

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE SECOND DAY OF MAY, 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
Rich Krapf

Staff Present:

Marvin Sowers, Planning Director
Adam Kinsman, Assistant County Attorney
David German, Planner
Jose Ribeiro, Planner
Jason Purse, Planner
William Cain, Environmental Engineer
Christy Parrish, Administrative Services
Coordinator

Absent:

Jim Kennedy

2. PUBLIC COMMENT

Ms. Jones opened the public comment period.

Hearing no requests the public comment period was closed.

3. MINUTES

A. March 7, 2007 Regular Meeting

Mr. Fraley motioned to approve the minutes.

Mr. Krapf seconded the motion.

In a unanimous voice vote the minutes of the April 4, 2007 regular meeting were approved (6-0). (Kennedy Absent)

4. Development Review Committee (DRC) Report

Ms. Jones presented the report stating that the DRC met on April 25, 2007. She stated that SP-124-06 Weatherly at White Hall was deferred to verify reference points and for

environmental review. Ms. Jones said a special meeting will be held on May 16 at 8:30 a.m. in the Conference of Building A in the government complex to hear the case. Ms. Jones also stated that C-31-07 was preliminarily approved pending agency comments.

Mr. Fraley motioned to approve the report.

Mr. Hughes seconded the motion.

In a unanimous voice vote, the DRC report was approved.

5. PUBLIC HEARINGS

A. SUP-12-07 Verizon Co-location at Brick Bat Road

Ms. Jones stated that the applicant has requested deferral until the June Planning Commission meeting.

Mr. Sowers stated that staff concurred with the request.

Ms. Jones opened the public hearing.

Hearing no request the public hearing was continued to the June 6 meeting.

B. SUP-1-07 Stat Restoration Services

Mr. Jason Purse presented that staff report stating that Mr. Mark Kaisand, on behalf of Powhatan Springs LLC, has applied for a Special Use Permit (SUP) to allow for business, governmental, and professional offices, on approximately 2.13 acres of land, on a parcel zoned R-8, Rural Residential. The property is located at 133 Powhatan Springs Road. The property can further be identified as Parcel No. (1-9) on the JCC Tax Map No. (46-2). The site is shown on the 2003 Comprehensive Plan Land Use Map as Low Density Residential. Recommended uses for Low Density Residential land include very limited commercial establishments, churches, single family homes, duplexes, and cluster housing with a recommended gross density of 1 unit per acre up to 4 units per acre in developments that offer particular public benefits. Staff recommended approval.

Mr. Obadal asked why Mr. Purse stated that this case does not represent a precedent. He stated that each SUP is unique and therefore constitutes a precedent.

Mr. Purse stated that he was referring to the inconsistency between the Comprehensive Plan and Land Use.

Mr. Obadal asked if Staff could determine if the underground gas tanks had leaked and if so if it has been cleaned up.

Mr. Purse stated that Staff was not aware of a leak and deferred that question to the applicant.

Ms. Hughes asked at what point during the approval of the previous SUP was the Five Forks Study approved.

Mr. Purse said it was approved in 2005 after the last SUP was approved by the Board of Supervisors.

Mr. Sowers agreed.

Ms. Hughes asked if there is any other way to require the applicant to clean up to site.

Mr. Purse stated that outdoor storage is a permitted use and that most of the items currently being stored on the site could remain if the SUP is not approved. He stated that the proposed fencing and enhanced landscaping would not be required.

Mr. Obadal asked how and what period of time did the site become non-conforming.

Mr. Purse said he could research the answer.

Mr. Obadal stated that the fact that it has been non-conforming for a long period of time does not mean the use is non-conforming.

Mr. Purse stated his belief that when the zoning ordinance changed the use was in existence on the site.

Mr. Sowers said Staff could research the specifics of this site. He stated that generally a change in the Zoning Ordinance changes use requirements so that something previously permitted under the use category changes and it reverts to a use that is no longer permitted. Mr. Sowers added that the current use may predate the Zoning Ordinance which was adopted in 1969 and stated that the applicant may have more information.

Mr. Obadal asked when the prohibition against outdoor storage came into effect.

Mr. Sowers stated that the ability to store things inside or outside is part of the Zoning Ordinance and that he suspects it became non-conforming with adoption of the Zoning Ordinance or a change in the use category that occurred with a Zoning Ordinance amendment.

Mr. Obadal asked if it includes specifically this prohibition to the use of land. He stated that the non-conformity may not apply to the Ordinance for the Zoning District.

Mr. Sowers stated that a use could be non-conforming due to the use itself or due to characteristics of that use such as outside storage or setbacks.

Mr. Billups stated his concern with Staff's recommendation for approval despite the number of inconsistencies indicated in the staff report. He asked if there are overriding circumstances leading to the recommendation.

Mr. Purse stated that the non-conforming use has resulted in negative conditions on the site. He stated the proposal will make the site more visually attractive for neighbors.

Mr. Billups asked if there are other benefits in addition to the visual aesthetics. He said the non-conforming use prohibits the proposed new buildings.

Mr. Purse stated that the non-conforming use pertains to the outdoor storage. He stated that other benefits include the removal of the underground fuel tanks.

Mr. Billups asked if that is significant to override the Ordinance.

Mr. Purse stated this will bring the site into conformance. He stated the applicant desires to locate his business on the site.

Mr. Obadal stated that there are previous conditions on the site.

