

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE FIFTH DAY OF JUNE, TWO-THOUSAND AND THIRTEEN, 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 Drummond
Robin Bledsoe
Chris Basic
Mike Maddocks
Rich Krapf
Al Woods

Staff Present:

Paul Holt, Planning Director
Adam R. Kinsman, Deputy County Attorney

Mr. Al Woods called the meeting to order at 7:00 p.m.

2. PUBLIC COMMENT

Mr. Woods opened the public comment.

Ms. Marjorie Ponzianni, 4852 Bristol Circle, offered comments related to the discussions at the joint Work Session with the Board of Supervisors. Ms. Ponzianni requested that there be less emphasis on creating networks of bike paths in favor of using the funds for projects which would benefit more citizens. Ms. Ponzianni also commented on the concerns regarding certain groups dominating public forums and noted that all citizens should be welcome to speak. Ms. Ponzianni stated that the format of public forums should not be structured in a way that would allow dissenting opinions to be discarded. Ms. Ponzianni also noted that citizens want to know the actual percentage of land that the County owns or controls with easements and the tax rate on those parcels. Ms. Ponzianni recommended that the questions to be discussed during public forums be advertised prior to the meetings. Ms. Ponzianni also noted that information related to the County's Rural Lands update should be more accessible.

3. MINUTES

Mr. Chris Basic moved to approve the minutes from the May 1, 2013 meeting.

In a unanimous voice vote, the Commission approved the minutes. (6-0)

4. COMMITTEE / COMMISSION REPORTS

A. Development Review Committee

Mr. Basic stated that the Development Review Committee met on May 29, 2013 to discuss the following cases

C-0026-2013, Cottage Hill Nursery

Mr. John Wright has leased the property at 7691 Richmond Road which is part of the Pumpkinville Parcel with a previously approved Master Plan and SUP. This case was brought before the DRC for Master Plan consistency review. Mr. Wright intends to operate a commercial nursery and use the existing house as a residence on approximately 2.1 acres. The approved Master Plan allows for the retail sale of plant and garden supplies, as well as antiques, office and landscape stone storage on the parcel zoned A-1. Mr. Wright's proposed use does not include the construction of a 4,000 square foot warehouse as originally shown on the approved master plan and, therefore, was seen as a less intensive use. Some of the existing SUP conditions will continue to apply such as buffers along the Community Character Corridor; the DRC voted that the proposed use is consistent with the approved Master Plan (4-0).

C-0021-2013, Veritas Preparatory School

Ms. Diane Cavazos has submitted a conceptual plan to locate a private school in an existing office building at 275 McLaws Circle in the Busch Corporate Center. The property is zoned M-1 which requires an SUP for public and private schools. The proposed school would offer instruction to up to 50 students, grades 6 – 10, and eventually up to grade 12. There will be no bus service and a shared parking agreement will need to be employed with the office of Dr. James Burden, DDS as there are only 60 parking spaces available. The DRC was generally supportive of the applicant moving forward with the SUP application, understanding that there may be additional requirements by staff or the Busch Corporate Center.

Mr. Krapf moved to accept the report.

In a unanimous voice vote, the Commission approved the report. (6-0)

B. Policy Committee

Ms. Robin Bledsoe stated that the Policy Committee met on May 31, 2013 to discuss ZO-0005-2013/SO-0001-2013, Ordinances to Amend JCC Code Chapter 24, Zoning and, Chapter 19, Subdivisions. Because an 18-month comprehensive ordinance update implemented amendments throughout a staggered period of time, some inconsistencies had been found. For clarity purposes, staff has recommended changes to remedy those inconsistencies. With the exception of M-2, General Industrial District, the proposed changes do not alter policy. The proposed changes to M-2, General Industrial District recommend a broader Use List that corrects formatting errors and inadvertent omissions, and removes uses that do not represent the highest and best use of increasingly desirable yet limited parcels of land. The Policy Committee recommends approval of ZO-0005-

2013/SO-0001-2013, Ordinances to Amend JCC Code Chapter 24, Zoning and, Chapter 19, Subdivisions.

Mr. George Drummond moved to accept the report.

