

AT A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE TWELFTH DAY OF NOVEMBER, NINETEEN HUNDRED AND NINETY-ONE AT 7:30 P. M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101C MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

1. ROLL CALL

Mr. Alexander C. Kuras, Chairman  
Mr. Raymond L. Betzner  
Mr. A. G. Bradshaw  
Mr. Wallace Davis, Jr.  
Mr. Martin Garrett  
Ms. Victoria Gussman  
Mr. John F. Hagee  
Mr. Donald C. Hunt  
Ms. Judith Knudson  
Ms. Carolyn Lowe

ALSO PRESENT

Mr. O. Marvin Sowers, Jr., Director of Planning  
Mr. John T. P. Horne, Manager of Development Management  
Mr. Leo P. Rogers, Assistant County Attorney  
Mr. Allen J. Murphy, Jr., Principal Planner  
Ms. Elizabeth R. Sullivan, Planner  
Mr. Michael A. Freda, Planner  
Mr. David N. Fletcher, Planning Intern  
Mr. Darryl Cook, Civil Engineer, Code Compliance

2. MINUTES

Upon a motion by Mr. Betzner, seconded by Mr. Garrett, the October 8, 1991 Minutes were approved, as presented, by voice vote.

3. DEVELOPMENT REVIEW COMMITTEE REPORT

Upon a motion by Mr. Garrett, seconded by Mr. Kuras, the Development Review Committee Report was approved, as presented, by voice vote.

4. INITIATION OF ZONING ORDINANCE AND MAP AMENDMENTS

Mr. Sowers presented the staff report (appended) which informed the Commission of recent changes in State Code regarding the process for forwarding amendments to the Zoning Ordinance and Zoning District Map to the Planning Commission. In accordance with the new process the following motions were made.

A. Resolution: Zoning Ordinance Review Relating to the Comprehensive Plan

Mr. Kuras made a motion, seconded by Ms. Gussman, to approve the resolution initiating amendments to bring the Zoning Ordinance into conformance with the Comprehensive Plan. The motion passed unanimously by voice vote.

B. Zoning Ordinance Amendment/Exterior Signs

Mr. Kuras made a motion, seconded by Mr. Davis, to initiate amendments to Section 20-448, Sign Dimensions and Special Regulations, to permit greater flexibility in the location of residential subdivision signs in order to increase their effectiveness and enhance public safety and convenience. The motion passed unanimously by voice vote.

CASES RECOMMENDED FOR DEFERRAL

5. CASE NO. SUP-26-91. JACK L. MASSIE CONTRACTOR, INC.

Mr. Sowers presented the staff report (appended) stating that Mr. Gary Massie requested deferral until the December meeting to allow additional time to address comments raised during the staff review of the proposal.

Mr. Kuras opened the public hearing. The public hearing was continued to the December 10, 1991 meeting.

6. CASE NO. Z-5-91. AMERICAN RETIREMENT CORPORATION

Mr. Sowers presented the staff report (appended) stating that the applicant, Ms. Deborah Lenceski of Langley & McDonald, had requested deferral until the January, 1992 meeting in order to complete business arrangements with Williamsburg Landing and meet with area residents. Staff concurred with the request.

Mr. Kuras opened the public hearing. The public hearing was continued to the January 9, 1992 meeting.

7. CASE NO. SUP-33-91. JCC/ANIMAL CONTROL SHELTER EXPANSION

Mr. Freda presented the staff report (appended) for an application by Mr. Stuart Hale of Facilities Management for a special use permit to expand the County's Animal Control Shelter. Mr. Freda stated that staff recommended approval with the conditions detailed in the staff report.

Mr. Kuras opened the public hearing. There being no speakers the public hearing was closed.

Mr. Garrett made a motion, seconded by Mr. Betzner, to accept the staff recommendation of approval. The motion passed: AYE: Bradshaw, Garrett, Lowe, Davis, Hagee, Gussman, Knudson, Betzner, Hunt, Kuras (10). NAY: (0).

