# A G E N D A JAMES CITY COUNTY PLANNING COMMISSION REGULAR MEETING

#### County Government Center Board Room 101 Mounts Bay Road, Williamsburg, VA 23185 July 6, 2016 7:00 PM

- A. CALL TO ORDER
- B. ROLL CALL
- C. PUBLIC COMMENT
- D. CONSENT AGENDA
  - 1. Minutes Adoption June 1, 2016 Regular Meeting
  - 2. Adoption of Updated 2016 Calendar
  - 3. Development Review Committee Action Item: Case No. C-0045-2016. Williamsburg Place, Farley Center Expansion
- E. REPORTS OF THE COMMISSION
- F. PUBLIC HEARINGS
  - 1. SUP-0008-2015/SUP-0011-2016, J.S.G. Mineral Resource Management Expansion and SUP Amendment
  - 2. Z-0006-2016/SUP-0015-2016, Our Saviour's Lutheran Church
- G. PLANNING COMMISSION CONSIDERATIONS
- H. PLANNING DIRECTOR'S REPORT
  - 1. Planning Director's Report July 2016
- I. PLANNING COMMISSION DISCUSSION AND REQUESTS
  - 1. Changes Related to New Residential Rezoning Applications
- J. ADJOURNMENT

#### AGENDA ITEM NO. D.1.

#### **ITEM SUMMARY**

DATE: 7/6/2016

TO: The Planning Commission

FROM: Paul D. Holt, III, Secretary

Minutes Adoption - June 1, 2016 Regular Meeting SUBJECT:

**ATTACHMENTS:** 

Description Type

Minutes of the May 4, 2016 Regular Cover Memo D

Meeting

**REVIEWERS:** 

Department Reviewer Action Date

Planning Commission Secretary, PC Approved 6/30/2016 - 4:18 PM

# M I N U T E S JAMES CITY COUNTY PLANNING COMMISSION REGULAR MEETING

#### County Government Center Board Room 101 Mounts Bay Road, Williamsburg, VA 23185 June 1, 2016 7:00 PM

#### VIDEO A. CALL TO ORDER

Mr. Tim O'Connor called the meeting to order at 7:00 p.m.

#### VIDEO B. ROLL CALL

**Planning Commissioners** 

Present:

Tim O'Connor

Rich Krapf

Chris Basic

Robin Bledsoe

John Wright

Heath Richardson

Danny Schmidt

#### **Staff Present:**

Paul Holt, Planning Director

José Ribeiro, Senior Planner II

Savannah Pietrowski, Planner

Roberta Sulouff, Planner

Maxwell Hlavin, Assistant County Attorney

Mr. O'Connor recognized the presence of Mr. Richard Bradshaw, Commissioner of the Revenue and Mr. Russ Seymour, Director of Economic Development.

#### VIDEO C. PUBLIC COMMENT

Mr. O'Connor opened the public comment.

As no one wished to speak, Mr. O'Connor closed the public comment.

#### VIDEO D. CONSENT AGENDA

- 1. Minutes Adoption May 4, 2016 Regular Meeting
- Development Review Committee Action Item: Case No. C-0037-2016, Natural Resources and Farm Link Center, Community Garden

Mr. Chris Basic made a motion to approve the Consent Agenda.

The consent agenda was approved by voice vote (7-0).

#### VIDEO E. REPORTS OF THE COMMISSION

Mr. Rich Krapf stated that the Policy Committee met on May 12, 2016 to review three proposed ordinance amendments. Mr. Krapf stated that the amendments included changes to the Planned Unit Development District to allow the manufacture of food, beverages and food products, changes to the Wireless Communications Facilities Ordinance and amendments to Allow Mobile Food Vending Vehicles in the M-1, Limited Business/Industrial District, the M-2, General Industrial District and the Planned Unit Development-Commercial District.

Mr. Krapf stated that the County has received requests to allow for the manufacture of food in certain areas zoned PUD-C. Mr. Krapf noted that the largest area is in Stonehouse which includes distinct commercial/industrial areas but has a more limited use list than the M-1 and M-2 districts. Mr. Krapf further stated that staff believes it may be beneficial to provide for the manufacture of food, beverages and food products in the PUD-C. The Committee concurred with the staff recommendations and voted to recommend approval of the proposed amendments.

Mr. Krapf stated that review of the Wireless Communications Facilities Ordinance was selected as part of the Planning Division Work Plan to determine if other structures such as microwave towers and radio towers should fall under the provisions of the ordinance. Mr. Krapf further stated that new federal regulations, specifically the Spectrum Act, must also be addressed. Mr. Krapf stated that the Committee voted to recommend that staff begin a review of the WCF Ordinance.

Mr. Krapf stated that the Policy Committee also considered Zoning Ordinance amendments to allow mobile food vending vehicles in the M-1, Limited Business/Industrial District, the M-2, General Industrial District and the Planned Unit Development-Commercial District. Mr. Krapf noted that this review was to fulfill a request by the Board of Supervisors. Mr. Krapf stated that the Committee and staff discussed such items as definitions, permitting, performance standards and operating hours. Mr. Krapf stated that the Committee also reviewed procedures and policies from other localities and provided feedback on staff's planned approach. Mr. Krapf stated that the Committee voted to approve staff preparing draft amendments for future consideration.

Mr. Heath Richardson stated that the Development Review Committee met on May 25, 2016 to review C-0037-2016, Natural Resource and Farm Link Center, Community Gardens for a determination of masterplan consistency. Mr. Richardson stated that Mr. Brian Noyes of the Colonial Soil and Water Conservation District has proposed the first phase of a multi-phase project to build a community agricultural resource center. The initial phase would include community garden plots. Mr. Richardson further stated that as a condition of SUP-0017-2003, "...all development of the Warhill Sports Complex site shall be generally in accordance with the adopted Master Plan (MP-0005-2003), with such minor changes as the DRC determines does not change the basic concept of character of the development." Mr. Richardson stated that the DRC finds that the first phase of the proposed use is consistent with the adopted Master Plan.

#### VIDEO F. PUBLIC HEARINGS

VIDEO 1. SUP-0006-2016, 8766 Pocahontas Trail Dollar General

Ms. Roberta Sulouff, Planner, presented a report to the Commission on the request to construct a Dollar General variety store at 8766 Pocahontas Trail. Ms. Sulouff noted that the proposal is subject to policies governing the Limited Business, LB District and properties designated as Neighborhood Commercial. Ms. Sulouff stated that the proposed conditions have been developed to ensure that the proposal is consistent with those policies. Ms. Sulouff stated that staff finds the proposal compatible with surrounding development and consistent with the recommendations of the 2035 Comprehensive Plan. Ms. Sulouff stated that staff recommends that the Commission recommend approval of the application to the Board of Supervisors, subject to the attached conditions.

Mr. O'Connor opened the public hearing.

Mr. Richard Smith, 2860 B NC Highway, Aberdeen NC, stated that he represents Par 5 Development Group. Mr. Smith further stated that it is the intention to comply with all conditions of the Special Use Permit to ensure that the proposed use fits well in the community.

Mr. Michael W. Lynch, 20 S. Roanoke Street, Fincastle, VA, stated that he represents Engineering Concepts Inc. Mr. Lynch noted that he is available to answer any technical questions related to the proposal.

Mr. John Wright inquired how the visual impacts on the adjacent residential areas would be mitigated.

Mr. Lynch stated that the site would be landscaped.

Mr. O'Connor inquired about landscaping along the road frontage.

Mr. Lynch stated that they would be working with a certified landscape architect to ensure that the proposed landscape plan would be acceptable.

Mr. O'Connor noted that his interest stems from the subject property being directly opposite the entrance to Carter's Grove.

Mr. Krapf inquired whether a new location had been found for the bus stop.

Mr. Lynch stated that they are working with VDOT on the access management and the final location of the bus stop.

Mr. Basic inquired if the applicant would be amenable to modifying the landscape plan so that evergreens would be substituted for some of the deciduous trees.

Mr. Lynch stated that the applicant is more than willing to make modifications that would make the project acceptable to the County.

Mr. Basic requested that staff work toward formalizing that modification.

Mr. Wright inquired if the proposed project was on the table at the time the parcel was withdrawn from the AFD.

Mr. Lynch stated that it was not.

As no one else wished to speak, Mr. O'Connor closed the public hearing.

Mr. O'Connor opened the floor for discussion by the Commission.

Ms. Robin Bledsoe stated that she believes the proposed development will bring needed services to the Grove community.

Mr. Wright noted that there were citizen concerns about another Dollar General store proposed for the Norge area. Mr. Wright inquired if there had been any citizen feedback about this proposal. Mr. Wright noted that it was an important distinction for the public to understand why this case was being heard and the other was not.

Ms. Sulouff stated that no negative feedback has been received. Ms. Sulouff noted that there had been some initial concern about a private drive being used to provide access to the property; however, the private drive will not be used. Ms. Sulouff noted that the difference between the two proposals is that the store proposed in Norge is actually part of a master plan for a rezoning that occurred in 2004. Ms. Sulouff stated that because that property is subject to a master plan and the proposed location for the store is designated as commercial, a legislative application is not required.

Mr. Wright inquired if the property in Norge was rezoned to commercial.

Ms. Sulouff stated that the property was rezoned to mixed use.

Ms. Bledsoe clarified that the one in Norge does not require further legislative action, whereas this proposal does.

Mr. Schmidt stated that he is appreciative of the concern for the Carter's Grove property and preserving the scenic quality around the historic property. Mr. Schmidt stated that he would support the application.

Mr. Wright noted that he was concerned about the future of this parcel when it was removed from the AFD and noted that he might be more cautious in the future when voting on such matters. Mr. Wright further noted that absent any community concerns, it makes sense to approve the application.

Mr. Krapf made a motion to approve the application subject to the recommended conditions and the additional condition proposed to modify the landscape plan to substitute evergreens for some of the deciduous trees along the road frontage.

Mr. O'Connor inquired it the applicant is agreeable to the additional condition.

Mr. Smith confirmed.

Mr. Basic noted that his intention was not to screen a new business but to have an emphasis on evergreen trees in the landscaping plan.

Mr. Holt inquired if the intent was to translate the request into an SUP condition or to rely on staff to ensure the matter is handled at site plan stage.

Mr. Basic stated that he would be prefer to include it as an SUP condition before the

case is considered by the Board of Supervisors.

Mr. O'Connor clarified that the motion is to recommend approval with the additional condition.

On a roll call vote, the Commission voted to recommend approval of SUP-0006-2016, 8766 Pocahontas Trail Dollar General (7-0).

A motion to Approve w/ Conditions was made by Rich Krapf, the motion result was Passed.

AYES: 7 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Basic, Bledsoe, Krapf, O'Connor, Richardson, Schmidt, Wright III

#### VIDEO 2. SUP-0009-2016, 7206 Merrimac Trail Rental of Rooms

Ms. Roberta Sulouff, Planner, presented a report to the Commission on the request to allow the rental of up to three rooms in an owner-occupied home. Ms. Sulouff noted that staff considered the location of the property, the availability of parking and adequate existing screening of the property to be factors favorable to the project. Ms. Sulouff stated that the SUP conditions mitigated impacts on adjacent properties by limiting the number of guests and the number of guest vehicles allowed on site. Ms. Sulouff stated that limitations have been placed on changes to the exterior of the property that would draw attention to the use. Ms. Sulouff further stated that the property owner will be required to obtain all necessary permits and licensing and pay all required use-based taxes.

Ms. Sulouff noted that staff has been made aware of restrictive covenants that may affect the rental of rooms on the property. Ms. Sulouff stated that the County Attorney has advised that because the County is not a party to this restrictive covenant, staff lacks the legal authority to interpret whether or not the covenant prohibits the proposed use. The applicant has affirmed that it does not. Any disagreement about this affirmation and/or the covenant is a private matter outside of the County's purview.

Ms. Sulouff stated that staff finds the proposal to be compatible with surrounding development and consistent with the 2035 Comprehensive Plan and Zoning Ordinance. Ms. Sulouff stated that staff recommends that the Commission recommend approval of this application to the Board of Supervisors, subject to the proposed conditions.

Ms. Bledsoe inquired how the County will ensure that the proper licenses are obtained and taxes paid.

Ms. Sulouff stated that a clause has been added to the conditions that at the owner must obtain a business license within 12 months of the SUP being approved and must present proof of such to the Director of Planning.

Ms. Bledsoe inquired whether payment of the transient occupancy tax had been addressed.

Mr. Richard Bradshaw, Commissioner of the Revenue, stated that anyone who is set up to collect the transient occupancy tax and the \$2 per night surcharge are required to file monthly returns, whether there are sales or not, and remit at that time any taxes that have

been collected.

Ms. Bledsoe inquired if there was any historical data on whether similar rental of rooms operations are actually collecting and paying the tax.

Mr. Bradshaw stated that if a business license is issued for this activity the business owner will be set up for reporting and remittance of the taxes as part of the licensing process.

Mr. O'Connor inquired if the process was handled similar to a coupon book.

Mr. Bradshaw confirmed and stated that it was similar to how sales tax is collected. Mr. Bradshaw noted that the occupancy tax and sales tax are due on the same day of the month. Mr. Bradshaw further stated that if the return is not submitted, an administrative assessment is made based on best figures that can be determined.

Ms. Bledsoe noted that the County would not necessarily be aware of these businesses unless the owners came forward through the SUP process.

Mr. Bradshaw confirmed and noted that discovery of unreported businesses is exceptionally time consuming.

Ms. Bledsoe noted that to date there are 205 properties in the County being advertised on the Airbnb site.

Mr. Bradshaw noted that unless the rooms are actually rented, there is no requirement for a license.

Mr. Bradshaw noted that many of the property owners change their minds after registering with Airbnb; however, the listing remains on the site. Mr. Bradshaw further stated that for enforcement, it is necessary to find where the property is located and confirm that the rooms are actually being rented.

Mr. Basic inquired if staff had considered a sunset clause for the SUP since the type of use is something new for the County.

Ms. Sulouff stated that staff tries to avoid sunset clauses for SUPs in general and did not consider one for this case.

Mr. Basic requested clarification on why sunset clauses are not considered.

Mr. Holt stated that there is no policy that would require a sunset clause for an SUP. Mr. Holt noted that sunset clauses are used for some of the very unique land uses in the County such as surface mines or borrow pits; however, it has been a practice not to include them for most SUPs since the intent of an SUP is for it to run with the land rather than requiring the property owner to go through the process again.

Mr. Basic stated that he felt that the rental of rooms qualified as one of the more unique land uses.

Mr. Wright inquired about the specific language in the restrictive covenants.

Ms. Sulouff stated that the restrictive covenants limit the property to residential uses only.

Mr. Wright inquired if the language specifically barred rental of rooms.

Ms. Sulouff stated that the language is that "no lot or tract shall be used for nonresidential purposes."

Mr. Wright inquired if it was a neighborhood covenant.

Ms. Sulouff stated that the covenants were for the James Terrace subdivision.

Mr. Richardson inquired if the HOA is currently active.

Ms. Sulouff stated that the HOA is not active.

Mr. O'Connor stated that this is the same community where an SUP for a daycare was considered several years earlier.

Mr. Richardson inquired whether all future applications for rental of rooms would be considered by the Commission.

Ms. Sulouff stated that rental of rooms is a specially permitted use, so all applications will be considered by the Commission.

Mr. Richardson inquired if a policy might be developed to assist in the review of applications for this type of use.

Mr. Holt stated that there may be discussion by the Commission later in the meeting whether the Policy Committee should take up the matter.

Mr. O'Connor inquired if, based on the language in SUP Condition 1, the applicant could rent rooms prior to obtaining a business license.

Ms. Sulouff stated that the expectation is that the applicant would operate legally. Ms. Sulouff stated that the condition was modeled off other commencement clauses and that staff believed the one year time frame was appropriate.

