

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE FOURTEENTH DAY OF JANUARY, TWO-THOUSAND AND TWO, AT 6:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101-C MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

1. ROLL CALL

Martin Garrett  
Don Hunt  
Wilford Kale  
Joe McCleary  
Peggy Wildman

ALSO PRESENT

Leo Rogers, Deputy County Attorney  
Marvin Sowers, Planning Director  
Christopher Johnson, Senior Planner  
Jill Schmidle, Senior Planner  
Karen Drake

ABSENT

John Hagee  
A. Joe Poole

\*Wilford Kale arrived during the presentation of Case No. SUP-26-01.

2. MINUTES

Upon a motion by Joe McCleary, seconded by Don Hunt, the minutes of the December 3, 2001, meeting, were approved by unanimous voice vote.

3. DEVELOPMENT REVIEW COMMITTEE (DRC)

Peggy Wildman presented the DRC report stating they reviewed three cases at the last meeting. She said the first case was a consent case in which the developer requested a reduction of the established setbacks for the master planned subdivision of Jamestown Hundred on three lots to allow proper placement of his model homes. The second case was for the approval of a 45' minimum buffer along News Road for Powhatan Village. The third case, Chesapeake Bank, came before the DRC for approval of the enhanced landscape plan along Route 30 as required in the proffers. She stated the DRC recommended preliminary approval for all the cases.

Don Hunt made a motion, seconded by Joe McCleary, to recommend approval of the DRC report. By a unanimous voice vote, motion passed.

4. INITIATION OF AMENDMENTS TO THE ZONING ORDINANCE.

Martin Garrett read the Initiation of the Zoning Ordinance to amend Section 19-15 (Fees) of the Subdivision Ordinance.

By unanimous voice vote, the Commission recommended approval.

5. CASE NO. SUP-18-01. WALTRIP COMMUNICATIONS TOWER.

Jill Schmidle presented the staff report stating the applicant was preparing additional information and requested deferral until the next regular Commission meeting in February. Staff concurred with this request.

Martin Garrett opened the public hearing. There being no speakers the public hearing remained open.

6. CASE NO. SUP-25-01. VOICESTREAM WIRELESS TELECOMMUNICATIONS TOWER.

Jill Schmidle presented the staff report stating the applicant for this case was continuing to compile information for staff to review and analyze and requested deferral until the February meeting. Staff concurred with this request.

Martin Garrett opened the public hearing. There being no speakers the public hearing remained open.

7. CASE NO AFD-1-89. ARMISTEAD AFD - 2002 RENEWAL.

Christopher Johnson presented the staff report stating the applicant requested to renew the existing 311.83 acre Armistead Agricultural and Forestal District for a term of four years. Staff found this request to be consistent with the surrounding zoning and development and the Comprehensive Plan. Staff recommended the Commission approve the continuance of this AFD and noted that on December 20, 2001, the AFD Advisory Committee unanimously recommended approval of this application.

Martin Garrett opened the public hearing. There being no speakers, the public hearing was closed.

Don Hunt made a motion, seconded by Joe McCleary, to recommend approval for the renewal of the Armistead AFD.

In a roll call vote, motion passed (4-0). AYE: Wildman, Hunt, McCleary, Garrett (4); NAY: (0).

8. CASE NO. AFD-1-93. WILLIAMSBURG FARMS AFD - 2002 RENEWAL.

Christopher Johnson presented the staff report stating the applicant requested to renew the existing Williamsburg Farms Agricultural and Forestal District for a term of four years. He stated the applicant had also requested to withdraw approximately 7.2 acres of an unsubdivided tract for possible development of additional residential lots. Staff found that the AFD was consistent with the surrounding zoning and development and the Comprehensive Plan. Staff recommended the Commission approve the continuance of the AFD subject to the conditions listed in the report and noted that on December 20, 2001, the AFD Advisory Committee unanimously recommended approval.

Don Hunt asked the applicant why he was requesting the withdrawal of 7.2 acres.

Patrick Duffeler, the applicant, stated that there had been some interest in developing the parcel but at this time, there was nothing planned.

Martin Garrett opened the public hearing. There being no speakers, the public hearing was closed.

Joe McCleary made a motion, seconded by Peggy Wildman, to recommend approval of this application.

In a roll call vote, motion passed (4-0). AYE: Wildman, Hunt, Garrett, McCleary (4); NAY: (0).

9. CASE NO. SUP-24-01. ZION BAPTIST CHURCH.

Jill Schmidle presented the staff report stating the applicant had applied for a special use permit to allow the construction of approximately 4,200 square feet of additions to the existing church which would include a relocated fellowship hall, pastor's study, dressing rooms, mothers' room, library, conference room and a kitchen. Staff found that the proposed additions consistent with the surrounding zoning and development and Comprehensive Plan. Staff recommended the Commission recommend approval of this application as outlined in the staff report.

