

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

1. ROLL CALL

Planning Commissioners

Present:

George Billups
Mary Jones
Tony Obadal
Jack Fraley
Shereen Hughes
Jim Kennedy
Rich Krapf

Staff Present:

Marvin Sowers, Planning Director
Jennifer Lyttle, Assistant County Attorney
David German, Planner
Jose Ribeiro, Planner
Michael Woolson, Senior Watershed Planner
John Horne, Development Manager
Kathryn Sipes, Planner
Luke Vinciguerra, Planner
Toya Ricks, Administrative Services Coordinator
Ellen Cook, Acting Principal Planner
Darryl Cook, Environmental Director

Absent:

None

2. PUBLIC COMMENT

Mr. Kennedy opened the public comment period.

Mr. Gerald Johnson, 4513 Wimbledon Way, spoke about how the changes in the landscape due to cutting and filling for Phase II of Settlement at Powhatan Creek will not preserve forest cover. He also stated his concerns about the handling of storm water run off.

Ms. Donna Hale, 99 Castle Lane, spoke about the flooding St. George's Hundred during Hurricane Floyd. She stated that the County determined the solutions to be cost prohibitive. Ms. Hale said the flooding is related to upstream development.

Mr. Bill Unaitis, 221 Charleston Place, spoke about the inadequacy of water run off management in St. George's Hundred.

Ms. Mary Smallwood, 1102 London Company, represented the Jamestown 1607 Homeowners' Association and spoke about the drainage issues there.

Ms. Sarah Kadec, 3504 Hunters Ridge, represented the Concerned Citizens Group.

Ms. Kadec requested money be appropriated in the Fiscal Year 2008 budget to assist with the flooding problems in St. George's Hundred and Jamestown 1607.

Hearing no other requests the public comment period was closed.

Mr. Kennedy stated that the Planning Commission does not set the County's budget and recommended citizens speak to the Board of Supervisors.

3. MINUTES

A. February 7, 2007 Regular Meeting

Mr. Obadal motioned to approve the minutes.

Ms. Jones seconded the motion.

In a unanimous voice vote the minutes of the February 7, 2007 regular meeting were approved (7-0).

4. COMMITTEE AND COMMISSION REPORTS

A. Development Review Committee (DRC) Report

Ms. Jones stated that there were no cases on the February 28, 2007 agenda. She stated that the cases that were deferred at the January 31 meeting are still under review and will be considered at the March 28 meeting at 4pm in the Conference Room in Building A at the County Complex.

B. Policy Committee Report

Mr. Fraley stated that the Policy Committee met several times in February to complete its review of the James City County Capital Improvements Program for fiscal years 2008-2012. He stated that the role of the Planning Commission is to make recommendations to the Board of Supervisors concerning funding levels and priorities for County programs. Mr. Fraley thanked Staff for their assistance and said the Committee's recommendations will be presented to the Commission later in the meeting. The Committee also reviewed the Mixed Use Ordinance to clarify language concerning setback modification requests. Mr. Fraley stated that the proposed amendment will also be presented later tonight. The Committee considered a citizen request to amend the A-1 and R-8 Ordinances to permit direct discharge sewer systems for single family lots under certain conditions. The Committee identified four areas for staff to take under advisement.

5. PLANNING COMMISSION CONSIDERATION

A. Initiating Resolution -- Zoning Ordinance Amendment -- Mixed Use

Ordinance

Ms. Ellen Cook presented the staff report stating that the Initiating Resolution is necessary for consideration of an amendment to the Zoning Ordinance. She stated that adoption of the resolution does not approve the amendment. Staff recommended adoption of the resolution.

Mr. Obadal asked that the Commission be allowed to discuss the proposed resolution prior to adoption. He stated his intent to motion for deferral.

Ms. Jones stated that only the initiating resolution is currently under consideration and suggested holding the public hearing on the proposed amendment prior to making any recommendations.

Mr. Sowers requested the Commission act on the initiating resolution which only gives notice of the intent to discuss an amendment. He stated that discussion on the amendment will take place later on the agenda.

Mr. Obadal stated his concern that approval of the initiating resolution may limit the amendment that might be offered later.

Ms. Jones stated the initiating resolution would have to be adopted with discussion taking place after the public hearing on the matter is opened.

Mr. Sowers stated that Staff must reference the section of Code to be discussed. He added that if the Commission chose to expand the scope then another initiating resolution would be brought forth at a later date.

In a unanimous voice vote the Initiating Resolution was adopted (7-0).

6. PUBLIC HEARINGS

A. SUP-35-06 Kenneth Brook's Contractor's Warehouse

B. Z-1-06/MP-12-06/SUP-36-06 The Candle Factory

Mr. Kennedy stated that the applicants for both cases requested deferral.

Staff concurred with the requests.

The public hearings were opened.

Hearing no requests the public hearings were continued to the April 4, 2007 meeting.

C. Capital Improvements Program (CIP)

Mr. David German presented the staff report stating that Staff was forwarding recommendations for the 2008-2012 CIP. He said that following discussions with the Policy Committee, each program was given a numerical ranking based on how well it met current and future needs, matched Comprehensive Plan goals, or supported other County initiatives. Based on the numerical scores provided by Staff, presentations from applicants, and discussions held by the Policy Committee, priority rankings of high, medium, or low were assigned to each application by the Policy Committee members. Mr. German stated that items in a new category, Maintenance, were not ranked since they were not seeking to create a new asset or fund a new program, but were, instead, to provide for maintenance of existing County programs and facilities.

Mr. Billups asked for clarification of the concept "new" and how priority rankings were decided.

Mr. German stated that each program was evaluated on its own merit and the category "new" referred to items completely new to the CIP program.

Mr. Obadal asked that the drainage improvements requested by citizens earlier in the meeting be added to the list.

Mr. Kennedy stated that Board of Supervisors action would be required, but asked that the minutes reflect the request.

