

AT A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, HELD ON THE TWELFTH DAY OF APRIL, NINETEEN HUNDRED AND NINETY FOUR 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. Jay H. Everson
Mr. Martin Garrett
Mr. John F. Hagee
Mr. Donald C. Hunt
Ms. Willafay McKenna

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
Ms. Elizabeth R. Friel, Senior Planner
Mr. Mark J. Bittner, Planner

2. MINUTES

Upon a motion by Ms. McKenna, seconded by Mr. Betzner, the Minutes of the work session and regular meeting were unanimously approved by voice vote.

3. DEVELOPMENT REVIEW COMMITTEE REPORT

Mr. Garrett presented this report and moved for approval.

Mr. Everson expressed concern regarding the approval of Case No. S-26-94, BASF Industrial Subdivision, Parcel 2. Mr. Everson made a motion to the defer the case pending an investigation into certain financial matters involving the IDA.

Mr. Sowers stated that the Subdivision Ordinance laws of Virginia specifically state what is to be considered in a subdivision matter and unless there is an issue that arises in regard to the ordinance there is no justification for deferring this case, and this issue does not fall within the bounds of the ordinance.

Following a brief discussion regarding the relevancy of Mr. Everson's stated objection to the approval of this case, Mr. Everson withdrew the motion to defer the case.

The Development Review Committee Report was unanimously approved by voice vote.

Mr. Horne stated that a great deal of effort had been devoted by staff to the Mann Industries matter and the latest subdivision proposal and the possibility of bringing a goodly number of jobs back to the County. Mr. Horne invited Mr. Everson to meet with staff in order to get a fuller understanding of the facts of the situation and for staff to hear from him. Mr. Horne stated emphatically that while he did not agree whatsoever with Mr. Everson's evaluation of the facts, he would like to meet with him and others who have been involved in this matter.

4. CASE NO. SUP-3-94. MARY WALTRIP/BEAUTY SHOP

Ms. Friel presented the staff report (appended) for a special use permit to allow a beauty shop within an existing building located at 5 Marclay Road. Ms. Friel stated that staff recommended approval with the conditions detailed in the staff report.

Mr. Kuras opened the public hearing.

Ms. Jean Waltrip, representing the owner of the building, Ms. Mary Waltrip, stated that the beauty shop would bring a service to the area with low traffic during the day time hours.

There being no further speakers the public hearing was closed.

Ms. McKenna made a motion, seconded by Mr. Betzner, to accept the staff's recommendation of approval. On a roll call vote, the motion passed: AYE: Betzner, Bradshaw, Garrett, Hagee, Hunt, McKenna, Everson, Kuras (8). NAY: (0).

5. CASE NO. Z-17-89 AND SUP-46-89. JACK L. MASSIE CONTRACTOR, INC.

Mr. Bittner presented the staff report (appended) to rezone approximately 35.13 acres from A-1, General Agricultural, to M-1, Limited Business/Industrial; 17.26 acres from A-1 to M-2, General Industrial; 10.20 acres from A-1 to A-1 with proffers; and 10.40 acres from R-1 to R-1 with proffers. Mr. Bittner stated that the applicant had also applied for a special use permit to construct a ready mix concrete plant and to manufacture stone products including cement treated aggregate.

Mr. Bittner stated that this case was denied by the Planning Commission on January 9, 1990 and subsequently deferred indefinitely by the Board of Supervisors. Since that time, there has been a change in the Comprehensive Plan designation of this site. Revised proffers and an updated traffic study have been received.

Mr. Bittner further stated, as follows, that two changes occurred since the preparation of the staff report:

- 1) Staff suggested that the applicant also prohibit automobile service stations and restaurants on the M-1 property. The applicant had stated that he wanted vehicle fleet maintenance, a fuel dispenser and an employee diner on the site which was why he had not proffered to prohibit automobile service stations and restaurants. The desired operations are considered accessory uses and therefore permitted; however, the applicant would like to subdivide some of this property and allow the new developments to share the same accessory uses. This is not permitted under the Zoning Ordinance. Staff discussed this with the applicant and they agreed to revise the proffer agreement prior

to the Board of Supervisors meeting that will allow developments within the subdivision to share these uses but prevent public retail operations such as auto service stations and restaurants from being developed.

- 2) The applicant has proffered that the A-1/R-1 property north of the CSX railroad line shall remain undisturbed except for stormwater management facilities and utility extensions and connections to continue to serve as a buffer between the Massie development and the Mirror Lake Subdivision.

The staff report states that this property could not be guaranteed to remain in an undisturbed state. The applicant has since stated that he will submit a revised proffer stating that a site plan for this area will be submitted for Development Review Committee approval. This condition will be added to the special use permit or a proffer agreement will be worked out before this case goes to the Board of Supervisors.