Mr. O'Connor inquired if the condition could be amended to add that the applicant would obtain the necessary licenses and permits prior to renting rooms.

Ms. Bledsoe noted that Mr. Bradshaw had stated that a license was not required until or unless the applicant intended to rent rooms.

Mr. Holt stated that to operate it would be necessary to have both the SUP and the business license.

Mr. O'Connor inquired if the Commissioner's Office staff checked to determine if a business license applicant had an SUP.

Mr. Bradshaw stated that for any home based occupation, the applicant must submit a home occupation application which is reviewed by Zoning Enforcement before a

business license is issued.

Mr. Holt noted that for any business, both the business license and Zoning approval are necessary.

Ms. Bledsoe requested an explanation for why the applicant for a previous SUP had been paying taxes but did not have the appropriate approvals.

Mr. Bradshaw stated that County Code is very clear that a business license cannot be issued without Zoning approval; however, it does not relieve the business of the obligation to collect and remit the appropriate taxes whether they have a business license or not.

Ms. Bledsoe noted that the previous applicant had stated that they had the business license; however, they did not have the required Zoning approval.

Mr. Bradshaw stated that the other applicant did not have a business license.

Mr. Holt noted that some of the confusion with the previous applicant was that they had received the coupon book to remit taxes and had begun the process to obtain the license but had not been issued the license because they did not have an SUP.

Mr. Bradshaw stated that as another step in the process, if an application is rejected by Zoning, all forms are returned to the applicant with notification that they need to correct those issues and reapply before a license can be issued. Mr. Bradshaw further stated that a business license for a home based business is never issued without Zoning approval.

Mr. O'Connor opened the public hearing.

Ms. Shelby Dillon, 7206 Merrimac Trail, applicant, addressed the Commission regarding the configuration of the property, historical data on guest stays and taxes remitted. Ms. Dillon affirmed that they wanted to operate in compliance with the necessary regulations going forward.

Mr. Wright stated that he appreciates the applicant's situation and noted that the Commission is having to decide on a matter that not only affects the applicant but also sets some precedent regarding a new type of land use that has farther reaching effects.

Ms. Bledsoe inquired if the applicant has liability insurance.

Ms. Dillon stated that she has insurance through her homeowners policy and would obtain additional coverage if the SUP is approved.

Ms. Bledsoe inquired if Airbnb has requirements for insurance.

Ms. Dillon stated that Airbnb does have insurance available but it is not as comprehensive as what is provided under the homeowners policy.

Mr. Richardson inquired about requirements for ADA accessibility.

Ms. Dillon stated that accessibility does not seem to be a focus for Airbnb; however,

they are encouraging host properties to ensure that they are in compliance with local zoning regulations. Ms. Dillon stated that because the host has the right to accept or refuse any guest, she does not advertise the property as accessible.

Mr. O'Connor inquired if the guests were able to use the kitchen.

Ms. Dillon confirmed.

Janice Elko, 660 Fairfax Way, addressed the Commission on safety concerns related to short term rentals. Ms. Elko stated that York County does not allow short term rentals due to safety concerns.

David Dafashy, 716 Autumn Trace, addressed the Commission in support of providing visitors with a variety of lodging options including short term rentals. Mr. Dafashy noted that since visitors want nice places to stay these homes are generally well kept and well landscaped and enrich the community.

Ms. Dianne Scoggins, 7200 Merrimac Trail, addressed the Commission in support of the application. Ms. Scoggins noted that her one concern is that the SUP would run with the land, and that future owners may not operate the property in the same manner as the applicant. Ms. Scoggins noted that the SUP should end with the sale of the property. Ms. Scoggins further stated that there should be a monitoring process in place.

Ms. Beth Singley-Hall addressed the Commission on the need for a monitoring process which does not put the responsibility one the community.

As no one else wished to speak, Mr. O'Connor closed the public hearing.

Mr. O'Connor opened the floor for discussion by the Commission.

Mr. Wright inquired if there would be any action on the state legislation this year.

Mr. Maxwell Hlavin stated that the matter is still under study; however, the goal is to introduce legislation by December 2016 for consideration during the next General Assembly session. Mr. Hlavin stated that there is no certainty that the legislation will go forward on that schedule.

Mr. Richardson stated that he is inclined to see what happens with the state legislation. Mr. Richardson further stated that there is a need for overarching policy guidance regarding short term rentals to assist with processing the potential influx of such applications. Mr. Richardson further noted that because we are a unique area of the country, it is necessary to carefully consider the impact of these uses on both the community and the local hotel industry in balance with the needs of the individual entrepreneur. Mr. Richardson noted that he had supported the previous application; however, at the risk of sending mixed signals, based on further thought on the matter, he is inclined not to support the application.

Mr. Schmidt noted that the Board of Supervisors submitted a letter to the State with concerns about prohibiting local regulation of short term rentals.

Mr. Wright stated that he is also concerned about the impact of potential state legislation on both short term rental regulations and the enforceability of neighborhood covenants

and he is reluctant to support these types of applications.

Mr. Hlavin stated that the two pieces of legislation that came out of the General Assembly this year would not prevent normal property law from taking effect, so while localities could not regulate the matter, it would not nullify restrictive covenants.

Ms. Bledsoe stated that she believes short term rentals will be a substantial part of the tourism industry going forward; however, she has concerns about how the County will address the shared economy. Ms. Bledsoe stated that there need to have process and policies in place to ensure that it is fair and equitable to the existing hospitality industry. Ms. Bledsoe further stated that if a property is advertised, there is an intent to rent the rooms; however, it is difficult to monitor and compel the property owner to comply with the regulations. Ms. Bledsoe further stated that she believes a property owner has a right to use their property as they desire within the law, but not to the detriment of the community. Ms. Bledsoe stated that until the County can ensure that the use is fair, safe and equitable she will not support such applications.

Mr. Basic stated that under County Code, if an application is denied, there is a two year waiting period before an applicant can reapply. Mr. Basic stated that he was not fully prepared to support the application. Mr. Basic further stated that he believed a deferral would be more appropriate due to the number of questions that still need to be addressed.

Mr. Krapf stated that the Zoning Ordinance allows for specially permitted uses and he has concerns about taking a stance that the Commission will not approve SUPs for a particular type of use. Mr. Krapf noted that the issue is not Airbnb but the rental of rooms. Mr. Krapf stated that he is concerned about the idea of denying tourist homes and rental of rooms to protect the hotel industry. Mr. Krapf further noted that the free enterprise system is built on entrepreneurs coming forward with competitive options. Mr. Krapf further stated the objections raised regarding rental of rooms could easily apply to bed and breakfast establishments which is a different category of use but different only in that a meal is provided. Mr. Krapf further noted the existence of transient occupancy hotels in proximity to residential neighborhoods and noted that there was little the County could do to regulate who stayed at those establishments. Mr. Krapf further stated that each SUP must be considered as a separate entity in the context of its location. Mr. Krapf stated that he has concerns about the Commission indicating for this application that the use is not appropriate for the location. Mr. Krapf further stated that he has concerns about the Commission moving from considering the application from a land use perspective to an enforcement stance. Mr. Krapf stated that it is not the role of the Commission to put mechanics in place to ensure compliance. Mr. Krapf stated that once an SUP is approved, it triggers the processes to ensure compliance with license and tax requirements. Mr. Krapf stated that he would support the application.

Mr. O'Connor noted that rental of rooms limits the rental to a maximum of three rooms and requires that the property be owner occupied. Mr. O'Connor inquired if the ability to close off the rented portion and the use of the kitchen would change staff's perspective on the application.

Ms. Sulouff stated that staff recognizes the unique configuration of the home; however, if the applicant chooses to provide kitchen access to guests it does not change staff's perspective on the compatibility of the use. Ms. Sulouff noted that if the portion of the

home to be rented had more than three bedrooms, it would require a different use designation.

Mr. Basic noted that Mr. Holt had clarified that the required interval between a denial and resubmitting an SUP application is one year. Mr. Basic stated that his previous recommendation to consider deferral stands since any reapplication would carry a negative connotation from the denial.

Mr. Richardson stated that he would be inclined to concur with a deferral.

Mr. Richardson stated that this is a unique land use and there are larger concerns to discuss.

Mr. Schmidt stated that his main concern is the issue of neighborhood covenants. Mr. Schmidt stated that he has concerns about setting a precedent by disregarding the neighborhood covenants.

Mr. O'Connor stated that he concurs that by disregarding neighborhood covenants, it creates discord in the neighborhood and detracts from the sense of community; however, restrictive covenants are a contractual obligation. Mr. O'Connor stated that if it is a deed restriction, the obligation is neighbor to neighbor; if it is a restrictive covenant, it is the purview of the HOA to enforce the covenants. Mr. O'Connor further stated that there has been guidance at state level regarding home occupations that would not be in conflict with covenants restricting the property to residential uses. Mr. O'Connor stated that the County Attorney has indicated that these are private matters between the HOA and an individual owner or between property owners.

Mr. Richardson stated that neighbors need to ensure that the covenants are enforceable by maintaining an active association.

Mr. Hlavin noted that if a deed restriction or covenant explicitly prohibits the use, the Commission may take that into account in making a recommendation; however, the County does not have the authority to determine what does or does not qualify as a residential use. Those determinations must be made by the Courts.

Mr. Basic noted that in an earlier SUP for a daycare where the property was restricted to residential uses, the applicant provided proof that the neighbors did not object to the land use requested. Mr. Basic noted that with the proof provided, the Commission had a comfort level to recommend approval.

Ms. Bledsoe noted that the legislation to be considered by the General Assembly is a strong lobbying effort by the shared economy. Ms. Bledsoe noted that Airbnb is investing a great amount of money to bring Airbnb to Virginia. Ms. Bledsoe stated that she would be happy to see short term rental of rooms, but wants to ensure that when it happens, it is handled in a way that is fair, safe and equitable for everyone. Ms. Bledsoe stated that she wants to ensure having a process that is fair to everyone who is already complying with the rules. Ms. Bledsoe stated that she would support a deferral so that the Commission could discuss how to proceed with developing a policy regarding short term rental of rooms. Ms. Bledsoe stated that she hopes consideration of the matter will include substantial research and thoughtful dialogue to develop the best possible process for the community. Ms. Bledsoe stated that if a reasonable policy is developed, it will encourage those properties currently operating in violation of the Zoning Ordinance to come forward to bring the use of their property into compliance.

Mr. O'Connor clarified that there are four options available: the Commission may bring the matter to a vote as currently proposed; the applicant may opt to withdraw the application; the Commission could recommend the addition of a sunset clause; or the Commission could defer the matter to a date certain.

Mr. Hlavin noted that if the matter is deferred to a date certain, the Commission must take action within 100 days.

Mr. O'Connor noted that if the matter is deferred and then action is taken to forward the matter to the Board, there is an option for the Board to defer the matter for one year.

Mr. O'Connor stated that he does not believe that a deferral would be beneficial to the applicant.

Mr. Holt noted that the Commission can add a one or two year sunset clause where the applicant will have time to address any concerns and come back though the SUP process.

Mr. Krapf stated that he believes the SUP process, followed by all the other mechanisms to ensure a business license is obtained and taxes are collected, is a satisfactory process and that he does not believe that it is necessary to change that process.

Ms. Bledsoe noted that a property owner wishing to rent three rooms or fewer while living in the home would apply for rental of rooms, where a property owner wishing to rent five rooms while not living in the home would apply for a tourist home.

Mr. Krapf noted that both are short term rental of rooms and both require a special use permit and that the SUP application is the process.

Ms. Bledsoe noted that she is looking at a process to ensure that the properties comply with all regulations.

Mr. Krapf noted that there are likely many properties conducting one type of enterprise or another that are not in compliance with the Zoning Ordinance. Mr. Krapf stated that the Commission is charged with making land use recommendations, not with determining how many properties are in violation of the Zoning Ordinance.

Ms. Bledsoe stated that the Commission considers land use issues related to hotels and bed and breakfasts and the County has standard that they must comply with. Ms. Bledsoe stated that rental of rooms is not any different. Ms. Bledsoe stated that hotels and bed and breakfasts must have a business license and pay taxes.

Mr. Krapf stated that this applicant would have to comply with the same standards.

Ms. Bledsoe noted that the County does not know about all of the properties doing short term rental of rooms.

Mr. O'Connor stated that the Commission is not charged with enforcement. Mr. O'Connor further stated that he is not in favor of recommending approval where the use is contrary to covenants and restrictions. Mr. O'Connor stated that while the

Commission does look at these applications individually, this application does have any of the negative aspects of the earlier application. Mr. O'Connor further stated that he does have concerns about the SUP running with the land in perpetuity which would leave uncertainty about how a future owner might operate the business. Mr. O'Connor stated that he could support the application if a sunset clause were included.

Mr. Basic inquired if the applicant would have to pay another fee if they reapplied.

Mr. Holt confirmed that the fee would have to be paid again.

Mr. Richardson inquired what benefit would come from consideration by the Policy Committee.

Mr. Holt stated that fully developing a policy and potentially amending the Zoning Ordinance could not be accomplished in time to act on the application within the 100 day limit.

Mr. Basic noted that the Commission seems uncomfortable about the enforcement component as well as the number of other properties operating under the radar. Mr. Basic stated that if an applicant goes through the land use process, the matter does go to the Commissioner of the Revenue's Office for enforcement. Mr. Basic further stated that most SUPs rely on community vigilance for enforcement when there are conditions involved.

Mr. Basic made a motion to recommend approval of the application with a sunset clause.

Mr. O'Connor inquired if it would be possible to require the SUP to be reconsidered on a recurring basis.

Mr. Hlavin stated that the clause should set the SUP to expire on a given date so that the burden is on the applicant to reapply timely to ensure that they have a continuing SUP.

Mr. O'Connor noted that two years might be sufficient to determine the effect of state legislation and to possibly have the Policy Committee take up the matter in parallel.

Mr. Richardson inquired about other cases approved with a sunset clause.

Mr. Holt stated that the most recent was for a daycare in Winston Terrace.

Mr. O'Connor noted that the daycare was part of the same neighborhood and that having a sunset clause for this application would ensure consistency.

Ms. Bledsoe noted that the state legislation will most likely not provide specific guidance for how this type land use should be handled.

Mr. Basic noted that the state legislation was geared more toward taxation matters.

Mr. O'Connor stated that the sunset clause would allow an applicant who is trying to do the right thing to operate while the County considers how to address the other issues.

Ms. Bledsoe requested that the SUP conditions be amended to require proof of liability

insurance for the rental portion of the home.

Mr. Hlavin stated that he would not recommend that amendment based on considering the application from a land use perspective.

Mr. O'Connor requested that Mr. Basic state his intention for term of the SUP.

Mr. Basic stated that he would want the SUP to expire after 24 months.

Mr. Richardson inquired if a vote would preclude further consideration by the Policy Committee. Mr. Richardson further stated that he would strongly recommend that the matter be taken up by the Policy Committee.

Mr. O'Connor stated that the Commission would discuss potential Policy Committee involvement at a later point in the meeting.

Mr. Holt clarified that the motion was to recommend approval of the application with the conditions attached to the staff report with an additional condition for the SUP to expire 24 months from the date of approval by the Board of Supervisors.

Mr. O'Connor inquired it the additional condition was acceptable to the applicant.

Ms. Dillon confirmed that the condition was acceptable.

Mr. Holt clarified that a "yes" vote would approve the application with the conditions attached to the staff report with an additional recommendation that the Board add a condition for the SUP to expire 24 months from the date of approval.

On a roll call vote, the Commission voted to recommend approval of SUP-0009-2016, 7206 Merrimac Trail Rental of Rooms (4-3).

A motion to Approve w/ Conditions was made by Chris Basic, the motion result was Passed.