Mr. Purse explained that current proposed conditions are the same as those that were attached to previously approved SUPs and have expired.

Mr. Obadal asked if this applicant was the parent company for whom they were approved.

Mr. Purse confirmed.

Mr. Obadal asked why they were not enforced.

Mr. Purse explained that the site plan was not approved prior to expiration of the SUP.

Mr. Obadal said that was two years ago and in the meantime the situation has gotten worse.

Mr. Purse said the site plan was not approved that would have allowed the construction for the buildings because the applicant was waiting for approval of the drainage easements for the regional storm water management facility.

Mr. Obadal stated his concern that if the situation is bad enough long enough you can be cleansed of the whole thing by the granting of the SUP.

Ms. Jones said she understood Mr. Obadal's concerns and suggested that the applicant might be able to address some of them.

Ms. Jones asked Mr. Purse for more detail on the issue of storm water management.

Mr. Purse explained that after the SUP was approved and the site plan turned in it was determined that the applicant needed an adequate off-site receiving channel for the storm water. He stated that the rezoning for the Villas at Five Forks required the granting of the necessary easements. Mr. Purse said the development plans for that project had to be approved first so that the easement could be recorded. He added that the site plan received preliminary approval by the DRC in 2005 but could not be granted final approval which would have allowed construction of the building, landscaping, and fencing.

Ms. Hughes stated her concerns about the amount of impervious surface cover and lack of LID (Low Impact Design) and Better Site Design features all of which are recommended in the Five Forks Area Study.

Mr. Woolson stated that the plan was approved prior to the establishment of the Five Forks Study Guidelines and the Better Site Design Principles. He stated that Staff did not believe it to be fair to require those items when the delay in obtaining drainage easement acquisitions was not the fault of the applicant. Mr. Woolson stated that with regard to impervious surface cover the Villas at Five Forks drainage study accounted for approximately 60% of this sites drainage and incorporated it into the design of that basin. He stated that no opportunity for LID infiltration exists due to soil conditions.

Ms. Jones opened the public hearing.

Mr. Mark Kaisand stated that he purchased the property and business five years ago after the original SUP had been approved. He said has spent approximately \$ 40,000 removing the underground gas tanks, which had not leaked, and cleaning the site. Mr. Kaisand stated that the property was in worse condition when he purchased it and that he has met with neighbors who approve of the plan. He stated that the delay was due to staff not wanting two storm water basins in the same area and requiring a regional storm water basin. Mr. Kaisand stated that by the time this was done his SUP has expired. He also added that in addition to additional filing fees he has had to rent space for his business in York County. Mr. Kaisand also stated that the site is being used for trailer storage and container storage that will be used for the business.

Hearing no other requests the public hearing was closed.

Mr. Krapf noted the lengthy history of the project and the applicant's frustration with the SUP expiring. He stated that the proposed conditions will significantly enhance property and neighborhood. Mr. Krapf stated that due to neighborhood support and bringing the site into conformance he is inclined to recommend approval.

Mr. Billups stated that the Ordinance does not allow extension of a non-conforming use and noted the building being erected on the site.

Mr. Purse stated that the non-conformity relates to the outdoor storage and that the amount of outdoor storage is not increasing.

Mr. Obadal said that is the only thing they are using the site for and asked if they can use the site for their business.

Mr. Purse said they can use the site for their business, outdoor storage and other uses permitted in the R-8 Zoning District.

Mr. Obadal asked if that is as of now.

Mr. Purse said yes.

Mr. Sowers stated the non-conformity relates specifically to the outdoor storage. He stated that that aspect can continue regardless of the approval of the SUP. S

Mr. Billups stated that the issue is inconsistency with the Comprehensive Plan. He stated his concern that he cannot find anything of substance in the staff report to support the recommendation for approval.

Hearing a request Ms. Jones reopened the public hearing.

Mr. Kaisand stated that the original use over the past forty years has been outdoor storage of heavy equipment. He stated that there are other businesses on the street that are non-conforming. Mr. Kaisand stated that the intent is to continue the current amount of outside storage currently being used for his business. He stated that a warehouse will be added and all but one other building has been demolished.

Mr. Obadal stated that the applicant has owned the property since 2002 and asked if he has been working with the County to clean the site.

Mr. Kaisand said there are no regulations requiring the clean up. He said he is doing so on his own initiative.

Hearing no other requests the public hearing was closed.

Mr. Fraley stated that the previous application was approved and that the applicant has endured substantial delay and expense in order to address needed rework which was noted during DRC review. He noted the neighborhood support and said he will approve the proposal.

Mr. Obadal stated his support stating that the applicant has given a good faith effort to improve the site. He stated that although he shared Mr. Billups' concerns he felt the proposal was overall the best benefit to the County.

Mr. Billups stated his concerns with the presentation. He stated that an impartial review of the staff report would hold the applicant hostage to something he is not responsible for. Mr. Billups stated that he would like more concrete information as opposed to value judgments to support approval of a case with so many Comprehensive Plan inconsistencies. He stated his support.

Ms. Jones stated that this was a difficult situation. She stated that the proposal was previously approved but was held up for environmental improvements. She stated her support.

Ms. Hughes indicated her agreement with the other Commissioners.

Mr. Fraley motioned to recommend approval of the application.

Mr. Krapf seconded the motion.

