

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE SIXTH DAY OF JULY, TWO-THOUSAND AND ELEVEN, 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:

Jack Fraley

Joe Poole III

Al Woods

Mike Maddocks

Rich Krapf

Tim O'Connor

Staff Present:

Allen Murphy, Director of Planning/Assistant
Development Manager

Adam Kinsman, Deputy County Attorney

Chris Johnson, Principal Planner

Leanne Reidenbach, Senior Planner

Jennifer VanDyke, Administrative Services Coord.

Mr. Jack Fraley called the meeting to order at 7:00 p.m.

2. PUBLIC COMMENT

Mr. Fraley opened the public comment period. Seeing no one wishing to speak, the public comment period was closed.

3. MINUTES

A. May 4, 2011

Mr. Joe Poole moved for approval of the minutes.

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

4. COMMITTEE AND COMMISSION REPORTS

A. Development Review Committee (DRC)

Mr. Poole stated that the DRC met earlier that day to review two cases. The first case was S-0022-2011, Tractor Supply Company. This case was before the DRC due to the requirement in Section 19-40 of the Subdivision Ordinance that requires all lots to have access to a public road. The applicant has proposed a series of access easements. The DRC recommends approval. The second case was C-0023-2011, Whitehall Design Guidelines Amendments. The approved proffers associated with the development of Whitehall. Amendment of the Design Guidelines must be reviewed and approved by the DRC. The DRC discussed three minor adjustments that had been requested. The DRC found no issue with the requested adjustments and recommended approval.

Mr. Mike Maddocks moved for approval of the minutes.

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

B. Policy Committee

Mr. Reese Peck stated that the Policy Committee had two meetings in June. On June 7th the Policy Committee discussed cumulative impacts of development, pedestrian accommodations; floodplain overlay districts, timbering, administrative policies and commercial districts. On June 16th the Policy Committee discussed private streets, highways, parking, loading, sound walls, lighting, tree preservation and community character corridor buffers.

C. Regional Issues Committee / Other Commission Reports

Mr. Fraley stated that there is a meeting coming up on July 26th at 8:30 a.m.

5. PLANNING COMMISSION CONSIDERATIONS

A. Initiating Resolution – Zoning and Subdivision Ordinance Update

Mr. Chris Johnson stated that the Ordinance Update Methodology was adopted by the Planning Commission in April 2010 and by the Board Of Supervisors (BOS) in May 2010. In accordance with the adopted methodology the commission has been considering ordinance update issues and options and has approved some initial drafts of amended ordinances. Next month the Policy Committee will begin reviewing finalized proposed amendments. Staff is presenting a resolution to initiate the Zoning and Subdivision Ordinance update process.

Mr. Rich Krapf made a motion to approve the initiating resolution for the Zoning and Subdivision Ordinance update.

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

B. Section 24-43, Timbering

Ms. Leanne Reidenbach stated that based upon the feedback provided by the Policy Committee and the Board of Supervisors, staff has developed three draft ordinances for consideration related to timbering. The three options have been outlined as seen on the provided table. All options include changes that are based on recommendations made by the Virginia Department of Forestry and also based on changes to State Code. Ms. Reidenbach discussed the differences between the three options. Ms. Reidenbach stated that staff recommends option one. She stated that the timbering section will be reviewed during a BOS work session on July 26, 2011.

Mr. Poole asked if the County's Agricultural and Forestal District (AFD) tax-break policies were discussed while reviewing ordinance changes related to timbering.

Ms. Reidenbach stated that they were not.

Mr. Al Woods asked Ms. Reidenbach to provide the rationale behind staff's recommendations.

Ms. Reidenbach stated that option one does not add any additional requirements. This option was based on the Virginia Department of Forestry's recommendations. The option would include a memorandum of agreement with the Department of Forestry to provide verbal notification of timbering activities, which is a step above what is currently required. The other two options were created in response to BOS comments.

Mr. Woods asked staff if there were any aspects to options two and/or three that in their view were particularly onerous for property owners.