Joe McCleary noted that the only thing they had been given were surface plats of the proposed addition and asked if the design of the extension of the church would generally look the same as the existing church.

Jill Schmidle stated there was a condition regarding architectural review.

Martin Garrett opened the public hearing.

John Morman, applicant for the church, said he would answer any questions of the Commission and stated that the addition of the church would generally look the same as the existing church.

Don Hunt asked where the extension of the building would occur.

John Morman said the extension would be on the side of the existing church closest to Route 199.

There being no further speakers, the public hearing was closed.

Don Hunt made a motion, seconded by Joe McCleary, to recommend approval subject to the conditions. In a roll call vote, motion passed (4-0). AYE: Wildman, Hunt, McCleary, Garrett (4); NAY: (0).

10. CASE NO. SUP-26-01. GRACE COVENANT PRESBYTERIAN CHURCH.

Christopher Johnson presented the staff report stating the applicant had applied on behalf of Grace Covenant Presbyterian Church for a special use permit to allow the construction of a church. He stated that Phase One of the development would consist of an 11,000 square foot building noting that the entire site had been master planned and included a provision to expand the church to 24,000 square feet. Staff found the proposal to be consistent with the surrounding zoning, development, and Comprehensive Plan. Staff recommends the Commission approve this proposal as outlined in the staff report.

Don Hunt asked if the church had any plans for a day care or nursery school.

Christopher Johnson stated that staff was unaware of any such facility.

Martin Garrett opened the public hearing.

Steve Giesler, Chair of the Building Committee for the church, introduced Ronnie Orsborne of LandMark Design Group, Bob Magoon of Magoon and Associates, and Tom Darnell, Pastor of the church. He gave a brief history stating the church was established in

1980 and had met in a number of buildings throughout the City and County and were presently meeting in the upper gym of Walsingham Academy. He stated that the church had met twice with the Settlers Mill Homeowners Association Board and once with the homeowners and said they reviewed staff's recommendation and found them to be thorough and acceptable. He noted that the church had no plans at this time for a day care or nursery school.

There being no further speakers, the public hearing was closed.

Peggy Wildman stated she was a resident of Settlers Mill and that this project would not directly affect her since she lived further into the subdivision. She said initial reaction of the view of the church from the east and west left her feeling that this was a very horizontal looking application with the exception of the roof line and canopy. She noted that she and Joe McCleary served on the committee that instituted the Neighborhood Commercial zoning and it particularly recommended not using long horizontal buildings. One example she used was Duke of Gloucester where it appears to be several small buildings but, in fact, is one building with different facades.

Joe McCleary added that the drawings that were shown did not completely portray the site since there was quite an elevation of the land. He had concerns of the starkness of the building and the way it would stand out. He said, since it was a Community Character Corridor, he would rather see something that blended in with the area.

Bob Magoon stated that the site could be thought of as a challenge but the engineers have considered the site to be an opportunity in working with this building. He stated that the parking lot of the Green Course in Colonial Williamsburg was terraced in a way that the parking areas fit the natural contours of the site. He stated as one travels down Jamestown Road, it will have quite a bit of interest where a flat site would not offer the same opportunities. The building facade has a gable, a large porch area, a colonnade, and not shown is the future worship space that sits out in front. He said by introducing offsets in the facade and gables, they visually break up what appears to be a flat facade.

Joe McCleary asked that since the Commission only had a black and white drawing, what Bob Magoon anticipated the color of the roof and walls would be.

Bob Magoon showed the Commission samples of what he suggested to the applicant but at this time, final colors had not been selected.

There being no further speakers, the public hearing was closed.

Joe McCleary made a motion, seconded by Don Hunt, to recommend approval of this application subject to the conditions in the staff report. In a roll call vote, motion passed (5-0). AYE: Wildman, Hunt, McCleary, Kale, Garrett (5); NAY: (0).

#### 11. CASE NO. SUP-28-01. McKINLEY OFFICE BUILDING.

Karen Drake presented the staff report stating the applicant had applied for a special use permit to construct and operate a 7,500 square foot general office building. Staff found this proposed office building to be a complimentary in-fill development within the Neighborhood Commercial designated property and would provide a uniform transition on Olde Towne Road from the businesses to the adjacent timeshares. Staff recommended the Commission recommend approval of this application with the conditions as outlined at the staff report.

Wilford Kale asked about BMP's and run-off from the parking lot and the site.