Mr. Obadal stated his desire that the citizen-requested drainage improvements be added to CIP recommendations as well as reflected in the minutes.

Mr. Kennedy stated that Ms. Kadec's letter requesting funding for storm water management would be made a part of the record.

Mr. Billups suggested that the drainage improvements be included in the new category, Maintenance.

Mr. Sowers stated that he thought it best that the request be forwarded to the Board with an explanation that it was not submitted in time for representatives of the various departments to review or for the Policy Committee to rank.

Mr. Billups stated that the Commissions' recommendations are tentative in nature anyway and suggested they be added to the list for the appropriate agency.

Ms. Jones stated her frustration that citizens' requests be necessary for County action to be taken. She stated that she lives in Jamestown 1607, and has previously been flooded and had to move out during repairs to her home.

Mr. Obadal said he was okay with letters being forwarded along with the CIP; however, he wanted to be certain that the citizen-requested drainage improvements issue is highlighted for the Board, along with the other CIP recommendations.

Mr. Sowers agreed to do so.

Mr. Obadal recommended high ranking for the citizen-requested drainage improvements as well, as did Ms Jones and Mr. Billups.

Mr. Kennedy opened the public hearing.

Mr. Bill Geib, 104 Alwoodley, suggested that the accompanying visual aides be larger and easier to read.

Mr. Sowers stated that the information is available on the County's website and in the Planning office.

Hearing no other requests the public hearing was closed.

Mr. Krapf motioned to approve the recommendations as amended.

Ms. Jones seconded the motion.

In a unanimous voice vote the recommendations were approved (7-0).

D. SUP-34-06 Rawls Byrd Elementary School Parking and Bus Loop

Mr. Luke Vinciguerra presented the staff report stating that Mr. Bruce Abbott of AES Consulting Engineers has applied for a Special Use Permit to allow for the construction of 43 additional parking spaces and 14 bus parking spaces. The property is located at 112 Laurel Lane, identified as JCC Tax Map No. 4810600171A, zoned R-2, General Residential District. The Comprehensive Plan designates this property as Federal, State, and County Land.

Ms. Hughes asked if Mr. Vinciguerra had an opportunity to observe bus loading at Mathew-Whaley Elementary.

Mr. Vinciguerra stated that the buses line up in single file adjacent to a public road. He stated that it was a different situation.

Mr. Fraley stated that Commissioners were not informed of the public meeting held as they had requested.

Mr. Vinciguerra stated that Staff was also not made aware of the meeting until afterwards.

Mr. Billups said there was a lot of emphasis on child safety and asked if there have been any incidents relative the child safety.

Mr. Vinciguerra deferred to the question to the applicant.

Mr. Krapf asked if a sidewalk will be added to separate the bus parking lot from the bus loop.

Mr. Vinciguerra said there were no plans to add a sidewalk.

Ms. Hughes asked if a fence will be installed around the new parking area.

Mr. Vinciguerra stated that a proposed SUP condition has been drafted should the Commission desires to add it.

Mr. Obadal asked about overnight bus parking.

Mr. Sowers said that was a question for the applicant.

Mr. Kennedy opened the public hearing.

Mr. Robertson represented the Schools and asked that Mr. Billups' question be repeated.

Mr. Billups restated his question.

Mr. Robertson stated that there has been no specific incident and that the students are not currently in intimate danger.

Mr. Billups confirmed that the audit criteria were the only driving factors.

Mr. Robertson said it was the thought that a better way exists.

Mr. Obadal asked if it is better to anticipate or wait until something occurs.

Mr. Robertson stated that from a standpoint of liability prudence in action ahead of time must be shown.

Ms. Jones asked how long the current method has been in place.

Mr. Robertson stated at least the 15 years he was been with the school system.

Ms. Jones asked if over 30 years, as she has heard, is possible.

Mr. Robertson answered yes.

Mr. Jones asked if any parents had expressed concern.

Mr. Robertson stated that parents are on the audit committee.

Ms. Jones stated that she attended a PTA meeting where parents and teachers did not appear to be clear what aspect the audit committee determined was unsafe.

Mr. Robertson explained that teachers were upset at the perception that the current situation is unsafe. He stated that the aspects of concern are lack of visibility and walking between buses.

Mr. Obadal asked how far apart the busses are when parked next to each other.

Mr. Earl Powell, Director of Transportation said they park parallel and are staggered with approximately 10-12 ft. of space between.

Mr. Obadal confirmed that it would be difficult for the front bus driver to see behind his/her bus.

Mr. Powell said that was correct. He said they would have to depend on their mirrors.

Mr. Kennedy asked if any of the buses departed before all of the students are loaded and the area is cleared.

Mr. Powell said no.

Mr. Kennedy asked if there are monitors watching while the children are being loaded onto the buses.

Mr. Powell said yes.

Mr. Krapf stated that he observed the bus loading the previous Monday and stated that the loading process was very orderly with staff escorting students. He also stated that he considered the additional parking spaces a separate issue from the bus loop. Mr. Krapf referenced comments from neighbors and a teacher from a Hampton school with a similar loading arrangement that questioned if a safety issue truly exists.

Mr. Obadal asked how long the buses would be parked if they are allowed to park overnight.

Mr. Robertson stated that although there are no plans to park buses overnight the school division did not want to give up the possibility completely should the need arise.

Mr. Obadal suggested defining conditions that would warrant overnight parking on a temporary basis in lieu of prohibiting it entirely.

Mr. Powell stated that drivers are allowed to take their buses home and will park them in nearby school lots if they cannot park them at their homes. He stated that the operations center is a long distance from many routes so that this cuts down on fuel and operations costs.

Mr. Obadal stated that citizens are correct to be concerned that a number of buses will be parked at the school when none have been parked there before.

Mr. Powell stated that buses can be parked overnight at the school now although to his knowledge it is not currently being done.

Mr. Kennedy suggested adding a condition prohibiting overnight parking of buses if Mr. Obadal desired.

