

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE SEVENTH DAY OF DECEMBER, 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

Rich Krapf

Al Woods

Chris Basic

Tim O'Connor

Absent:

Mike Maddocks

Staff Present:

Allen Murphy, Acting Development Manager

Chris Johnson, Principal Planner

Adam Kinsman, Deputy County Attorney

Luke Vinciguerra, Planner

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

2. PUBLIC COMMENT

Mr. Fraley opened the public comment period.

There being none, Mr. Fraley closed the public comment period.

3. MINUTES – NOVEMBER 2, 2011

Mr. Joe Poole moved to approve the minutes.

In a unanimous voice vote, the minutes were approved (6-0; absent, Maddocks).

4. COMMITTEE AND COMMISSION REPORTS

A. DEVELOPMENT REVIEW COMMITTEE (DRC)

Mr. Poole stated that the DRC met on November 30. The DRC reviewed Case No. C-0041-2011, White Hall Design Guidelines Amendment. The case was before the DRC to allow an amendment to the approved White Hall Design Standards changing the definition of rear yard fence and introducing language describing courtyard fencing. The DRC voted 4-0, to approve the amendment request. The DRC reviewed Case No. C-0040-2011, New Town Shared Parking Update. This case was before the DRC for the regular semi-annual DRC review for New Town Sections 2 and 4 shared parking plan. The DRC recommended approval of the shared parking update by a vote of 4-0. The DRC also voted that the next review of the shared parking update be presented at the meeting in May 2012. The DRC reviewed Case No. SP-0100-2011, New Town Section 9 (Settler's Market) Commercial Site Plan Amendment. This case was before the

DRC to obtain preliminary approval for a group of buildings in excess of 30,000 square feet. It was also before the DRC to determine if on-street parking could be counted towards minimum parking requirements. The DRC recommended preliminary approval of the plans subject to agency comments and recommended that the applicant be allowed to count off-site parking towards the minimum parking requirements by a vote of 4-0. The DRC reviewed Case No. SP-0085-2011, Courthouse Commons Parcels 4 & 5 Setback Reduction. This case was before the DRC for a setback reduction for the building on Parcel 4 of the site in accordance with Section 24-415 of the Zoning Ordinance. The DRC recommended approval of the reduction by a vote of 4-0, with the stipulation that the applicant would provide the enhanced trail/pocket park landscaping plan to staff prior to final approval.

Mr. Al Woods moved for approval of the DRC report.

In a unanimous voice vote, the report was approved (6-0; absent, Maddocks).

#### B. POLICY COMMITTEE

Mr. Rich Krapf stated that the Policy Committee met on December 6 to discuss FY 2013-2017 Capital Improvement Program (CIP) requests. Members present were Mr. Fraley, Mr. Maddocks, Mr. Krapf, Mr. Woods and Mr. O'Connor. The Committee reviewed the ranking process and the categories. The committee determined staff agencies to invite to the next meeting to provide additional information about the requests. The committee will meet again on Monday, December 12 for agency presentations and finalized scores. The Policy Committee plans to provide the recommendation to the full Planning Commission at the January 4 meeting.

#### 5. PUBLIC HEARINGS

##### A. MP-0003-2011/Z-0004-2011, Mason Park Master Plan Amendment

Mr. Fraley stated that the applicant has requested a deferral until the January 4, Planning Commission meeting to resolve outstanding Virginia Department Of Transportation (VDOT) comments.

Mr. Allen Murphy stated that staff concurs with the applicant's request.

Mr. Fraley opened the public hearing. Seeing no one from the public wanting to speak Mr. Fraley stated that the public hearing will remain open until the January 4 meeting.