In a unanimous roll call vote the application was approved (6-0). AYE: Obadal, Fraley, Hughes, Billups, Krapf, Jones (6); NAY: (0). (Kennedy absent)

C. SUP-13-07 Denley Brown Contractor's Warehouse

Mr. Jason Purse presented the staff report stating that Mr. Tim Trant of Kaufman and Canoles, on behalf of Denley Brown, has applied for a Special Use Permit to allow for a contractors office and warehouse, on approximately 8.074 acres of land, on a parcel zoned A-1, General Agricultural. The property is located at 272 Peach Street. The property can further be identified as JCC Tax Map No. 2410100015a. The site is shown on the 2003 Comprehensive Plan Land Use Map as Rural Lands. Recommended uses on property designated for Rural Lands 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. Staff recommended approval of the application and attached conditions.

Mr. Obadal asked if the intent is to allow flexibility to an Ordinance so that any inequalities that are seen in practice can be corrected.

Mr. Purse said yes.

Mr. Obadal stated that the mitigation called for under the under the Comprehensive Plan has to be a full mitigation from whatever the applicant seeks to mitigate from.

Mr. Purse agreed.

Ms. Jones opened the public hearing.

Mr. Tim Trant with Kaufman and Canoles represented the applicant giving an overview of the proposal. He stated that Mr. Brown had applied for a building permit for the warehouse and was not aware of the need to apply for a special use permit until denial of his business license and home occupation applications. Mr. Trant stated that the warehouse will be used to store items associated with his business such as concrete blankets, forms, and equipment. He also stated that the 15 employees take the 6 pick-ups home with them and will visit the site infrequently and that no business will be conducted from the home other than storage and an administrative office. Mr. Trant stated that Mr. Brown has been responsible for maintenance of the shared road access with financial contributions from neighbors whom he has met with concerning his proposal.

Mr. Fraley asked if the traffic would increase with approval of the application.

Mr. Trant stated that the applicant is adamant that if the business is expanded he would move the business to another site. He stated that the warehouse will accommodate only a limited amount of storage.

Mr. Obadal stated his concerns about maintenance of the road and the possibility of manufacturing taking place on the property.

Mr. Trant stated that private restrictions require proportional shared maintenance of the driveway with an all-weather surface. He also stated that it is his belief that manufacturing is not a permitted use in the A-1 Zoning District and that approval of the SUP limits the uses on the property.

Mr. Obadal stated that manufacturing and power equipment can be used on the site without restrictions.

Mr. Trant stated that while there are no restrictions on power equipment in practice there is no concrete manufacturing on the site

Ms. Jones asked Mr. Purse to address Mr. Obadal's concern regarding manufacturing.

Mr. Purse stated that the SUP request is for a contractor's office and warehouse; manufacturing would not be a permitted use on the site.

Mr. Sowers stated that regarding the road maintenance the Subdivision Ordinance requires the road to be maintained in an all-weather fashion meaning that at the very least it must be graveled.

Ms. Hughes stated that when loaded with equipment the applicant's vehicles will be heavier resulting in more wear and tear than other residents.

Mr. Trant said that the conditions that currently exist require Mr. Brown to contribute proportionally to the maintenance of the road; therefore if his use is greater his share will be larger. Mr. Trant stated that this is the current practice.

Ms. Carolyn Amos, 220 and 250 Peach Street, stated that she has no concerns with the application. She stated that there is little traffic and that the applicant maintains the road.

Ms. Sherry Matheney, 276 Peach Street, stated that she has no concerns with the business. She stated that rarely is there any traffic or equipment in relation to the operation. Ms. Matheney also said that on the last two occasions the applicant has purchased the material for the road and her family helped lay it.

Ms. Laura Kirkpatrick stated that her family contributes to the maintenance of the road and she has no concerns with the application. She also stated that she has had no problems with the employees and that the warehouse is well screened.

Mr. James Howard, 8603 Richmond Road, stated that he owns 15 acres in the area and pays the property taxes for the road because it is part of his property. He stated that he is concerned about the future impacts of the proposal.

Ms. Nancy Howard added that she and Mr. Howard will be building a home on their property and are concerned about property values due to the influx of heavier traffic. She also stated that neighbors' complaints that they do not contribute to road maintenance is misleading because she and Mr. Howard pay the taxes for the land containing road.

Ms. Jones asked Mr. Purse to address the easement issue.

Mr. Purse stated that the access easement is a private agreement between the owners and no documents were found limiting access trips or types of uses.

Mr. Obadal asked if the agreement was in existence when the Howards' purchased their property.

Mrs. Howard said they purchased their property in August 1999 and that they had attempted to have restrictions added.

Mr. Obadal asked the purpose of the easement.

Mr. Purse said it is to allow access to the parcels.

Ms. Jones asked Mr. Trant to address the issue.

Mr. Trant stated that the easement was created as part of a family subdivision in 1987.

Mr. Obadal asked for confirmation that the Howards purchased their property after that date.

Mr. Trant said that was correct. He stated that the applicant notified the Howards at their address of record about the neighborhood meeting and had not heard from them before tonight.

Mr. Obadal asked the definition of access under the law.

Mr. Trant stated that it is for ingress and egress.

Mr. Obadal asked if there is any inherent limitation.

Mr. Trant said no.

Mr. Obadal asked if the applicant could run a fleet of trucks from the parcel on the access easement.

Mr. Trant stated that ingress and egress to and from the parcel is unrestricted.