Mr. Obadal said he would like a provision that would allow overnight parking in cases of emergency or specific exceptions. He stated the need to be sensitive to residents.

Mr. Kennedy asked Ms. Lyttle to prepare a draft condition prior to Board of Supervisors consideration of the case.

Ms. Hughes asked if a safety audit had been performed with the buses parked end along the sidewalk in the loop instead of parallel. She suggested trying other solutions before moving forward with a plan that significantly impacts the community. Ms. Hughes said she would not like to have a bus parking lot in front of her house and that the green space that would be removed is used by the school and the community

Mr. Robertson stated that the school system is the final arbitrator of safety and discussed the different groups and agencies that were consulted prior to moving forward with the current recommendation. He stated that the applicant considers the current proposal to be the better option.

Mr. Fraley stated he did not receive notice of the community meeting as he had requested.

Mr. Robertson apologized stating that he had communicated with Staff but not the Planner responsible for the case.

Mr. Fraley stated that he also observed the bus loading at the school and complimented staff on a very orderly process with everyone being alert and concerned for the students. He stated that he does not see a direct link between the safety protocol audit and current request.

Mr. Robertson stated that the committee has the freedom to make additional comments and that someone noted concerns with parallel parking and recommended diagonal style parking like other schools. He stated that based on that comment meetings were held with the Principal and the Director of Transportation. Mr. Robertson stated the applicant's opinion that although there is no eminent danger this proposal represents a better way.

Mr. Billups asked about the possibility of separating the parking lot addition from the bus loop expansion. He stated that the current situation does not rise to the level of foreseeable danger but a matter of supervision and administration assignment.

Mr. Robertson stated that they must look forward to the possibility of a problem. He also stated that the applicant was not opposed to separating the two issues with both moving forward for Board of Supervisor consideration.

Mr. Jack Marahens, 113 Laurel Lane, stated that he lives across the street from the school. He stated that it is more likely that a plane from the nearby airport would crash into the school than a child to be injured stating that for 20 years the buses parked nose to tail and in the past 10 years have been staggered and parallel all with no incident. Mr. Marahens stated that safety audit produced one comment recommending restructuring to eliminate students walking between buses and that money was allocated 2 years ago but nothing was done. He stated that on President's Day he observed that the only schools without parked buses were Mathew-Whaley and Rawls Byrd which are the only schools without a bus parking lot.

Mr. Franco Triolo, 100 Laurel Lane, referred the Commission to an email he sent to

each Commissioner outlining his objections. He suggested the schools try something different and questioned who decided to parallel park the buses. Mr. Triolo stated that there is no need to create what in his mind is a bus depot and recommended denial of the bus parking aspect of the request.

Mr. Ed Qualtrough Supervisor of Maintenance, 119 Shore Drive, stated that the present situation is not unsafe but questioned whether it can be done safer. He compared the scenarios to difference between dial-up internet and high speed internet stating that both work but asked which achieves W-JCC School's high standard. Mr. Qualtrough stated that concerning the airport, airplanes must change from their normal flight pattern so they do not fly over the school.

Ms. Jones asked if the buses will face the school under the proposed method.

Mr. Robertson said yes.

Hearing no other requests to speak the public hearing was closed

Mr. Kennedy stated that the Commission had the option of separating the two requests. He also asked Commissioners to consider Comprehensive Plan General Land Use Standard #1 and Land Use Goals, Strategies, and Actions, Strategies #1 and #2 in evaluating the application.

Ms. Hughes motioned to separate the two requests. She stated that she can support the parking lot addition and encouraged the school system to consider all the parking needs and traffic flow completely. She also referenced Section 24-9 Special Use Permits outlining items to be considered when evaluating a special use permit request in stating her concerns about the bus loop expansion.

Mr. Sowers passed out a list of the SUP conditions separated according to each issue. He also stated that a condition requiring fencing off the play area could be added if Commissioners desired.

Mr. Kennedy asked about a condition concerning overnight bus parking.

Mr. Sowers said it could also be added.

Mr. Obadal asked that it be added with the modifications he discussed earlier.

Mr. Kennedy asked that Staff draft such a condition.

Mr. Billups questioned the legality of prohibiting overnight bus parking.

Mr. Kennedy said it could be added as a condition.

Ms. Jones seconded the motion.

In a unanimous voice vote the motion was approved (7-0).

Mr. Obadal motioned to approve the rear parking addition with amending the SUP

conditions to included conditions concerning fencing and overnight bus parking.

Ms. Jones seconded the motion.

Mr. Billups confirmed that the conditions distributed tonight matched those in the packet with the exception of the fence.

Mr. Sowers said that was correct.

In a unanimous roll call vote the rear parking addition was approved (7-0). AYE: Obadal, Fraley, Hughes, Billups, Jones, Krapf, Kennedy (7); NAY: (0).

Ms. Jones motioned to deny the request for bus loop expansion.

Mr. Billups seconded the motion.

In a unanimous roll call vote the bus loop expansion was denied (7-0). AYE: Obadal, Fraley, Hughes, Billups, Jones, Krapf, Kennedy (7); NAY: (0).

Mr. Sowers suggested forwarding to the Board of Supervisors a recommendation that should the Board choose to approve the bus loop that the condition be added restricting overnight bus parking.

Ms. Hughes suggested also recommending a condition requiring a traffic analysis of the area.

In a unanimous roll call vote the Commission agreed to forward both recommendations to the Board of Supervisors and made the following statement:

“The Planning Commission wished to state its rejection of the use of the diagonal bus parking area for overnight parking of school busses; however, it agrees that overnight parking could be allowed in unusual or in emergency circumstances such as those involving weather stating that adjacent property owners should not have to bear the burden of having a bus parking lot during non-school hours within view of their property.”

The Planning Commission subsequently added Comprehensive Plan Goals, Strategies, and Action, Strategy #5 as reason for its denial of the bus loop expansion and overnight bus parking.