In a unanimous voice vote, the Commission approved the report. (6-0)

C. Regional Issues Committee

Mr. Woods stated that there had not been a Regional Issues Committee meeting since the last Planning Commission meeting and therefore there was no report.

Mr. Mike Maddocks confirmed.

5. PLANNING COMMISSION CONSIDERATION

A. Initiating Resolution - ZO-0005-2013/SO-0001-2013 Ordinances to amend JCC Code, Chapter 24, Zoning and Chapter 19, Subdivisions.

Mr. Jason Purse, Zoning Administrator, stated that after reviewing all of the changes from the Comprehensive Zoning Ordinance Update process, staff has identified a number of items that need to be corrected. Many of these corrections are housekeeping in nature. Mr. Purse noted that adoption of the Initiating Resolution is a necessary precursor to the Commission considering the amendments. Mr. Purse further stated that staff recommends that the Commission adopt the resolution to initiate consideration of this amendment to the Zoning and Subdivision Ordinances in accordance with Virginia State Code.

Mr. Maddocks inquired whether the actual ordinance changes would be considered in a separate action.

Mr. Purse confirmed that the amendments would be considered under the Public Hearing portion of the agenda.

Mr. Krapf moved to adopt the Initiating Resolution.

In a roll call vote, the Commission adopted the Initiating Resolution. (6-0)

6. PUBLIC HEARING CASES

A. Case No. AFD-09-86-1-2013, Gordon Creek Pickett Holdings Agricultural and Forestal District Addition

Mr. Luke Vinciguerra, Planner, stated that Mr. Meade Spotts has applied to enroll 349 acres of heavily wooded property located at 2171 Bush Neck Road into the Gordon Creek AFD. The parcel is zoned A-1, General Agricultural and is designated rural lands by the Comprehensive Plan. The property meets the minimum size and location requirements for inclusion in the AFD. The AFD Advisory Committee unanimously voted to endorse the application. Staff recommends that the Planning Commission recommend approval to the Board of Supervisors.

Mr. Woods inquired if the applicant was present.

Mr. Vinciguerra stated that the applicant was not present.

Mr. Woods opened the floor to questions.

The Commission had no questions.

Mr. Woods opened the public hearing.

There being none, Mr. Woods closed the public hearing.

Mr. Wood opened the floor for discussion.

There was no discussion.

Mr. Krapf noted that the parcel is contiguous with other parcels in the Gordon Creek AFD and that it is in an area that currently remains pristine.

Mr. Krapf moved to recommend approval of the addition of the property to the Gordon Creek AFD.

In a roll call vote, the Commission recommended approval of the application. (6-0)

B. Case No. SUP-0006-2013, Creative Kids Child Development Center

Mr. José Ribeiro, Senior Planner, stated that Ms. Tracey Williams has applied for a SUP to operate a child day care center in residential neighborhood and to increase the number of children from 9 to 20. The property is located at 701 Mosby Drive. zoned R-2, General Residential and designated as low density residential by the Comprehensive Plan. A Special Use Permit is required for the operation of child day care centers in the R-2 district.

Mr. Ribeiro stated that in 2006, Ms. Williams submitted an application for a home occupation to operate a child day care center for up to five children. Subsequently Ms. Williams applied for a license with the Virginia Department of Social Services to increase the capacity of her program to 9 children 24 hours a day; seven days a week and was unaware that the increase in capacity would require an SUP.

Mr. Ribeiro noted that if the SUP is approved, it will bring her child day care center into conformance with the Zoning Ordinance in addition to increasing the capacity of her program to 20 children.

Mr. Ribeiro noted on March 27, 2013, the DRC considered Ms. Williams request to increase the occupancy at her child day care center and offered comments and recommendations.

Mr. Ribeiro stated that in discussion with the applicant, staff supported bringing the use into conformance with the Zoning Ordinance and a modest increase in the number of children up to 12. Staff's main concerns are the impacts of traffic and noise associated with the larger increase on the residential neighborhood. Mr. Ribeiro further noted that Ms. Williams also proposes to move out of her residence in order to have sufficient space to accommodate 20 children. Mr. Ribeiro stated that staff does not support turning the residence into a commercial facility as this would be in conflict with the character of the neighborhood.