Mr. Bittner stated that this proposal was consistent with the Comprehensive Plan, with the proffers and staff recommended conditions, and the existing Massie operation, the Bryant Construction Company, and the surrounding Mixed Use designated properties. Also that staff felt that the proposal was inconsistent with the surrounding residential development but that the mitigating factors, proffers, and conditions of this proposal overcome these inconsistencies.

However, Mr. Bittner stated that staff recommended deferral of this case until concerns regarding road and traffic, and the undisturbed nature of the buffer north of the CSX railroad track have been resolved. But, if the Planning Commission chooses to recommend approval, staff recommended that the conditions detailed in the staff report be placed on the special use permit.

In an inquiry by Mr. Everson regarding the 100 foot buffer along Richmond Road, Mr. Sowers stated that the Comprehensive Plan recommends the 100 foot buffer as a natural greenbelt area, in effect, to maintain a clear visual separation between Norge and Toano.

At Mr. Betzner's request, Mr. Bittner again stated the two changes to the staff report:

- 1) Staff suggested the applicant prohibit automobile service stations and restaurants. The applicant wished to have vehicle fleet maintenance and fueling and a diner for his employees for this and other subdivided properties. Staff and the applicant are in agreement as to what should and should not be permitted. The applicant agreed to submit an acceptable proffer statement prior to the Board of Supervisors meeting.
- 2) The applicant has agreed that the area along the CSX Railroad would remain as a buffer between his property and Mirror Lakes, but water impoundments and extensions of utility connections in the buffer could possibly take up too much of the area. In order to guarantee its effectiveness as a buffer, the applicant will submit a site plan for approval by the Development Review Committee. Staff will put this in the special use permit or the applicant will proffer this prior to the Board of Supervisors meeting.

Mr. Hagee asked what VDOT's position was relative to this matter.

Mr. Horne stated that VDOT must issue an entrance permit for the new roadway, but it was not clear whether VDOT would deny the entrance permit should they conclude that a signal was necessary at that entrance. Mr. Horne further stated that because the basis for the traffic study had been challenged VDOT had not reached a conclusion as to whether a signal was necessary at either this or both accesses. Also, VDOT must issue a private street or a public street entrance permit. VDOT may feel they have the authority under that permitting process should they conclude that a signal is necessary to require the signal as part of that permitting process.

Mr. Hagee asked if the County could move forward on the application if VDOT finds the traffic study unacceptable.

Mr. Horne responded that the County is bound only by its desire to have accurate information as to impacts of whatever action is taken, and further stated that VDOT will take action whether or not the County requires it, and also may offer advice to the County as to what are the necessary improvements to mitigate impacts.

Mr. Rogers stated that the proffers were not currently in a form acceptable to the County Attorney's Office. Mr. Rogers further stated that council for the applicant was informed of this opinion prior to this hearing. Mr. Rogers cited under proffers condition #8, in particular, which states, "timing of such phases shall be determined by the Owner(s). . . based upon market conditions, costs and other factors prevailing at any given time." Mr. Rogers stated that this condition was at best unenforceable and at worst it is unconstitutionally void for vagueness.

Mr. Rogers stated that the County had been challenged before on conditions on rezoning and that he was concerned that not only would this proffer be declared unconstitutional if it was ever attempted to be enforced but there was no savings provision in the proffers so the entire proffers would be unconstitutional. Mr. Rogers understood that his comments were relayed to the applicant by the Planning staff but there had been no changes to the proffers. Mr. Rogers also pointed out that under General Proffers, #2, regarding the rezoning legend, it reads that the rezoning legend can be changed by the applicant on certain conditions. Mr. Rogers stated that, in his opinion, this was neither a clear standard nor an enforceable proffer.

In response to Mr. Hagee's inquiry regarding an enforceable proffer, Mr. Rogers stated that while he could not propose proffers as they must come from the applicant, he would be willing to discuss the proffers with the applicant.

In response to Mr. Garrett's inquiry regarding procedure for action on this case, Mr. Rogers stated that the Commission could approve the proposal based on verbal representations. If the Commission accepts verbal assurances that the proffers will be revised prior to the Board meeting, it would be Planning staff's responsibility to make sure that the changes were made.

Mr. Rogers reiterated that some of the very important proffers that should be considered for planning purposes, in his opinion, were not valid in their current condition.

Mr. Hagee questioned why the proffers were not enforceable.

Mr. Rogers stated that regarding #8 there was no objective criteria for the Zoning Administrator to make an opinion.

Mr. Sowers stated that in the past staff's position has been that if changes agreed to at the Planning Commission have not been made prior to the Board of Supervisors meeting the recommendation would be for the Board to defer the case back to the Planning Commission.