E. ZO-1-07 Zoning Ordinance Amendment – Mixed Use Ordinance

Ms. Ellen Cook presented the staff report stating that Staff has recognized the need to amend and reordain JCC Code, Chapter 24, Zoning, Article V, Districts, Division 15, Mixed Use, MU, Section 24-527, Setback Requirements, to clarify the following: when a setback is required, the conditions of when a setback can be modified and the procedure to request a modification. Ms Cook stated that the amendment is necessary to eliminate ambiguity between the terminology used in the title of the section and the terminology used in the first sentence and to permit setback waiver modification requests in Mixed Use Districts regardless of Comprehensive Plan Designation. Ms. Cook also

noted several other proposed amendments. She stated that on February 27, 2007 the Policy Committee voted to forward the recommendations to the Planning Commission.

Mr. Obadal asked if the intent of adding the word "external" to paragraph A is to totally eliminate setbacks that are interior.

Ms. Cook stated that specifying the word "external" means setbacks would be from external roads and there would be no setbacks from internal roads in a Mixed Use District.

Mr. Sowers added that Mixed Use Districts have to go through rezoning and that during either the rezoning or development plan process is when setbacks are established. He stated that this amendment allows more flexibility.

Mr. Obadal asked where that authority is given.

Mr. Sowers said the authority would be given under the section of the Ordinance being considered.

Mr. Obadal stated that the effect then would be to eliminate internal setbacks entirely.

Mr. Kennedy asked Ms. Lyttle to comment on Mr. Obadal's statement.

Ms. Lyttle asked for a moment to research the answer.

Mr. Obadal asked Ms. Cook to repeat her earlier reference to Cluster developments.

Ms. Cook stated there was an error in the memorandum and that R-4 should have been used, instead of Cluster, along with PUD in comparing Districts with large master planned communities that have flexible setbacks internal to the District.

Mr. Obadal stated his thoughts that setbacks included an interior setback.

Mr. Kennedy stated that he would entertain a motion to defer this item due to the complexity of the issues.

Mr. Obadal said that would be acceptable.

Mr. Billups asked if the application sought to exclude external setbacks and asked if that would be on a case by case basis.

Ms. Cook clarified that the setback would for roads external to the Mixed Use District.

Mr. Billups asked what would happen with a development that runs parallel to a Corridor road.

Ms. Cook stated that they would need to have the setback from that external road unless they applied for a waiver.

Mr. Billups referenced the term "Planning Director or designee" and asked what

authority a designee would have without Board approval.

Ms. Cook stated that the term "or designee" had been removed per the Policy Committee's comment.

Mr. Billups motioned to defer the application.

Ms. Jones seconded the motion.

Mr. Kennedy asked that Commissioners forward their questions and concerns to Staff to be research prior to the case being considered again.

Mr. Kennedy opened the public hearing.

Hearing no requests the public hearing was continued.

In a unanimous voice vote the application was deferred (7-0).

Mr. Fraley thanked Ms. Cook for her work on the application.

F. Z-9-06/MP-10-06 Ironbound Square Redevelopment

Mr. Sowers explained that the current plan depends upon the previously proposed Ordinance Amendment and stated that staff would like to present the application and have it considered but that final decision would have to be deferred until the April meeting.

Ms. Jones asked if the Ordinance was being changed for this case.

Mr. Sowers explained that certain aspects of the master plan would require waivers that would be permitted under the amendment.

Mr. Obadal asked if the case could proceed by waiver rather than Ordinance change.

Mr. Sowers stated that the current configuration of the master plan for this case and the Pottery case later on the agenda would require an Ordinance Amendment.

Mr. Obadal asked if the proposal could go through legislative processing and be evaluated by Ordinance requirements current at the time of site plan approval rather than the Ordinance established at the time of Master Plan approval.

Mr. Sowers said no.

Ms. Jones asked for clarification that three cases depend upon the Ordinance being changed for them to be consistent.

Mr. Sowers said that the master plans currently under consideration are not consistent with the Ordinance.

Mr. Obadal asked if a change in waiver criteria rather a setback change might be a

solution.

Mr. Sowers answered yes.

Mr. Jose Ribeiro presented the staff report stating that Mr. Rick Hanson of the James City County Office of Housing and Community Development has applied to rezone approximately 9.34 acres of land along Ironbound Road from R-2, General Residential, to MU, Mixed Use zoning district, with proffers. The development proposed with this rezoning will create up to 51 single-family affordable and mixed-income residential lots and three new streets. The properties are designated Low Density Residential on the 2003 Comprehensive Plan Land Use Map and can be further identified as Parcel Nos. (1-105), (1-104), (1-103), (1-102), (1-101), (1-99), (1-97), (1-96), (1-95), (1-94), (1-93), (1-92), (1-90), (1-89), (1-88), (1-87), (1-86), (1-85), (1-84), (1-83), (1-82), (1-81), (1-80), (1-79), (1-78), (1-77), (1-76), (1-75), (1-75A), (1-75B), (1-74), (1-73), (1-72), (1-71), (1-70), (1-69), (1-68), (1-67), (1-66), and (1-65), on JCC RE Tax Map No. (39-1). Low Density Residential areas are suitable for development with gross densities of one to four dwelling units per acre. This phase of the proposed development would have a gross density of approximately 5.4 dwelling units per acre. The gross density of the entire development will be 3.6 dwelling units per acre.

Mr. Fraley said he had difficulty reading the master plan and asked for confirmation that phase 2 has less open space than required but that taken in totality with Phase 1 and 3 the application exceeded open space requirements.

Mr. Ribeiro said that was correct.

Mr. Fraley asked for the location of the 1.32 acres of open space.

Mr. Ribeiro showed the parcel on the location map stating that it is not labeled on the plan.

Mr. Fraley said he did not notice any LID (Low Impact Design features).

Mr. Ribeiro said they are not labeled but are included on the master plan.

Mr. Fraley asked if they need to be labeled to be compliant.

Mr. Ribeiro said Staff will ask the applicant to label them.