Karen Drake stated that a BMP was proposed behind the general office building and showed the Commission a large scale drawing of the proposed plan.

Wilford Kale asked what the distance was between the back alley and the BMP. He said his concern was about the large trucks that access that alley.

Karen Drake said the BMP will be on the property and will not cross over to the adjacent property. She added that the distance between the alley and BMP was 50 feet.

Martin Garrett opened the public hearing.

Greg Davis of Kaufman and Canoles representing the applicant, McKinley Properties, LLC, gave a brief history of the company noting projects in Winchester, Ashland, Fredericksburg, and Richmond County. He also stated that the applicant worked with staff on a conceptual plan prior to formal submission. He said the special use permit conditions adequately addressed the assurance that the building would comply with the architectural renderings submitted and such planning concerns as water use, traffic, etc. He said he would answer any questions of the Commission and requested they recommend approval of this application.

Cliff and Maricko Bloom, owners of Olde Towne Marketplace adjacent owners to the site, spoke of their main concern of stormwater run-off and noted the existing situation with AES that was built 16 years ago and was not under strict regulations. He asked where the water would go when it overflows.

Greg Davis stated the overflow would drain down the drainage utilities onto the Olde Town Square property into the drop inlet. He noted that the engineering plans have not yet been developed.

Martin Garrett asked Karen Drake if staff had adequately addressed this issue.

Karen Drake said that once the engineering plans were submitted, staff would work with the Environmental Division and Mr. and Mrs. Bloom to adequately address their concerns.

Don Hunt asked if it was a standing water problem in the landscape area.

Mr. and Mrs. Bloom said that was one of their concerns.

Marvin Sowers stated staff would make certain that these comments would be given to the Environmental Division and when the drainage plans come in with the site plans, notification of the submittal would be made to all adjacent property owners. He stated if the stormwater management plans were not adequately resolved between the parties, it would then go before the DRC.

There being no further speakers, the public hearing was closed.

Wilford Kale felt this was an excellent in-fill project in concept and idea and made a motion to recommend approval of SUP-28-01 with one amendment to the conditions in the staff report. He requested that this case go to the DRC.

Peggy Wildman seconded the motion. In a roll call vote, motion passed (5-0). AYE: Wildman; Hunt, McCleary, Kale, Garrett (5); NAY: (0).

**12. CASE NO. SUP-29-01. A-STAT RESTORATION SERVICES.**

Christopher Johnson presented the staff report stating the applicant had applied for a special use permit to allow the construction of an approximately 12,000 square foot office building. He stated the master plan for this development identified parking areas for company vehicles, employees and customers, an outdoor storage area for containers and equipment, and a picnic area for employees. Staff found the proposal generally consistent with the surrounding zoning and development and the Comprehensive Plan and with the conditions, as outlined in the staff report, found the proposal to be a positive improvement to the surrounding residential area. Staff recommended the Commission recommends approval of this application.

Martin Garrett opened the public hearing.

Fred Nice, owner of A-Stat Restoration Services, said he would answer any questions of the Commission.

Don Hunt asked if Fred Nice had any concerns regarding the conditions of the special use permit.

Joe McCleary said that the elevation received by the Commission was minimal and asked the applicant if the building would look similar to the Oak Tree Business Park located on Ironbound Road.

Fred Nice stated he was agreeable to the conditions of the special use permit and that the appearance of the building would be brick or stone on the front and wanted the structure to have a home-like look, noting there would be a porch across the front.

Joe McCleary said he had been contacted by the Historic Route 5 Association and in view of the support of the local residents, they had no problem with the proposed development and had asked him to speak on its behalf.

There being no further speakers, the public hearing was closed.

Joe McCleary made a motion, seconded by Wilford Kale, to recommend approval of this application. In a roll call vote, motion passed (5-0). AYE: Wildman, Hunt, McCleary, Kale, Garrett (5); NAY: (0).

**13. PRESENTATION ON COUNTY REGULATIONS FOR TELECOMMUNICATION FACILITIES.**

Marvin Sowers stated the Commission had two pending applications for communication towers coming before them at its next meeting. He stated the County has an ordinance and policy dealing with the treatment of these facilities in the community. He said that staff received some comments and questions from some Commission members and they requested Leo Rogers, Deputy County Attorney, to review the Telecommunication Act of 1996.