Ms. Reidenbach stated that all three options meet State Code requirements. She stated that the State Code allows the Zoning Administrator ten days to consider pre-harvest applications. She stated that staff attempted to craft their recommendations based on making minimal requirements in addition to meeting State Code.

Mr. Peck asked if staff could include provisions that enable the land owner to harvest certain trees of value.

Ms. Reidenbach stated that option three requires buffers outside the Primary Service Area (PSA) for properties zoned A-1 and located along Community Character Corridors, though there is a provision that would allow up to half of the basal area of the buffer to be harvested. She stated that the larger trees that have more value as timber and less value as a buffer could be removed.

Mr. Peck stated that he specifically wanted to know if there were measures in place to help mitigate the financial burden (such as selective harvesting) for land owners.

Mr. Maddocks stated that option one is most similar to what is currently required.

Ms. Reidenbach stated that there were a few minor changes based on State Code and the recommendations made by the Department of Forestry. She stated that the primary change is not actually codified in the Ordinance. The notification change would be in a separate memorandum of agreement with the Department of Forestry.

Mr. Fraley asked staff to describe what other localities have in place to govern timbering, specifically York County.

Ms. Reidenbach stated that York County currently has requirements for both pre-harvest plan submissions and buffers on all properties that are timbered. She stated that staff's pre-harvest plan requirements were structured on York County's requirements. She stated that other localities' requirements varied. She stated that there was a locality in northern Virginia that required buffers along all roads for all properties as well as requiring a pre-harvest plan submission. She stated that there were some localities that did not require buffers. She stated

that Charles City negotiates on a case-by-case basis.

Mr. Fraley stated that based on the staff report, Mr. Billy Apperson, the local representative from the Department of Forestry, preferred option one, though he is amenable to options two and three. Mr. Fraley stated that it is apparent that Mr. Apperson wants to maintain the ability for a land owner to harvest and make gains on those trees of value. Mr. Fraley noted that Mr. Apperson's intent was to eliminate those trees that could become a public health and safety issue by noting the risk of certain trees falling as a result of a storm. Mr. Fraley stated that his two concerns center on maintaining the rights of the property owner to realize the full value of their timber and eliminate the possible risks to public health and safety. He asked if these two concerns have been successfully addressed.

Ms. Reidenbach stated that the full value will depend on the property and the type of trees that are left in the buffer. She stated that staff's proposal would permit the property owner to harvest up to half of the basal area of the trees within the buffer. She stated that in talking with the Department of Forestry this proposal is similar to how they would treat stream management zones. She stated that this may not give the property owner the full value of their timber, but it would provide some financial relief.

Mr. Fraley asked why staff is not more supportive of option three. He stated that option three adds more protection to the Community Character Corridors, which was a prime objective outlined in the Comprehensive Plan.

Ms. Reidenbach stated that Mr. Apperson is most fully in support of option one and staff recommended that option based on conversations with Mr. Apperson.

Mr. Poole asked if staff would object to requiring property owners that participate in the AFD program to provide a 50-foot buffer for any property abutting a public right of way. He stated that in his view staff's endorsement of option one would not fulfill the goals and objectives of the Comprehensive Plan.

Mr. Peck stated that he had previously discussed during a Policy Committee meeting requiring a buffer for those property owners outside the PSA as long as there was some provision to mitigate the economic impact.

Mr. Krapf stated that one aspect of option one that disturbs him is requiring verbal notification. He stated that such a provision would be difficult to defend if the property owner did not properly notify the County. He stated that he prefers option three. He stated that the intention of the Comprehensive Plan was to maintain the valued characteristics as noted in the citizen input. He stated that preserving Community Character Corridors needs to be a priority. He stated that recently there had been timbering activities taking place near the intersection of Menzels Road and Little Creek Dam Road. He stated that there was no buffer and the site became an eye sore. He stated that the buffer listed for option three is consistent with A-1 within the PSA, and therefore it has applicability with A-1 outside the PSA.