Ms. Jones asked why LID was not proffered.

Mr. Ribeiro said they have not been proffered but are provided as part of the master plan.

Mr. Obadal stated that the plan is totally residential and asked how it fit into Mixed Use.

Mr. Ribeiro said that although there are no commercial venues the plan provides a variety of housing styles and densities and open space.

Mr. Sowers added that this proposal is phase 2 of a larger revitalization plan and that

phase 1 has a variety of different housing types such as single-family and assisted living, and office space.

Mr. Obadal state that he felt the apartment still fit in the category of residential.

Mr. Sowers stated that to some degree the proposal is similar to New Town where there are specific residential sections that include single-family, multi-family and mixed areas.

Mr. Obadal said the statement that the plan is consistent with the Mixed Use Ordinance and Comprehensive Plan is not accurate because the Ordinance would need to be amended.

Mr. Ribeiro said it is consistent with the exception of setbacks.

Mr. Obadal stated that he felt there is a provision that might come close to allowing a waiver of some sort. He said it would be worthwhile to consider in order to move the case forward.

Ms. Hughes asked if LID measures are only going to be proposed if the regional storm water basin is not used.

Mr. Ribeiro said they will remain regardless of utilization of the regional storm water basin.

Ms. Hughes asked about the rezoning of five homes where signatures were not obtained.

Mr. Sowers said that 5 of the 40 properties owners in this particular phase were unwilling to sign onto the rezoning so the Board initiated the rezoning of them.

Mr. Kennedy asked if the increase from 40 to 52 lots is a result of condemnation.

Mr. Sowers deferred to the applicant.

Mr. Fraley asked the difference between master planned items and proffered items.

Mr. Sowers stated that proffers do not give as much flexibility as something shown on the master plan. He stated that the DRC can permit changes to development plans under certain circumstances.

Mr. Fraley asked which have more legal standing.

Mr. Sowers said master plans have the ability to be more flexible.

Mr. Kennedy opened the public hearing.

Mr. Rick Hanson represented the applicant and detailed the history of the project. He stated that the County received a total of \$1,384,000 in Community Development Block grants towards the revitalization. Mr. Hanson also stated that a redevelopment concept plan

was created with community input. He stated that 39 new single family homes in addition to 5 new homes built by Habitat for Humanity and Housing Partnership will be affordable and made available to the workforce community. He also stated that the applicant will proffer that 20 of the 39 will be restricted to be sold to low and modern income households with the others being available to varying incomes in order to create a mixed income community. Mr. Hanson detailed the applicant's participation in the Earthcraft House Certification Program, a voluntary green building program.

Mr. Kennedy asked if the affordable concept was a change from original proposal.

Mr. Hanson said it was consistent.

Mr. Kennedy asked if all the homes had been expected to be affordable previously.

Mr. Hanson said it had not been specified in redevelopment plan. He said the revitalization plan designated 36 as the target for the number of affordable units. He stated that the Community Block Grant application designated 36 homes as affordable which includes Ironbound Village.

Mr. Fraley asked if the affordable homes will be spread throughout the community not isolated in one section.

Mr. Hanson answered yes and stated that all the homes will be similar in construction.

Mr. Kennedy asked if they would be rental housing.

Mr. Hanson stated that all the homes will be sold through Housing and Community Developments Housing Incentive Program which can provide financing for above the low or moderate levels.

Ms. Jones asked if the affordable homes will be available to people with higher incomes.

Mr. Hanson explained that 20 of 39 homes will be sold to families with low to moderate incomes. He stated that the other 19 may also be sold to people who would qualify as low to moderate; however the guarantee is that at least 50% will be.

Mr. Obadal asked if this is similar to a soft mortgage that would prevent resale.

Mr. Hanson stated that 20 homes are projected to sell for under \$160,000 and that all 39 sold will be sold through the affordable housing incentive program whose objective is to provide assistance primarily to first time buyers.

Mr. Kennedy informed the applicant that he was over the time limit.

Mr. Hanson completed his presentation and invited questions.

Mr. Obadal asked the project to prevent homebuyers from receiving a windfall by selling.

Mr. Hanson stated that all or a portion of the funding provided is repaid if property is sold.

Ms. Jones asked Mr. Hanson to address issue regarding residents currently living in the neighborhood.

Mr. Hanson stated within phase 2, 29 homes were acquired by Williamsburg Redevelopment and Housing Authority and 9 were retained in private ownership. He stated that of those 9 privately owned 4 signed the rezoning application and 5 did not. Mr. Hanson went on to say that of the 5, they are still in purchase negotiations with 3 and that the other 2 have chosen not to sell.

Ms. Jones stated she thought this was a matter of rezoning not purchasing of property and asked if this is part of a condemnation.

Mr. Hanson stated that 2 of the 3 properties will require the purchase of some of their property in order to construct the cul-de-sac.

Ms. Jones asked the location of those homes.

Mr. Hanson indicated the lots on a location map stating that they are negotiating the purchase of portions of the rear of the 3 properties. He stated that it was determined that one of the homes was not suitable for redevelopment so they will purchase the entire parcel.

Ms. Jones asked how much of the rear properties they are trying to purchase.

Mr. Hanson said approximately 50 feet of the rear of the properties.

Mr. Kennedy asked if the homeowners were limited to selling to the County or face condemnation.

Mr. Hanson stated that Certificates of Condemnation had been acquired for 3 properties.

Mr. Kennedy asked if they intended to seek redevelopment of the homes.

Mr. Hanson said they will redevelop the one house.

Mr. Kennedy asked if this was more of a taking than voluntary.

Mr. Hanson stated that although they were negotiating with the property owners they are required to move quickly because the redevelopment plans have a termination period.

Mr. Kennedy recalled when the original case was before the Board of Supervisors in 2002 due to condemnation, and asked if condemnation is how the applicant is creating 50 lots from the 42 existing.

