

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE SIXTH DAY OF NOVEMBER, TWO-THOUSAND AND SIX, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101-F MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

1. ROLL CALL

George Billups  
Mary Jones  
Tony Obadal  
Jack Fraley  
Shereen Hughes  
Jim Kennedy  
Don Hunt

STAFF PRESENT

Marvin Sowers, Planning Director  
Jenny Lyttle, Assistant County Attorney  
Jason Purse, Planner  
Matthew Smolnik, Planner  
Darryl Cook, Environmental Director  
Toya Ricks, Administrative Services Coordinator

2. PUBLIC COMMENT

Mr. Fraley opened the public comment period.

Hearing no requests; the public comment period was closed

3. MINUTES

A. October 2, 2006 Regular Meeting

Mr. Kennedy motioned to approve the minutes.

Ms. Hunt seconded the motion.

In a unanimous voice vote the minutes of the October 2, 2006 regular meeting were approved.

4. COMMITTEE AND COMMISSION REPORTS

A. Policy Committee

Mr. Billups presented the Policy Committee report stating that the Policy Committee met on October 18 but did not have a quorum. He stated that there was discussion of the consistency of granting setback reduction modifications but no action was taken.

Mr. Fraley asked Ms. Hughes if the Better Site Design committee is reviewing setbacks.

Mr. Fraley asked Ms. Hughes if the Better Site Design committee is reviewing setbacks.

Ms. Hughes stated that a policy was being worked on with staff concerning reductions in R-1 that will be forwarded to the Policy Committee when completed.

B. Development Review Committee (DRC)

Mr. Kennedy presented the DRC report stating that there are two reports. He stated that on September 27, 2006 the Committee considered two cases: C-124-06 Chickahominy Road Utility Waiver and S-27-04/SP-119-06 Michelle Point both were approved 4-0. Mr. Kennedy stated that on November 1, 2006 the Committee considered five cases: C-110-06 Overhead Utility Waiver John Tyler Hwy; C-114-06 Brandon Woods fence; SP-104-06/S-78-06 Walnut Grove, formerly Jennings Way; SP-123-06 Hampton Roads Development – Endeavor Drive were approved 4-0; SP-124-06 New Town Block E Sentara Building was deferred due to parking concerns.

Mr. Kennedy motioned to approve the report.

Ms. Jones seconded the motion.

In a unanimous voice vote the report was approved.

5. PLANNING COMMISSION CONSIDERATION

A. ZO-2-06 Initiating Resolution Subdivision Ordinance Amendment – Final Plan Submittal Requirements

Ms. Jenny Lyttle presented the staff report for an ordinance to amend and reordain Chapter 19, Subdivisions, of the Code of the County of James City, Virginia, by amending section 19-29, Final Plan – Submittal requirements to correct an outdated citation to the James City County Chesapeake Bay Preservation Ordinance.

Mr. Billups asked if it would be renumbered or if it no longer exists.

Ms. Lyttle stated that it no longer exists. She said that Staff and developers are aware of the situation and make the correct reference on plats.

Mr. Hunt motioned to approve the initiating resolution.

Ms. Jones seconded the motion.

In a unanimous voice vote the resolution was approved.

B. Planning Commission Annual Report

Mr. Sowers presented the Planning Commission Annual Report and highlighted some of the activities including the Toano Area Study, Rural Lands and Better Site Design Committee. Mr. Sowers stated that the Division has been involved in several Landscaping projects to include Route 199, Anderson's Corner, and Jamestown Road. The Division has also been instrumental in obtaining \$7 million in funding for transportation.

In unanimous voice vote the report was approved.

Mr. Fraley stated that he would be presenting the report to the Board of Supervisors November 28.

C. Planning Commission Meeting Schedule

Mr. Fraley stated that Planning Commissioners and members of the public had requested additional time to review applications and supporting documentation as well as more time for discussions with Staff. He stated that the Commission will meet on the first Wednesday beginning in January. Mr. Fraley also mentioned that packets will continue to be distributed the Wednesday prior allowing two additional work days.