AYES: 4 NAYS: 3 ABSTAIN: 0 ABSENT: 0 Ayes: Basic, Krapf, O'Connor, Richardson Nays: Bledsoe, Schmidt, Wright III

Nays. Dicusoc, Schilliat, Wright II.

#### VIDEO 3. SO-0002-2016. Subdivision Ordinance Amendments Regarding Monuments

Mr. José Ribeiro, Senior Planner II, presented a report to the Commission regarding proposed amendments to the Subdivision Ordinance to eliminate language requiring certification of a surveyor's monument. Mr. Ribeiro noted that the certification is not a requirement under the Code of Virginia. Mr. Ribeiro further stated that land surveyors are governed by other licensures and are held to stringent professional standards set by the Code of Virginia. Mr. Ribeiro stated that staff recommends the Planning Commission recommend approval of these amendments to the Board of Supervisors.

Mr. Basic inquired if staff had received any feedback from licensed surveyors in the area.

Mr. Ribeiro stated that staff has not received any feedback. Mr. Ribeiro further stated that York County uses similar language in its ordinance and has not noted any problems.

Mr. Wright inquired what the recourse is if monuments are not properly set.

Mr. Ribeiro stated that surveyors are governed by state code and could risk losing their license if their work is not up to standard.

Mr. Wright noted that surveyors are probably required to have liability insurance to cover such issues.

Mr. O'Connor opened the public hearing.

As no one wished to speak, Mr. O'Connor closed the public hearing.

Mr. Krapf made a motion to recommend approval of the ordinance amendment.

On a roll call vote the Commission voted to recommend approval of SO-0002-2016, Subdivision Ordinance Amendments Regarding Monuments (7-0).

A motion to Approve was made by Rich Krapf, the motion result was Passed.

AYES: 7 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Basic, Bledsoe, Krapf, O'Connor, Richardson, Schmidt, Wright III

VIDEO 4. ZO-0002-2016. B-1, General Business District. Amendments to Setback Requirements and Building Coverage Limits and ZO-0003-2016. LB, Limited Business District.

Mr. José Ribeiro, Senior Planner II, presented a report to the Commission regarding proposed amendments to the B-1, General Business District and the LB, Limited Business District to make guidance regarding setbacks and setback reduction procedures clear and consistent between the two districts and to increase the building coverage to up to 60% and delete requirements regarding floor area ratio (FAR). Mr. Ribeiro noted that the application of FAR requirements can restrict building height. Mr. Ribeiro stated that other sections of the code also speak to height limitations and that the FAR language is not necessary. Mr. Ribeiro stated that staff recommends that the Commission recommend approval of these amendments to the Board of Supervisors.

Mr. Wright inquired about the process to amend building coverage limits for project approved under the previous requirements.

Staff responded that it would depend on the original approval; a legislative case would require an amendment through the legislative process and an administrative case would require an administrative site plan amendment.

Mr. O'Connor opened the public hearing.

As no one wished to speak, Mr. O'Connor closed the public hearing.

Mr. Basic made a motion to approve ZO-0002-2016.

On a roll call vote the Commission voted to recommend approval of ZO-0002-2016, B-1, General Business District, Amendments to Setback Requirements and Building Coverage Limits (7-0).

A motion to Approve was made by Chris Basic, the motion result was Passed.

AYES: 7 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Basic, Bledsoe, Krapf, O'Connor, Richardson, Schmidt, Wright III

Mr. Krapf made a motion to approve ZO-0003-2016. On a roll call vote the Commission voted to recommend approval of ZO-0003-2016, LB, Limited Business District, Amendments to Setback Requirements and Building Coverage Limits (7-0).

A motion to Approve was made by Rich Krapf, the motion result was Passed.

AYES: 7 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Basic, Bledsoe, Krapf, O'Connor, Richardson, Schmidt, Wright III

# VIDEO 5. ZO-0004-2016 & SO-0003-2016, Amendments to the Zoning and Subdivision Ordinances Regarding Development Review Committee (DRC) Review Criteria and Procedure

Ms. Roberta Sulouff, Planner, presented a report to the Commission on ordinance amendments to align ordinance language and policy with the current scope and purpose of the Development Review Committee. Ms. Sulouff stated that the amendments would allow for submission of an enhanced conceptual plan where a site plan must be reviewed by the DRC. Ms. Sulouff noted that his would enhance consistency and predictability of the review process and identify concerns earlier in the process. Ms. Sulouff further stated that staff is proposing to remove language requiring DRC review of major subdivisions. Ms. Sulouff noted that in practice, DRC review of subdivisions under 50 lots is very rare, unless otherwise required by proffer or Special Use Permit conditions. Ms. Sulouff stated that under state code, any major subdivision of 50 or more lots obtain preliminary approval from the Planning Commission. Ms. Sulouff stated that staff recommends that the Commission recommend approval of these amendments to the Board of Supervisors.

Mr. Richardson inquired how the changes would affect the plans that the DRC would customarily review.

Ms. Sulouff stated that with the amended language, multifamily dwellings, shopping centers and a building or group of buildings over 30,000 square feet would now be required to submit an enhanced conceptual plan which would be reviewed by the DRC.

Mr. Wright inquired how major subdivisions of less than 50 lots would be handled.

Ms. Sulouff stated that those subdivisions, unless the requirement was waived by the Planning Director, would still come before the Planning Commission as a consideration item.

Mr. O'Connor opened the public hearing.

As no one wished to speak, Mr. O'Connor closed the public hearing.

Ms. Bledsoe stated that she believes these amendments are a good step toward simplifying the review process and meeting the needs of the development community.

Mr. Wright made a motion to approve ZO-0004-2016.

On a roll call vote the Commission voted to recommend approval of ZO-0004-2016. Amendments to the Zoning Ordinance Regarding Development Review Committee Review Criteria and Processes (7-0).

A motion to Approve was made by John Wright III, the motion result was Passed.

AYES: 7 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Basic, Bledsoe, Krapf, O'Connor, Richardson, Schmidt, Wright III

Mr. Krapf made a motion to approve SO-0003-2016.

On a roll call vote the Commission voted to recommend approval of SO-0003-2016, Amendments to the Subdivision Ordinance Regarding Development Review Committee Review Criteria and Processes (7-0).

A motion to Approve was made by Rich Krapf, the motion result was Passed.

AYES: 7 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Basic, Bledsoe, Krapf, O'Connor, Richardson, Schmidt, Wright III

VIDEO 6. ZO-0005-2016, PUD, Planned Unit Development, Zoning Ordinance Amendments, Article V, Section 24-493, Use List

Ms. Roberta Sulouff, Planner, presented a report to the Commission on the proposed amendments to the Planned Unit Development-Commercial, PUD-C, District to allow for the manufacture of food or food products as either a by-right use where the activities were conducted in a fully enclosed building with no external impacts or as a specially permitted use where that criteria was not met. Ms. Sulouff further noted that the revisions reflect an effort to encourage a balanced mixture of commercial, industrial and residential land uses that support strategies for economic development recommended in the 2035 Comprehensive Plan.

Mr. O'Connor opened the public hearing.

As no one wished to speak, Mr. O'Connor closed the public hearing.

Mr. O'Connor opened the floor for discussion by the Commission.

Mr. Basic noted that there had been discussion from the Board of Supervisors about opening up this opportunity in several districts. Mr. Basic inquired if the Policy Committee had considered adding this use to other districts.

Mr. Krapf clarified that this amendment was not related to mobile food vendors. Mr. Krapf further stated that the matter of food trucks is still being considered and that this amendment is strictly related to the manufacture of food and food products in the PUD-C District.

Mr. Schmidt noted that one of the concerns considered was the impact of odors on adjacent properties; however, it was determined that if there were concerns about odors or other external impacts, a special use permit would be required.

Mr. Richardson made a motion to recommend approval of the ordinance amendment.

On a roll call vote the Commission voted to recommend approval of ZO-0005-2016, PUD, Planned Unit Development, Zoning Ordinance Amendments, Article V, Section 24-493, Use List (7-0).

A motion to Approve was made by Heath Richardson, the motion result was Passed.

AYES: 7 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Basic, Bledsoe, Krapf, O'Connor, Richardson, Schmidt, Wright III

#### VIDEO G. PLANNING COMMISSION CONSIDERATIONS

**VIDEO** 

1. Initiation of Consideration of Amendments to the Wireless Communications Facilities Regulations in the Zoning Ordinance

Mr. Holt presented a report to the Commission on the request to initiate consideration of amendments to the Wireless Communications Facilities ordinance. Mr. Holt noted amendments would address how WCF performance standards should be applied when considering SUP applications for other types of communications towers. Mr. Holt further noted that the amendments also would incorporate processes to comply with the 2012 Spectrum Act. Mr. Holt stated that the changes to the WCF Ordinance and the process for reviewing these applications would be a multiple stage process. Mr. Holt stated that adoption of the resolution was part of the formal process required to initiate amendments to the Zoning Ordinance and would not change the Zoning Ordinance at this time. Mr. Holt stated that staff recommends the Planning Commission adopt the attached resolution to formally initiate consideration of such amendments to the Zoning Ordinance and refer this matter to the Policy Committee.

Mr. Krapf made a motion to adopt the initiating resolution.

On a roll call vote the Commission adopted the resolution to initiate consideration of amendments to the Wireless Communications Facilities Ordinance.

A motion to Deny was made by Rich Krapf, the motion result was Passed.

AYES: 7 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Basic, Bledsoe, Krapf, O'Connor, Richardson, Schmidt, Wright III

#### VIDEO H. PLANNING DIRECTOR'S REPORT

VIDEO 1. Planning Director's Report

Mr. Holt stated that there was nothing more to add other than what was submitted in the Planning Commission packet.

#### VIDEO I. PLANNING COMMISSION DISCUSSION AND REQUESTS

Mr. O'Connor stated that Mr. Basic would represent the Planning Commission at the Board of Supervisors meeting in June.

Ms. Bledsoe requested that the Policy Committee research other localities processes

and consider how the County can ensure that the required permits and licenses are obtained and taxes paid for short term rentals.

Mr. Holt stated that the matter would be discussed at the upcoming Policy Committee meeting and further consideration given to what type of data and information should be gathered.

Ms. Bledsoe requested that Mr. Bradshaw participate in the discussion and research.

Mr. Krapf stated that it would be helpful to understand how other localities handle this type of use and what limits and stipulations are applied. Mr. Krapf further stated that it would be helpful to develop a matrix to understand how the process flows.

Ms. Bledsoe stated that she believes the majority of individuals who are advertising short term rentals are simply not aware of the permit and license requirements and that it would be helpful to consider a community education piece.

Mr. O'Connor stated that the Commission should consider the effect of short term rentals on the local hotel industry from a land use perspective due to concerns expressed in the community over vacant retail and hotel space.

Ms. Bledsoe stated that it is necessary to look at the matter from the perspective of the Strategic Plan.

Ms. Bledsoe stated that the June 6 Strategic Plan meeting was canceled; however, the June 24 meeting was still on.

Mr. O'Connor thanked Mr. Bradshaw and Mr. Seymour for attending the meeting.

Mr. O'Connor noted that a motion to adjourn would adjourn the meeting to the joint meeting with the Board of Supervisors on June 28 at 4:00 p.m.

#### J. ADJOURNMENT

Ms. Bledsoe made a motion to adjourn to June 28 at 4:00 p.m.

The meeting was adjourned at approximately 9:24 p.m.

#### **AGENDA ITEM NO. D.2.**

#### **ITEM SUMMARY**

DATE: 7/6/2016

TO: The Plannig Commission

FROM: Paul D. Holt, III, Secretary

SUBJECT: Adoption of Updated 2016 Calendar

The attached calendar has been updated to reflect the Planning Commission's joint work session with the Board of Supervisors being rescheduled to July 26.

No other changes to the calendar are proposed.

#### **ATTACHMENTS:**

	Description	Type
D	Updated Calendar	Exhibit

#### **REVIEWERS:**

Department	Reviewer	Action	Date
Planning Commission	Holt, Paul	Approved	6/29/2016 - 9:23 AM
Planning Commission	Holt, Paul	Approved	6/29/2016 - 9:23 AM
Publication Management	Burcham, Nan	Approved	6/29/2016 - 9:25 AM
Planning Commission	Holt, Paul	Approved	6/29/2016 - 9:26 AM

#### PC 2016/2017

- March 21<sup>st</sup> \* (6:00 pm)
- April 6<sup>th</sup>
- May 4<sup>th</sup>
- June 1<sup>st</sup> July 6<sup>th</sup>
- July 26<sup>th</sup> Joint Work Session w/BOS (4:00pm)
- August 3<sup>rd</sup>
- September 7<sup>th</sup>
- October 5<sup>th</sup>
- November 2<sup>nd</sup>
- December 7<sup>th</sup>
- January 4<sup>th</sup> (2017)
- February 1<sup>st</sup> (2017)
- March 1<sup>st</sup> (2017)
- March 20\* (6:00 pm)
- \* Special Meeting (Organizational and CIP)

#### Policy Committee 2016/2017 (4 pm)

- March 3<sup>rd</sup> \*
- March 10<sup>th</sup>
- April 14<sup>th</sup>
- May 12<sup>th</sup>
- June 16<sup>th</sup>
- July 14th
- August 11<sup>th</sup>
- September 15<sup>th</sup>
- October 13<sup>th</sup>
- November 10<sup>th</sup>
- December 15<sup>th</sup>
- January 12<sup>th</sup> (2017)
- February 9<sup>th</sup> \* (2017)
- March 2<sup>nd</sup> \* (2017)
- March 9<sup>th</sup> \* (2017)
- \*CIP Meetings

#### DRC 2016/2017 (4 pm)

- March 30<sup>th</sup>
- April 27<sup>th</sup>
- May 25<sup>th</sup>
- June 29<sup>th</sup>
- July 27<sup>th</sup>
- August 31st
- September 28<sup>th</sup>
- October 26<sup>th</sup>
- November 16<sup>th</sup>
- December 14<sup>th</sup>
- January 4 (2017)
- January 25 (2017)
- February 22 (2017)

#### PC 2017/2018

- April 5<sup>th</sup> May 3<sup>rd</sup>
- May 23 Joint Work Session w/BOS (4:00pm)
- June 7<sup>th</sup>
- July 5<sup>th</sup>
- August 2<sup>nd</sup>
- September 6<sup>th</sup>
- October 4<sup>th</sup>
- November 1<sup>st</sup>
- December 6<sup>th</sup>
- January 3<sup>rd</sup> (2018)
- February 7<sup>th</sup> (2018)
- March 7<sup>th</sup> (2018)
- \* Special Meeting (Organizational and CIP)

#### Policy Committee 2017/2018 (4 pm)

- April 13<sup>th</sup>
- May 11<sup>th</sup>
- June 8<sup>th</sup>
- July 13<sup>th</sup>
- August 10<sup>th</sup>
- September 14<sup>th</sup>
- October 12<sup>th</sup>
- November 9<sup>th</sup>
- December 14<sup>th</sup>
- January 11th (2018)
- February 8<sup>th</sup> \* (2018)
- March 1<sup>st</sup> \* (2018)
- March 9<sup>th</sup> \* (2018)
  - \*CIP Meetings

#### DRC 2017/2018 (4 pm)

- March 29<sup>th</sup>
- April 26<sup>th</sup>
- May 31<sup>th</sup>
- June 28<sup>th</sup>
- July 26<sup>th</sup>
- August 30st
- September 27<sup>th</sup>
- October 25<sup>th</sup>
- November 15<sup>th</sup>
- December 13<sup>th</sup>
- January 3<sup>rd</sup> (2018)
- January 31st (2018)
- February 28<sup>th</sup> (2018)

#### **AGENDA ITEM NO. D.3.**

#### **ITEM SUMMARY**

DATE: 7/6/2016

TO: The Planning Commission

FROM: Jose Ribeiro, Senior Planner II

SUBJECT: Development Review Committee Action Item: Case No. C-0045-2016.