Mr. Hanson said the 2002 plan did not specify the exact number of lots. He stated that the 3 lots in question are not being subdivided into additional lots. He said those will remain intact minus the portion used for the roadway.

Mr. Kennedy asked if the number of lots was an increase from the proposal in 2002.

Mr. Hanson said the 2002 proposal designated land use but did not specify the number of units.

Mr. Kennedy said he believed the number of lots was part of the proposal.

Mr. Hanson stated that the revitalization plan submitted prior to the redevelopment did include the number of lots which was proposed as 49.

Mr. Kennedy asked what percentage of James City County citizens will purchase in this development.

Mr. Hanson said priority is given to those who live or work in the County with no distinction made between the two.

Mr. Kennedy asked what percentage would be made up of people who live or work in the County.

Mr. Hanson said nearly all.

Mr. Kennedy stated that with 90% availability that would address the need for housing for people who live or work in the County. He also stated his concerns about condemnation aspects facing homeowners.

Mr. Billups asked about the racial make-up of the people property was being taking from.

Mr. Hanson said the homeowners include minorities.

Mr. Billups asked the racial composition of the 3 homeowners whose property was been taken.

Mr. Hanson stated that they are minorities. He also stated that many of the residents whose properties were purchased were investors and not minority.

Mr. Billups stated his concern with the use of taxpayer dollars to condemn and take away property from individuals to build houses for others.

Mr. Hanson stated that of the 5 that did not sign the rezoning application only 1 lot was being taking as a whole and that the others will retain some of their property. He added that portions of the rear of 2 properties were being bought and that the other 2 will retain their land.

Ms. Jones asked if the cul-de-sac could be moved down to lot 11 rather than hurt current residents.

Mr. Hanson said the house that is located on lot 13 is right on the boundary of parcel 11 which would cause a problem.

Ms. Jones asked if the problem is that a house could not be built on it.

Mr. Hanson stated that moving the street down would interfere with the house going on lot 13.

Ms. Jones asked if a house was going on lot 11.

Mr. Hanson stated if the street were moved to where lot 11 is the house would be right on the edge of lot 13.

Ms. Jones said she did not understand the rationale of taking property from homes that already exist instead of moving the street and taking property from lot 11 which does not currently exist.

Mr. Kennedy reminded Commissioners that the matter before them is the issue of rezoning and asked Commissioners' thoughts on the rezoning aspect.

Mr. Hanson said that lot 13 has a house on it and moving the road will impact that house.

Mr. Jones said the road will be next to a house regardless.

Mr. Billups noted that the lots will be approximately 5,000 sq. ft. or 50x 100 and that in order to increase the number of lots property was being taken from existing lots to create additional homes.

Mr. Horne noted that the Commissioners had not heard from the public and advised continuing with any other factual questions and deferring comments until the public has had an opportunity to speak.

Ms. Jones pointed out that the master plan Commissioners received differed from the plan being shown. She stated that the lot she identified as number 11 is actually number 12.

Mr. Fraley asked why LID was not proffered in the proposal.

Mr. Hanson said he was not aware of the need to do so and that he thought master plan notation was sufficient.

Mr. Aaron Small of AES Consulting Engineers stated that his experience has shown that if it was shown on the master plan and specifically labeled they are required to use it. He also stated their intent to do so regardless of the use of a regional storm water basin. Mr. Small said they have an alternate plan for storm water management if the basin is not adequate stating that storm water management is non-existent on site currently.

Ms. Carolyn Boyd-Tucker, 116 Carriage Road, stated that her deceased father was the original owner of the property. She stated that she did not sign the rezoning application saying they were offered and told many different things. Ms. Boyd-Tucker said she just wanted to keep what she had.

Mr. Douglas Canady, 4356 Ironbound Road, stated that although he has not received

any offers to buy his home he has had surveyors on his property without his permission. He said he was only told that he will no longer have access to his property from Ironbound Road. Mr. Canady added that the salary structure in the community will not accommodate the mortgages which he expects will be \$900 per month for the new homes. Mr. Canady also stated the impact of dust from the construction at New Town.

Mr. Obadal asked Mr. Canady if he had been offered any money for his home.

Mr. Canady said no

Mr. Obadal asked if he had been offered a trade for one of the new homes.

Mr. Canady answered no.

Mr. Collins Tucker, 116 Carriage Road, stated that two women came to his home and that he told them did not want to sell. He said they were pushy and he had to ask them to leave. Mr. Tucker stated that he is against rezoning and that the proposed road will come right by his property. Mr. Tucker also questioned how older, current residents will get along with the residents of the new homes.

Mr. William Jones, 4363 Ironbound Road, stated that he is a member of the Ironbound Square Neighborhood Association. He stated that they will do anything they can to make the neighborhood better. Mr. Jones stated that residents have expressed dissatisfaction with the widening of Ironbound Road as opposed to the rezoning itself.

Mr. James Peters, 17 Magruder, of AES Consulting Engineers stated that fronting the homes on Ironbound with rear access was desired by the community members who attended the public meetings.

Hearing no other requests to speak Mr. Kennedy continued the public hearing.

Ms. Jones stated that Ironbound Road could have been very easily widened in the other direction. She stated that she felt it unfortunate that it was widened in this manner significantly impacting families that have been there a number of years.

Mr. Fraley stated that the area does need rezoning. He stated that the manner chosen hurts people.

Mr. Billups motioned to defer the application.

Ms. Jones seconded the motion.

In a unanimous voice vote the application was deferred (7-0).

G. SUP-32-06/MP-11-06 Prime Outlets Master Plan Amendment

Ms. Kathryn Sipes presented the staff report stating that Mr. Greg Davis has applied on behalf of Prime Retail, L.P. to amend the existing master plan and special use permit to incorporate the existing Comfort Inn site into Prime Retail and to allow for the construction of an additional 49,000 square feet of retail space. The properties can be identified as JCC

RE Tax Map Nos. 3310100028, 3310100029, 3310100033A, 3310100033D, 3310100033E, 3310100033F, 3310100033G, and 3330100002. The property is zoned B-1, General Business, with proffers and is designated Community Commercial on the Comprehensive Plan Land Use Map. Lands designated Community Commercial are intended to allow general business activity in areas located within the Primary Service Area while usually having a moderate impact on nearby development.