##### B. ZO-0004-2011, Commercial Districts

Mr. Chris Johnson stated following the passage of the six Commercial Ordinances at the October 11, 2011 Board Of Supervisors (BOS) meeting, staff became aware of inconsistencies between the draft versions of the M-1 and M-2 Ordinances. He stated that the inconsistencies were found on the version that had been posted online prior to the September 7, 2011 Planning Commission and the paper copies of the same Ordinances that had been distributed to the Planning Commission and the BOS. He stated that due to the discrepancies, on November 22, 2011, meeting the BOS voted to rescind their approval and requested that staff reexamine the use

list in each of these districts and correct any inconsistencies that were identified. He stated that the draft versions of the M-1 and M-2 Ordinances reviewed by the Planning Commission in October included fast food restaurants as a permitted use in both districts. He stated that fast food restaurants had previously been permitted by-right in B-1, General Business district, but were not permitted in M-1 or M-2. He stated that upon additional review staff has amended the use list to make fast food restaurants a specially permitted use in the M-1 district and has removed the use from the M-2 district. He stated that staff has not made any additional changes to any of the proposed six Ordinances. He stated that at the September 7, 2011 Planning Commission meeting, the Commission voted (6-0) to recommend approval of the four commercial districts and the DRC Review Criteria Ordinances. He stated that the commission voted (5-1) to recommend approval of the Commercial Special Use Permit (SUP) Trigger Ordinance. He stated that staff incorporated elements discussed in the Business Climate Taskforce Report into the ordinances aimed at providing greater predictability and flexibility in the legislative and administrative review processes, improving communications between staff and applicants, and fostering a more business friendly environment. He stated that staff recommends that the Planning Commission recommend approval of the six ordinances.

Mr. Poole asked staff, in light of recent efforts to make the ordinances more business friendly, why fast food restaurants had been removed from the specially permitted use list in M-2. He stated that he thought it would be suitable to have this use in the district.

Mr. Johnson stated that the intent for M-2 states that this district has the most intensive uses and therefore should remain industrial in nature. He stated that there is very little land in the County with this designation. He stated that M-1 is more of a hybrid district. He stated that M-1 is generally closer in proximity to areas with higher residential traffic. He stated that staff did think that fast food restaurants would be more appropriate in this district, but on an SUP basis. He stated that staff determined by looking at the Comprehensive Plan Land Use map that there would be a very low probability that a proposal for a fast food restaurant would be approved within the M-2 district.

Mr. Fraley asked Mr. Johnson to identify the M-1 areas in the County.

Mr. Johnson stated that M-1 properties include Busch Corporate Center on McLaws Circle, the Pottery, the property along Monticello Avenue and Ironbound Road, portions of the northern area of the County near Hankins Industrial Park, James River Commerce Park, Courthouse Commons, Lightfoot, and the Outlet Mall.

Mr. Fraley stated that there already are fast food restaurants in several of those areas Mr. Johnson identified. He stated that he was trying to think of an example of a poorly placed fast food restaurant in M-1, but he could not think of any.

Mr. Johnson stated that there are some fast food restaurants that do not generate a great deal of vehicular traffic. He stated that fast food restaurants need to be evaluated on a case-by-case and location-by-location basis due to the impacts.

Mr. Fraley stated that he can recall when the commission recommended Oinkers

Barbeque near James River Commerce Park. He stated that even though this restaurant does not generate a great deal of traffic it still would trigger the commercial SUP requirement.

Mr. Johnson stated that Oinkers is a lower-intensity use; the location would not be appropriate for a retailer that would draw a higher traffic volume.

Mr. Fraley stated that he does not like the definition provided for fast food restaurants. The ordinance currently reads: "any establishment with its principle business is the sale of any prepared and rapidly prepared food directly to the customer on a ready to consume state or consumption either at the restaurant or off premises." He stated that the definition does not reference drive-thrus. He asked staff if *Starbucks* would be considered a fast food restaurant.

Mr. Johnson stated that *Starbucks* would be considered a coffee shop because the primary product is coffee.

Mr. Fraley asked if the definition will be reworked.

Mr. Johnson stated that staff can revise the definition later in the process.

Mr. Fraley asked if a reference can be made to drive-thru within the new definition.

Mr. Johnson stated that this reference would be useful.

Mr. Fraley asked if there is a way to make our regulations easier for the small, independent businessman.

Mr. Murphy stated that staff can look to achieve that with the definition.

Mr. Fraley stated that it would be helpful to relax the SUP requirements specifically for the small businessman.

Mr. Tim O'Connor asked staff what a deli versus a *Subway* is defined as.