8. CASE NO. SUP-34-91. BILLY S. SCRUGGS ON BEHALF OF DAVID L. HERTZLER

Mr. Freda presented the staff report (appended) for a special use permit for an automobile sales and service center to be located at the existing Merrimac Retail Store on Merrimac Trail. Mr. Freda stated that staff recommended approval with the conditions detailed in the staff report.

In response to Ms. Gussman's inquiry as to whether the 1989 flood affected other properties, Mr. Freda responded that much of the area was flooded as indicated by debris from the site that floated onto other properties.

Mr. Freda stated that during a site visit he observed pallets at the inlet to the pipe that disperses water from this site. Mr. Freda stated that this was above the 100 year flood and if the site was kept clean and the pallets, tires, boxes, etc. were not permitted to clog the facility, and with measures taken during the site plan review process, flooding of this magnitude, from a technical standpoint, should be rare.

Ms. Lowe stated that the staff report indicates the best possible solution for this problem is a drainage study; however, the applicant felt the cost of a drainage study and its implementation would make the proposed development economically unfeasible. Mr. Scruggs in a letter to the County stated that if the County approved the project and another flood occurred he would not hold the County responsible. Ms. Lowe felt that although Mr. Scruggs would not that other people could hold the County responsible.

Mr. Freda stated that the County has preliminarily considered ways to prevent flooding including installing grates in front of the inlets to prevent clogging. Mr. Freda felt there was little chance that such flooding would recur.

In response to Mr. Garrett's inquiry as to other businesses being put out of business, Mr. Darryl Cook responded that he did not know what caused the failure of any of the businesses. However, the storm in question accumulated over 11 inches within 12 hours, which is well in excess of the 100 year storm and, in fact, the storm of record in this area.

Mr. Sowers stated that on this B-1 district site, the applicant has the right to continue a variety of uses, some of which in the past had a large amount of exterior storage of pallets, wood, etc., that probably contributed to the flooding. If the applicant is denied this permit, another use could go on the site that would contribute to flooding of the site and surrounding area, but by granting this permit the Commission would have the ability to take steps to improve conditions on this particular site.

Mr. Hagee asked if monitoring the drainage could be included as a condition. He felt the applicant should not be financially penalized if not needed and especially if the proposed use would not contribute more than any other use to possible flooding.

In response to Ms. Lowe's inquiry regarding alternative measures, Mr. Cook stated that no alternatives had been formulated other than to be sure that the site stays clean. Mr. Cook also stated that a means of trash protection for the culvert should be investigated, and would take cooperation between VDOT and those responsible for the railroad.

Ms. Knudson stated that currently traffic could move all the way around the building but that some question had been raised about closing a portion of the service drive thereby causing all traffic to exit on the service drive abutting the residences on Davis Drive.

Mr. Freda responded that Mr. Scruggs informed him that the fence would be placed near the service area to prevent vehicles from his business from entering the service drive adjacent to Mr. Buriak's property.

Ms. Knudson asked if anything could be done about the noise from some of the existing uses.

Mr. Freda responded that it was his understanding from the Assistant County Attorney that the County, at this time, should concentrate on the applicant's special use permit request and not on existing uses.

Ms. Knudson asked if it was possible to prevent the installation of the fence.

Mr. Freda responded that a condition could be included which allows the Director of Planning to make a decision regarding the fence.

Mr. Kuras opened the public hearing.

Ms. Thelma McKenny, a 40 year resident of Merrimac Trail, stated that she has had flooding on her property and feels the turn lane and a grate will bring more flooding. She objected to a junk car dealer on the site.

Mr. Bobby Allen Morgan, Davis Drive, felt it was unfair to expect Mr. Scruggs to be responsible for Ms. McKenny's problems and praised Mr. Scruggs as a good businessman. The proposed use, he said, was not for a junk car dealer.