Mr. Maddocks asked which local principality follows option three.

Mr. Fraley stated that York County follows option three.

Mr. Tim O'Connor stated that he does not want to further burden property owners. He stated that as it stands, property owners are already required to work with the Department of Forestry. He stated that requiring notification is fine but he does not support requiring a pre-harvest plan, as seen in option two.

Mr. Poole stated he is prepared to support a hybrid of option three. He stated that the hybrid of option three would make an additional requirement of those property owners participating in AFD's to maintain a buffer along any right-of-way, with selective harvesting permitted. Mr. Poole noted that property owners participating in the AFD program are already benefitting from a tax break and should provide a benefit back to the public as a result.

Mr. Murphy stated that the County benefits from property owners participating in the AFD program with their agreement to not develop their property.

Mr. Adam Kinsman stated that the County would have a difficult time justifying treating those participating in the AFD program differently from other property owners. He stated that the best option would be to create a universal standard for everyone to follow.

Mr. Murphy stated that while considering the policies York County created, it is important to recognize that they have very different land development circumstances.

Mr. Fraley asked how many properties zoned A-1 were actually located along a Community Character Corridor and could potentially be timbered.

Ms. Reidenbach provided information on those properties that are in a Community Character Corridor and outside the PSA.

Mr. Fraley stated that he thought it would be in the County's interest to protect the viewshed.

Ms. Reidenbach stated that upon evaluation staff determined that this buffer requirement would not affect a great amount of acreage.

Mr. Peck stated that he supports option three; the measures taken here reflect the intent of the Comprehensive Plan. He stated that he supports exploring the possibility that participating AFD land owners would be required to have a buffer along any portion of land abutting a right-of-way. He stated that there would need to be a provision permitting select harvesting within the required buffer.

Mr. Woods stated that option one does not reflect the preferences of the community. He asked staff to reexamine their position. He stated that he supports option three.

Mr. O'Connor asked a hypothetical question; would he be permitted to clear a piece of

property without a buffer with the intent to plant corn.

Mr. Fraley stated that a buffer would not be required.

Mr. O'Connor stated that buffers should not be a requirement as timber can be looked at as a crop, just as corn is in his example.

Mr. Maddocks stated that buffers should not be a requirement.

Mr. Fraley stated that he supports option three.

Mr. Krapf made a motion to recommend option three. In a voice vote, the motion was approved (5-2; Nay; O'Connor, Maddocks).

Mr. Poole asked that staff consider and report back with the pros and cons in applying conditions on those properties within the AFD program. The Commission concurred.

Mr. Fraley stated that staff's work on these options did alleviate some concerns the Planning Commission members had regarding property owner rights and public safety and asked that staff note this when the options are presented to the BOS.

C. Section 24-147, DRC Triggers

Mr. Johnson stated that the Policy Committee requested that this ordinance section be considered by the entire Commission as there was not a consensus on the proposed changes to Development Review Committee triggers.

Mr. Poole asked for more information on what led up to the proposed changes.

Mr. Johnson spoke on the work done by the Subdivision and Site Plan Improvement Review Team (SSPIRT) and how staff arrived at the recommendations brought forward.

Mr. Poole asked how staff arrived at the recommended change from "a single building or group of buildings which contain a total floor area that exceeds 30,000 square feet" to "50,000 square feet".

Mr. Johnson stated that the 50,000 square foot threshold was initially recommended by the SSPIRT committee by following a careful review of site plans which had been reviewed in the past decade as well as those which required DRC review.

Mr. Poole stated that a 50,000 square foot development would have a greater impact on a small parcel compared to a larger parcel. He stated that by creating a universal change triggering fewer DRC reviews, the community would lose the benefit of having development reviews (by the DRC). He stated that this would be unfortunate especially with those proposals that could have a significant impact on the community.