Mr. Johnson stated that consideration would need to be made based on a eat-in or take-out facility, drive-thru or no drive-thru.

Mr. Murphy stated historically those type of uses have not been considered fast food. He stated that staff anticipates making improvements to the definition of fast food restaurant to provide greater clarity.

Mr. Fraley stated that when the discussion originally came up the Policy Committee recommended making fast food restaurants by-right in M-1. He stated that at that time staff did not object. He asked why staff changed their position on this matter.

Mr. Johnson stated that staff has been asked by the BOS to give the specific land use further consideration. He stated that at one time staff had included fast food restaurants since it is a less

intense use compared to other industrial-type uses. He stated that initially the thought was, if it is going into M-1 it might as well be included in M-2. He stated that being given the opportunity to revisit this one specific use staff determined that it is most appropriate to not include fast food restaurants in M-2 and only with an SUP in M-1.

Mr. Fraley asked why staff chose to make the distinction between B-1, by-right and M-1 requiring an SUP.

Mr. Johnson stated that there is no obvious distinction other than B-1 areas are the general commercial shopping centers where one would typically see fast food restaurants in the out-parcels.

Mr. Fraley opened the public hearing.

There being none, Mr. Fraley closed the public comment period.

Mr. O'Connor stated that the drive-thru component seems to be the greatest concern. He stated that potentially all businesses with drive-thrus should require SUP's, to include pharmacies like CVS.

Mr. Johnson stated that the primary difference is the hours of operation.

Mr. Murphy stated that one distinction between M-1 and M-2 is the hybrid nature. He stated M-1 can be found in locations that are strictly industrial as well as locations where there is greater commercial development. He stated requiring an SUP in M-1 allows the County to pick and choose the appropriate locations for fast food restaurants.

Mr. Chris Basic stated that he appreciates staff's explanation of removing fast food restaurants in M-2. He stated that staff's explanation has convinced him that this is an appropriate choice.

Mr. Krapf stated that not all drive-thrus have the same impacts. He stated that a drive-thru for a fast food restaurant would have a higher intensity than a drive-thru for a CVS. He stated that he sees a subtle distinction between M-1 and M-2 based upon the hybrid nature of M-1. He stated that he is comfortable with the proposed changes as well as the rationale used to arrive at these choices.

Mr. Al Woods moved for approval of the Commercial Districts as presented.

In a roll call vote, the Commission recommended approval (6-0; absent, Maddocks).

#### C. ZO-0010-2011, Wireless Communication Facilities

Mr. Luke Vinciguerra reviewed highlights of the proposed revisions to the Ordinances related to Wireless Communication Facilities (WCF) such as: regulations for multi-antenna systems such as Distributed Antenna Systems (DAS), regulations for Portable Cellular

Transmission Facilities (PCTF), clarification of building mounted/alternatively mounted antennas, clarification of the camouflaged tower provision and the elimination of the by-right camouflaged tower provision in the residential districts. He stated that at the September 15, 2011 Policy Committee meeting the committee endorsed the draft Ordinance. He stated that following the discussion the Policy Committee recommended requiring issuance of an SUP for camouflaged towers over 80 feet in residential districts and consideration of stronger language for camouflaged towers utilizing native vegetation provision. He stated that at the September 27, 2011 work session the BOS requested legislative approval for all towers in residential districts and a mechanism to extend the duration of portable cellular transmission facilities over the 90 day maximum. He stated that recommendations made by the Policy Committee and the BOS have been incorporated into the draft Ordinance. He stated that staff recommends the Planning Commission recommend approval of the ordinance revisions and the Performance Standards Policy to the BOS.

Mr. Fraley stated that he was very pleased with the draft Ordinance. He stated that monopoles (including slick-sticks) can qualify for the camouflage provisions under the buffer provision but, it will not be obvious to the public. He stated that there is a lot of discussion that has surfaced as a result of the Kingsmill cell towers that indicates that the majority of Kingsmill residents would have preferred that the towers be slick-sticks. He stated that he had asked if staff would be willing to put some language in the buffering camouflage section that would make it apparent that a monopole would qualify for this provision.