Mr. Billups said the owner has a right to have customers visit his business.

Mr. Trant said the applicant's home occupation license does not allow retail customers to visit the site.

Mr. Billups questioned the restriction.

Mr. Trant said it would be a zoning violation. He stated that the SUP allows for a storage facility only.

Mr. Billups asked if the commercial aspect has any bearing on the ingress and egress issue.

Mr. Trant stated that the ingress and egress limitations are private land use agreements between the owners' of the benefited parcels with no restrictions in the chain of title on ingress and egress to the various properties.

Mr. Billups stated that there have been class action cases involving private establishments on private property concerning the right to enter the property to conduct business.

Ms. Jones asked Mr. Kinsman about the legal impact of the easement on the application.

Mr. Kinsman stated that Staff looked at the documents and concluded that the easement was a private land use matter with respect to who can use the road, who owns it, and the types of use. He stated that the Commission may consider the adequacy of the road and can place conditions limiting of the amount of traffic if they desire.

Mr. Obadal asked if research had been done to determine if ingress and egress could be limited to the owners of the parcels to the exclusion of their agents.

Mr. Kinsman stated that the documents show the easement on the plat as a private matter so that no research was done to determine whether it is limiting in any fashion. He stated that the applicant has stated his belief that they can use it and that other homeowners' can engage a private suit to protect their interests if they believe the applicant to be overstepping his ability.

Mr. Obadal stated that the Commission can limit the number of trips. He also said the applicant can be questioned about his expectations to see an agreement reached with the owners of road.

Mr. Kinsman stated the Commission can consider the impact of the use on neighbors and can draft a condition limiting the amount of traffic to an amount they find acceptable.

Mr. Sowers said the current conditions attached to the proposal indirectly limit traffic by limiting the business in terms of the size of the building, and the amount of storage and parking. He added that the Commission can add other more direct conditions.

Mr. Obadal said he is still concerned about the number of trips.

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

Mr. Fraley said the applicant has stated that he does not anticipate more than ten additional vehicle trips per day as part of the business. He suggested that that figure can be used as a basis for an additional condition.

Ms. Jones said she is comfortable with the current conditions and amount of oversight.

Ms. Hughes stated her concern about access from a private road. She stated that according to the Comprehensive Plan businesses should be located, if in a rural area, on a public road. Ms. Hughes said she is not comfortable approving a proposal that impacts parties that do not approve where that party would be responsible to mitigate the situation and assume legal fees. She stated her support for limiting the number of vehicles if the parties could agree.

Mr. Obadal asked if the applicant could request an increase in the numbers trips if his business expands and the Commission has set a limit on the number of trips.

Mr. Kinsman said he could apply for an amendment to the SUP.

Mr. Fraley said the applicant has stated that this is his home and that he would move the business elsewhere if it expanded.

Mr. Obadal asked if the applicant would be amenable to such a condition.

Ms. Jones re-opened the public hearing.

Mr. Trant stated that the applicant committed to a number of trips generated but had not perceived a condition limiting the number. He requested a recommendation for approval with an indication for the applicant to work with staff to develop the number of trips before the application is considered by the Board of Supervisors.

Mr. Fraley asked if the applicant is amenable to working with the other property owners.

Mr. Trant answered yes.

Ms. Hughes stated her approval as long as all parties could agree.

Ms Jones asked Mr. Sowers the procedure for adding the recommendation.

Mr. Sowers clarified that the Commission would be adding a recommendation as opposed to a condition so that staff could craft an SUP condition at a later time.

Mr. Obadal stated his agreement.

Mr. Fraley asked for the Commissioners' agreement to request the applicant work with staff and property owners to craft a more direct SUP condition.

The Commissioners stated their agreement. Ms. Hughes stated her concerns should the parties not come to an agreement.

Mr. Fraley motioned to approve the application with the appropriate recommendation. He also confirmed with Mr. Sowers that if there is no agreement between parties and no condition is added then the final decisions rests with the Board of Supervisors who have heard the Commission's recommendations.

Mr. Kinsman confirmed that the Commission would be recommending approval of the SUP and attached conditions and with a separate recommendation that the applicant work with the other owners and staff to draft a more direct condition. He added that if there is no agreement between the parties and therefore no condition then the Planning Commissions would still be recommending approval by the Board of Supervisors of the SUP and currently attached conditions.

Ms. Hughes expressed her desire that the wording of the recommendations be included in the packet that the Board receives so that they are aware of the concerns.

Mr. Krapf seconded the motion.

Mr. Billups asked if the owners would be seeking agreement on all of the conditions currently attached or only the traffic issue.

Ms. Jones stated that the recommendation is only an amenable traffic level.

Mr. Obadal stated that the principals who must agree are the ones whose property the road runs through.

Ms. Jones said that would be passed on with the recommendation to the Board of Supervisors.

The Commissions discussed who would need to agree.

Mr. Sowers stated that if the parties are unable to reach an agreement then the recommended condition is no longer applicable.

In a unanimous roll call vote the Planning Commission recommended approval of the application and attached conditions with a recommendation concerning traffic (6-0). AYE: Obadal, Fraley, Hughes, Billups, Krapf, Jones (6); NAY: (0). (Kennedy absent)

Ms. Jones requested a 5 minute break.