Mr. Walter Buriak whose backyard adjoins the subject property spoke strenuously against the project. Mr. Buriak felt the use would bring more noise, ugliness, and invite crime to the area. He discussed noise from chainsaws, trucks and other equipment rented by an existing use on the site. Mr. Buriak referred to the petition he submitted to the Planning Division, which included the signatures of the majority of the residents of Davis Drive, opposing this application. Mr. Buriak also circulated photographs of the area which displayed the view from his property. Mr. Buriak stated that the special use permit should apply to the entire site and asked that the application be denied.

Mr. Garrett, in response to derogatory comments directed at the Commission by Mr. Buriak, stated that as a member of the Commission he resented such comments against those who hold public office and try to uphold the integrity of the community.

Mr. Garrett made a motion to defer Case No. SUP-34-91 to permit further review.

Mr. Billy Scruggs, applicant, 119 Woodmere Court, Williamsburg, and owner of James York Texaco, complimented the Planning Division staff in their efforts to assist him. Mr. Scruggs stated that he thought he had contacted everyone with concerns. He further stated that he was a partner in Capital Motors with John Otey (Capital Loan Company) and Isaac Lambert (B and J Autos). Mr. Scruggs stated that Capital Motors leased the property for a used car lot to be operated in the B-1 district with a special use permit. Mr. Scruggs felt this use would have less adverse impact than some other permitted uses. He said the fence meets current requirements and requested that condition #2 regarding its removal be deleted. He further stated that his business would provide taxes and jobs for the community.

Mr. Charles Morrell, owner of three businesses along Merrimac Trail, including the adjacent business, stated that he had seen the flooding and the conditions on the Hertzler property. Mr. Morrell felt the flooding was a VDOT problem and that the flooding problem would exist whether or not this project was approved. Mr. Morrell also felt that Mr. Hertzler should not bear the financial burden of alleviating the flooding problem. He also stated that Mr. Hertzler had planted attractive screening and that the existing fence improved security.

Mr. David Hertzler, property owner since 1976, stated that it was not true that a motorcycle business was being considered. Mr. Hertzler said that he would do something about the noise from the chain saws and mentioned starting them up inside.

Mr. Kuras suggested a noise barrier in the area where the equipment was being started up.

Mr. Buriak spoke again stating that his major concerns are the existing uses and that no new businesses should be added.

There being no further speakers the public hearing was closed.

Ms. Knudson seconded Mr. Garrett's motion for deferral.

Ms. Knudson suggested strengthening conditions 6 and 7 of the staff report in order to remedy existing problems; i.e., noise and fence.

Ms. Lowe felt the concerns expressed were legitimate and favored deferral.

Mr. Kuras stated that the closing of the public hearing would be reversed and it would be continued at the December 10 meeting.

9. CASE NO. Z-4-91. FREDERICK AND MARY HIRSH

Ms. Sullivan presented the staff report (appended) for an application to rezone approximately 3 acres from A-1, General Agriculture, to B-1, General Business. Ms. Sullivan stated that the applicant requested deferral on this case until the December 10 meeting.

Mr. Kuras opened the public hearing.

Mr. Hirsh stated that he requested deferral of this case in order to present amended proffers.

The public hearing was continued until the December 10 meeting.

10. CASE NO. ZO-9-91. ZONING ORDINANCE AMENDMENT/EXTERIOR SIGNS

Mr. Fletcher presented the staff report (appended) to amend Section 20-448 of the ordinance which would place subdivision signs in a manner to make them more effective as directional indicators. Mr. Fletcher stated that staff recommended approval of this amendment.

Mr. Kuras opened the public hearing. There being no speakers the public hearing was closed.

Mr. Betzner made a motion, seconded by Ms. Lowe, to accept the staff recommendation of approval. The motion passed: AYE: Bradshaw, Garrett, Lowe, Davis, Hagee, Gussman, Knudson, Betzner, Hunt, Kuras (10). NAY: (0).

Following a brief intermission, the meeting reconvened at 8:52 p. m.