Mr. Johnson stated that just because the DRC is not reviewing the case does not mean

that staff is not very carefully considering the impacts of developments regardless of the site. He stated that all reviewing agencies would still offer their comment for consistency with all established Ordinances and policies.

Mr. Poole stated that it is noteworthy that the DRC has been very flexible and amenable to meeting the needs of all applicants progressing through DRC review.

Mr. Johnson stated that the majority of those cases over 30,000 square feet also triggered legislative review for a Special Use Permit (SUP) and/or a rezoning.

Mr. Fraley asked how many 50,000 square foot buildings, or group of buildings has come before the DRC within the last three years.

Mr. Johnson stated less than a dozen.

Mr. Fraley stated that he agrees with Mr. Poole's comment regarding the different level of impact from one building development to the next, depending on the size of the parcel and the intended use. Mr. Fraley stated that currently fast food restaurants are by-right in B-1 and permitted with an SUP in Mixed Use.

Mr. Fraley stated that he cannot find a definition for a multifamily dwelling in the Zoning Ordinance.

Mr. Johnson stated that the Zoning Ordinance contains a definition for multiple family dwelling units, which is a structure arranged or designed to be occupied by more than two families grouped by common law. He stated that it also contains a definition for single family development and two family dwelling. He stated that multifamily is one of the words that will come up during the commission's review of the definitions section of the Ordinance later in the process. He stated that staff has recognized the need for further clarification. He stated that multifamily would be consistent with multiple family (more than two). He stated that these structures would contain three or more families separated by common walls or floors; examples of this would be apartments, townhouses and condominiums. He stated that staff recognized the fact that there had been some significant, smaller infill developments that had been reviewed only by staff. He stated that staff proposes that any development containing ten units or more would require DRC review instead of the trigger that is currently at 50 units. He stated that there will be an increasing amount of infill residential development cases on properties that have challenging topography. He stated that by having these cases brought forward to the DRC there will be an opportunity to have healthy discussions including applicants, the DRC, residents and staff.

Mr. Fraley stated that the trigger responsible for bringing Autumn West to the DRC was the 30,000 square feet requirement. He stated that the currently proposed changes would eliminate similar cases going to the DRC based solely on square footage but may still trigger DRC review if ten or more units are proposed.

Mr. Johnson stated that item number two states that any case with unresolved, problems

between the applicant, adjacent property owners or departmental reviewing agencies would still trigger the need for DRC review.

Mr. Fraley stated that a definition for multifamily development is needed.

Mr. Johnson stated that at stage three final ordinance language will be introduced; this will be further considered at that time.

Mr. Murphy stated that staff intends to define townhouses, condominiums, apartments and triplex developments as multi-family units.

Mr. Fraley stated that he did not understand the wording used in Section 24-147(2)(b).

Mr. O'Connor suggested: "The Economic Development Director determines whether or not the site plan creates".

Mr. Poole asked who the members of the SSPIRT committee were.

Mr. Johnson stated that the SSPIRT committee represented the public and private sector of the development community. In the group there was a representative from a local law firm, a private engineering group, as well as County staff and reviewing agencies, including; the Virginia Department Of Transportation (VDOT), James City County Service Authority (JCSA), General Services, Planning and Zoning staff.

Mr. Krapf stated that he approves of the threshold change for multifamily dwelling units, though he too has some concern for changing the square footage threshold. He stated that his experience has been that the DRC has made some sound recommendations that have enhanced the appearance of a number of projects. He stated that Walgreens, CVS and Fleet Brothers are good examples.

Mr. Johnson stated that each case sited triggered a legislative review either for size or the amount of vehicle traffic generated at its peak hour. He stated that as a part of the enhanced conceptual review process, staff has encouraged applicants who have cases going before the Planning Commission and BOS which are in a corridor where architectural plans would be considered, to come before the DRC first. He stated that it is in the applicant's best interest to get constructive feedback to enhance the project so that the proposal does not get delayed later in the process.

Mr. Krapf stated that it is beneficial to see projects earlier on. He stated, while considering this Ordinance modification there are other triggers that would also send cases to the DRC.