Mr. Ribeiro stated that on May 13, 2013 staff became aware of restrictive covenants associated with the neighborhood. The covenants state that no lot in the tract shall be used except for residential purposes. Mr. Ribeiro stated that staff informed the applicant that, based on the language in the covenants, staff would no longer be able to support an increase in the number of children from 9 to twelve.

Mr. Ribeiro noted that in 2009, in a similar case, the County Attorney's office issued a memorandum explaining the role of private covenants in zoning decisions and indicated that the Board of Supervisors should not, as a matter of public policy, take action which conflicts with restrictive covenants and that staff should recommend denial of such applications.

Mr. Ribeiro stated that there is no question that the applicant's child day care is a valuable resource for the community as evidenced by the number of letters received in support of her application; however, from a land use standpoint, staff does not find that a child day care center is a use appropriate to the interior of a residential neighborhood, particularly if the applicant moves out of the residence.

Mr. Ribeiro further stated that given the existence of covenants restricting the use of the lots, staff does not support this application. Mr. Ribeiro noted that should the Commission wish to approve the application and allow for up to 20 children, staff has proposed conditions to mitigate impacts associated with the proposed use.

Mr. Woods opened the floor to discussion.

Mr. Krapf inquired whether, if the number of children was 5 or less, the day care center could continue to operate as a home occupation.

Mr. Ribeiro confirmed that under those conditions it would be considered a home occupation.

Mr. Krapf noted that the restrictive covenants seemed to limit the number of children to 5 and inquired if the applicant had any recourse to have the covenants waived or changed.

Mr. Ribeiro responded that all property owners who are bound by the covenants must be in agreement with any changes and an amendment must be recorded among the land records with the Clerk of Circuit Court.

Mr. Krapf inquired what percentage of the neighborhood the letters of support represent and approximately how many property owners in James Terrace would have to acquiesce to any waivers.

Mr. Ribeiro responded that there are 16 lots on Mosby Drive. Residents on seven of those lots submitted letters of support. Letters were also received from property owners not on the cul-de-sac. Mr. Ribeiro noted that he would research the number of lots that comprise the entire subdivision.

Mr. Adam Kinsman clarified that the private covenants state that no lot shall be used except for residential purposes and that the County's policy is to not recommend approval of any use that is in direct conflict with the private covenant. Mr. Kinsman noted that in terms of the Zoning Ordinance, day care for 5 or fewer children is permissible as a home occupation and interpreted as a residential use. Mr. Kinsman further noted that property owners may feel differently regarding the interpretation of what constitutes a commercial or residential use.

Mr. Kinsman further clarified that an amendment to private covenants is more than just a survey of the property owners and would require drafting legal documents and filing them with the Court.

Mr. Basic inquired how many property owners would need to approve the amendment to the covenants.

Mr. Kinsman stated that an amendment would require approval by 100% of the property owners. Mr. Kinsman further noted that ascertaining the number of lots which are bound by the private covenants would require extensive research among the land records.

Ms. Bledsoe inquired if the residents enforce the covenants or if there was a homeowners association.

Mr. Kinsman stated that he was not aware of a homeowners association for the neighborhood and that any individual resident who benefits from the covenants would be able to file suit to enforce the covenants. Mr. Kinsman further noted that the County is not a party to the covenants and has no standing to enforce them. Mr. Kinsman noted again that the County's policy is to not recommend approval of any use that is in obvious and direct conflict with a private covenant.

Ms. Bledsoe inquired if anyone has complained about the existing day care.

Mr. Ribeiro stated that he was not aware of any complaints.

Mr. George Drummond inquired what number of children staff feels would be appropriate if the Commission recommended approval.

Mr. Ribeiro stated that the applicant is currently licensed by the Virginia Department of Social Services for 9 children. In the initial discussions with the applicant staff supported bringing the use into conformity with the Zoning Ordinance and a modest increase to 12; children; however, given the existence of the covenants, staff is no longer able to support the application.