Leo Rogers stated that the County had some very comprehensive standards in place in both the guidelines and ordinance and said those standards were done in compliance with the Federal Telecommunication Act. He noted that the Telecommunications Act of 1996 changed a

lot in terms of the regulations of personal wireless facilities and that nothing in the act was designed to take away the authority from state and local government to regulate these types of facilities. He said the County was relying on the laws and decision of the Fourth Circuit and said the U.S. Supreme Court had yet to render an opinion on the meaning of the Telecommunication Act. He explained to the Commission the intent of the Telecommunication Act and how land-use decisions and zonings could be used without discriminating against or prohibiting a communications provider or violating the Telecommunication Act. He said decisions based on health factors related to radio frequency were made by the Federal Telecommunication Commission and, therefore, the County cannot revisit them and would not be a valid consideration for denying a tower. He stated that the Commission could make decisions based on land-use elements. He said the County can regulate size, location, processing, submittal requirements, administrative approval requirements, and the aesthetic look of the tower when dealing with the harmonious nature of the surrounding community.

Don Hunt noted that the tower located on Croaker Road was erected without approval of the governing boards because it lies within the VDOT right-of-way. He asked if the County could tell a private landowner who lives within two-hundred yards of that existing tower that he has to meet a standard separate from the one that the State of Virginia has set down as acceptable.

Leo Rogers stated that the answer was yes and he understood what Don Hunt was speaking about. He said that the state was exempt from complying with local zoning requirements.

Wilford Kale said while working with a tower application on Route 5, the applicant said if they couldn't get a certain height, it would preclude service to a certain area. He asked if the Commission had the leverage to require a restricted height.

Leo Rogers said that the tower companies were saying that if they weren't allowed to go to 185', then they would be prevented from providing service to certain areas. What they weren't saying was that they could provide service to those areas but they would have to erect more towers which would not be economically feasible for them. He stated that the courts determined that it is not a consideration that a jurisdiction has to consider. If it were reasonable for the County to say that the towers should be 120' and they can then spread that cost along to their users, then that's all the County has to allow. He noted that Albemarle County has been very aggressive in that regard.

Marvin Sowers commented that the reality in Albemarle County has been that the companies have come back in and put the shorter towers up.

#### **14. PLANNING DIRECTOR'S REPORT.**

Marvin Sowers stated that on January 22, 2002, the Board would be given a presentation by the Consultant from Virginia Tech on the results of the Citizen Survey and welcomed all Commission members to attend that meeting.

Marvin Sowers also mentioned that there would be a VDOT public meeting on the Jamestown/Route 199 intersection on January 23, 2002, at 7 p.m. in the Berkeley Middle School.

There being no further business Martin Garrett stated that this was his last meeting. He said in the past a Nominating Committee came up with nominations for Chairman and Vice

Chairman of the Commission and noted that there are no requirements in the by-laws that a committee must make nominations. He suggested that the Commission appoint Vice-Chairman, Joe Poole, as Acting Chairman and appoint a Chairman and Vice-Chairman with nominations from the floor at the February meeting..

The Commissioners concurred with Martin Garrett.

Wilford Kale requested to speak before Martin Garrett adjourned the meeting. He said he wanted to personally thank Martin Garrett for the work that he has done as Chairman during the last four years and, more importantly, for the hours spent over that last 24 years on the Commission. He said that he has found Martin Garrett to be fair, above reproach in the handling of the meetings, outstanding with the citizens that have come before the Commission, and that he has had dignity and a sense of propriety that has suited the Commission well. He concluded by saying thank you and noted the County has been well served.

Joe McCleary seconded those sentiments.

Don Hunt said that on the time he has served on this Commission, he greatly appreciated Martin Garrett's input and the manner in which he conducted himself. He said they were going to miss him and he wished him well.

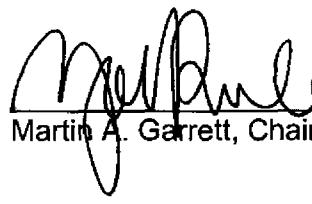
Martin Garrett said that of all the years that he has been here, he said he was the first ever to say something to a developer that they didn't like, that he recalled.

Don Hunt said he will always remember Martin Garrett's first comment about timeshares giving him heartburn.

Marvin Sowers said that on behalf of staff he would like to thank Martin Garrett for his service including his many hours at both the Commission and DRC meetings and stated it had been a pleasure to work with him.

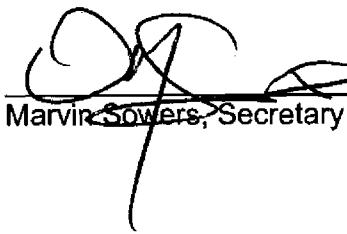
15. ADJOURNMENT.

There being no further business, the January 14, 2002, meeting of the Planning Commission was adjourned approximately at 7:50 p.m.



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Martin A. Garrett, Chairman



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Marvin Sowers, Secretary