Mr. Obadal asked the amount of impervious surface proposed.

Ms. Sipes answered 74%.

Mr. Obadal stated that the Ordinance calls for no more than 60 %.

Ms. Sipes stated that that is a current Ordinance requirement and that some of the site was constructed prior to that requirement.

Mr. Obadal stated that if it is considered a redevelopment it should meet the current Ordinance requirements.

Ms. Sipes deferred the question to Mr. Cook, Environmental Director.

Mr. Obadal restated his question and asked if the applicant received an exception.

Mr. Cook stated that a large part of the site was developed prior to the Ordinance requirement.

Mr. Obadal said that does not mean they should be over 60% in this new area which is going to be torn up and re-done anyway.

Ms. Sipes stated that the overall site will be a total of 74% impervious surface cover which includes both the new and older sections.

Mr. Obadal asked the amount of impervious cover in the new area

Mr. Cook stated that an exhibit prepared by applicant shows 73%.

Mr. Obadal stated that the last two phases were approved at 60% impervious cover and came in at over 90%

Mr. Cook said that was incorrect. He stated that they were approved at 60% and came in at 66%.

Mr. Obadal confirmed that that is 6% over.

Mr. Cook said that according to the applicant's exhibit that is correct.

Mr. Obadal asked why that occurred.

Mr. Cook deferred the question to the applicant. He stated his belief that the project was constructed according to the site plan which showed 60%.

Mr. Obadal asked if the site plan did not accurately state the amount of impervious surface cover.

Mr. Cook stated that according to the exhibits submitted that is correct.

Mr. Obadal asked if Staff checked.

Mr. Cook said Staff does not have the ability to check and relies on the certification of the professionals preparing the plan.

Mr. Obadal said the professionals are employees of the applicant.

Mr. Cook said they also have professional responsibilities as well.

Mr. Obadal asked what the parking would be for the new site if it were calculated at the stated ordinance level.

Ms. Sipes and Mr. Obadal discussed the calculation of the parking requirements based on gross square footage compared to net square footage and the Zoning Administrator's interpretation.

Ms. Sipes stated that using gross square footage 4.3 spaces per 1,000 square feet would be provided with this proposal and using net square footage 5.5 spaces per 1,000 square feet would be provided with this proposal.

Mr. Krapf asked for clarification if the issue is the amount of square footage not related to retail operations such as for storage.

Ms. Sipes stated that non-retail square footage does not contribute to the parking demand.

Mr. Obadal stated that his opinion is that the words of the Ordinance should still be followed.

Ms. Jones asked if the Ordinance allows a 20% reduction at the discretion of the Zoning Administrator.

Mr. Kennedy asked the Commissioners to reserve additional comments until the public hearing was opened.

Mr. Fraley thanked Ms. Sipes for a very well written staff report.

Ms. Hughes asked if a food court as discussed previously has been included. She also asked if provisions for off-site parking and green building techniques had been proffered. Ms. Hughes asked if LEED measures will be provided.

Ms. Sipes said the food court is included and showed the proposed location on the location map. She said no condition had been included for off-site parking and noted a letter provided by the applicant explaining measures taken during highest peak day last year, the Friday after Thanksgiving, and their verbal agreement to continue to use similar measures.

Mr. Kennedy stated that success can be measured in different ways. He stated that there was still off-site parking on the sides of the road in Chisel Run and in the parking lot where he rents space. Mr. Kennedy also asked about traffic mitigation to address traffic concerns on the night in question when the mall was open at midnight.

Ms. Sipes deferred Mr. Kennedy's question to the applicant and stated that Staff discussions determined that there was no other demand on the roads at that time so that only Prime customers were involved in the traffic congestion.

Mr. Sowers stated there are no provisions in the current application to make any changes pursuant to that issue.

Mr. Kennedy stated that emergency services needing access to homes in that area would have had difficulty. He said the proposal is an improvement over what has happened before but needs more work.

Ms. Sipes stated that traffic concerns were not expressed by other agencies such as the Fire Department. She also answered Ms. Hughes stating that the proposal does not include a condition requiring green building techniques.

Mr. Billups asked if any recommendations were made by the Fire or Police Departments concerning measures that they would like to have included in the plan.

Ms. Sipes said they had the opportunity to make comments and had not replied with any recommendations.

Mr. Billups asked if it was necessary for those agencies to make such a request when the need is obvious.

Mr. Kennedy said he heard that there were a few physical altercations at two stores where only a limited number of customers were allowed in at a time due to staffing constraints. He asked if Staff had received any similar reports.

Ms. Sipes said Staff did not receive a report from the police department that indicated those were not isolated incidents.

Ms. Hughes asked if the bio-retention areas in the previous SUP that would have been in a buffer remain.

Mr. Cook said it is no longer there. He stated that a number of bio-retention trenches are proposed in locations outside proposed buffers.

Ms. Hughes asked if he had a chance to study and approve the proposed rain tanks.

Mr. Cook said he had researched the products and saw no reason to deny them. He stated his only concern is that pre-treatment of the water is critical so that he is requiring at least two pre-treatment features.

Ms. Hughes asked if the funds being provided for the clean-up in Chisel Run were

adequate.

Mr. Cook stated that the amount is based on the length of stream to be restored.

Ms. Hughes asked if Mr. Cook had any reservations about the pervious concrete being proposed.

Mr. Cook stated that he is not very familiar with the product. He stated that based on his research he determined that it would be appropriate in the areas proposed.

Mr. Obadal asked if the light purple areas shown on the map are all pervious cover for the most part.

Mr. Cook showed the three primary locations of pervious pavement.

Mr. Obadal said he was not familiar with the third area.