11. CASE NO. Z-12-90 AND CASE NO. SUP-48-90. OLD DOMINION FRENCH WINERY

Mr. Murphy presented the staff report (appended) stating that these cases had been remanded to the Commission by the Board because of adopted changes in the Comprehensive Plan since the Commission unanimously recommended denial of these applications. Mr. Murphy stated that staff recommended approval of the applications for rezoning and special use permit, with conditions, as this development is now generally consistent with the suggested uses and activities designated for this area by the Comprehensive Plan and it is located inside the Primary Service Area.

Mr. Vernon Geddy, III, applicant, stated that this project would create 254 acres of business park around the I-64 interchange. In response to the matter that this project is more tourist and retail development than is preferable and is out of character with the community, Mr. Geddy responded that the mixed use designation in the Comprehensive Plan would make any large development out of character with the surrounding area. Also, he felt the winery, chateau and retail portion of this project would tap what is a proven market in this area - tourist related and retail businesses. This small element, less than 30%, allows the developer to help pay costs for extending utilities to the site and extending roads into the business park. The winery, he said, is only 10 acres of the 240 acres but would give the project the momentum needed to attract users to the site.

Mr. Geddy stated that the timeshares and retail elements of this project are directed to the tourist market and will help defray the cost of the infrastructure of this property as well as being a good transitional use between the business park and the surrounding agricultural and rural residential land.

Mr. Bradshaw expressed concern that the only positive indication of any development is for the timeshare portion of the project and the rest would be delayed.

Mr. Geddy responded the developer plans to start the winery and chateau immediately and the timeshares would begin as soon as possible but did not know when. Mr. Geddy stated that in order to build the timeshares the complete infrastructure for this portion of the project would have to be built.

Mr. Bradshaw also stated that it bothered him that so many projects in James City County bear the name of Williamsburg.

In response to Mr. Hagee's inquiry, Mr. Geddy responded that he did not know the extent of experience of the principals in the development of a corporate park nor did he know if a feasibility study had been performed. Mr. Geddy said that clients do not always share what they consider confidential feasibility market studies with their attorney.

Ms. Knudson inquired about the size and height of the building, as she recalled being told on a tour of the property that flags would be mounted on turrets to be visible from the interstate, and also inquired whether part of the building would be underground. Ms. Knudson stated she was very concerned about how it would look and that on the site tour the County was told by the developer how important it was that people see the project from the interstate.

Mr. Geddy responded that the building material would be masonry on steel framing. Mr. Richard Costello, AES, stated that the building would be 60 ft. and would not require a height limitation waiver. The rear part of the building (production facilities) would be underground. He stated that after further review and hearing concerns about visibility, he did not believe the structure would be constructed so that it could be seen from the interstate, except by accident.

Mr. Murphy stated that the Board of Supervisors requested staff to bring before the Commission concerns raised by the Board. One concern questions what the Board options are relative to the bolded language at the end of the Comprehensive Plan section of the staff report (appended) and whether it granted any special authority. It does not. The Planning Commission and the Board, in each of their zoning decisions, decide whether or not it is an appropriate use under a given designation. This is a mixed use area and there is a great deal of flexibility under that designation and this is the first example of consideration under a mixed use designation.



Mr. Murphy further stated that another concern expressed by the Board was whether legal aspects regarding timeshares would prevent the staging of the development. Mr. Murphy stated that we were not aware of any requirements or aspects about timeshares.

Also of concern was the appearance of the winery's main building. There are no conditions in the proffers that address the appearance of the winery; however, a special use permit does cover the 70 acre site which includes the winery building and some conditions could probably be attached to the special use permit by the Commission and Board which would affect its appearance in some fashion.

Mr. Murphy further stated that a member of the Board asked the Commission to expedite, if possible, the consideration of these two cases.