Mr. Sowers added that all deadlines will remain the same.

In a unanimous voice vote the schedule was approved

6. PUBLIC HEARINGS

A. Hill Pleasant Farm

Mr. Fraley stated that the applicants requested deferral until the December Planning Commission meeting and asked if Staff concurred.

Mr. Sowers said Staff concurred.

Mr. Fraley opened the public hearings.

Hearing no requests to speak the public hearings was continued to December 4, 2006.

B. SUP-23-06 Volunteer Fire Department Flea Market

Mr. Purse presented the staff report stating that Mr. Bill Apperson, on behalf of the James City-Bruton Volunteer Fire Department, has applied for a Special Use Permit to allow for a flea market, on approximately .5 acres of land, on a parcel zoned B-1, General Business. The property is located on the north side of the corner of Forge and Richmond Road. The property can further be identified as Parcel No. (1-8) on the JCC Tax Map No. (12-3). The site is shown on the 2003 Comprehensive Plan Land Use Map as Moderate Density Residential. Recommended uses on property designated for Moderate Density Residential areas are townhouses, apartments, recreation areas, and may also include very limited commercial and community-oriented facilities. The application was heard by the Planning Commission at its October meeting; however adjacent property owner were not adequately notified prior to the public hearing; therefore the Commission is again considering the case. The only changes to the proposal since the October meeting were changes recommended by the Planning Commission including the addition of boats and wheeled vehicles to the list of restricted sellable goods as well as a provision limiting operation hours from dawn until dusk. The applicant is also requesting a setback waiver along Richmond and Forge Roads to 25 ft. Staff found the proposal generally consistent with surrounding characteristics and the Comprehensive Plan and recommended approval.

Mr. Fraley opened the public hearing.

Mr. Mike Pintz with Virginia Real Estate and Development stated that his company has a contract on the adjacent property. Mr. Pintz stated his and the current property owners' concerns regarding the lack of a traffic signal or designated crossing area for access to the restroom facilities across the street, the lack of on site restroom facilities and sight distance concerns and possible entrance conflicts. He also stated their willingness to allow shared ingress and egress and parking accommodation with the applicant.

Mr. Purse stated that the intent of the applicant is to provide restroom facilities for vendors at the fire station across the street not the public. He also stated the applicant's willingness to work with Mr. Pintz on joint access if Mr. Pintz's plan moves forward.

Mr. Billups asked if this would be a stop and go market.

Mr. Purse said that was the intent.

Mr. Bill Apperson represented the James City-Bruton Volunteer Fire Department stating their willingness to work with Mr. Pintz in the future. He also stated their desire to have this application continue and not be restrained by a proposal that may or may not take place.

Mr. Billups asked if the applicant foresees any health and safety concerns as the

project grows.

Mr. Apperson answered no. He stated their vision that consumers would come in, purchase their items, and leave without visiting or loitering.

Mr. Billups asked if Mr. Apperson anticipated browsing by neighbors or students.

Mr. Apperson said they did not anticipate this becoming a community gathering corner.

Mr. Purse stated that the development of the neighboring property provides flexibility for more growth since the owner is willing to offer land to add additional facilities if the flea market is more successful than anticipated.

Mr. Obadal stated his concerns about safety. He asked if the portable facilities could be installed if it becomes necessary.

Mr. Apperson stated that they will address any problems that arise.

Hearing no other requests the public hearing was closed.

Ms. Jones stated that the purpose of the market is to raise funds to continue to provide for the safety of citizens. She stated that the restroom facilities are for the vendors. She stated her support.

Ms. Jones motioned for approval.

Mr. Kennedy seconded the motion and concurred with Ms. Jones' statements that the Volunteer Fire Department provided a great service to the community and felt that the Fire Department would put similar effort in this project.