Mr. Drummond inquired if the current number of children is in conflict with the Zoning Ordinance.

Mr. Ribeiro stated that prior to discovering the existence of the private covenants, staff had been supportive of a modest increase in the number of children from 9 to 12; however, there were concerns about increasing the number to 20.

Mr. Drummond inquired about when the covenants were established.

Mr. Ribeiro stated that the covenants were executed in 1956.

Mr. Basic inquired about the purpose of the County Attorney's position on private covenants.

Mr. Kinsman responded that it is a matter of public policy. Mr. Kinsman noted again that the County did not create the covenants and is not party to them and cannot enforce them; however, the County does not want to approve a use that would put the applicant in jeopardy of being in conflict with the other property owners to whom the covenants apply. Mr. Kinsman further noted that in terms of the Zoning Ordinance, 5 or fewer children is a home use and the County supports that.

Mr. Maddocks inquired what the DRC requested the applicant to do regarding proof of support from surrounding property owners.

Mr. Ribeiro stated that the applicant was to obtain letters of support from her neighbors and clients.

Mr. Maddocks inquired whether the DRC had recommended the applicant be limited to 9 children.

Mr. Ribeiro responded that the DRC had not made a recommendation on the number of children and that the focus of the request from the DRC was regarding showing support from adjacent property owners.

Ms. Bledsoe inquired what the ramifications to the County would be if the Commission voted in favor of the application.

Mr. Kinsman responded that there would be no ramifications to the County. Mr. Kinsman noted that it would put the applicant in jeopardy of enforcement action by the other property owners to whom the covenants apply.

Ms. Bledsoe inquired if the applicant proceeded with the applications, knowing the risks, whether it would be the applicant who would be responsible for dealing with enforcement actions.

Mr. Kinsman confirmed that the applicant would be the sole party responsible for dealing with any enforcement action by other property owners.

Mr. Woods noted that much of the focus has been on the number of children and requested that staff highlight some of the additional concerns related to the application.

Mr. Ribeiro stated that the actual request is for 20 children. Mr. Ribeiro further stated that the applicant would like to move out of the residence in order to accommodate that number. The applicant has also proposed atypical hours of operation from 6:00 a.m. to 12:00 a.m. Monday-Friday and from 7:00 a.m. to 12:00 a.m. from Saturday-Sunday. Mr. Ribeiro noted that staff considered the request from a land use perspective and the impacts of the proposal and arrived at conditions that would mitigate those impacts. Staff was comfortable supporting the application prior to discovering the existence of the restrictive covenants.

Mr. Maddocks inquired if a conflict over the covenants would be between the applicant and another property owner.

Mr. Ribeiro confirmed that the covenants are a private contract between the property owners which the County is not party to and does not enforce or interpret.

Mr. Maddocks inquired why the County would be concerned about a potential conflict between the applicant and another property owner.

Mr. Kinsman confirmed that it was a matter of public policy which was developed in 2009 and issued as a memorandum during consideration of a similar case.

Mr. Maddocks requested confirmation that there is no risk to the County as it relates to the covenants.

Mr. Kinsman confirmed.

Mr. Drummond noted that there was a similar situation in his neighborhood related to Dee's Day Care which was ultimately approved.

Mr. Ribeiro stated that there were several similarities between the two cases. Mr. Ribeiro stated that in the Dee's Day Care case, staff supported the application and the existence of restrictive covenants was discovered only after the Commission had recommended approval. Based on the guidance of the County Attorneys, staff had to change its

recommendation. Mr. Ribeiro stated that the Board of Supervisors did ultimately approve the request.

Mr. Drummond inquired about the number of children approved for the Dee's Day Care case.

Mr. Ribeiro stated that the Dee's Day Care proposal was for 12 children.

Mr. Drummond inquired about the considerations related to allowing 12 or 20 children.

Mr. Ribeiro stated that it was a matter of the impacts on the neighborhood. The impacts of noise and traffic increase as the number of children increases.

Mr. Drummond noted that it appeared that the majority of adjacent property owners supported the application.

Mr. Ribeiro confirmed.