Dr. Robert Solomon, 5011 Riverview Road, adjacent to the proposal, stated that he is in an Agricultural and Forestal District, has livestock, and enjoys living in a rural area. This commercial project, he felt, would have a negative impact on the rural, agricultural, and livestock use of land and was concerned also about the impact on the Croaker community which presently is a residential community of low, moderate and high income housing. Dr. Solomon urged the Commission to consider the negative impact on him, his neighbors and the greater community. Dr. Solomon reminded the Commission that he previously submitted a petition of about 100 residents who opposed this application.

Mr. Garrett stated that one consideration to weigh was that this proposal for development would provide infrastructure for future industrial/commercial development in the very near future. The development includes 500 timeshare units and primarily tourist oriented facilities relying upon the area's tourist base without attracting anything new. If this development does not go through then the infrastructure will not be provided for an area which is prime development area for this community. This would mean that for commercial/industrial growth that wants to come to the County, and wants to come quickly, there would not be time to provide infrastructure and growth would be delayed

Mr. Garrett stated that although the Commission should plan 20-40 years ahead in this case because timeshares may last 20-40 years and its unpredictable whether they would remain timeshares, and the County cannot control the situation. He stated that he does not think they will be a long term benefit.

Mr. Garrett felt caught between the dilemma of a development that would provide infrastructure which would be an enticement for potential commercial/industrial growth in the next 2, 5 or 10 years, and the loss of revenues if the infrastructure is not provided. Also Mr. Garrett felt there were already too many low wage jobs in the area and this would add to that problem. Mr. Garrett further felt the Commissioners concern should not be whether the project would be developed in York County but rather the concern should be for the development of this particular piece of property.

Mr. Garrett, in summation, said he did not like timeshare units, did not feel they were good for the County, did not feel this project was a future benefit to the County, and was willing to wait for another proposal.

Ms. Gussman agreed that the proposal was oriented to tourist/ commercial and expressed concern that if the industrial side does not materialize the project would be almost exclusively tourist/commercial retail. In regard to timeshares Ms. Gussman stated that in the past year and a half at least six motels in the Williamsburg area experienced serious financial problems and have been converted to apartments; she did not feel it prudent at this time to encourage that sort of thing.

Ms. Gussman referred to the Comprehensive Plan in which it encourages the development of interstate interchanges in a manner that maximizes their economic development potential and supports the policies of the Comprehensive Plan. It does not, she said, suggest tourist related commercial and retail uses but stresses limited industrial and commercial uses and a diversification of the economy.

Ms. Gussman expressed concern regarding the Agricultural and Forestal District which the County has an obligation to protect but does not feel the proposal has paid particular attention, and as a legal requirement this needs to be done.

Ms. Lowe stated that she sees the project as a lot of glitter and not much gold in the foreseeable future. Further, she felt we should look to other counties and referred to Loudoun County which has experienced massive real estate tax delinquencies on commercial/industrial properties, and a very high vacancy rate. She stated that other counties have found that commercial development does not always lead to lower taxes. Ms. Lowe expressed concern that the first years of this project would be tourist related and beyond that, uncertainty.

Mr. Betzner also stated that he did not favor timeshares and shared Mr. Garrett's concern about their viability in the future and their impact on the community in the short term. He expressed concern regarding the lack of sufficient information or project feasibility study and experience of the developers.

Mr. Davis expressed concern regarding the mixed use and the timeshare units which he did not favor.

Mr. Kuras stated that although tourist oriented development is not encouraged this is a tourist area. Timeshares, he said, are widespread and widely used, and he felt some low paying tourist jobs and some high salaried jobs would be created in management and sales. He felt 500 units would bring 1000 or more additional tourists into the area. Mr. Kuras questioned if, considering the industrial/commercial proposal and the approval of Stonehouse, the interchange could handle the traffic.

Mr. Murphy informed the Commission that approximately 2600 vacant acres of commercial and industrial land exist in the County. This proposal would add approximately 250 acres of M-1 land to that total. Recent studies, he said, identifying trends not only in the County but on the peninsula, for absorption of industrial and business park land, estimate 2-1/2 times the amount of vacant available land in the County than would be needed over the entire peninsula for the next decade. Mr. Murphy said that other factors to consider are the 350 acres around the Barhamsville interchange, the 100 acres at Anderson's Corner and the 800 available acres in Greenmount in the lower end of the County.