Mr. Johnson stated that this change has been made to shift review responsibility to staff for a selected number of items that are currently seen by the DRC. The DRC would then become the appellate body to review those cases where the applicant feels the decision was reached unfairly.

Mr. Fraley stated that he has heard a lot of complaints from the business community regarding the DRC review process.

Mr. Poole stated that he has heard complaints about the conceptual review process as well as general DRC review.

Mr. Peck stated that he sees real value in having the conceptual review process. He stated that if the DRC becomes more of an appellate review body, triggers may not be necessary.

Mr. Fraley asked the commissioners if anyone objected to leaving in shopping centers, no one objected. Mr. Fraley asked if anyone would object to removing fast food restaurants from DRC triggers.

Mr. Poole stated that he would prefer to leave it in.

Mr. Woods asked for some historical perspective.

Mr. Murphy stated that fast food restaurants had been added to DRC triggers due to a negative perception of impacts. He stated that the typical fast food restaurant is large enough to trigger the need for a Commercial SUP. He stated that for smaller fast food restaurants it is debatable whether there is enough of an impact to require DRC review. He stated that when the triggers were initially placed in the Ordinance there was no Commercial SUP provision.

Mr. Fraley pointed out that there is only one district that allows fast food restaurants by right, that is B-1.

Mr. Krapf stated that if a fast food restaurant is permitted by right in only one district and trip generation numbers would trigger legislative review for most than only the most benign proposal would evade DRC and/or full legislative review.

Mr. Poole stated that he does not see a reason to remove fast food restaurants from DRC triggers.

Mr. Johnson spoke on Zaxby's Chicken Restaurant. He stated that Zaxby's was reviewed as a site plan for a fast food restaurant. He stated that it was the fast food restaurant trigger that required DRC review. He stated that Stuckey's was an SUP.

Mr. Woods asked what sorts of improvements are made for those cases that are seen by the DRC.

Mr. Fraley stated that the DRC has worked to improve a number of features on sites such as, traffic circulation and buffers for drive-thru lanes.

Mr. Johnson pointed out that the comments that had been made are generally relative to the architectural elevations, building colors and materials. He stated that the applicant is not

bound to suggestions like an SUP condition or proffer. He stated that the applicant is given the choice to make their own decisions.

Mr. O'Connor stated that if the intension is to promote the conceptual review process then the triggers should be minimized or eliminated.

Mr. Krapf stated that applicants can benefit from the conceptual review process by having more predictability. He stated that applicants do not need to fear the costs associated with a plan that does not receive the necessary approvals if they elect to bring the proposal to the DRC at the conceptual review stage and follow through with recommendations.

Mr. Fraley stated that applicants pay a great deal of money for engineered drawings. He stated that fewer renderings equates to less expense.

In a straw vote, the committee's consensus was to approve staff's recommendation to remove fast food restaurants from DRC triggers.

Mr. Fraley asked why staff's proposed trigger was set at ten multifamily units.

Mr. Johnson stated that this number was an attempt to allow some flexibility and not overburden an applicant with smaller scaled infill development, yet also capture the majority of those cases that have impacts that need to be mitigated.

Mr. Fraley asked Mr. Johnson if he expected to hear negative feedback from the development community.

Mr. Johnson stated that he suspects that the development community would support the recommended changes for all sections of the Zoning and Subdivision Ordinance.

Mr. O'Connor stated that he supports the recommended change to ten units.

Mr. Peck stated that he is comfortable with relaxing the threshold knowing that if there are issues that go unresolved the case will come to the DRC.

Mr. Fraley moved to recommend staff's recommendation to reduce the DRC trigger from 50 to 10 multifamily units. In a unanimous vote the motion passed, (7-0).

Mr. Fraley proposed that they discuss staff's recommendation that would change "a single building or group of buildings a total floor area that exceeds 30,000" to "a single building or group of buildings a total floor area that exceeds 50,000".