In a unanimous roll call vote approval was recommended (7-0). AYE: Hughes, Jones, Obadal, Fraley, Kennedy, Billups, Hunt (7); NAY (0).

C. AFD-9-86 Gordon Creek Withdrawal

Mr. Jason Purse presented the staff report stating that Mr. Sanford Wanner has applied to withdraw approximately 40.285 acres from the existing Gordon Creek AFD. The withdrawal site will be used for the 8<sup>th</sup> Elementary School in W-JCC. A withdrawal was previously approved for a portion of this site. This withdrawal will change the boundary lines of the property being withdrawn to conform to the actual development plan. The property is located at 4001 Brick Bat Road, and can further be identified as parcel (1-1) on the JCC Tax Map (36-3).

Mr. Kennedy asked if portions of the property were being returned to the AFD while other portions were being withdrawn. He also asked if there would be any taxation issues.

Mr. Purse indicated the previous and proposed boundary lines on a map. He stated that conversations were on-going with the property owners and that it was uncertain whether any of the unused portions was be returned to the AFD.

Mr. Kennedy noted that no one was present from the School Board. He stated that Commissioners had been assured previously that there was enough land for adequate road frontage and that the County owned the land. He stated he felt previous information was incorrect and key elements had been left out. Mr. Kennedy stated his concern that the unusable portion of the property would be returned to the owner to deal with and referred to the process as a disaster.

Mr. Fraley opened the public hearing.

Hearing no requests to speak the public hearing was closed.

Ms. Jones motioned for approval.

Ms. Hughes seconded the motion.

In a roll call vote the application was recommended for approval (5-2). AYE: Billups, Obadal, Jones, Fraley, Hughes (5); NAY: Hunt, Kennedy (2).

D. SUP-29-06 WJCC 8<sup>th</sup> Elementary School Amendment

Mr. Jason Purse presented the staff report stating that Mr. Sanford Wanner, on behalf of James City County, has applied for a Special Use Permit to amend SUP-5-06, which was for the 8<sup>th</sup> Elementary School. This project is located on approximately 40.285 acres of land, on a parcel zoned A-1, General Agricultural. The property is located at 4001 Brick Bat Road. The property is currently part of a larger parcel located off of Brick Bat Road, which can further be identified as parcel (1-1) on the JCC Tax Map (36-3). The purpose of the amendment is to adjust the boundary lines of the project so they include the turn lanes, the stormwater management facility and the baseball field as a part of the site. The site is shown on the 2003 Comprehensive Plan Land Use Map as Rural Lands. Recommended uses on property designated for Rural Lands areas are agricultural and forestal activities, together with certain recreational, public or semi-public and institutional uses that require a spacious site and are compatible with the natural and rural surroundings.

Ms. Jones stated her concern that the site is near two hunt clubs and asked for their locations.

Mr. Purse stated that one was located off of Busch Neck Road. He said he did not know the location of the other one.

Mr. Hunt stated that County Ordinance prohibits discharge of a firearm within 50 feet of a school.

Ms. Jones stated that this would impede the rights of the hunters.

Mr. Kennedy stated that construction had already begun on the school. He asked who reviewed the plans and why they did not realize the gymnasium was too small. Mr. Kennedy asked why the County was not made aware that a change order had been placed for a larger gymnasium. He also stated his disappointment that a representative of the School Board was not present.

Mr. Sowers said they are required to go through a site plan process and building permit review. He said he did not have the answers for Mr. Kennedy's questions tonight but would be happy to provide the information later.

Mr. Obadal asked if construction had begun.

Mr. Purse said it had begun for the portions that were already approved.

Mr. Obadal asked it was substantial.

Mr. Purse said it was everything within the yellow lines on the map shown earlier.

Mr. Kennedy motioned for approval.

Ms. Jones seconded the motion.

In a unanimous roll call vote the application was recommended for approval (7-0). AYE: Billups, Hunt, Obadal, Jones, Fraley Hughes, Kennedy (7); NAY: (0).