D. Z-10-06/MP-12-06/SUP-37-06 The Candle Factory

Mr. Jose Ribeiro presented the staff report stating that Mr. Vernon M. Geddy, III has applied rezone approximately 64.45 acres of land from A-1, General Agricultural District and M-1, Limited Business/Industrial District, to MU, Mixed Use zoning district, with proffers. The development proposed with this rezoning application will allow the construction of up to 219 residential units and up to 18,900 square feet of commercial uses. The properties are located at 7551, and 7567, Richmond Road and can be further identified as Parcel Nos. (11-1D), and (11-1E), on JCC RE Tax Map No. (23-2). Mr. Ribeiro also stated that the applicant requests a special use permit to allow the construction of two mixed use, commercial buildings totaling 45,000 square feet on property located at 7521 Richmond Road and further identified as Parcel No. (11-1C) on JCC Tax Map RE No. (23-2). The properties are designated Low Density Residential, Mixed Use and Limited Industry on the

Comprehensive Plan Land Use Map. Low Density Residential areas are suitable for development with gross densities of one to four dwelling units per acre. Mixed Use areas are centers within the Primary Service Area (PSA) where higher density development, redevelopment, and/or a broader spectrum of land uses are encouraged. Limited Industry areas are centers within the PSA for warehousing, office, service industries, light manufacturing plants, and public facilities that have moderate impacts on the surrounding areas. Staff recommended denial of the application.

Mr. Sowers stated that the County's traffic consultant from Kimley-Horn and Associates is present.

Mr. Fraley commended Mr. Ribeiro for his work on the staff report. He stated that the area designated mixed use where Staff indicates a concern with density is at the lower end of the density recommendations. Mr. Fraley stated his concern that the residential component should be secondary and that is not the case with this proposal. He also added that regarding the limited industry portion of the site the Economic Development Authority (EDA) has determined that the area is probably not useful given its physical features and surrounding land uses.

Mr. Obadal stated his concern that the Commission is being asked to address an application that is based upon a proposed amendment to the Mixed Use Ordinance. He asked Mr. Kinsman's opinion about a decision based upon a proposed Ordinance.

Mr. Fraley explained that the Planning Commission has forwarded a recommendation for an Ordinance Amendment to the Board of Supervisors that the Board will hear at their next meeting.

Mr. Kinsman stated that if the Board of Supervisors did not approve the amendment and this application was approved then any affected items would have to be changed.

Mr. Obadal suggested deferring the case until the next Planning Commission meeting.

Mr. Kinsman deferred to Staff as to what changes would have to be made pursuant to those proposed amendments to the Mixed Use Ordinance not being approved.

Mr. Obadal said one change is that setbacks would be required. He said the case should be deferred until the next meeting by which time the Board of Supervisors will have acted on the Ordinance Amendment.

Ms. Jones said the applicant has requested setback reductions. She stated that should the Ordinance Amendment not be approved there are still ways that the existing Ordinance can be applied to this case.

Mr. Kinsman conferred with the applicant and stated that if the case is approved by both Planning Commission and the Board of Supervisors and the proposed amendment is not then it is incumbent on the applicant to comply with the Ordinance as it stands. Mr. Kinsman also indicated that further clarity will be gained when the applicant addresses the Commission.

Ms. Jones opened the public hearing.

Mr. Vernon M. Geddy, III represented the applicant giving an overview of the proposal. Mr. Geddy stated the applicant's belief that the light industrial designation was added to the parcel pursuant to an expectation that there would be a connector route road between Route 60 and Centerville Road. He stated that that designation failed to be removed when the road was deleted from the Comprehensive Plan. Mr. Geddy also compared that proposal to other mixed use projects with respect to the ratio of residential to business uses. He stated the public benefits of the proposal include affordable and mixed costing housing, unusual environmental protections, and open space design. Mr. Geddy requested deferral until the next Planning Commission meeting in order to address outstanding issues.

Ms. Jones stated her concern about commenting on cases when the applicant is requesting a deferral.

Mr. Obadal commended the applicant on the presentation and stated his support for the deferral request. He also stated his concerns relative to environmental and density issues. He asked Mr. Cain to comment on the run-off from the western side of the property.

Mr. William Cain confirmed that Mr. Obadal was referring to the southeastern edge of the site. He stated that staff would have to address that at the development plan stage.

Mr. Obadal said the applicant would have to reduce number of single family houses if a swell were installed.

Mr. Cain said it may be possible to install a swell and maintain the number of houses. He said whether or not that can be accomplished would have to be evaluated when the site plan is submitted.

Mr. Obadal asked if the master plan is binding.

Mr. Cain stated that the master plan would have to comply with the County's 10-point system and feasibility of the BMP (Best Management Pond) locations. He stated that additional components such as adequacies of channels and discharge locations and the area of concern Mr. Obadal pointed to would be reviewed with the site plan.

Mr. Geddy added that the storm water plan is conceptual at the rezoning stage. He stated that they have included a proffer requiring approval of a detailed plan by the Environmental Division before the site plan can be submitted.

Mr. Obadal stated that if the Mixed Use Ordinance is amended by the Board of Supervisors the applicant can increase the number of townhouses and reduce the number of single families and still maintain the same density.

Mr. Geddy said that was not correct. He stated that there are specific land uses for each of the areas.

Mr. Fraley pointed out that the site plan would have to be approved by the DRC.

Ms. Jones added that the DRC would evaluate the site plan against the master plan.

Mr. Obadal said DRC approval would not be required if the Board approves the Ordinance amendment.

