- <u>Direct Discharge Septic Systems.</u> Staff has compiled a set of proposed performance standards and additional research in collaboration with the Virginia Department of Health. These findings will be presented to the Policy Committee on September 6 for a recommendation.
- <u>CaseTrak.</u> CaseTrak 2.0 was released for use by the general public on August 14, 2007. Staff has received primarily positive feedback and some suggestions for improving the system. Additional items to be addressed include data updates, creation of standardized reports, procedures for loading applicant response letters, and implementing citizen suggestions.
- <u>Public Land District</u>. At their August 1, 2007 meeting the Planning Commission unanimously recommended approval of the comprehensive rezoning of 122 parcels to Public Land, PL, to the Board of Supervisors. Staff will present the case to the Board at their September 11, 2007 meeting. This is the final anticipated step involved in this process.
- Stonehouse Work Session. A work session to discuss amendments to the Stonehouse Planned Unit Development master plan and proffers is scheduled prior to the regular September 12th meeting.
- Adequate Public Facilities: Cumulative Development Impact to Schools Project. This project got underway in mid-July. Staff has been working to develop and refine the database that will be employed in the project. Once the database is fully developed, Staff will be able to accurately estimate what the cumulative impact of new development approved in the County will be for each individual school in the Williamsburg-James City County School District. Great progress has been made on the database that will support the project. Staff estimates that initial reports should be available by the end of September.
- <u>Environmental Inventory</u>. As a follow-up to presentations by the Citizens' Coalition to the Planning Commission and Board of Supervisors, staff has begun to review possible changes to the type and amount of environmental information that is received with rezoning and SUP applications.

•	Master Plan Process. At its August 1st meeting the Planning Commission requested a		
	review of ordinance provisions regarding the master plan process. Background		
	materials were provided to the Policy Committee at a subsequent meeting in Augus		
	and additional meetings will take place to discuss potential amendments.		

•	Board Action Results August 14. August.	No Public Hearings were considered by the Board in
		O. Marvin Sowers, Jr.