Mr. Kuras opened the public hearing.

Mr. Alvin Anderson, representing the applicant, presented a history of the proposals of this project. Mr. Anderson stated that with the zoning and special use permit applications the applicant prepared and filed a legally binding proffer agreement which restricts all of the property of the project. Mr. Anderson stated his and the applicant's eagerness to provide a proffer agreement in a form satisfactory to the County Attorney's office. Mr. Anderson discussed the proffers and the concrete plant specifications and restrictions such as a spill prevention plan, paved roads, dust collection system, an enhanced runoff system, landscaping, lighting, etc.

Mr. Anderson stated that the applicant had not been "uncooperative in the perceived possible deficiencies in the proffers." Also that the applicant had done an updated traffic study which was delivered to the staff on March 2, 1994. Mr. Anderson stated that there is adequate capacity on Route 60 to serve this development now and through the build out period.

Mr. Anderson also discussed the positive economic impacts of this development, including 243 full time jobs by the year 2000 with an annual excess of revenues over and above expenses of approximately one third of a million dollars. Mr. Anderson urged the Commission to approve the proposal as presented by Mr. Bittner and himself.

Mr. Anderson stated that also present to answer questions were Mr. Norman Mason and Ms. Debbie Lenceski of Langley and McDonald, the Massie family (applicant), and Mr. Messmer to comment on the fiscal impact statement.

In response to Mr. Garrett's request regarding the changes in the proffers, Mr. Anderson stated that he concurred with Mr. Bittner's comments on the changes.

Mr. Rogers stated that Mr. Anderson's verbal concurrence was acceptable.

Mr. Anderson reiterated that he and the applicant would be happy to "do what it takes to make the proffers in form satisfactory to the County Attorney's office."

In response to Mr. Everson's inquiry regarding the intent of the previously discussed #8 of the proffers, Mr. Anderson responded: This is a major project for the Massie family. The intent is not to put in the new access road to Route 60 until it is required by a particular developer who is buying a particular parcel within the industrial development.

Mr. Horne questioned if it was Mr. Anderson's intent that the cement treated aggregate and the ready mix facilities, which he understood would be developed by the Massie family, could potentially go out Cokes Lane prior to the construction of the road.

Mr. Anderson responded that the concrete plant could not; it would require the paving of the areas shown as paved, and the construction of the access road out onto Route 60. The cement treated aggregate plant would not require that.

Mr. Massie further stated that a cement treated aggregate facility requires that the trucks be weighed of the existing scales. The ready mix, because of the nature of the work, do not come back over the scales and where they will be positioned on the site will use the industrial access road.

Mr. Hagee asked if the ready mix facility would be built after the construction of the industrial road.

Mr. Massie responded that when the ready mix facility is built the access road to Route 60 would be constructed; the cement treated aggregate facility would not require the construction of the access road.

Mr. Hagee asked why the applicant was resisting the extra 50 feet of buffer.

Mr. Massie responded that because of the topography of the land and the ravine if he gave 100 feet he would actually be giving 220 feet. Mr. Massie felt that visual separation could be accomplished by working with the Development Review Committee, working with the 50 foot dimensions, and coming up with some planting that would provide the visual separation between Norge and Lightfoot to comply with the Comprehensive Plan. Mr. Massie stated that this was an issue they are willing to work on with the County.

Mr. Sowers asked if it was the applicant's intent to have a business with visibility from Route 60.

Mr. Massie responded that it was not their intent to be hidden from the road, they want to "look good, be proud and be an asset."

Mr. Sowers pointed out that it is the intent of the Comprehensive Plan to not have businesses visible in this area along Richmond Road.

Mr. Everson questioned the applicant's unwillingness to remove the billboard.

Mr. Massie responded that he felt it was not linked to the project; however, they are willing to review the request if necessary.

Mr. Glen Williams, 250 Reflection Drive, Mirror Lake Subdivision, complimented Mr. Massie on a clean operation; however, he felt the buffers are currently inadequate and is concerned about the effect on Mirror Lake homes when the cement plant is constructed. Mr. Williams also expressed concern regarding the increase in traffic, both truck and rail, noise, dust, and resale value of his home. Mr. Williams felt more earth berm, vegetation, or landscaping is needed.

Mr. Bobby H. Key, 100 Fairmont Drive, felt that not only he but every resident of Mirror Lake Subdivision should have been notified of the hearing. Mr. Key expressed concern regarding the affect of dust on Child Development Resources, Williamsburg Regional Library, Toano Middle School, wild life, and the Farm Fresh Grocery Store, as well as an invalid neighbor, children in the area, and a decline in the value of his home. Mr. Key was also concerned about a fuel storage tank explosion. Mr. Key suggested that the cement factory could be located closer to the Owens-Brockway Glass Containers factory in the industrial complex.