Mr. Fraley stated that changing the location of the houses would be approved by the DRC and setback concerns would be approved by the Board.

Mr. Sowers agreed with Mr. Fraley that the location of the housing is very specific and that they cannot be commingled under this current master plan.

Mr. Obadal confirmed that they will have an opportunity to discuss their concerns further at the next meeting.

Ms. Jones said yes and asked members to forward comments in the interim to the appropriate parties.

Mr. Fraley stated the role of the EDA and asked the applicant about the lack of proffers for a soft second mortgage. He asked the applicant to consider including such a provision.

Mr. Geddy said the applicant will consider and explained their reluctance to do so since they are already proffering affordability. He said the program no longer allows the developer a charitable deduction and represents a straight lose.

Mr. Fraley suggested enhancing the proffers to include specific sustainable building standards.

Ms. Hughes asked if the 19.35 acres of developable area includes the RPA (Resource Protection Area) buffers.

Mr. James Peters explained how the non-developable area was calculated.

Ms. Hughes expressed her concern with claiming an open space design concept when the area in question must be preserved by law. She stated that the applicant should not get credit for that. She stated that she is pleased with the LID (Low Impact Design) features and the 25 foot setback from the RPA buffer. Ms. Hughes also asked the amount of impermeable surface.

Mr. Geddy said 31%.

Mr. Fraley asked with respect to the low density residential areas if any lot lines are on steep slopes.

Mr. Geddy said no. He stated that any steep slopes contiguous to an RPA have been avoided and that one or two lots were lost due to that.

Ms. Linda Rice, 2394 Forge Road, represented Friends of Forge Road in Toano and referred to a letter submitted to the Commission stating the group's concerns about rezoning without substantial public benefit, inadequate proffers, overall fiscal impacts of approved development in the area that is yet to be built, environmental impacts, lack of connectivity, and lack of specificity about green building techniques. Ms. Rice also stated that the case information was not able available for public review until Monday giving little time to prepare for the meeting.

Mr. Wayne Nunn, 238 Loch Haven, stated that this is one of better plans he has ever seen. He stated that the Limited Industrial Comprehensive Plan Designation on this parcel was created in 1990 and was dependent on a Route 60 Bypass that was never installed and therefore should not dictate how the property is developed today. Mr. Nunn also stated that a farming operation in A-1 is not feasible because one cannot make a living farming in James City County.

Mr. Gerald Johnson, 4513 Wimbledon Way, represented James City County Concerned Citizens and asked if any on-site investigation was conducted. He stated that environmental studies occur after the proposal is approved and spoke about the environmental issues such as inadequacy of proffers, increase in pervious area, and adequacies of the BMPs. Mr. Johnson supported the request for deferral.

Mr. Timothy Johnston, 610 Colonial Trail, stated his positive experience with the applicant. He expressed his concerns with the Limited Industrial designation of the parcel stating that as an adjacent owner he would not like to see that use for the property. Mr. Johnston stated that the Comprehensive Plan is only a guideline.

Mr. John Wilson, 6304 Glen Wilton Lane, stated that he is a commercial and residential real estate broker whose office is located in this same corridor. He stated that the Limited Industry designation predates the current growth of the area.

Mr. Jeff Barrow, stated that he will be doing some of the architectural work on the project. He stated that his office is located in area. Mr. Barrow said he has been involved with recent Comprehensive Plan updated and thought that the industrial designation had been the result of the previous owner's vision that did not take. He also stated that during the two community meetings a lot of interest was expressed in the project as presented and not in industrial use.

Mr. John Speegle, 206 Chair Rail Court, stated that he attended the community meetings and was impressed with the proposal and response from citizens. He also stated his positive experiences with the applicant.

Ms. Kay Kelly, 302 Farmville Lane, stated her support of the proposal. She stated that all of the feedback from the communities was positive.

Ms. Jones notified Commissioners that the County's traffic consultant may not be available at the next meeting and advised addressing any specific traffic concerns tonight if possible.

Mr. Sowers added that any traffic concerns could be forwarded to the consultant after the meeting if necessary.

Hearing no other requests to speak the public hearing was continued to the June 6, 2007 meeting.

Ms. Jones stated her support for the phasing of the project, environmental features and the affordability. She stated concerns relative to traffic, significant inconsistencies with the Comprehensive Plan, and significant impacts on schools. Ms. Jones also suggested that a soft second mortgage be proffered and that the Community Character Corridor Buffer be returned the 50 feet.

Mr. Krapf stated his concerns with the plan's inconsistency with the Comprehensive Plan. He stated that a previously mentioned case, Charlie's Antiques, was different in that it offered unusual public benefit. He also stated that 189 of 219 units will still be at market price and that in mixed use areas the Comprehensive Plan calls for residential uses to be secondary in nature. Mr. Krapf agreed with Ms. Hughes that much open space is developed and also recommended a cap on the maximum number of residential units to be constructed in any one year as well as a baseline study of the Yarmouth Creek erosion.

Ms. Hughes expressed concerns that the number of residential units proposed is excessive, that she would like to see more open space if the applicant is claiming an open

space design, that the project will increase traffic by 6,000 car trips a day, the lack of connectivity, and the need for more LID measures in light of the 31% impervious surface cover. Ms. Hughes also agreed that the proffer for stream restoration is inadequate.