Mr. Maddocks stated that he supports the recommended change.

Mr. Poole stated that he is not in support of moving forward with staff's recommendation.

Mr. Krapf stated that he has had a difficult time reaching a decision on this recommendation. He stated that he does feel that staff is very capable of recognizing those issues that need to be addressed during case review, but he also feels as though DRC participation does improve the final product. He stated that he supports the recommendation.

Mr. Woods began a discussion regarding the number of cases the change would affect.

Mr. Fraley stated that he would like to see a more nuanced approach that would apply different review standards to cases based on the zoning district rather than solely square footage.

Mr. Poole concurred stating that in the absence of such a nuanced approach he does not support the recommended changes. He stated that the aesthetic value of the community is too important to jeopardize with this change.

Mr. Krapf stated that he would like to see a matrix that lays out all recommended ordinance changes that effect commercial triggers.

Mr. Johnson stated that he can appreciate the difficulty one would have in trying to keep track of all the recommended changes to the commercial districts besides the one being discussed tonight. He relayed information regarding the timing for upcoming Ordinance review schedules.

Mr. Poole stated that it is difficult to see the big picture since he and Mr. Krapf are not a part of the Policy Committee. He stated that by not being present at these meetings he is not gaining the benefit of engaging in discussions that relate to the big picture.

Mr. Fraley asked if 20,000 square feet triggers the need for an SUP then why is the DRC trigger there at all.

Mr. Johnson stated that Section 24-11 includes exemptions for office development, industrial development, warehousing, and manufacturing that are not included in 24-147. He suggested that some of those exceptions to certain types of development, such as industrial parks, office parks, manufacturing uses, etc. are given an exemption from review by the DRC. He stated that these cases are not thought to create impacts on adjacent development.

Mr. Fraley stated that he likes this approach. He asked when this will be going back to the BOS.

Mr. Johnson stated that staff will bring the Commercial Districts including this Ordinance to the Policy Committee for a cursory review of the changes recommended by the Policy Committee as well as the changes that are recommended or endorsed by the BOS at the June 28th Work Session. He stated that it would then come back to the full Planning Commission for consideration within the next two months. He stated that it would then be sent back to the BOS. He stated that this will go back to the Policy Committee on July 13th.

Mr. Fraley discussed other scheduled items.

Mr. Poole stated that Mr. Johnson's recommendation is a welcomed approach. Mr. Poole stated that he wants this recommendation to move forward without concern of meeting deadlines.

Mr. Johnson stated that staff has been meeting the methodology deadlines. He stated that for the four priority items it has been an expedited process.

Mr. Fraley stated that this new approach needs to be discussed further.

Mr. Krapf stated that he does not feel comfortable voting on this particular trigger until he sees more information from staff to provide a comprehensive look at these items to gain more perspective. He stated that he proposes that a decision be delayed until July 13th.

Mr. Fraley confirmed that consensus was reached to delay voting until July 13th.

6. PLANNING DIRECTOR'S REPORT

Mr. Allen Murphy stated that he has no comments.

7. COMMISSION DISCUSSIONS AND REQUESTS

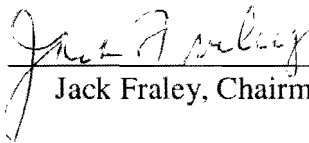
Mr. Peck stated that he is resigning from his position as Planning Commissioner.

Mr. Fraley expressed his appreciation for Mr. Peck's time and service on the Planning Commission. Mr. Fraley stated that Mr. Krapf has been asked to join the Policy Committee in light of Mr. Peck's resignation.

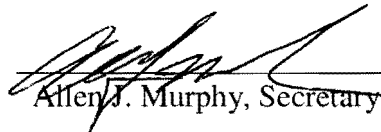
8. ADJOURNMENT

Mr. Woods moved to adjourn.

The meeting was adjourned at 9:17 p.m.



Jack Fraley, Chairman



Allen J. Murphy, Secretary