Williamsburg Place, Farley Center Expansion

The applicant has submitted a conceptual plan proposing a modular structure of  $\pm 1,440$  square feet to be used by patients as an area for physical exercise and other wellness activities such as yoga. The proposed addition would be connected to the existing  $\pm 12,000$ -square-foot Farley Center building.

The conceptual plan indicates the proposed addition would be constructed within the front setback.

The applicant has appealed a decision by the Director of Planning to deny a proposed setback reduction.

Link to DRC Agenda and Staff Report: http://jamescity.novusagenda.com/AgendaPublic/MeetingView.aspx? MeetingID=320&MinutesMeetingID=-1&doctype=Agenda

DRC Recommendation: Approval of the setback reduction request, subject to conditions (3-0).

#### **REVIEWERS:**

Department	Reviewer	Action	Date
Planning Commission	Holt, Paul	Approved	6/30/2016 - 8:30 AM
Planning Commission	Holt, Paul	Approved	6/30/2016 - 8:30 AM
Publication Management	Burcham, Nan	Approved	6/30/2016 - 9:11 AM
Planning Commission	Holt, Paul	Approved	6/30/2016 - 10:59 AM

#### **AGENDA ITEM NO. F.1.**

#### **ITEM SUMMARY**

DATE: 7/6/2016

TO: The Planning Commission

FROM: Roberta Sulouff, Planner

SUBJECT: SUP-0008-2015/SUP-0011-2016, J.S.G. Mineral Resource Management

Expansion and SUP Amendment

#### **ATTACHMENTS:**

	Description	Type
D	Staff Report	Staff Report
ם	Location Map	Backup Material
ם	Proposed SUP Conditions for SUP-0008-2015	Backup Material
D	Proposed Amendment for SUP- 0026-1991 (with condition to be removed, highlighted)	Backup Material
ם	Master Plan Exhibit	Backup Material
ם	Photos of Wood Processing Equipment	Backup Material

#### **REVIEWERS:**

Department	Reviewer	Action	Date
Planning Commission	Holt, Paul	Approved	6/30/2016 - 3:52 PM
Planning Commission	Holt, Paul	Approved	6/30/2016 - 3:53 PM
Publication Management	Burcham, Nan	Approved	6/30/2016 - 4:06 PM
Planning Commission	Holt, Paul	Approved	6/30/2016 - 4:07 PM

#### Staff Report for the July 6, 2016, Planning Commission Public Hearing

#### **SUMMARY FACTS**

Applicant: Ms. Caitlin King, J.S.G. Corporation

Land Owner: Mr. Gary Massey, J.S.G. Corporation

Proposal: To permit the manufacture and sale of

wood products, the operation of a contractors' office, the storage of petroleum and the storage and repair of heavy equipment on property which is already being used as an active borrow pit. The applicant is also requesting to amend the adopted Special Use Permit (SUP) conditions for the properties to remove a condition regarding a limitation on

disturbed area.

Location: 5701, 5977 and 5979 Centerville Road

Tax Map/Parcel Nos.: 3110100079A, 3020100006A,

3020100007 and 3020100006

Project Acreage: +/- 170.4 acres

Zoning: A-1, General Agricultural

Comprehensive Plan: Rural Lands, however a small area of the

entrance road is designated Low Density

Residential

Primary Service Area: Outside

#### **PUBLIC HEARING DATES**

Planning Commission: July 6, 2016, 7:00 p.m.

Board of Supervisors: August 9, 2016, 6:30 p.m. (tentative)

Staff Contact: Roberta Sulouff, Planner

#### **FACTORS FAVORABLE**

- 1. With the recommended conditions, and given the large size of the parcel and historic use of the subject properties, staff finds that the proposal will not negatively impact surrounding zoning and development.
- 2. The proposal is consistent with the recommendations of the Comprehensive Plan adopted in 2015, "Toward 2035: Leading the Way."
- 3. The proposed expansion would not bring the limits of intense industrial uses, such as mining operations and the production of wood products, closer to surrounding residential development than what is currently disturbed or being actively mined.
- 4. The Virginia Department of Mines, Minerals, and Energy (DMME) monitors use of the site with more stringent monitoring and reporting requirements than what is required by the original SUP.
- 5. The request would bring the current storage of civil construction heavy equipment and vehicles into conformance.
- 6. The applicant estimates that the proposed uses would create approximately 20 new jobs at the site.

Staff Report for the July 6, 2016, Planning Commission Public Hearing

#### 7. FACTORS UNFAVORABLE

- 1. An increase in heavy equipment traffic to and from the site.
- 2. An increase in the intensity of uses in an area designated Rural Lands

#### SUMMARY STAFF RECOMMENDATION

Approval, subject to the conditions in the attached resolution.

#### PROJECT DESCRIPTION

Ms. Caitlin King has applied on behalf of J.S.G. Corporation to allow for four specially permitted uses - the manufacture and sale of wood products, the operation of a contractors' office, the storage of petroleum and the storage and repair of heavy equipment - on approximately 170.4 acres of land currently in use as an active borrow pit. During the course of staff's review of this application, it was determined that the adopted conditions of the original mining SUP (James City County Case No. SUP-0026-1991), needed to be amended to clarify the limitation on disturbed area. The applicant subsequently requested to amend the conditions of the original SUP as well.

The request includes plans for the following buildings and corresponding uses:

• Manufacture and Sale of Wood Products: Approximately 10 acres of previously disturbed area to be used for the seasonal production of mulch, using a special type of grinder as pictured in Attachment No. 5, from materials

cleared from local projects. Per the applicant, customers will be able to view samples of the mulch at the contractor's office. The applicant anticipates limited customer pick-up, with a focus on bulk delivery.

- Contractors' Office/The Storage and Repair of Heavy Equipment: A ±14,200-square-foot office and maintenance facility will replace the existing office, which is currently considered an accessory structure to the mining operation. The new office would also be the headquarters for J.S.G.'s civil construction operation. The building will also feature a large, attached maintenance facility for repair and maintenance of J.S.G.'s fleet vehicles and heavy equipment.
- The Storage and Repair of Heavy Equipment: Two ±8,000-square-foot sheds to store vehicles and heavy equipment used both for the mine and for J.S.G.'s civil construction operations.
- The Storage of Petroleum: ±12,000-gallon-petroleum storage facility for fleet and heavy equipment use on-site.
- The applicant has stated that the following fleet vehicles will be stored on-site:
  - Eight dump trucks (five used for the borrow pit, three used for the contracting operation).
  - o One lowboy tractor-trailer.
  - o Two logging dump trailers.
  - o Six crew trucks.
  - Six miscellaneous field trucks (including a flatbed water truck, a cushion truck and a hydroseeder).

#### Staff Report for the July 6, 2016, Planning Commission Public Hearing

- o Three blower trucks for mulching.
- Amendment to SUP-0026-1991: The original SUP for the mine operation, SUP-0026-1991, included conditions which limit the disturbed area of the project to 40 acres. Though the operation is currently in compliance with this condition, the original conditions do not account for the newly proposed uses. To account for the new activities, the applicant is proposing to remove the disturbed area restriction from the original SUP. Staff is recommending a condition be added to the current SUP which limits total disturbed area on site to 66 acres total.
- J.S.G. Corporation has an active mining permit from the Virginia Department of Mines, Minerals, and Energy (DMME) for the mine. All operational activities associated with the mine are regulated by the DMME. The mining activity produces topsoil, dirt and clay to be sold to third parties.

#### PLANNING AND ZONING HISTORY

The Board of Supervisors approved Case No. SUP-0026-1991 on February 18, 1992. The permit allowed for the operation of borrow pit on the property included in the current application. The conditions of that SUP limited the disturbed area to 40 acres and limited activity to two "cells" per the adopted master plan for the mine.

#### SURROUNDING ZONING AND DEVELOPMENT

• The properties are located on Centerville Road, adjacent to Freedom Park, the Blayton/Hornsby school site and the Windmill Meadows subdivision.

- Surrounding Zoning Designations include:
  - o PL, Public Lands, to the south and northwest (Freedom Park and Blayton/Hornsby school site).
  - o A-1, General Agricultural, to the north and east (single-family homes).
  - o R-2, General Residential, to the northeast (Windmill Meadows subdivision).

#### COMPREHENSIVE PLAN

- The properties are primarily designated Rural Lands on the Comprehensive Plan Land Use Map, however a small section of the entrance road is designated as Low Density Residential.
- While the proposed uses are not considered primary uses for the Rural Lands designation, the Comprehensive Plan states that "certain uses which require very low intensity settings relative to the site in which it will be located may be considered on the basis of a case-by-case review... These uses should be located in a manner that minimizes effects on agricultural and forestal activities, and located where public services and facilities, especially roads, can adequately accommodate them."
- Staff finds that this proposal is consistent with Comprehensive Plan as a secondary use and is unique in comparison to other similar requests in Rural Lands for the following reasons:
  - The site is already home to an intense industrial use (borrow

#### Staff Report for the July 6, 2016, Planning Commission Public Hearing

pit/mine).

- The proposed uses would also encompass a very small area relative to the size of the site, roughly 20 additional acres out of a total of approximately 170 acres.
- The existing SUP imposes a 100-foot and 50-foot buffer in areas directly adjacent to neighboring residences, as well as 50-foot buffers in areas adjacent to Resource Protection Areas (RPA).
- Existing right- and left-turn-in lanes to the site on Centerville Road adequately accommodate additional traffic created by this request.
- Surrounding Comprehensive Plan designations include:
  - o Public Lands to the south and the west (Freedom Park).
  - o Rural Lands to the north (family homes).
  - Low Density Residential (Windmill Meadows and adjacent single-family homes).

#### PUBLIC IMPACTS

- 1. Anticipated impact on public facilities and services:
  - a. *Streets*. The applicant has estimated that the newly proposed uses will produce an additional 68 vehicle trips per day on average, including both increased trips from workers reporting to the office and potential mulch customers and deliveries. The Virginia Department of Transportation

(VDOT) has reviewed this application and did not identify any concerns beyond those that may be addressed at the site plan stage of development. Based on VDOT's review and existing traffic infrastructure, no impacts are anticipated.

- b. Schools/Fire/Utilities. No impacts anticipated.
- 2. <u>Environmental</u>: There is RPA located on these properties, however the limits of this SUP fall outside of the RPA. A condition is also proposed for spill prevention in the area of the wood processing and petroleum storage. The DMME addresses environmental concerns associated with the borrow pit through the applicant's mining permit and operational plan.
- 3. <u>Cultural/Historical</u>: Condition No.5 of SUP-0026-1991 required a Phase I Archaeological Study to be submitted for approval prior to the commencement of work in any area of the site. A Phase I Archaeological Study was conducted on this site in 1992 which identified six sites which were recommended for Phase II studies. All of these areas are outside the scope of work for the newly proposed uses.

#### 4. Nearby and Surrounding Properties:

- a. *Visual Impacts*: There is minimum of a 50-foot-wooded buffer, which is increased to 100 feet in some areas, between the site and all neighboring properties.
- b. *Auditory Impacts*: Staff conducted a sound test of the wood grinder on June 13, 2016, taking decibel readings at 200 feet from the grinder as well as from the site entrance on Centerville Road, the nearest residence in the Windmill

#### Staff Report for the July 6, 2016, Planning Commission Public Hearing

Meadows subdivision, inside Freedom Park, At the Blayton/Hornsby school sites and at a location on Jolly Pond Road. The highest decibel readings beyond the direct work site were located at the school site and were most likely associated with children playing at the time of the sound testing. Decibel readings within the Windmill Meadows subdivision were equal to readings taken at the entrance to the site and to readings taken on Jolly Pond Road.

Site	Reading (in decibels, dB)
200 feet from equipment (on-site)	82 dB
Entrance road	53 dB (note: ambient volume measured at 51dB while the equipment was not in use)
Within Windmill Meadows	50 dB
Botanical Garden at Freedom Park	45 dB
School Site	55 dB (note: children playing at recess may have increased volume at this site)
Residence at Jolly Pond	50 dB

#### PROPOSED SUP CONDITIONS

- The full text of the proposed conditions for the four new specially permitted uses, associated with James City County Case No. SUP-0008-2015, are attached.
- Regarding the proposed SUP amendment, given the size of the site and the binding Master Plan submitted with this application, staff is comfortable with a potential minor increase in mining activity, as removing the language regarding disturbed area

would help to make both SUPs more easily understood and readily enforceable.

#### STAFF RECOMMENDATION

Approval, subject to the proposed draft conditions and amendments.

RS/nb SUP08-15 and SUP11-16JSGMineralRes

#### Attachments:

- 1. Location Map
- 2. Proposed SUP Conditions for SUP-0008-2015
- 3. Proposed Amendment for SUP-0026-1991 (with condition to be removed highlighted)
- 4. Master Plan Exhibit
- 5. Photos of wood processing equipment

# SUP-0008-2015/SUP-0011-2016 J.S.G. Mineral Resource Management Expansion





#### SUP-0008-2015, JSG Mineral Resource Management Expansion

#### **Draft SUP Conditions**

- 1. <u>Master Plan and Use:</u> This Special Use Permit (the "SUP") shall be valid for the operation of a contractor's office, the manufacture of wood and/or wood products, storage of petroleum, and storage and/or repair of heavy equipment (the "Project") on property located at located at 5701, 5977 & 5979 Centerville Road, further identified as JCC Real Estate Tax Map Nos. 3110100079A, 3020100006A, and 30201000078196, respectively, and one parcel without an address identified as JCC Real Estate Tax Map No. 3020100006 (collectively, the "Property"), which includes an existing borrow pit. The Project shall be in accordance with the "Conceptual Plan for Special Use Permit, Manufacture of Wood Products, Contractors Office and Storage Shed, Owner: JSG Corporation" prepared by AES Consulting Engineers, and dated November 17, 2015 (the "Master Plan"), with any deviations considered per Section 24-23(a)(2) of the Zoning Ordinance, as amended.
- 2. <u>Hours of Operation for Transportation and Wood Grinding</u>: Hours of operations for transportation of equipment to and from the site, and for the grinder and all associated equipment shall be limited 7:00 a.m.-7:30 p.m., Monday through Saturday, except for occasional afterhours and Sunday transportation related to storm cleanup work.
- 3. <u>Hours of Retail Operations:</u> Retail sale of wood and wood products shall be limited to 9AM-5PM, Monday-Friday, with all transactions occurring at the location identified as "Office and Maintenance" on the Master Plan.
- 4. Disturbed Area: No more than 66 acres of the site shall be disturbed at one time.
- 5. <u>Material and Equipment Storage:</u> Material and Equipment Storage: All material and equipment storage shall be limited to the areas designated as "Shed" and "Office & Maintenance" on the Master Plan.
- 6. <u>Wood Grinder:</u> The wood grinder and all associated equipment shall be located so as to minimize the potential adverse impacts on adjacent properties. When in operation, this equipment shall be placed in the locations identified as "Site 2: Area of Manufacture and Sale of Wood Products" on the Master Plan.
- 7. <u>Perimeter Buffer:</u> The existing vegetation surrounding the Property and surrounding the storage of vehicle and equipment areas as shown on the Master Plan shall remain undisturbed.
- 8. <u>Resource Protection Areas:</u> A fifty (50) foot undisturbed buffer shall be provided on all Resource Protection Areas (RPA) as defined in Section 23-3 of the James City County Code.
- 9. <u>Lighting</u>: A lighting plan shall be reviewed and approved by the Director of Planning or his designee prior to final approval of the site plan. Any exterior site or building lighting shall be shielded and directed downward. No glare defined as 0.1 foot-candle or higher shall extend outside the property lines. Lights shall be operated by a motion detector or be able

to be turned on as needed and shall not be routinely illuminated at night. No lighting shall be installed on structures at a height greater than sixteen (16) feet above finished grade. This condition shall not apply to any lighting required by federal or state regulations.