E. SUP-28-06 VFW Post 8046

Mr. Matthew Smolnik presented the staff report stating that Mr. John Worley has applied for a Special Use Permit on the parcel located at 5343 Riverview Road, which is currently zoned A-1, General Agricultural in order to construct a new meeting facility for VFW Post 8046. The property is also known as parcel (1-31) on the JCC Tax Map (15-3). Mr. Worley has filed the Special Use Permit application because the proposal is permitted by special use permit only in this zoning district. The site is designated as Rural Lands by the James City County Comprehensive Plan. Appropriate primary uses include agricultural and forestal activities, together with certain recreational, public or semi-public and institutional

uses that are compatible with the natural and rural surroundings.

Mr. Kennedy recused himself stating his membership in the VFW.

Mr. Fraley opened the public hearing.

Ms. Peggy Bowman stated that the building had been purchased 30 years ago. She stated that the expansion was needed in order to increase membership and avoid the constant need for repairs.

Mr. Hunt motioned for approval.

Ms. Jones seconded the motion.

In a unanimous roll call vote the application was recommended for approval (7-0). Billups, Hunt, Obadal, Jones, Fraley, Hughes (6); NAY: (0). (Kennedy abstained).

F. Z-5-06/MP-7-06 New Town Section 7& 8

Mr. Matthew Smolnik presented the staff report stating that an application has been submitted by New Town Associates, LLC to rezone 108.1 acres of land located at 5240 and 5248 Monticello Avenue currently zoned R-8, Rural Residential to MU, Mixed Use. The property is also known as parcels (1-51) and (1-56) on the JCC Tax Map (38-4). Under the proposed Master Plan, a maximum of 62,300 square feet of commercial buildings are proposed with a maximum of 400 dwelling units. The site is designated for Mixed Use development by the James City County Comprehensive Plan. Mixed Use areas are centers within the PSA where higher density development, redevelopment and/or a broader spectrum of land uses are encouraged.

Mr. Obadal gave an overview of the history of rezonings of the New Town project.

Mr. Smolnik and Mr. Obadal discussed when various sections of the project were rezoned.

Mr. Obadal stated that in 2004 a request was made to reduce the buffer around the perennial stream in section 8 to allow more density.

Mr. Cook stated that the Chesapeake Bay Ordinance was amended in 2004 and that grandfathering was applied. He also gave an overview of the history of the environmental issues of the project.

Mr. Obadal stated that a variable buffer was allowed for 279 units. He stated his opinion that the density could have achieved without the perennial stream buffer



reduction. He questioned the applicant's need for a reduction of the Community Character Corridor.

Mr. Cook deferred the question to the applicant.

Mr. Obadal and Mr. Fraley discussed the changes and amendments that have taken place with the project over time.

Mr. Obadal wanted to follow-up on the density and the prior rezonings. He stated that the buffer around the intermittent stream was one of the changes.

Mr. Billups suggested that the applicant be allowed to make his presentation before Commissioners continue their discussions.

Mr. Fraley asked for a comment on water quality

Mr. Cook stated that the variable width buffer that included buffers on both perennial and intermittent streams should result in better water quality protection than buffers on only perennial streams.

Ms. Hughes stated her concerns about steep slopes, nature trails in the reduced buffers, and lack of commitment to LID (Low Impact Design)

Mr. Cook stated that the steep slopes would not have been protected by the original buffer. He deferred the discussion of the nature trail location to the applicant.

Mr. Smolnik stated that 8 acres were transferred to section 9 not 80 as he had previously indicated.

Ms. Hughes asked the basis for determining the number of school children.

Mr. Smolnik deferred the question to the applicant.

Mr. Fraley opened the public hearing.

Mr. Gregory Davis, Kaufman and Canoles, represented the applicant presenting the proposal. He highlighted the architecture, cash proffers, and affordability component.