Mr. Billups stated his concerns with amending the Zoning Ordinance, the proposed density, and lack of public benefit. He asked for a study of the average income of County employees relative to the cost of housing. Mr. Billups also stated his concern with ignoring the Comprehensive Plan stating that a lot of peoples' time and energy goes into each update of the plan.

Mr. Obadal said his concerns are high density, impacts to the character of the area, lack of public benefit, and environmental issues. He said he also agrees with Ms. Hughes', Mr. Krapf's, and Mr. Billups' statements.

Mr. Fraley reminded the audience that the environmental plans will be addressed again by the DRC. He stated his pleasure with the affordable housing component, LID features, developmental phasing and his support for rezoning from limited industry. Mr. Fraley recommended the applicant meet with citizens groups on environmental issues, offer a soft second mortgage or some other solution to avoid flipping, increased connectivity, restoration of the community character buffer, traffic mitigation, decreased number of units, more creativity in the design and proffers for stream restoration.

Ms Hughes motioned to defer the application to June 6, 2007.

Mr. Krapf seconded the motion.

In a unanimous voice vote the application was deferred (6-0). (Kennedy absent)

E. Z-2-07/MP-3-07 Chestnut Grove

Mr. David German presented the staff report stating that Mr. Joel Almquist has applied to rezone a 9.018-acre parcel from a split-zoning of R-8, Rural Residential and LB, Limited Business, to R-5, Multi-Family Residential, with proffers, to allow for the construction of forty townhouse units. The property is located at 104 Wisteria Garden Drive, and is further identified on the JCC Tax Map as Parcel # 5910100024. The property is designated Moderate Density Residential on the Comprehensive Plan Land Use Map. Recommended uses on property designated for Moderate Density Residential include residential developments with a gross density of four to twelve dwelling units per acre, and that offer particular public benefits to the community, such as mixed-cost housing, affordable housing, or unusual environmental protection. Staff recommended approval of the application and attached conditions.

Mr. Fraley confirmed with Mr. German that his comments had been forwarded to the applicant and then stated his concern that proffered LID (Low Density Impact) features are not specified on the storm water plan.

Mr. Cain stated that the LID features will have to comply with County systems regarding those areas designated for LID and will be evaluated during site plan review.

Mr. Fraley stated that the Commission does not have the opportunity to consider the layout and design to determine if it represents the most productive use of the site.

Mr. Cain stated that the Environmental Division would work with the applicant through the development of the plan.

Ms. Hughes asked Mr. Cain's opinion of the location of the proposed open space.

Mr. Cain stated that the soils, native vegetation, and proximity to buffers would have to be considered. He stated that with the density of the proposal preservation in the middle of the project is probably not possible.

Ms. Hughes stated her opinion that the most valuable open space location from an environmental and open space perspective is the area adjacent to the RPA (Resource Protection Area) buffer due to the mature forest and overlying A-B soils.

Ms. Hughes asked if the applicant would meet recreation area requirements if they increased the proposed Community Character Corridor Buffer to 100 feet in front of the property.

Mr. German said they might.

Mr. Fraley asked what the requirement is and the location of the recreation facilities.

Mr. German stated that the applicant is proposing 2 ½ to 3 times more than required.

Mr. Fraley stated that only ¾ of an acre is being proposed for recreation facilities so that allowing 100 feet for the buffer would bring them below the requirement.

Mr. Sowers suggested asking the applicant about the feasibility of increasing the proposed buffer.

Ms. Jones opened the public hearing.

Mr. Vernon M. Geddy, III of Geddy, Harris, Franck and Hickman introduced the applicants.

Mr. Joel Almquist presented the proposal stating that 40 % of the project is proffered to be affordable. He highlighted the proposed recreation facilities and stated that the affordable units will be mixed together with market-priced units in the development, and that all pricing is well below the JCC average. Mr. Almquist also

stated that the location of the BMP is due to the depth of the area, allowing run-off from the site without interfering with the RPA buffer, and that the requested Community Character Corridor Buffer reduction to 50 feet is consistent with the surrounding area. Mr. Almquist explained the Health-E Homes Design aspects of the proposal.

Mr. Michael Ware stated that their sales prices target 60%-80% of average mean income in James City County. Mr. Ware noted that the different affordable options for buyers depended on their particular situations, and explained how forgivable second deeds of trusts benefit the buyer and help to avoid resale-for-profit scenarios.

Mr. Fraley stated that the LID proffer is not specific enough.

Mr. Almquist showed the location of the LID features on a map and stated that approval by the Environmental Division will be required.

Mr. Fraley asked about the LID proffer regarding saving existing trees whenever possible.

Mr. Sowers deferred the question to Environmental since it concerns an LID feature.

Mr. Fraley said he did not consider it an LID feature.

Mr. Almquist stated their agreement to add stronger language within the proffers concerning LID.

Mr. Fraley stated his concerns that the project has negative fiscal impacts. He stated his appreciation of the affordability and building techniques.

Mr. Ware stated that they suffered a \$1,000,000 reduction in profit revenue on their previous project (referring to Pocahontas Square), and that they expect a \$400,000 reduction in profit revenue on this project due to the second mortgages offered. He also pointed out that 40% of the project will be affordable.

Mr. Fraley said the affordable units represent 20% of the project under the County's definition, and questioned why the per-unit proffer contributions were lower on this project than on the Pocahontas Square project.

Mr. Jay Epstein explained the definition of affordability. He stated that increased proffer contributions would reduce the number of affordable units.