Mr. Johnson stated that staff would be more than happy to find a way to incorporate that term at least once within the provision and also within the recommended BOS policy to make it more specific. He stated that there are differences to note regarding slick-sticks and monopoles. He stated that not all monopoles qualify as slick-sticks this distinction will have to be evident in the text.

Mr. Fraley recommended that staff look at the Albemarle County policy.

Mr. Johnson stated that it may be beneficial to replicate what Albemarle County has done by providing a picture of the tower.

Mr. Fraley stated that on the chart found on page 96, "Table 1: Tower Mounted Wireless Communication Facilities" under R-4 unlike the other residential districts all towers are permitted with an SUP. He stated that he was under the impression that the tower mounted WCF's would not be permitted in any residential district.

Mr. Johnson stated that the R-4 districts require a minimum of 400 acres. He stated that Kingsmill, Ford's Colony, Governor's Land are all well in excess of 400 acres and all three have non-residential components to them. He stated because of these differences there may be an acceptable location for taller, non-camouflaged towers in R-4.

Mr. O'Connor stated that one concern that came up during the cell tower discussion with the Kingsmill residents was the noise generated by the towers. He asked if there would be regulations put in place regarding acceptable noise levels generated from any tower.

Mr. Adam Kinsman stated that the County recently adopted a new Noise Ordinance; it does apply in residential areas.

Mr. Fraley asked if it would apply to R-4.

Mr. Kinsman stated that the Noise Ordinance is not quite as precise as the WCF Ordinance.

Mr. Basic asked what Stonehouse is zoned.

Mr. Johnson stated that it is a Planning Unit Development (PUD) which has areas on its master plan designated for Planning Unit Development Residential (PUD-R) and Planning Unit Development Commercial (PUD-C). He stated that language could be added to R-4 which references areas designated on adopted master plans in R-4 communities that are designated for non-residential activity. He stated that one way of adding additional clarity would be to state that placement would be suitable in areas that are designated for non-residential activity and consistent with BOS policy.

Mr. Fraley stated that providing more guidance in the Ordinance would be preferred. He stated that applicants would prefer greater predictability.

Mr. Johnson stated that it may be inappropriate to go so far as to identify properties that are suitable for WCF's. He stated that it is not suitable to tell a private property owner that their property has been identified as a location for a future tower.

Mr. Fraley stated that the County imposes zoning on property owners. He stated that the property owner would not be forced to place a WCF on their property. He stated that they would only be informed that it is an appropriate location for a WCF.

Mr. Johnson stated that there have been discussions in the past centered on finding appropriate areas. He stated that cell tower companies will determine that they have a need for a tower with a specific rating based upon coverage demands. He stated that when the proposed location was not acceptable the County has assisted the provider in finding appropriate alternative locations.

Mr. O'Connor stated that on pages 99-100 there are three categories of architectural compatibility. He asked if there is a better way to define casual observer. He stated that the concept of the casual observer was debated during the Kingsmill cell tower discussions.

Mr. Johnson stated that it is a subjective standard. He stated that the formulated opinions of staff, our governing bodies, and the public will debate this point during the legislative process for a proposed location. He stated that it has been made clear in the past that "to the casual observer" does not mean that the tower would not be completely hidden. He stated that the question that needs to be asked is, is this a distracting feature.

Mr. Fraley stated that Mr. Johnson's response is vague. He asked if it would be better to remove the phrase from the text.

Mr. Johnson stated that staff has seldom approved camouflaged towers. He stated that by default the case is taken to a public hearing. He stated that the standard has intentionally been set high.

Mr. Basic asked what is the maximum height in R-4.

Mr. Johnson stated, 120 feet, with a 400 foot buffer.

Mr. Fraley stated that it is 120 feet, but the applicant can apply for an extension with an SUP.

Mr. Basic asked what the absolute maximum height is.

Mr. Johnson stated that there is one existing tower that is 199 feet.

Mr. Fraley opened the public hearing.

Mr. David Neiman of 105 Broomfield Circle spoke. He stated that the revised, draft Ordinance is a big improvement. He stated that towers with internally mounted antennas, or slick sticks are an improvement to many other types of towers. He stated that tower mounted antennas should not be permitted in R-4 districts; these towers make a significant visual impact. He stated that there should be a WCF Master Plan.