Mr. Davis also detailed regulatory changes that have affected the project.

Ms Jones asked if the 8 acres set aside for the Small Whorled Pogonia exceeded requirement.

Mr. Davis stated that there is no specific requirement but a determination by various regulatory agencies.

Ms. Jones if that applicant was satisfied with the amount of land set aside.

Mr. Davis said that from a development stand point they are disappointed. He stated that the Army Corp of Engineers is delighted.

Mr. Hunt said they are concentrated in a small area.

Mr. Davis added that there is no impact to the Pogonia like there was with the WindsorMeade project.

Mr. Fraley asked if there is an archeological site in that area as well.

Mr. Davis said yes.

Ms Hughes asked for an explanation of the term perennial stream restoration and mediation.

Mr. Davis said it is included in the Homeowners Association requirements.

Ms. Hughes said she had not seen it.

Mr. Obadal asked if the pollutants entering the streams would be monitored.

Mr. Davis said no and stated that the applicant and staff could look into it.

Mr. Fraley supported Mr. Obadal's suggestion.

Mr. Obadal thought monitoring could be beneficial to future projects.

Mr. Fraley stated his concerns about building on steep slopes.

Mr. Robert Cosby with AES Consulting Engineers stated that the steep slopes are isolated in nature. He also stated that further review had found that most of the slopes were less than 25 %.

Mr. Fraley asked if the applicant would avoid building on slopes that are 25% or greater.

Mr. Cosby stated that in that scenario it would be discussed at site plan phase with staff.

Mr. Fraley stated his concern with the lack of commitment to LID.

Mr. Cosby stated that New Town has been very proactive with LID measures and that they would pursue them as much as possible.

Mr. Fraley asked about water quality.

Mr. Cosby stated that within New Town state requirements regarding removal of pollutants are exceeded.

Mr. Fraley asked how many of the buffers are reduced.

Mr. Cosby said 25% are reduced to 50 ft.

Mr. Fraley asked if 100 buffers would increase water quality.

Mr. Cosby said not substantially.

Mr. Fraley said the preference would be for the trail to be taken out of the buffer.

Mr. Davis stated the goal was to provide a woodland trail with permeable surfaces.

Mr. Obadal stated that a 100 ft buffer would achieve 75% reduction in sediments and 40% reduction of nutrients.

Mr. Cosby said a larger buffer would provide more pollutant removal but not significantly when compared to other measures.

Mr. Obadal said a better method was necessary.

Mr. Cosby said the run-off is not sent across the buffer it is collected and piped to the BMP and then treated.

Mr. Cosby and Mr. Obadal discussed the percentage of sediments and pollutants removed by a BMP versus a traditional buffer.

Mr. Obadal stated that an Ordinance should be a guide for conduct without a great deal of flexibility.

Mr. Fraley said there is no Ordinance requirement relative to Community Character Corridor in Mixed Use.

Mr. Hunt stated that the goal of the Commission is to be flexible and provide elasticity when possible and appropriate.

Mr. Fraley called for a 10 minute break.

The Commission reconvened at 9:35 p.m.

Mr. Fraley opened the public hearing.

Ms. Kensett Teller, 126 Lake Drive, read a letter from the Friends of Powhatan Creek Watershed recommending denial of the project due to environmental concerns. Ms. Teller also stated concerns about noise pollution.

Ms. Sarah Kadec, 3504 Hunters Ridge, represented James City County Concerned Citizens read a letter requesting denial due to concerns regarding environmental, traffic, and public safety issues.

Mr. Jay Eversole, 103 Branscomb, stated concerns about adequate schools facilities test, density based on non-developable acreage, and environmental concerns.

Mr. Fraley clarified that the 300 ft variable buffers Mr. Cosby spoke of applies to main stem streams of which there are none in this application.

Ms. May Sly, 3829 Cluster Way, stated her support for a 100 ft buffer and increased protections for the small whorl begonia.