- 10. <u>Operational Mitigation Plan</u>: An operational mitigation plan shall be reviewed and approved by the Director of Planning or his designee prior to final site plan approval. The plan shall address:
  - a. Dust mitigation, such as water trucks, mulch, or similar methods.
  - b. Smoke mitigation, such as containment or similar methods.
  - c. Noise mitigation, such as the enforcement of hours of operation.
- 11. <u>Material Decomposition</u>: The use of chemicals to aid in the decomposition of material shall be prohibited. No materials shall be burned on the Property.
- 12. <u>Stormwater Management:</u> A stormwater management plan shall be submitted to the Director of Engineering and Resource Protection or his designee for review and approval prior to preliminary site plan approval. The stormwater management plan shall demonstrate that adequate measures have been taken for the Project, post-development, to achieve the same degree of pre-development water quality. The development of the Property shall utilize the applicable best management practices as outlined in the Virginia Department of Environmental Quality Stormwater BMP Clearinghouse.
- 13. <u>Entrances:</u> Access to the Project shall be limited to the existing entrance from Centerville Road.
- 14. <u>VPDES Industrial and Spill Prevention:</u> Prior to issuance of preliminary site plan approval, the Owner must determine if a general Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater Associated with Industrial Activity will be required from the Virginia Department of Environmental Quality. If a VPDES permit is required, the owner must provide evidence of having obtained the permit prior to issuance of final site plan approval. If a VPDES permit is not required, an operational phase stormwater pollution prevention plan/spill prevention and control plan to address the outdoor vehicle and material storage, including but not limited to oil, diesel and gasoline, shall be submitted to the Director of Engineering and Resource Protection and the Fire Chief for their respective review and approval.
- 15. <u>Wood Product Stock Piles</u>: Stockpiles associated with the manufacture of wood products shall not exceed 20 feet in height from the existing grade.
- 16. <u>Vehicle Storage</u>: Storage of vehicles associated with the Project shall be limited to those which can fit within a 6000 square foot area.
- 17. <u>Site Plan Approval</u>: A site plan shall be required for the Project. Final approval of the site plan shall be obtained within twenty-four (24) months of issuance of this SUP, or the SUP shall become void.

18.	<u>Severance Clause:</u> This SUP is not severable. Invalidatio sentence or paragraph shall invalidate the remainder.	n of a	any	word,	phrase,	clause,

#### RESOLUTION

#### CASE NO. SUP-26-91. JACK L. MASSIE CONTRACTOR, INCORPORATED

- WHEREAS, the Board of Supervisors of James City County has adopted by Ordinance specific land uses that shall be subjected to a special use permit process; and
- WHEREAS, the Planning Commission of James City County, following its public hearing on December 10, 1991, voted 8-1 and recommended approval of Case No. SUP-26-91 to permit a borrow pit in the A-1, General Agricultural district, on property identified as Parcel (1-79A) on James City County Real Estate Tax Map No. (31-1) and Parcels (1-6), (1-6A) and (1-7) on James City Real Estate Tax Map No. (30-2).
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-26-91 as described herein with the following conditions:
  - All erosion and sedimentation control measures shown on the Land Disturbing Permit shall be installed prior to any clearing or grading of any cell.
  - 2. No more than 2 cells, as identified on the Master Plan prepared by AES and dated July 1991, shall be open at one time. No more than 40 acres of the site shall be disturbed at one time.
  - 3. Inert materials such as broken concrete, bricks, blocks, broken roadway, and unsuitable soil removed from Jack L. Massie job sites may be used to refill the cells. Non-inert materials shall not be disposed of on this site. If it is determined that non-inert materials are being disposed of on site, the special use permit shall become void.
  - A 50-foot undisturbed buffer shall be provided on all Resource Management Area (RMA) wetlands as defined in Section 198-3 of the James City County Code.
  - 5. Prior to the commencement of any work within a cell, a Phase I Archaeological Study for that cell shall be submitted to the Director of Planning for his review and approval. The study shall meet the guidelines set forth in the Virginia Department of Historic Resource's <u>Guidelines for Preparing Archaeological Resource Management Reports</u> and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's <u>Professional Qualification Standards</u>. The developer shall undertake a Phase II and/or a Phase III Study of archaeological sites identified in the Phase I Study, if identified by the Phase I Study as warranting Phase II or Phase III Study. Such studies shall be submitted to and approved by the Planning Director prior

to any land disturbing on or adjacent to such sites. The recommendations of such studies shall be incorporated into the plan of development for the site and the clearing, grading or construction activities thereon. If as a result of a Phase II Study, the Planning Director determines the site is eligible for inclusion in the National Register of Historical Places based on the Criteria established by the Department of the Interior, the developer shall develop and implement a plan for inclusion of the site on the National Register of Historic Places and for the mitigation of potential adverse impacts on the site.

- 6. A right- and left-turn lane shall be installed to VDOT standards at the proposed entrance of the site within 18 months from the date of issuance of this permit in the location shown on the Master Plan prepared by AES and dated July 1991. The existing entrance to the site as identified on the Master Plan shall be abandoned when the new entrance is completed. The location of this entrance may be shifted; however such a shift shall be approved by the Planning Director.
- 7. A gate shall be provided on the proposed entrance road no further than 200 feet from Centerville Road. The Planning Director may waive this requirement if evidence is presented that due to topographic and safety constraints the entrance must be placed further than 200 feet from Centerville Road.
- 8. A 100-foot undisturbed buffer shall be provided on the eastern boundary of that area shown as Cell 8 on the Master Plan prepared by AES and dated July 1991. An undisturbed buffer shall be provided along Centerville Road as shown on the Master Plan. A 50-foot undisturbed buffer shall be provided on the perimeter of the remainder of the site.
- 9. The hours of operation shall be limited to daylight hours (6:00 a.m. to 9:00 p.m. in the summer, 6:00 a.m. to 6:00 p.m. in the winter), Monday through Saturday.
- 10. A reforestation plan for each cell on the site shall be approved by the Virginia Department of Forestry Area Forester prior to the commencement of land disturbing on the next cell. A mixture of hardwoods and softwoods to reflect the current species ratic shall be provided. All restored areas shall be returned to a condition adequate to support and encourage the growth of trees. A minimum of 800 seedlings an acre shall be planted during the reclamation of the cell.
- 11. The buffer areas shall be staked in the field prior to clearing so the operators know the limits of their work.
- 12. The maximum side slope of all reclaimed areas shall be 3:1 or flatter.

- 13. Berms and sediment traps shall be provided to protect wetlands above Dry Ponds 1 and 3 as shown on the Master Plan prepared by AES and dated July 1991. These facilities shall be placed around the perimeter of all disturbed areas adjacent to these wetlands. The design of these facilities shall be incorporated into and approved by the Director of Code Compliance as part of the site plan for the project.
- 14. All property along Centerville Road, necessary for the 4 laning of the road, shall be dedicated to the County at its request.

# 2. <u>Case No. ZO-11-91. Zoning Ordinance Amendment/ Residential Cluster</u> Development

Mr. Jeffrey J. Mihelich, Planner, reiterated that the proposed Residential Cluster Development Ordinance was reviewed by a three-person subcommittee of the Planning Commission, who recommended a number of significant changes which would implement many of the provisions of the updated Comprehensive Plan.

Mr. Mihelich further stated that the case was deferred at the February 3, 1992, Board of Supervisors meeting to allow time to consider open space requirements and gross acreage (density transfer) calculations.

In concurrence with staff, the Planning Commission by a vote of 9-1 recommended approval of the ordinance.

Mr. DePue asked for clarification of the current procedures regarding private roads.

Mr. John T. P. Horne, Manager, Development Management, stated that private roads were not approved in routine development and were rare in our community.

Staff emphasized the proposed ordinance was workable with the current private roads policy.

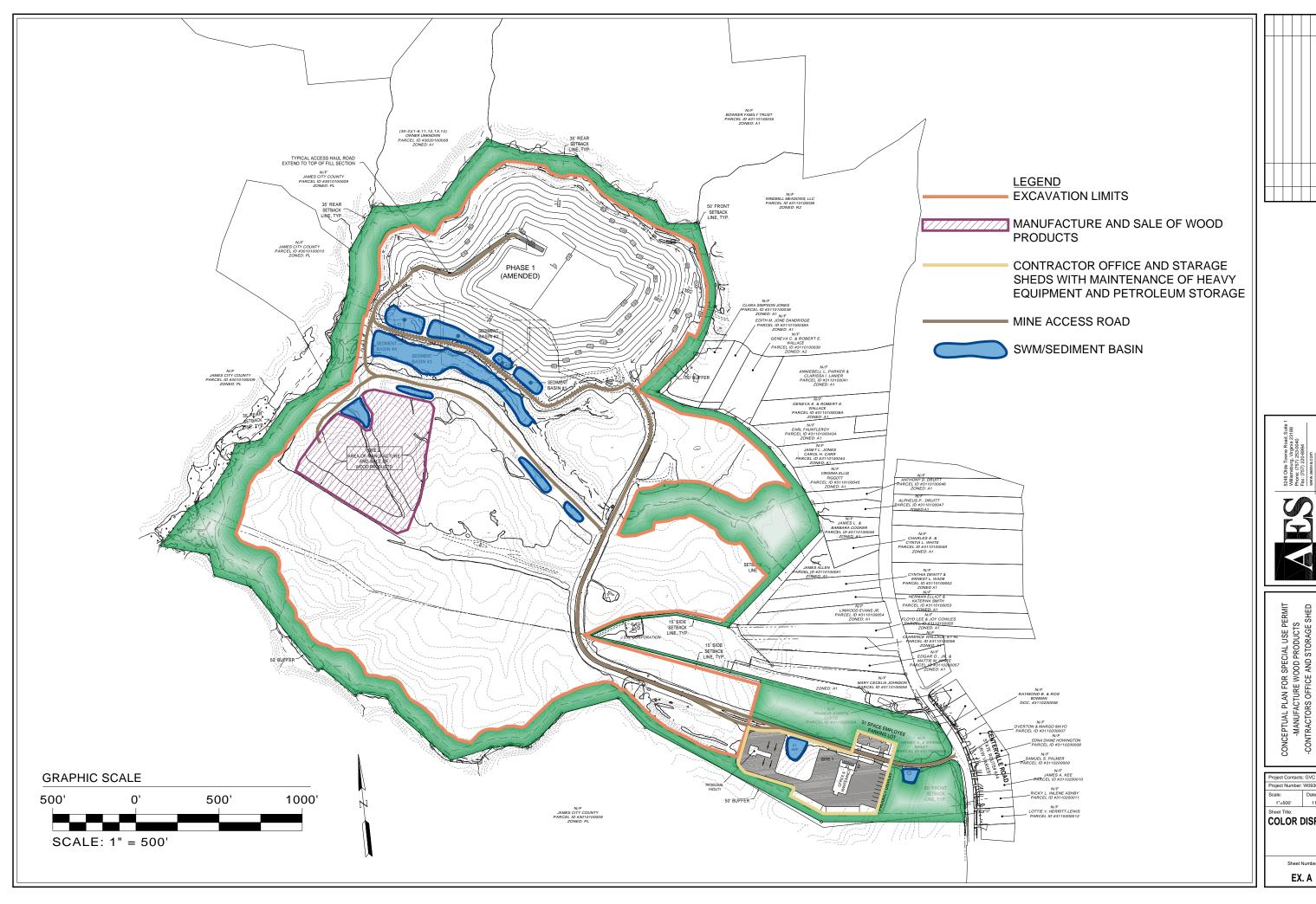
Ms. Knudson made a motion to approve the Ordinance amendment.

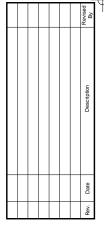
On a roll call, the vote was: AYE: Taylor, Sisk, Knudson, Edwards (4). NAY: DePue (1).

# 1. <u>Case No. ZO-8-91</u>. <u>Zoning Ordinance Amendment/ Timbering</u>

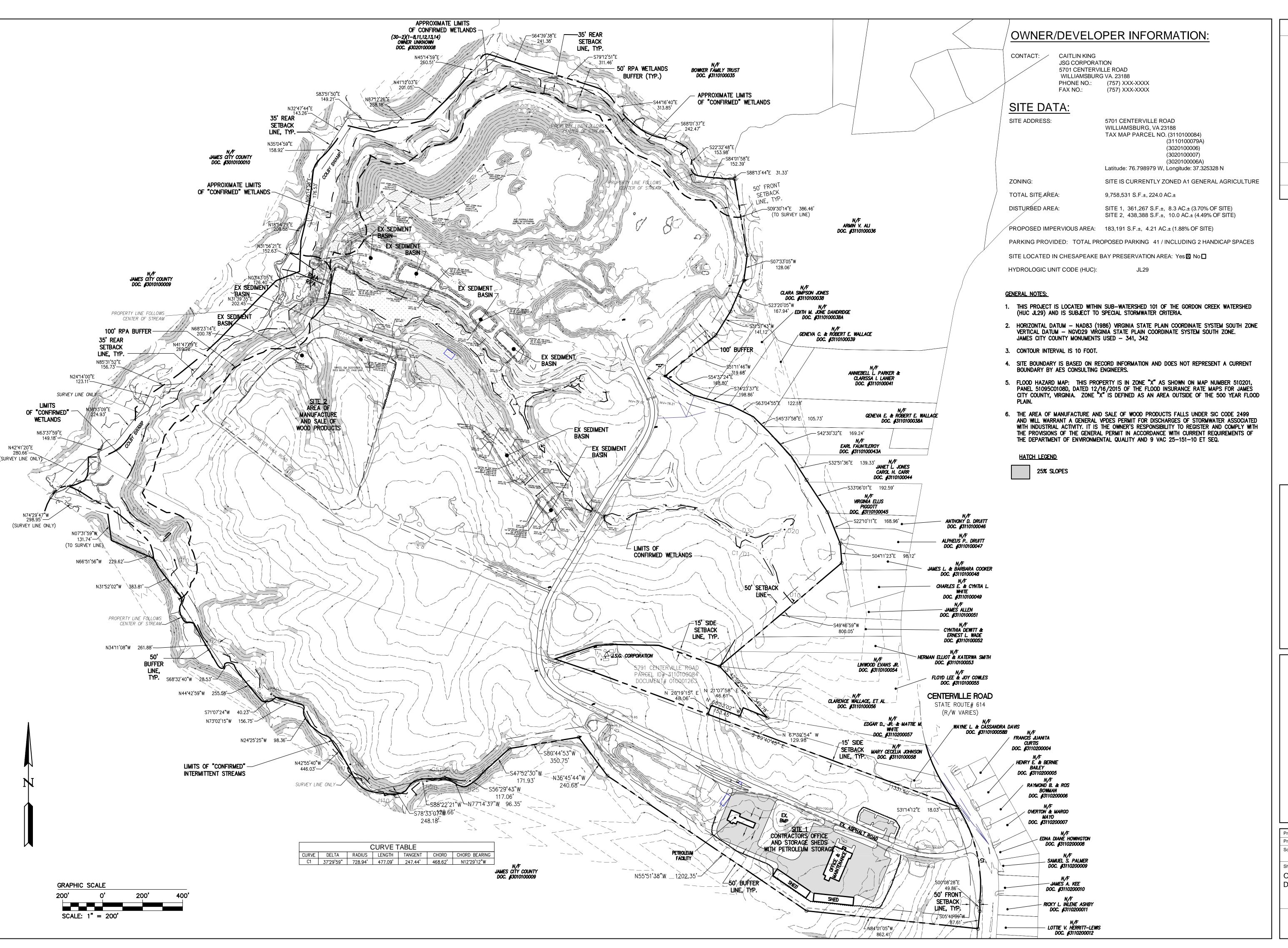
Mr. Horne stated that action was deferred at the Board of Supervisors' February 3, 1992, meeting on the proposed amendment to regulate timbering activities by requiring a special use permit in certain zoning districts.