Mr. Curtis H. McSherry, Toano, representing his uncle, Mr. R.K. Taylor who owns property on Cokes Lane, expressed concern regarding the traffic, noise, and the environment. He also stated that existing traffic noise from the site already disrupts activities at the Olive Branch Church, especially funerals, and this would get worse. Mr. McSherry felt there were too many questions because there was not enough information. Mr. McSherry expressly thanked Mark Bittner for his assistance.

There being no further speakers the public hearing was closed.

Mr. Garrett read the following statement: The verbally stated addition to the proffers involving uses and buffers will mitigate land use and Comprehensive Plan issues. Note that no proffer was forthcoming with respect to traffic light. I view this as an economic development project with employment opportunity and one that will generate a positive fiscal impact on the County, and, although there are unresolved transportation issues and they may well result in the expenditure of public funds to address improvements needed that are going to be generated by this private development, the economic development benefits of this proposal outweigh this potential public cost. My motion also includes continuation of the 100 foot buffer.

Mr. Garrett then made a motion, seconded by Ms. McKenna, to accept the Massie proposal with the understanding that the legal staff and legal representative for the applicant resolve the issue of written proffers prior to the Board of Supervisors meeting (and the substance stay there); otherwise that it be deferred back to the Planning Commission.

In discussion on the motion, Mr. Garrett stated that his motion to encourage the 100 foot buffer would be left to the Board of Supervisors to determine whether it shall be a 100 foot buffer nor not.

Mr. Kuras stated that the economic portion of the proposal was very attractive and the site is one of the few places where the railroad can be well used. Mr. Kuras stated for those who spoke on the environmental impacts, that the County had visited concrete plants and found that the state of the art concrete mixing plant is surprisingly dust free.

Mr. Betzner felt that overall this proposal was superior to the previous submittal. Mr. Betzner expressed concern regarding the traffic, the traffic light, and the billboard sign, and for these reasons would vote against the proposal.

Ms. McKenna stated that in reading the response to VDOT from Langley and McDonald that most of the issues raised by VDOT were fairly well addressed.

On a roll call vote, the motion passed: AYE: Bradshaw, Garrett, Hagee, Hunt, McKenna, Everson, Kuras (7). NAY: Betzner (1).

Several of the nearby residents again expressed concern about the proposal and the Commission's action.

Mr. Garrett addressed the residents of Mirror Lake Estates stating that he appreciated their concerns. Mr. Garrett stated that the County has been dealing with this issue since 1984-85, and that the Comprehensive Plan, which shows what is going to be built where, is available for public viewing.

6. CASE NO. SUP-2-94. OUTDOOR WORLD RECREATIONAL VEHICLE RENTAL UNITS

Mr. Bittner presented the staff report (appended) for a special use permit to allow the placement of up to 117 recreational vehicle rental units at the Outdoor World Campground located at 4301 Rochambeau Road. Mr. Bittner stated that staff recommended approval with the conditions detailed in the staff report.

Mr. Kuras opened the public hearing.

Mr. Dennis Danko, Director of Construction with Outdoor World, introduced Mr. Chris Cameron, Williamsburg Resort Manager, and Mr. Tony Ioreo, Manager of Project Development.

Mr. Danko stated that the intent is to upgrade the older models which have been on site 7-8 years and showing wear.

There being no further speakers the public hearing was closed.

Mr. Garrett made a motion, seconded by Mr. Bradshaw, to accept the staff's recommendation of approval. On a roll call vote, the motion passed: AYE: Betzner, Bradshaw, Garrett, Hagee, Hunt, McKenna, Everson, Kuras (8). NAY: (0).

7. PLANNING DIRECTOR'S REPORT

Mr. Sowers presented the staff report (appended). Mr. Sowers clarified that the newspaper article inaccurately reported that the Richmond Road Subarea Study Committee had endorsed several options to the ill-fated Monticello Avenue Flyover. Mr. Sowers stated that the committee had simply selected some alternatives for further study but did not specifically endorse an alternative and reserved the right to study further options and expressed some fairly significant concerns about the impacts of the options. More information will be forthcoming.

Ms. McKenna confirmed that no action had been taken by the Committee.

Mr. Bradshaw expressed concern of the impact on Chambrel. Ms. McKenna stated that this concern had been heavily discussed.

8. ADJOURNMENT

There being no further business, the April 12, 1994 Planning Commission meeting adjourned at approximately 9:20 p.m.



Alexander C. Kuras, Chairman



O. Marvin Sowers, Jr., Secretary

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