Mr. Horne stated that as part of the master plan for the property in Grove which the County hopes to develop jointly with The Colonial Williamsburg Foundation, a market analysis was performed to advise of the most likely market on the Peninsula in this region. The conclusion of the study indicated a tremendous glut of speculative office and M-1 space that is available for small incremental developments. Mr. Horne said, according to the consultant, the driving force on the peninsula has been the periodical big user, such as the brewery, CEBAF and Canon, who develop a large portion of the site and spinoff occurs from that major development. In updating the Comp Plan, he said, the focus was on the type and variety of acreage, not on total acreage, and that there was a need for moderate sized sites with interchange locations which are ready for development.

Mr. Horne further stated that in discussions with Keith Taylor, Director of Economic Development, in their best judgment, given the way utilities and road proffers are structured, the County will very early in the project have marketable sites, moderate sized sites, and even if the developer, per se, is on one corner developing commercial and timeshares, there will be both utilities and roads immediately available. Even though there may not be any activity for 4-5 years, he pointed out that from a marketing point of view there is value in having fully engineered, fully serviced sites near the interstate so that if eventually a big user shows interest, he can see a site with good access and hardly any uncertainty.

Mr. Horne again stressed that the Commission should not think too much about total acreage but to the marketing point of view; i.e., what kind of sites are available to market and whether this provides the County with additional types of sites on the menu to be offered a prospective client at this time. He stated that much of the site is not suitable for large buildings, and the interchange does not have capacity for high traffic generation.

Mr. Hagee stated that the Commission originally said that they did not feel tourist/commercial was appropriate, and the proposal has not changed. This would not bring in new tourists, and would have a negative impact on the motel industry which is currently suffering.

Mr. Garrett made a motion, seconded by Mr. Hagee, to recommend denial of Case No. Z-12-90 and Case No. SUP-48-90. The motion for denial passed: AYE: Bradshaw, Garrett, Lowe, Davis, Hagee, Gussman, Knudson, Betzner, Hunt (9). NAY: Kuras (1).

## 12. OTHER CONSIDERATIONS

### A. By-law Amendment - Election of Officers

Mr. Sowers presented the staff report (appended) to amend the By-laws in order to elect officers in February instead of January.

Upon a motion by Mr. Betzner, seconded by Ms. Gussman, the Commission unanimously by voice vote approved the amendment.

### B. Development Review - Economic Development

Mr. Horne presented the staff report (appended) for expediting the development review process for projects that significantly contribute to the economic development goals of the adopted Economic Development Strategy and the Comprehensive Plan.

Following discussion, the Commission unanimously agreed by voice vote that two representatives, the Chairman of the Planning Commission and the Chairman of the Development Review Committee, or their alternates, would act on the Commission's behalf in reviewing cases as set forth in the staff report.

Following discussion, upon a motion by Ms. Gussman, seconded by Mr. Bradshaw, the Commission unanimously by voice vote initiated amendments to the Zoning Ordinance to permit two representatives, to act on the Commission's behalf in reviewing cases as set forth in the staff report. Further, it was agreed that a report of their staff recommendations would be presented to the Planning Commission.

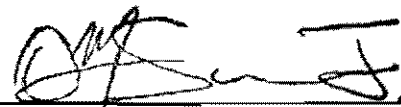
12. PLANNING DIRECTOR'S REPORT

Mr. Sower's presented the staff report which was accepted as presented.

13. ADJOURNMENT

There being no further business, the November 12, 1991 Planning Commission meeting was adjourned at 10:12 P. M.

  
\_\_\_\_\_  
Alexander C. Kuras, Chairman

  
\_\_\_\_\_  
O. Marvin Sowers, Secretary

pcmin.nov