Ms. Dorothea Neiman of 105 Broomfield Circle spoke. She stated that more work should be done with a WCF consultant to get a high level of expertise. She stated she had reviewed some very thorough and thoughtful reports completed by different localities with the assistance of different independent consultants.

Mr. Fraley stated that with this Ordinance there are Performance Standards which is meant to be the BOS Policy. He stated that in those Performance Standards there are additional requirements beyond the 400 foot buffer. He stated that as a policy it is not in the Ordinance, making it easier to change. He stated that the policy would not have the same legal standing as the Ordinance.

Mr. Krapf asked; what is the advantage of having a second policy statement as opposed to having everything in the Ordinance. He asked if it was staff's intension to make it easier to change with technological changes.

Mr. Murphy stated that there are many aspects of the policy as written; it is subjective, allowing for some flexibility. He stated that staff does anticipate there being changes to technology. He stated that the Performance Standards Policy will go before the BOS for their adoption, hand-in-hand with the Ordinance.

Mr. Kinsman stated that adding a policy that applies to an SUP case discourages carriers from bringing in sub-standard applications to the BOS and Planning Commission. He stated that this informs applicants what the County is looking for.



Mr. Fraley stated that he sees some inconsistencies between the Performance Standards and the Ordinance.

Mr. Basic stated that he understands Mr. Fraley's concern; language like "minimal intrusion" is very vague.

Mr. Fraley stated that making it as objective as possible is most helpful for all parties.

Mr. Poole stated that he concurs. He stated that the SUP process allows the governing body to thoroughly review the application. He stated that the generalizations spelled out in the Performance Standards are helpful. He stated that he supports the Ordinance and the Performance Standards.

Mr. Fraley asked Mr. Basic if he was comfortable with having all towers permitted in R-4 (with an SUP).

Mr. Basic stated he is comfortable with the text as proposed. He stated that due to the nature of the district and the required 400 foot buffer, he sees R-4 differently.

Mr. O'Connor asked if the phrase "casual observer" will be stricken.

Mr. Fraley stated he would support it being removed.

Mr. Woods asked, if the phrase were left in would it not provide additional elements of consideration while under legislative review.

Mr. Murphy stated that the language is helpful. He stated that this phrase has been used in the past to substantiate an argument against qualifying as a camouflaged tower. He stated that in his estimation a "casual observer" is a higher test than someone that is intentionally looking.

Mr. Fraley stated that he would still like to have some illustrations and additional text to further define monopoles and slick-sticks.

Mr. O'Connor stated that he would want language added to further clarify the location of a tower within R-4.

Mr. Johnson stated that it would limit the location of a tower to an area in R-4, that is designated as something other than residential on the master plan.

Mr. Murphy stated that it would still require an SUP.

Mr. Woods made a motion to approve the draft Ordinance and Performance Standards with the addition of illustrations and text to further define monopoles and slick-sticks as well as defining placement of tower mounted WCF's to those areas designated as something other than residential within the R-4 districts.

Mr. Fraley asked Mr. Kinsman if he had any issue with the suggestion to limit placement within R-4 to those areas designated as something other than residential.

Mr. Kinsman stated that he is okay with the language.

In a roll call vote, the Commission recommended approval (6-0; absent, Maddocks).

6. PLANNING DIRECTOR'S REPORT

Mr. Murphy stated he had nothing further.

7. COMMISSION DISCUSSIONS AND REQUESTS

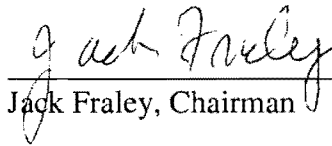
Mr. Fraley stated he would be covering the BOS meeting on December 15.


Mr. Fraley stated that he has asked staff to prepare for Mr. Reese Peck a certificate for his service on the Planning Commission.

8. ADJOURNMENT

Mr. Poole moved to adjourn.

The meeting was adjourned at 8:13 p.m.

  
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Jack Fraley, Chairman

  
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Allen J. Murphy, Secretary