Mr. Fraley explained that the 100 ft buffer staff referred to was around a perennial stream.

Mr. Smolnik addressed concerns that copies of the plan were not available to the public. He stated that the application was submitted 71 days ago and that Friday was the first day anyone from the public inquired about the project.

Mr. Obadal stated that citizens should not have to pay for copies. He stated that FOIA (Freedom of Information Act) required free copies at the state level.

Mr. Kennedy explained that staff time is not charged only the cost of the copies.

Mr. Obadal asked if staff time should be charged to applicants for the considerable amount of time staff spending working on their plan.

Mr. Sowers read a letter from Mark Sexton stated his concerns about the proposal.

Hearing no other requests to speak the public hearing was closed.

Mr. Hunt stated that provisions have been made regarding the perennial stream, and the Small Whorled Pogonia, and the provisions should be made for the Community Character Corridor.

Mr. Obadal stated his concerns about the protections offered for the perennial stream. He said he agrees with staff concerning the Community Character Corridor.

Ms. Jones stated that the project complies with the Watershed Management Plan, includes affordable housing, and is a fiscal positive. She stated that allowing a variance on the Community Character Corridor provides for a better project. Ms. Jones stated her support for the project.

Ms. Hughes stated that flexibility has already been allowed. She stated her support for the 150 ft Community Character Corridor and her concerns about school capacities. Ms. Hughes stated she will not support the project.

Mr. Kennedy said he has never supported the New Town concept. He stated that he could see the case for making an exception and stated his support for the proposal.

Mr. Billups stated his concern that the VDOT (Virginia Department of Transportation) ROW (Right-of-Way) buffer of 80 ft is combined with the applicant's required buffer. He asked what would happen should VDOT choose to exercise their right to utilize the ROW. Mr. Billups stated that he did not see a specific benefit of reducing the buffer. He also stated his concerns regarding school impacts, and the lack of confirmation of affordable housing.

Mr. Fraley stated that staff was in agreement with the proposal except the Community Character Corridor. He also stated that the adequate public facilities test was an issue for the Board of Supervisors to consider. He expressed his satisfaction with the proposed architecture. Mr. Fraley also stated his support to reducing the Community Character Corridor buffer and requested the applicant establish a program or process for the monitoring and remediation of water quality.

Mr. Davis agreed to look into it.

Mr. Fraley suggested the applicant meet with the citizens who spoke prior to the case moving forward to the Board of Supervisors.

Ms. Jones motioned to approval the proposal and suggestions for a water quality monitoring and remediation program.

Mr. Hunt seconded the motion.

In a voice vote the application was approved (4-3). AYE: Kennedy, Hunt, Jones,

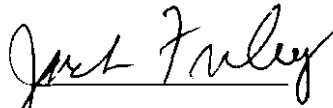
Fraley (4); NAY: Billups, Obadal, Hughes (3).

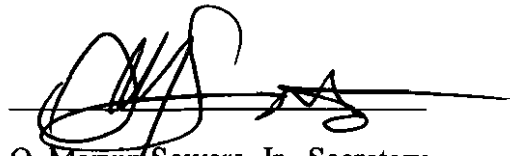
6. PLANNING DIRECTOR'S REPORT

Mr. Marvin Sowers presented the Planning Director's Report stating that the Parks and Recreation Master Plan Update is underway with meetings being held November 16 at 7 p.m. at Stonehouse Elementary School and on November 18 at the James River Commerce Center. Mr. Sowers also stated that the Division is participating in the County's Succession Management Program. He said Allen Murphy has assumed a temporary position in the County Administrator's office and in his place Ellen Cook is Acting Chief Planner, Current Planning and Melissa Brown is Acting Zoning Administrator.

7. Adjournment

There being no further business the Planning Commission was adjourned at 10:50 p.m.

  
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Jack Fraley, Chairman

  
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O. Marvin Sowers, Jr., Secretary