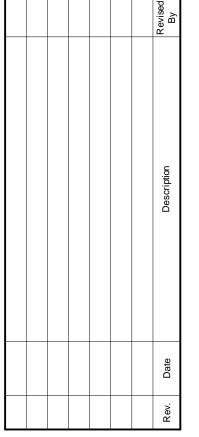
He further stated that the regulation could be accomplished by requiring an administrative timbering permit with guidelines with an appeal process to the Board of Supervisors.

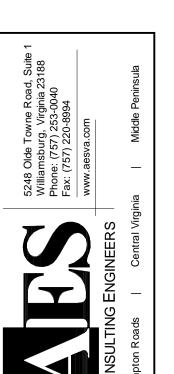




COLOR DISPLAY



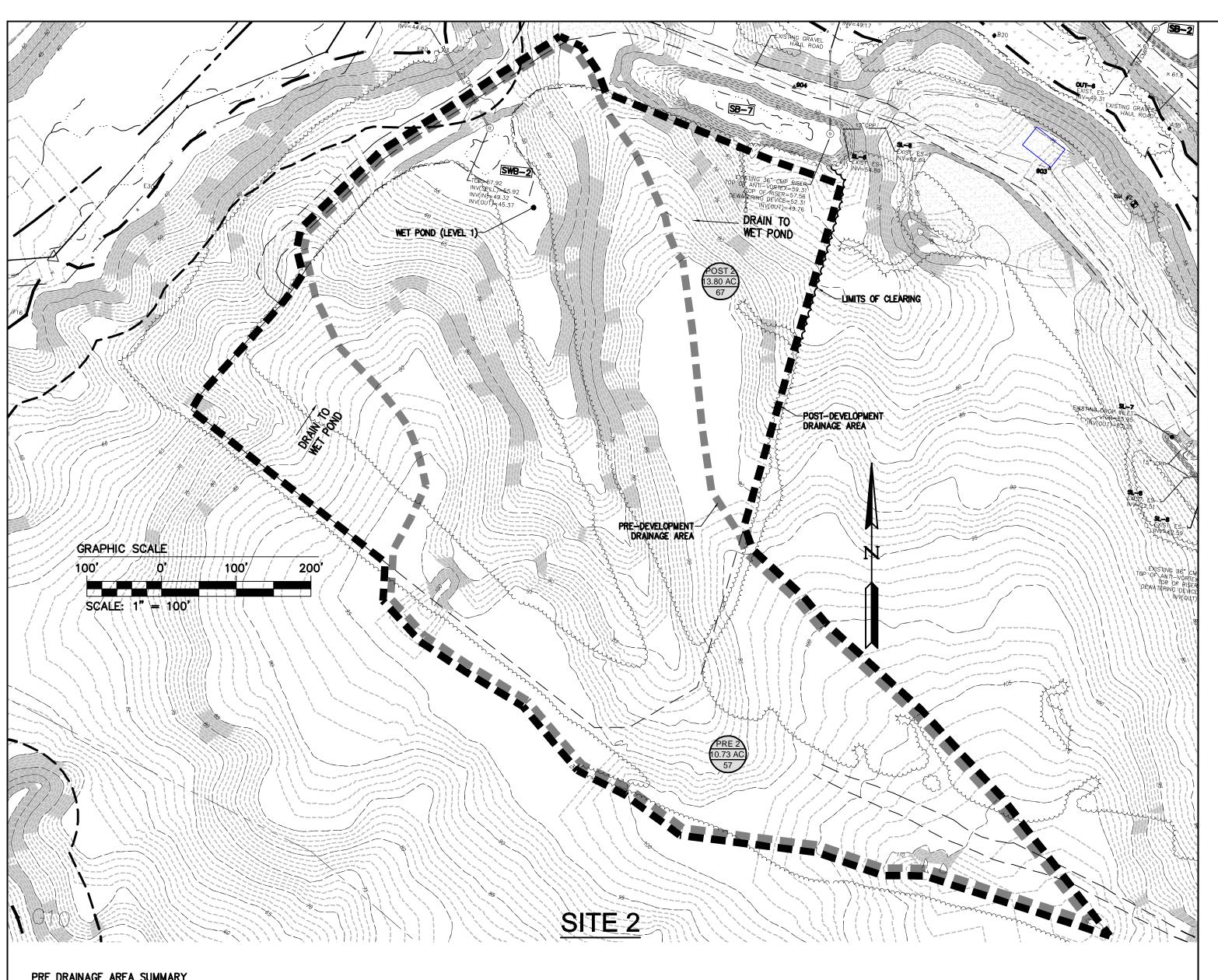




-MANUFACTURE WOOD PRODUCTS
-CONTRACTORS OFFICE AND STORAGE SH
WITH PETROLEUM STORAGE
OWNER: JSG CORPORATION

Project Contacts	: GVC			
Project Number:	9304-08			
Scale:	Date:			
1"=200'	11/17/15			
Sheet Title:				
OVERALL SITE DISPLAY				
	I			

Sheet Number EX. B



PRE	DRAINAGE	AREA	SUMMARY	

DRAINAGE AREA ID	DRAINAGE AREA	IMPERVIOUS COVER	1-YR	2-YR	10-YR	100-YR
PRE 1	13.64 AC	0.94 AC	1.96 CFS	5.91 CFS	26.72 CFS	51.80 CFS
PRE 2	10.72 AC	0.00 AC	0.77 CFS	3.43 CFS	19.49 CFS	39.60 CFS

# POST DRAINAGE AREA SUMMARY

DRAINAGE AREA ID	DRAINAGE AREA	BMP TYPE	IMPERVIOUS COVER	1-YR	2-YR	10-YR	100-YR
DA-1	14.95 AC	WET POND LEVEL 2	6.26 AC	0.25 CFS	0.33 CFS	6.39 CFS	8.37 CFS
DA 1B	1.08 AC	UNTREATED	0.00 AC	0.36 CFS	0.93 CFS	3.43 CFS	6.31 CFS
DA 1 TOTAL	_	-	-	0.43 CFS	1.05 CFS	6.70 CFS	9.76 CFS
DA 2	13.80	WET POND LEVEL 1	0.00 AC	0.19 CFS	0.27 CFS	17.55 CFS	47.15 CFS

\*NOTE THAT TOTAL FLOWS ARE NOT A DIRECT SUM OF FLOWS DUE TO VARYING TIME TO PEAK FOR EACH HYDROGRAPH

# WATER QUALITY SUMMARY - SITE 1

INFORMATION).

PHOSPHORUS LOAD REDUCTION REQUIRED 9.86-LB/YR
 PHOSPHORUS LOAD REDUCTION ACHIEVED 12.72-LB/YR

(SEE PERFORMANCE BASED WATER QUALITY CALCULATIONS FOR MORE DETAILED

WATER QUALITY SUMMARY - SITE 2

- phosphorus load reduction required 1.18—LB/Yr - phosphorus load reduction achieved 3.42—LB/Yr

(SEE PERFORMANCE BASED WATER QUALITY CALCULATIONS FOR MORE DETAILED

# DA 1 ENERGY BALANCE SUMMARY DISCHARGE TO NATURAL CHANNEL

Q1-YR-DEVELOPED < I.F. \* [Q1-YR-PRE-DEVELOPED \* RV1-YR-PRE-DEVELOPED]/[RV1-YR-DEVELOPED)

0.42 < 0.59 (MEETS REQUIREMENTS)

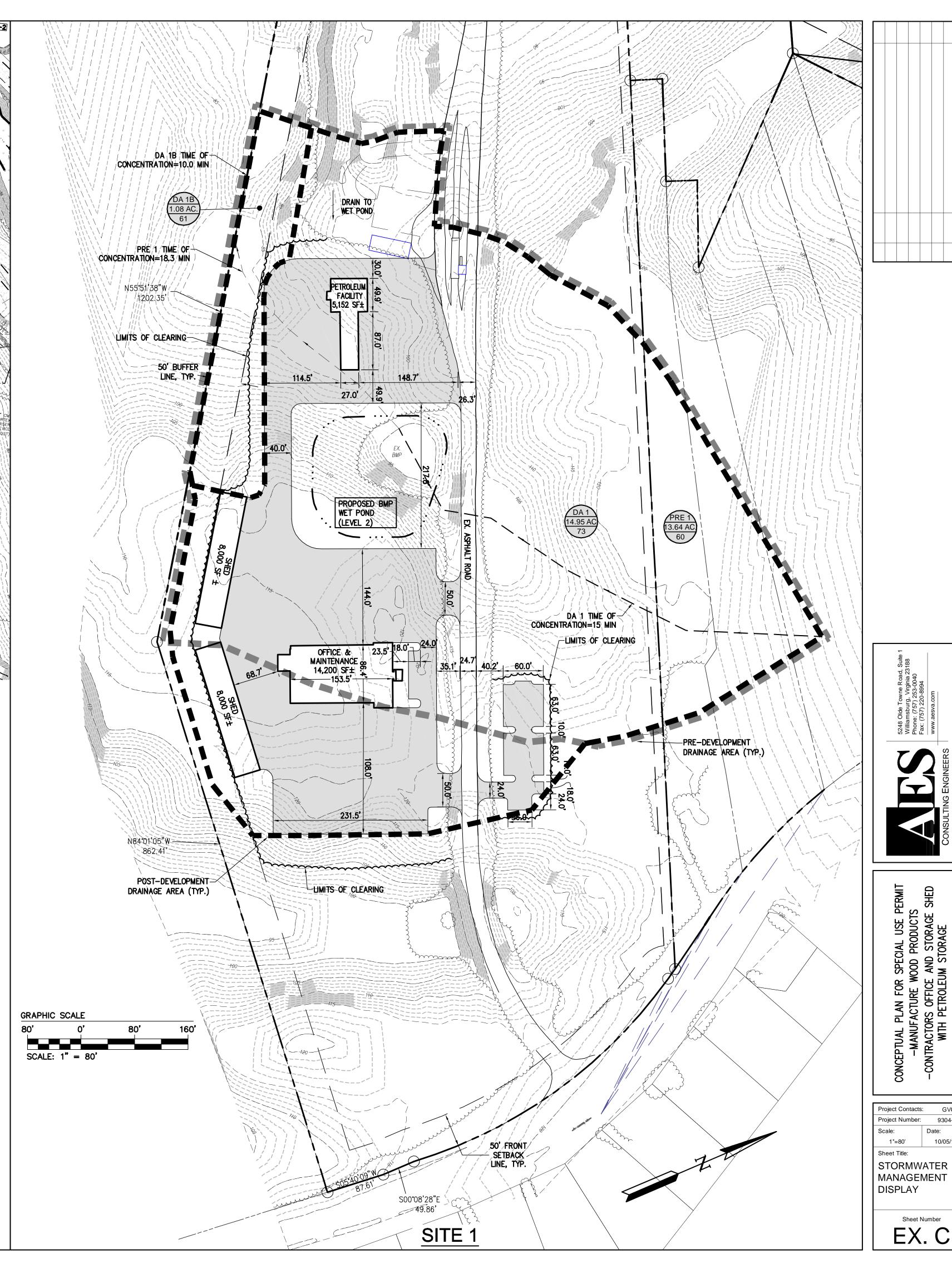
# DA 2 ENERGY BALANCE SUMMARY

DISCHARGE TO NATURAL CHANNEL

Q1-YR-DEVELOPED < I.F. \* [Q1-YR-PRE-DEVELOPED \* RV1-YR-PRE-DEVELOPED]/[RV1-YR-DEVELOPED)

< 0.8 \* 0.77

0.18 < 0.26 (MEETS REQUIREMENTS)



Project Number:

1"=80'

9304-08

10/05/15

Sheet Number

EX. C





# **AGENDA ITEM NO. F.2.**

# **ITEM SUMMARY**

DATE: 7/6/2016

TO: The Planning Commission

FROM: Savannah Pietrowski, Planner

SUBJECT: Z-0006-2016/SUP-0015-2016, Our Saviour's Lutheran Church

# **ATTACHMENTS:**

	Description	Type
	Staff Report	Staff Report
ם	Location Map	Cover Memo
ם	Draft Proffers dated June 30, 2016	Cover Memo
ם	Draft SUP Conditions	Cover Memo

# **REVIEWERS:**

epartment	Reviewer	Action	Date
lanning Commission	Holt, Paul	Approved	6/30/2016 - 2:59 PM
lanning Commission	Holt, Paul	Approved	6/30/2016 - 2:59 PM
ublication Management	Burcham, Nan	Approved	6/30/2016 - 3:02 PM
lanning Commission	Holt, Paul	Approved	6/30/2016 - 3:04 PM
lanning Commission ublication Management	Holt, Paul Burcham, Nan	Approved Approved	6/30/2016 - 2:59 PM 6/30/2016 - 3:02 PM

# Staff Report for the July 6, 2016, Planning Commission Public Hearing

### **SUMMARY FACTS**

Applicant: Rev. James P. Nickols

Land Owner: Our Saviours Evangelical Lutheran

Church, Williamsburg Virginia

To rezone the subject property to LB, Proposal:

Limited Business, to allow the existing kitchen to be used for commercial catering and meal preparation, and to obtain a Special Use Permit (SUP) for an existing building over 5,000 square feet in an area

designated Low Density Residential.

Location: 7479 Richmond Road

Tax Map/Parcel No.: 2320100064

Project Acreage: +/- 4.11 acres

Zoning: R-2, General Residential

Comprehensive Plan: Low Density Residential

Primary Service Area: Inside

Savannah Pietrowski, Planner Staff Contact:

### **PUBLIC HEARING DATES**

Planning Commission: July 6, 2016, 7 p.m.

Board of Supervisors: August 9, 2016, 6:30 p.m. (tentative)

### **FACTORS FAVORABLE**

- The proposal is compatible with surrounding zoning and development.
- 2. The proposal is consistent with the recommendations of the James City County Comprehensive Plan adopted in 2015, "Toward 2035: Leading the Way."
- The existing place of public assembly will remain the primary use of the property.

### **FACTORS UNFAVORABLE**

Staff finds that there are no unfavorable conditions.

### SUMMARY STAFF RECOMMENDATION

Approval subject to the attached conditions and acceptance of the voluntary proffers.

# PROJECT DESCRIPTION

Proposal to rezone the property from R-2, General Residential, to LB, Limited Business, in order to allow the church to lease its existing kitchen to a catering company. Commercial catering and meal preparation operating in a space that is 5,000 square feet or less is not a permitted use in the R-2 Zoning District, but is a permitted use in LB. The existing place of public assembly will remain the primary use of the property, and the catering operation is proposed to be a secondary use.

Although the catering operation itself will be less than 5,000 square feet, the existing Fellowship Hall building is over 5,000 square feet.

# Staff Report for the July 6, 2016, Planning Commission Public Hearing

Buildings over 5,000 square feet on property zoned LB and designated Low Density Residential on the Comprehensive Plan require an SUP from the Board of Supervisors.

The SUP, if approved, would ensure the existing building would not become a non-conforming structure due to its size if the property is rezoned to LB.

### PLANNING AND ZONING HISTORY

• The Board of Supervisors approved an SUP (Case No. SUP-0018-1997) for the operation of a day care center for up to 30 children in the Fellowship Hall and Sunday School of Our Saviours Lutheran Church on June 24, 1997.

### SURROUNDING ZONING AND DEVELOPMENT

- Located on Richmond Road across from St. Olaf Catholic Church
- Surrounding Zoning Designations include:
  - a. R-8, Rural Residential, to the northeast (St. Olaf Catholic Church);
  - b. B-1, General Business, to the east (Christmas Mouse) and northwest (Norge Crossing Shopping Center);
  - c. R-2, General Residential, to the south (Old Church Road single-family homes and Norvalia subdivision); and
  - d. M-1, Limited Industrial to the west (Poplar Creek Business Center).