Mr. Cook said the third location proposes that drive aisles between the parking spaces will be normal pavement while the parking spaces themselves will be pervious.

Mr. Obadal asked if the feature will run the full length of the L-shaped building in the area.

Mr. Cook answered yes and showed the entire area on the map.

Mr. Obadal stated that he knew Mr. Cook worked a long time on this proposal and commended him on the final product.

Mr. Kennedy opened the public hearing.

Mr. Gregory Davis with Kaufman and Canoles represented that applicant and presented the proposal. Mr. Davis stated that the plan was innovative and progressive in addressing impacts and the Commissioners' previously stated concerns. He stated that the most notable features are the addition of promenades in the largest parking lots for pedestrian walkability that will include pervious concrete for aesthetics and environmental sensitivity. Mr. Davis noted that Commissioners received a demonstration in the lobby of how the system works. He also highlighted other features of the plan including overall reduction in the percentage of the project that will be impervious, improvements to the BMP along the road, the use of LID techniques, the SUP condition providing \$200,000 for stream restoration which represents the total cost of restoration not just Prime's share, LEED certification, and improved landscaping along the Community Character Corridor to include Ewell Station and the Comfort Inn sites, and the provision of approximately 5.95 parking spaces per 1,000 square feet of retail. Mr. Davis presented the applicants Peak Day Parking Plan and stated that they are amenable to the addition of a condition requiring LEED certification.

Ms. Hughes stated she was pleased with a lot of the changes such as LID, pervious pavement, promenades, interconnectivity within facility, and the food court. She stated her concerns that even with off-site parking they are still impacting residents of Chisel Run and asked how the applicant proposed to address that.

Mr. Davis stated that they only had anecdotal evidence of the problems. He stated they have increased the amount of parking with each application. Mr. Davis stated that the applicant proposes to address parking concerns with an off-site parking plan, use of police officers, a signage plan included in the SUP conditions, and the possible closing of some entrances including those nearest neighborhoods. He added that they cannot add an SUP condition for the off-site parking plan because the plan relies on continued permission of the owners of those off-site facilities.

Mr. Fraley asked about internal signage discussed previously and asked if there are plans to provide additional signage.

Mr. Davis answered yes. He showed the areas of proposed internal signage and stated that the signage is subject to Staff approval.

Mr. Billups asked if all store entrances are internal.

Mr. Davis said yes they are internal to the site and not adjacent to the road.

Mr. Obadal asked if the area in front of the Food Lion will be repaved.

Mr. Davis said some areas will be replaced with pervious pavement.

Mr. Kennedy stated his concern that security be tightened with convenience facilities provided and monitoring of off-site parking.

Mr. Davis said that during the midnight opening on Black Friday the left lane of Richmond Road was open for emergency vehicles.

Mr. Kennedy read a statement from Ms. Sarah Kadec, of James City County Concerned Citizens group commending the applicant on the planned environmental features and proposed stream restoration. She stated that the impervious surface cover is still excessive and urged the use of water reuse systems and green roof technology. Ms. Kadec recommended approval.

Ms. Diana Luzinski, 110 Alwoodley, commended the Commissioners concerns with the lack of adequate landscaping proposed by the Williamsburg Pottery Factory. She expressed the importance of the landscaping along Richmond Road and stated that clear cutting contributes to water problems and destroys the beauty.

Mr. Doug Gebhardt of the James City County Economic Development Authority stated that Prime Outlets represents the eighth largest tax payer in the County. He stated that the planned improvements, increase in sales tax revenue, and architectural unification of the Corridor are positives for the County. Mr. Gebhardt stated their support of the proposal.

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

Mr. Fraley stated his pleasure with the environmental features and traffic mitigations measures proposed by the plan. He also thanked Ready-Mix representatives for their work on the proposal.

Ms. Jones noted the positive fiscal impacts. She said she will support the project.

Mr. Obadal congratulated the applicant on a superb job.

Ms. Hughes encouraged more applicants to come forward early in their design in order to generate better solutions early in the process. She stated that the proposal is the poster child for hard work by Staff and the applicant.

Mr. Billups thanked Ms. Sipes for her work on the project as well as the applicant and other County Staff. He thanked Ready-Mix for their osmosis demonstration.

Mr. Fraley motioned to approve the application as amended to include a condition requiring LEED certification.

Mr. Obadal seconded the motion.

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

H. Z-8-06/SUP-36-06/MP-9-06 Williamsburg Pottery Factory

Mr. Kennedy stated that the applicant has requested deferral until the April 4, 2007 meeting.

Mr. Sowers stated that Staff concurred.

Mr. Kennedy opened the public hearing

Hearing no requests the public hearing was continued.

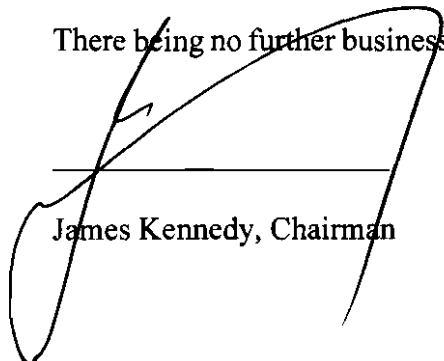
In a unanimous voice vote the application was deferred (7-0).

7. PLANNING DIRECTOR'S REPORT

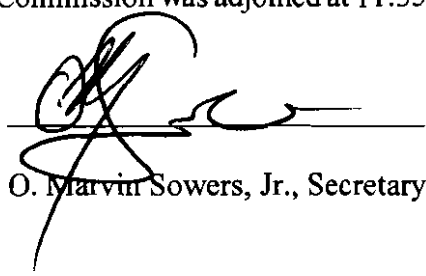
Mr. Sowers presented the report in the Commissioners' packet.

8. ADJOURNMENT

There being no further business the Planning Commission was adjourned at 11:35 p.m.



James Kennedy, Chairman



O. Marvin Sowers, Jr., Secretary