Ms. Jones stated that the applicant is requesting rezoning from LB Limited Business which has greater potential to produce a positive fiscal impact for a project that is negative fiscally. She stated her support for expanding the Corridor Buffer and detailed what the County was being asked to contribute to the project in exchange for eight

affordable units.

Mr. Epstein disagreed with the number of affordable units, stating that the correct number of affordable units is sixteen.

Ms. Jones asked if any of the units in Pocahontas Square have been resold.

Mr. Epstein said no. He stated that prices do not typically increase until the developer has completed the project.

Mr. Obadal stated that the Community must recognize the need to compromise in order to achieve affordable housing. He stated that it is an attractive proposal and that he is comfortable with the reduced buffer. He asked the applicant's profit margin.

Mr. Epstein said it is not easy to determine until the project is complete due to land and environmental costs.

Ms. Hughes asked if the applicant can meet recreational requirements without reducing the buffer. She said the property is across the street from Carter's Grove, a historical property, and that building an urban setting adjacent to it is not desirable.

Mr. Epstein said it would hurt in terms of the recreation required.

Ms. Hughes asked if the buffer area could be increased and used for recreation. She stated her concern that preserving trees is an LID features and that she would like the trees preserved near the RPA buffer.

Mr. Epstein stated that reduced building area by 20 feet means reducing the number of affordable units by one.

Mr. Krapf asked Mr. German about his statement that the County has been consistently favorable to reducing the Corridor Buffer along Route 60.

Mr. German noted some parcels in the area with zero or reduced Corridor Buffers. He also stated that concerning the landscape proffer the County's landscape planner would go out with the developer prior to submission of the site plan to establish which existing trees and vegetation would be preserved.

Mr. Almquist stated that a 150 foot buffer reduces the number of units by 5 units which means one entire eight-unit would be lost.

Ms. Barbara Pheiffer, 103 Links of Leith, stated her concern about the reduced buffer. She stated her desire for this project to be better than surrounding uses. Ms. Pheiffer stated her support for increasing the buffer area and incorporating the recreational area. She also questioned the types of plantings to be used in the buffer.

Mr. Epstein asked if the 150 foot buffer could be used to satisfy recreation requirements.

The Commissioners discussed the proposal.

Mr. Fraley said they would be concerned with locating recreation by the road.

Mr. Epstein proposed to incorporate the picnic area into the buffer which would create a 150 foot buffer on that side of the project's entry road, and 50 feet on the other side.

Mr. Sowers and the Commissioners discussed keeping existing trees and adding additional ones.

Hearing no other requests the public hearing was closed.

Mr. Obadal motioned to approve the application as amended with a recommendation to include a 150 Community Character Corridor Buffer on one side of the project's entry road, and more specific proffers regarding LID and sustainable building techniques.

Mr. Krapf seconded the motion.

Ms. Hughes asked about Staff's recommendation.

Mr. Sowers said Staff's recommendation is for approval.

Mr. Fraley said the reduced proffer contribution amounts would be considered by the Board of Supervisors.

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

6. PLANNING DIRECTOR'S REPORT

Mr. Sowers presented the Planning Director's Report stating that the report is on page 91 of the Commissioners' packets. He said he had no additional comments.

Mr. Fraley mentioned that the traffic study for the Candle Factory application is one of two applications that have included a full corridor study. He stated that improving transportation studies is a part of the Planning Division's work projects list. Mr. Fraley stated his desire to take advantage of those studies to map and layer those corridors as build-out continues.

Mr. Sowers stated that the Division will do more detailed analysis in conjunction with the Comprehensive Plan update.

Ms. Hughes said she would like to discuss the issue of developable area. She stated that if RPA buffer is non-developable according to state mandate then it should not be considered as developable.

Mr. Fraley stated that wetlands, flood plains, and steep slopes should be subtracted to determine net developable area.

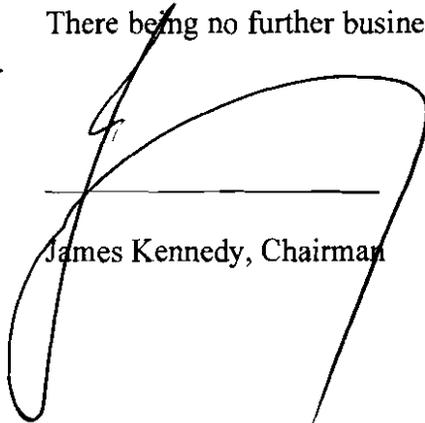
Ms. Jones said that will also be addressed with the Comprehensive Plan update.

Mr. Billups asked that research be conducted on the legal implications of dealing with non-conforming uses. He also commended Ms. Jones for chairing the meeting.

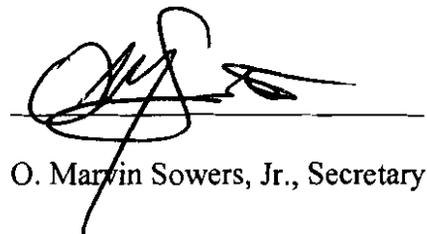
Mr. Sowers thanked Christy Parrish for stepping in at last minute to assist with the meeting.

7. ADJOURNMENT

There being no further business the Planning Commission was adjourned at 12:15 a.m.



James Kennedy, Chairman



O. Marvin Sowers, Jr., Secretary