### **COMPREHENSIVE PLAN**

- Designated Low Density Residential on the Comprehensive Plan Land Use Map. Recommended uses include residential developments, places of public assembly, very limited commercial and community-oriented facilities.
- Areas within the LB Zoning District that are designated Low Density Residential on the Comprehensive Plan are subject to the special provisions outlined in Section 24-369 of the Zoning Ordinance, including the requirement to obtain an SUP for buildings over 5,000 square feet. Developments within these areas shall also demonstrate consistency with the following design standards:
  - a. Screen large work doors from external roadways or orient on the sides or rear of the building.
  - b. Screen any fixed outdoor operating machinery (HVAC equipment, compressors, etc.) or objectionable features (dumpsters, utility meters, etc.) from adjacent property and the street right-of-way through landscaping and/or fencing.
  - c. Limitations on sign colors and freestanding signs needing to be monument-style with ground-mounted lighting.
  - d. Site landscaping shall be consistent with the natural landscape and character of the surrounding properties.
  - e. Compliance with these items shall be evidenced by the submission of a site plan.

# Staff Report for the July 6, 2016, Planning Commission Public Hearing

The buildings on-site are existing and no expansions are currently proposed. However, future improvements on the site would be reviewed against these criteria.

- The Neighborhood Commercial Development Standards, adopted by the Board of Supervisors in March 1999, would also apply to this project if rezoned to LB. Similarly, these standards would not address the existing buildings, but would apply to any future building expansions on the property.
- Staff finds this proposal to be consistent with the Comprehensive Plan given that the existing place of public assembly will remain the primary use and that the proposed catering use and allowable day care would be limited commercial uses secondary in nature to the existing church. The property is located on the Richmond Road arterial roadway adjacent to other commercial businesses.
- Surrounding Comprehensive Plan designations include:
  - a. Low Density Residential to the northeast and south (St. Olaf Catholic Church, Old Church Road and Norvalia);
  - b. Community Commercial to the northwest (Norge Crossing);
  - c. Neighborhood Commercial to the east (Christmas Mouse); and
  - d. Mixed Use to the west (Poplar Creek Business Center).

### **PUBLIC IMPACTS**

- 1. <u>Anticipated Impact on Public Facilities and Services</u>:
  - a. Streets. None.

- b. Schools/Fire/Utilities. None.
- c. *Utilities*. The site is served by public water and a private septic system. The Health Department has verified that the existing septic system is capable of handling the proposed increase in septic system usage.
- 2. <u>Anticipated Impact on Environmental/Cultural/Historical</u>: No additional impacts anticipated as no additional land disturbance is proposed.
- 3. <u>Anticipated Impact on Nearby and Surrounding Properties</u>: No impacts anticipated. The site is located on the Richmond Road arterial roadway and is adjacent to several existing commercial properties.

### PROPOSED CONDITIONS

- The proposed proffers limit the uses that will be permitted on the site to the existing place of public assembly, catering and meal preparation 5,000 square feet or less, and a child day care center for up to 30 children. A condition is proposed to ensure the day care will remain a secondary use to the existing place of public assembly.
- The proposed SUP conditions state that the SUP is valid only for the existing Fellowship Hall, not any future expansions. The draft SUP conditions also state that a place of public assembly shall remain the primary use of the site.

# STAFF RECOMMENDATION

Approval subject to the attached conditions, and acceptance of the voluntary proffers.

# Staff Report for the July 6, 2016, Planning Commission Public Hearing

SP/ab SUP06-16and15-16-OSLChurch

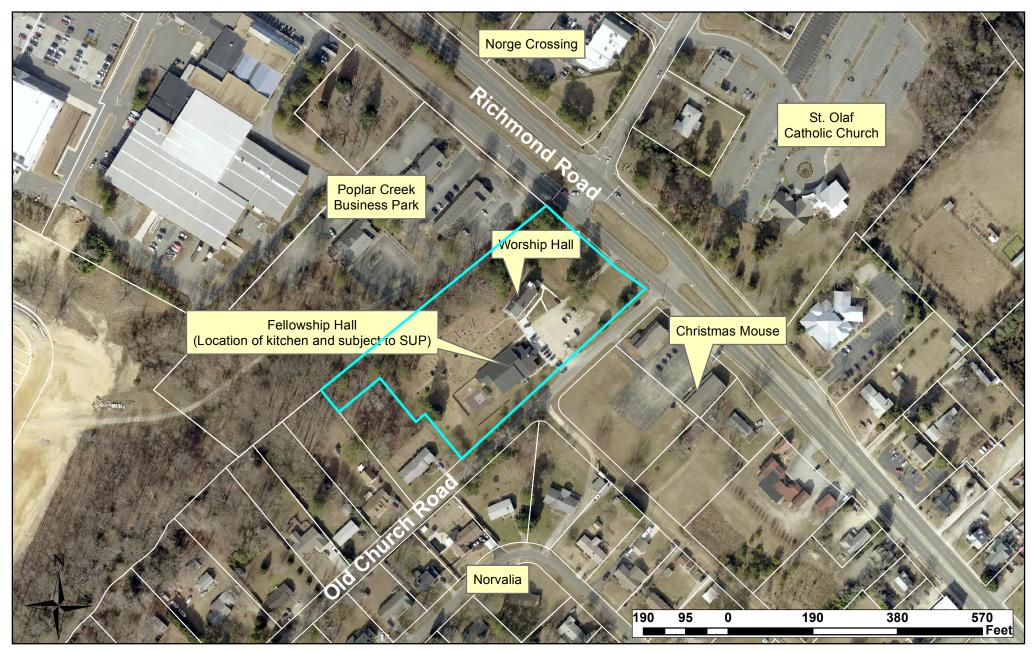
# Attachments:

- 1. Location Map
- 2. Draft Proffers dated June 30, 2016
- 3. Draft SUP Conditions

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.

# Z-0006-2016/SUP-0010-2016 Our Saviours Lutheran Church Commercial Kitchen





### **PROFFERS**

THESE PROFFERS are made this 30 day of June, 2016 by OUR SAVIOURS EVANGELICAL LUTHERAN CHURCH WILLIAMSBURG VIRGINIA (together with its successors in title and assigns, the "Owner").

### RECITALS

- A. Owner is the owner of a parcel of land located in James City County, Virginia (the "County"), containing approximately 4.11 acres, more or less, further identified as James City County Tax Parcel No. 2320100064 (the "Property").
- B. The Property is designated Low Density Residential on the County's Comprehensive Plan, *Toward 2035: Leading the Way*, Land Use Map and is now zoned R-2, General Residential. Owner has applied to rezone the Property from R-2 to LB, Limited Business, with proffers.
- C. Owner desires to offer to the County certain conditions on the development of the Property not generally applicable to land zoned LB in the form of the following Proffers.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and the County Zoning Ordinance, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void.

# CONDITIONS

- 1. Permitted Uses. Permitted uses on the Property shall be limited to the following:
  - a. Catering and meal preparation 5,000 sq. ft. or less
  - b. Child day care centers up to 30 children

- c. Places of public assembly
- 2. Severability. In the event that any clause, sentence, paragraph, section or subsection of these Proffers shall be adjudged by any court of competent jurisdiction to be invalid or unenforceable for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth of Virginia or of the United States, or if the application thereof to any owner of any portion of the Property or to any government agency is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, section or subsection hereof, or the specific application thereof directly involved in the controversy in which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, section or provision hereof.
- 3. <u>Successors and Assigns</u>. These Proffers shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, successors and/or assigns.

# WITNESS the following signature.

Ellen	L.	Pica	rd-	Cong	regation	President
Our Saviours L	utheran	Church V	Villiamst	ourg Vir	ginia	

STATE OF Virginia
CITY/COUNTY OF Sames City, to-wit:

The foregoing instrument was acknowledged before me this 20th day of 2014, by Our Saviours Lutheran Church Williamsburg Virginia.

BARBARA E SKINNER
Notary Public
Commonwealth of Virginia
Registration No. 7668262
My Commission Expires Nov 30, 2020

NOTARY PUBLIC

My commission expires: 11-30-2020Registration No.: 1608202

### SUP-0010-2016, Our Saviours Lutheran Church Draft Conditions:

- 1. <u>Building</u>: This SUP shall be valid for one building in excess of 5,000 square feet, the existing Fellowship Hall at Our Saviours Lutheran Church (the "Fellowship Hall"), as shown on the map "Z-0006-2016/SUP-0010-2016, Our Saviours Lutheran Church Commercial Kitchen" dated June 29, 2016 (the "Location Map"), on the Property with uses limited to those proffered by the Owner as part of James City County Case No. Z-0006-2016 (the "Project"). All future development and improvements on the Property shall be in accordance with the development standards in Section 24-369 of the James City County Zoning Ordinance, "Special provisions for areas within the Limited Business District, LB, designated Neighborhood Commercial or Low-Density Residential on the Comprehensive Plan," as amended, and the Neighborhood Commercial Development Standards Policy adopted by the Board of Supervisors on March 23, 1999. Any future expansions of the Fellowship Hall will require a new SUP. Any new buildings over 5,000 square feet or any expansion of the existing Worship Hall, as shown on the Location Map, beyond 5,000 square feet will require a separate SUP.
- 2. <u>Primary use:</u> The primary use of the Property shall be the existing place of public assembly. The catering and day care uses shall be secondary to the place of public assembly and shall not occupy their own stand-alone building.
- 3. <u>Screening:</u> Dumpsters shall be screened with a brick enclosure or other materials similar in type and color to the building face.
- 4. <u>Signage:</u> Exterior free-standing signage shall be limited to one (1) free-standing, externally illuminated, monument-style sign not to exceed eight (8) feet in height from finished grade. The base of the sign shall be brick or shall use materials similar in type and color with the site architecture. All building face signage shall be externally illuminated only. Existing free-standing and building face signs in place at the time of this application shall be exempted from this condition.
- 5. <u>Severance Clause</u>: This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

# **AGENDA ITEM NO. H.1.**

# **ITEM SUMMARY**

DATE: 7/6/2016

TO: The Planning Commission

FROM: Paul D. Holt, III, Planning Director

SUBJECT: Planning Director's Report - July 2016

# **ATTACHMENTS:**

Description Type Cover Memo D Spreadsheet listing new applications Exhibit received 

# **REVIEWERS:**

Department	Reviewer	Action	Date
Planning Commission	Holt, Paul	Approved	6/28/2016 - 5:56 PM
Planning Commission	Holt, Paul	Approved	6/28/2016 - 5:56 PM
Publication Management	Burcham, Nan	Approved	6/29/2016 - 7:45 AM
Planning Commission	Holt, Paul	Approved	6/29/2016 - 7:51 AM

### MEMORANDUM

DATE: July 2016

TO: The Planning Commission

FROM: Paul D. Holt, III, Director of Planning

SUBJECT: Planning Director's Report

This report summarizes the status of selected Planning Division activities during the past month.

• <u>Monthly Case Report</u>: For a list of all cases received in the last month, please see the attached documents.

# Board Action Results:

- o June 14, 2016
  - o SUP-0004-2015. Hankins Resource Recovery Facility Approved (5-0)
  - o SUP-0003-2016. Two Drummers Smokehouse SUP Amendment Approved (5-0)
  - O SUP-0004-2016. Extra Mile Landscapes Approved (5-0)
  - o SUP-0009-2015. 100 Lake Drive Rental of Rooms Not Approved (4-0-1)
  - o Z-0004-2016/MP-0001-2016. New Town Proffer and Master Plan Amendment Postponed to June 28, 2016
  - Z-0005-2016. The Promenade at John Tyler Proffer Amendment Community Character Corridor Buffer Approved (5-0)

PDH/nb DirectorsReport07-2016

			New Cases for July 2016			
Case Type	Case Number	Case Title	Address	Description	Planner	District
	C-0039-2016	Newman Rd. Right of Way to Lot Conversion	N/A	(York County Courtesy Review)	Ellen Cook	N/A
	C-0040-2016	1322 Jamestown Rd. Caretakers Quarters	1322 JAMESTOWN ROAD	Proposal to add a caretakers quarters to be placed in proximity of current shed/garage.	Savannah Pietrowski	05-Roberts
	C-0041-2016	500 Thompson Lane	500 THOMPSON LANE	Proposal to replace existing 2-bay garage with a 3-bay garage and 2 bedroom apartment above the garage and future option to replace existing 1-story 3 bedroom home with a 2-story 4-bedroom home, connecting the home to the new garage.	Ellen Cook	02-Powhatan
Conceptual Plan	C-0042-2016	2510 Manion Dr., Detached Accessory Apartment	2510 MANION DRIVE		Ellen Cook	03-Berkeley
	C-0043-2016	716 Arlington Island Rd. Subdivision	716 ARLINGTON ISLAND ROAD	Subdivide property into two lots.	Roberta Sulouff	02-Powhatan
	C-0044-2016	Quarterpath 7-11 Redevelopment	7341 POCAHONTAS TR	Redevelopment of existing 7-11 and development of restaurant on remaining parcel.	Ellen Cook	05-Roberts
	C-0045-2016	Williamsburg Place, Farley Center Expansion	5477 MOORETOWN ROAD	Construction of a 1,440 sq. ft. structure to be used as an exercise facility.	Jose Ribeiro	02-Powhatan
	C-0046-2016	Veritas Preparatory School -Condition Verification	275 MCLAWS CIRCLE	Per conditions for SUP-0011-2013, information provided on school enrollment and traffic mitigation plan.	Ellen Cook	05-Roberts
	CU-0002-2016	1322 Jamestown Rd. Retail/Restaurant	1322 JAMESTOWN ROAD	Change of use application for 1322 Jamestown Rd to allow a restaurant (juice bar/café)	Savannah Pietrowski	05-Roberts
Change of Use	CU-0003-2016	4385 Ironbound Rd. Unit B	4385 IRONBOUND ROAD	Change of use 4385 Ironbound Road.	Jose Ribeiro	04-Jamestown
	CU-0004-2016	4854 Longhill Rd. Suite 1 Joan's Antiques	4854 LONGHILL ROAD	Change of use for 4854 Longhill Rd. Suite 1.	Roberta Sulouff	04-Jamestown
	CU-0005-2016	4854 Longhill Rd. Restaurant	4854 LONGHILL ROAD	Change of use for 4854 Longhill Rd. to a restaurant.	Savannah Pietrowski	04-Jamestown
	S-0018-2016	Colonial Heritage Ph. 1, Sec. 1, Lots 1-6, 18-19, LLE	4819 HOUSE OF LORDS	Final plat of 2 lots on 1.021 acres.	Jose Ribeiro	01-Stonehouse
Code division or	S-0019-2016	Chickahominy Rd Subdivision, Ph. 3, Lots 1 and 2	3095 CHICKAHOMINY ROAD	Subdivision to create one additional lot and boundary line adjustment with adjacent property.	Savannah Pietrowski	01-Stonehouse
Subdivision	S-0020-2016	New Town Section 8, Parcel D	5335 SETTLERS MARKET BLVD	Construction Plans for 120 lots.	Roberta Sulouff	04-Jamestown
	S-0021-2016	Colonial Heritage Deer Lake Estates Natural Open Space and Conservation Easement	499 JOLLY POND ROAD	Natural open space and conservation easement plat.	Roberta Sulouff	01-Stonehouse

Case Type	Case Number	Case Title	Address	Description	Planner	District
	SP-0039-2016	The Settlement at Powhatan Creek, Ph. 3, SP Amend.	4101 MONTICELLO AVENUE	Prince	Scott Whyte	03-Berkeley
	SP-0040-2016	Carter's Grove Plantation - Slave Quarters	8797 POCAHONTAS TR	ÿ	Roberta Sulouff	05-Roberts
	SP-0041-2016	Brook Haven Drainage Improvements SP Amend.	135 BROOK HAVEN DR	Change in type of dry swale from previously approved plan.	Jose Ribeiro	04-Jamestown
	SP-0042-2016	Warhill Maintenance Storage Building	5700 WARHILL TRAIL	150' long by 15' single sloped equipment storage building in existing maintenance area.	Ellen Cook	02-Powhatan
	SP-0043-2016	New Town Section 8, Parcel D	5335 SETTLERS MARKET BLVD	Development of 120 lots, and associated infrastructure.	Roberta Sulouff	04-Jamestown
	SP-0044-2016	Busch Gardens Holiday Inn Express	480 MCLAWS CIRCLE	Minor exterior site changes to parking, pool area and patio.	Ellen Cook	05-Roberts
	SP-0045-2016	Ford's Colony Sec. 2 Greenway #22 Drainage Improvements	N/A	Drainage improvements to Greenway #22.	Jose Ribeiro	02-Powhatan
Site Plan	SP-0046-2016	Blayton E.S. Rainwater Distribution System SP Amend.	800 JOLLY POND ROAD	Install a 1,000 gallon rainwater collection and distribution system powered by PV solar panels in conjunction with a 12V pump system.	Jose Ribeiro	
	SP-0047-2016	Patriot's Colony Expansion	3400 JOHN TYLER HGWY	80- units of apartments; made up of four, five story 20- unit buildings. Parking is provided within the ground floor of each building.	Jose Ribeiro	03-Berkeley
	SP-0048-2016	Fort Magruder Hotel SP Amend.	6945 POCAHONTAS TR	Minor exterior site changes including patio, fire pit, and sidewalks.	Ellen Cook	05-Roberts
	SP-0049-2016	6560 Richmond Rd. Parking SP Amend.	6560 RICHMOND ROAD	Modification of accessible parking spaces and access ramps.	Scott Whyte	01-Stonehouse
	SP-0050-2016	Jacobs Industrial Center Parcel 6 SP Amend.	256 INDUSTRIAL BLVD	9,000 s.f. office/warehouse building with asphalt parking area and gravel storage yard.	Jose Ribeiro	01-Stonehouse
	SP-0051-2016	New Town Sec. 9 (Settlers Market) Townhomes (Village Walk) SP Amend. 2	4520 CASEY BLVD	This site plan amends SP-0097-2013 which includes lot moves/resizing and the addition or removal of water/sewer service based on these lot revisions. Grading and drainage items also revised as such.	Roberta Sulouff	04-Jamestown

New Cases for July 2016							
Case Type	Case Number	Case Title	Address	Description	Planner	District	
	SUP-0010-2016	Our Saviour's Lutheran Church Commercial Kitchen	7479 RICHMOND ROAD	SUP to allow a building in excess of 5,000 SF.	Savannah Pietrowski	01-Stonehouse	
	SUP-0011-2016	JSG Mineral Resource Management Expansion	5701 CENTERVILLE RD	Request an amendment of SUP-26-91. The amendment	Roberta Sulouff	02-Powhatan	
Special Use Permit				requested is to remove the following language from			
				condition #2, "No more than 40 acres of the site shall be			
				disturbed at one time.			
	ZO-0006-2016	Special Regulations and Definitions Articles of the Zoning	N/A	Amendments to the Special Regulations and Definitions	Scott Whyte	N/A	
		Ordinance to Add Electr		Articles of the Zoning Ordinance to Add Electric Vehicle			
Zoning Ordinance				Charging Stations.			
Amendment	ZO-0007-2016	Highways, Streets, Parking and Loading Division and Definitions	N/A	Amendments to the Highways, Streets, Parking and	Scott Whyte	N/A	
		section of the Zoning Ordinance to R		Loading Division and Definitions section of the Zoning			
				Ordinance to Reduce Parking Requirements.			

# **AGENDA ITEM NO. I.1.**

# **ITEM SUMMARY**

DATE: 7/6/2016

TO: The Planning Commission

FROM: Paul D. Holt, III, Planning Director and Adam R. Kinsman, County Attorney

SUBJECT: Changes Related to New Residential Rezoning Applications

This Agenda item will review a Resolution adopted by the Board of Supervisors on June 28 to take action in response to Chapter 322 of the 2016 Virginia Acts of Assembly relating to conditional zoning for new applications for residential rezonings.

# **ATTACHMENTS:**

Description Type
Staff Report Staff Report
Resolution Resolution

# **REVIEWERS:**

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Reviewer	Action	Date
Holt, Paul	Approved	6/29/2016 - 7:52 AM
Holt, Paul	Approved	6/29/2016 - 7:53 AM
Burcham, Nan	Approved	6/29/2016 - 8:00 AM
Holt, Paul	Approved	6/29/2016 - 8:11 AM
	Holt, Paul Holt, Paul Burcham, Nan	Holt, Paul Approved Burcham, Nan Approved

### MEMORANDUM

DATE: June 28, 2016

TO: The Board of Supervisors

FROM: Adam R. Kinsman, County Attorney

SUBJECT: Changes in Response to Senate Bill 549, Conditional Zoning

At its 2016 Session, the Virginia General Assembly approved Senate Bill 549, which was signed into law by the Governor as Chapter 322. Chapter 322 created new Section 15.2-2303.4 to the *Code of Virginia*, 1950, as amended (the "Virginia Code") which fundamentally changes the conditional zoning system in the Commonwealth of Virginia. Consequently, James City County must also make immediate changes to a number of policies, procedures and Code sections relating to proffers and conditional zoning.

### History

Conditional zoning was first approved by the General Assembly in 1978. In its declaration of legislative policy, the General Assembly stated that "more flexible and adaptable zoning methods are needed to permit differing land uses and at the same time to recognize effects of change. It is the purpose of [conditional zoning] to provide a more flexible and adaptable zoning method to cope with situations found in such zones through conditional zoning, whereby a zoning reclassification may be allowed subject to certain conditions proffered by the zoning applicant for the protection of the community that are not generally applicable to land similarly zoned." Chapter 320, 1978 Acts of Assembly.

Localities are not required to accept proffers and many, including James City County, may even choose the section of the Virginia Code under which they accept proffers. Currently, the County accepts proffers pursuant to § 15.2-2303 of the Virginia Code, which is the enabling authority for rezoning property in high growth localities like James City County.

The first recorded proffers in James City County occurred on November 16, 1983, with the Board's approval of Olde Towne Farms, Inc.'s application for a 239-unit development along Olde Towne Road, now known as Chisel Run. There were two proffers offered to and accepted by the Board - one limiting the development to "single family dwellings, duplexes, triplexes and townhouses" and one limiting the development to 239 total units. Following the Olde Towne Farms case, developers have offered increasing numbers of proffers with each development, including school cash proffers, school sites, workforce housing, stream restoration, turf management and others. Since 1983, the County has accepted and recorded more than 190 proffer documents.

# **Chapter 322 of the 2016 Acts of Assembly**

Chapter 322 adds new § 15.2-2303.4 to the Virginia Code, which creates a myriad of prohibitions upon and penalties against, localities who continue to accept residential proffers. Specifically, this section prohibits localities from requiring, requesting, accepting or even *suggesting* an "unreasonable proffer" associated with an application for new residential development.

# Restrictions

There are a number of new restrictions contained in Chapter 322. In summary, they greatly reduce the ability of developers to offer "outside the box" proffers or those that are not accompanied by extensive data that proves their need. All proffers designed to address on-site issues are automatically deemed "unreasonable" unless they address an impact that is "specifically attributable" to a proposed new residential development or other new residential use. In the past, on-site proffers proposed by developers include signage and aesthetic improvements to the development; whether those are "specifically attributable" impacts caused by the development is questionable.

All proffers designed to address offsite issues, including all cash proffers, are deemed "unreasonable" unless they: 1) address an impact to an offsite public facility (now limited to a public transportation facility, public safety facility, public school facility or a public park) such that the new residential development creates a need, or identifiable portion of a need, for one or more public facility improvements in excess of existing capacity at the time of rezoning or proffer condition amendment; and 2) each new residential development receives a direct and material benefit from a proffer made with respect to a public facility improvement. This new language requires that the developer and the County staff engage in a series of tests, including the "specifically attributable" test, existing capacity analyses and a determination of "direct and attributable" benefit to the development, among others. Each of these tests, and the results therefrom, are subject to a court challenge after the rezoning.

### Penalties

The new Code section also set up a new penalty system that appears impossible to avoid. If the County has required, requested, accepted or even suggested an "unreasonable proffer" and the proposed rezoning is not approved, the denial may be challenged in court. In that challenge, the court is <u>required</u> to presume that the refusal or failure to submit the "unreasonable proffer" was the basis for the denial. The court may then award attorney's fees and costs to the applicant and the matter will be remanded back to the County with an order to approve the application.

Most concerning is that there is neither a definition of a "suggested proffer" in this new section of the Virginia Code, nor any explanation of who from the County has authority to make a "suggestion" to the applicant. It is the County's current procedure to work with applicants to improve proposed developments from the preapplication stage up to an including the night of the Board of Supervisors meeting. A "suggestion" may mean that anything said during one of those meetings by a member of County staff or a Planning Commissioner could be a "suggestion" in violation of the statute. Additionally, all of the Board's adopted policies on legislative cases outlined above may be considered a "suggested proffer," which may be considered "unreasonable" in some legislative cases.

# Conclusion

When Chapter 322 becomes effective on July 1, 2016, the liabilities associated with accepting voluntary proffers for residential development now outweigh the benefits. This new section now requires that the County navigate a minefield of tests, analyses and concerns about illegal "suggestions" prior to accepting a voluntary proffer whose very purpose was to "provide a more flexible and adaptable zoning method to cope with situations found in such zones through conditional zoning, whereby a zoning reclassification may be allowed subject to certain conditions proffered by the zoning applicant for the protection of the community that are not generally applicable to land similarly zoned." Chapter 320, 1978 Acts of Assembly. Once accepted, the County must then be concerned with a legal challenge to any portion of the process. If challenged, all presumptions rest with the developer who submitted the proffer and the County is required to not only defend the process by which the development was considered, but also the tests, analyses and spoken words that led to the ultimate disposition of the application.

I recommend that the Board of Supervisors adopt the attached resolution, which states that the Board will no longer accept proffers associated with residential rezonings, initiates revision of those Codes and policies that must be changed to reflect this new position, initiates a staff study to determine which of the existing legislative policies related to residential rezonings may be incorporated into the County Code and sets forth the procedure by which the Board will consider amendments to previously-approved residential proffers.

ARK/nb ChangesSB549-mem

# RESOLUTION

# A RESOLUTION TO TAKE ACTION IN RESPONSE TO CHAPTER 322 OF THE

### 2016 VIRGINIA ACTS OF ASSEMBLY RELATING TO CONDITIONAL ZONING

### FOR RESIDENTIAL REZONINGS AND PROFFER AMENDMENTS

- WHEREAS, James City County, Virginia (the "County") currently allows applicants to voluntarily proffer reasonable conditions for all rezonings and zoning map amendments pursuant to Section 15.2-2303 of the Code of Virginia and Section 24-16 of the County Code; and
- WHEREAS, SB 549, which was passed by the General Assembly, approved by the Governor, and incorporated as Chapter 322 of the 2016 Virginia Acts of Assembly ("Chapter 322"), added Section 15.2-2303.4 to the Code of Virginia which fundamentally changes the conditional zoning law in the Commonwealth; and
- WHEREAS, the Board of Supervisors (the "Board") strongly opposed SB 549 (and its companion bill HB 770) due to its significant negative impacts on the County and other localities; and
- WHEREAS, Chapter 322 becomes effective on July 1, 2016, is prospective only and will only apply to any residential rezoning and proffer amendment applications filed on or after July 1, 2016; and
- WHEREAS, Chapter 322 imposes significant liabilities upon localities that continue to accept voluntarily-proffered conditions associated with residential rezonings, including a new cause of action against localities for requiring, requesting, accepting or even *suggesting* an "unreasonable proffer" as defined by Chapter 322; and
- WHEREAS, the Board has adopted various policies and guidelines to assist developers with the creation of voluntary proffers, including: the Route 5 Road Improvement Proffer Policy, adopted on May 28, 1996, to provide guidance for rezonings in the Route 5 corridor; the Natural Resources Policy adopted on July 27, 1999, to provide a guideline for protecting habitats for rare species and natural communities in special use permit and rezoning cases; the Cash Proffer Policy for Schools adopted on July 24, 2007, to provide guidelines for proportionate contributions to reduce impacts to schools; the Residential Redevelopment Policy adopted on November 27, 2012, to provide guidelines for the proffer of conditions for residential redevelopment projects and the Housing Opportunities Policy adopted on November 27, 2012, to provide guidelines for the creation of affordable and workforce housing in rezoning cases; and
- WHEREAS, all of the above-mentioned policies and guidelines, in whole or in part, could now be determined to be inconsistent with Section 15.2-2303.4 of the Virginia Code; and

- WHEREAS, in order to reduce potential liability to the County, the Board desires to cease its acceptance of all proffered conditions associated with a new residential rezoning or zoning map amendment, or any new residential component of a multi-use district rezoning or zoning map amendment filed after July 1, 2016; and
- WHEREAS, in accordance with Chapter 322, the County will process all applications for amendments to previously-approved residential rezoning or zoning map amendment, or any residential component of a multi-use district rezoning or zoning map amendment in accordance with the laws in existence prior to July 1, 2016.
- NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, hereby will no longer accept any voluntarily proffered conditions pursuant to Virginia Code Section 15.2-2303 as part of any new application for residential rezoning or zoning map amendment, or any residential component of a multi-use district rezoning or zoning map amendment; provided, however, that the County will process all applications for amendments to previously-approved residential rezoning or zoning map amendments, or any previously-approved residential component of a multi-use district rezoning or zoning map amendment, in accordance with the laws in existence prior to July 1, 2016.
- BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby repeals the following policies as they apply to new applications for residential rezonings filed on or after July 1, 2016: the Route 5 Road Improvement Proffer Policy adopted on May 28, 1996; the Natural Resources Policy; adopted on July 27, 1999; the Cash Proffer Policy for Schools adopted on July 24, 2007; the Residential Redevelopment Policy adopted on November 27, 2012; the Housing Opportunities Policy adopted on November 27, 2012 and the Outstanding Specimen Tree Option Guidelines adopted on November 22, 2011.
- BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby initiates amendments to Section 24-16 of the County Code to explicitly state that the County will only accept voluntarily proffered conditions associated with non-residential rezonings and zoning map amendments, and further directs staff to have such amendments brought before the Planning Commission at its first meeting in July, to be forwarded to the Board of Supervisors for adoption at its second meeting in July.
- BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby directs staff to study the ability to incorporate the following policies into the James City County Code and bring back recommendations for the Board's consideration at a work session in September: the Archaeological Policy adopted on September 22, 1998; the Community Character Corridor Buffer Treatment Guidelines adopted on November 22, 2011; the Design Guidelines for the Toano Community Character Area adopted on February 14, 2006; the Economic Opportunity District Construction Phasing Guidelines adopted on September 13, 2011; the Environmental Constraints Analysis for Legislative Cases adopted on June 12, 2012; the Multiple Use Districts and Mixed Use Construction Phasing Policy adopted on September 11, 2012; the Outstanding Specimen Tree Option Guidelines adopted on November 22, 2011.

	Michael J. Hipple Chairman, Board of Supervisors				
ATTEST:	Chairman, Boar	VOTES			
	MCGLENNON LARSON ONIZUK	<u>AYE</u> 	<u>NAY</u>	ABSTAIN	
Bryan J. Hill Clerk to the Board	SADLER HIPPLE				
Adopted by the Board of Supervisors of 2016.	James City County,	Virginia,	this 28th	day of June,	

SB549ProfferChngs-res