Mr. Holt noted that there were also life, safety and building code impacts related to the requirements for increasing the number of children above 12 including monitored fire alarms, installation of exit doors and other factors which alter the structure of the dwelling and introduce a more commercial element.

Mr. Basic noted that the applicant's license from the Virginia Department of Social Services allows operation of the business 24 hours a day to accommodate those clients who work night shift. Mr. Basic inquired why the proposed hours are now significantly less.

Mr. Ribeiro stated that Planning and Building Safety and Permits staff met with the applicant to discuss how building code regulations would affect the proposal. It was determined that a certificate of occupancy to operate 24 hours a day with 20 children could not be obtained for a wood frame structure, therefore, the applicant was required to reduce the hours of operation.

Mr. Woods inquired if the reduction in hours of operation are reflected in the SUP conditions.

Mr. Ribeiro stated that the reduced hours of operation which were agreed to by the applicant are noted in the staff report. The hours noted in the SUP conditions reflect what staff believes would have less impact on the neighborhood.

Mr. Basic inquired how a lower number of children might affect the ability to operate 24 hours a day.

Mr. Ribeiro stated that it was not the number of children that triggered the building code requirements but the hours of operation.

Mr. Drummond inquired about the intent of the document provided by the Virginia Department of Social Services.

Mr. Ribeiro stated that it was not so much a letter of support but a preliminary determination that there was sufficient floor space for the proposed number of children based on a floor plan submitted by the applicant; however, physical inspection of the structure is still required for final determination.

Mr. Drummond inquired if the floor plan reflected the current conditions.

Mr. Ribeiro stated that the floor plan was based on proposed changes to the interior.

Mr. Woods invited the applicant to speak.

Ms. Williams thanked the Commission for the opportunity to speak.

Ms. Williams stated that she wanted to clarify several items.

Ms. Williams stated that the SUP application is for up to 20 children and that the Virginia Department of Social Services approval is for 24 children.

Ms. Williams shared with the Commission the proposed functional design of the residence which had been submitted to the Virginia Department of Social Services.

Ms. Williams further stated that she has approval from Building Safety and Permits for a certificate of occupancy for up to 20 children but this will require approval from the Planning Division. Ms. Williams noted that the options for a Certificate of Occupancy fell under both the I-4 group and the E group. The I-4 group pertains to a facility other than a family day home that provides supervision and personal care on a less than 24 hour basis for more than 5 children 2 1/2 years of age or less; excepting a child day care facility that provides care for more than 5 but no more than 100 children 2 1/2 years of age or less where the rooms in which the children are cared for have an exit which discharges directly to the exterior which is classified as an E group. Group E occupancies under 20,000 do not require sprinkler systems but still require a monitored fire alarm. Ms.

Williams stated that she had agreed to apply for a certificate of occupancy as an E group which would allow more than 5 but fewer than 100 children in a structure with a combustible wood frame structure.

Ms. Williams further noted that in regard to the concerns about operating 24 hour a day; seven days a week, she has been conducting business on that schedule for over 12 years. Since there were concerns about the hours of operations, she proposed to scale back the hours of operation encompass 5:30 or 6 a.m. to 12 a.m. Monday through Friday and 7 a.m. to 12 a.m. Saturday and Sunday which was acceptable to Building Safety and Permits staff. Ms. Williams noted that the time frames proposed are to accommodate clients who work varying shifts.

Ms. Williams noted that her clients encompass a diverse group of individuals who require the services that she provides to enable them to have child care while they work. Ms. Williams shared a letter of thanks from the County's Division of Social Services for her work with their clients.

Ms. Williams stated that she is aware of the private covenants and that she has obtained letters of support from both adjacent property owners and clients.

Ms. Williams further stated that she has documented approval from the James City Service Authority for the increase in use.

Ms. Williams stated that Engineering and Resource Protection has reviewed the application and recommends approval. Ms. Williams further noted that the Virginia Department of Transportation has no traffic concerns related to the proposal and no traffic improvements were recommended. Ms. Williams stated that the Virginia Department of Health only requested that Ms. Williams apply for the necessary food handling permits.

Ms. Williams stated that the Virginia Department of Social Services had granted her a license for the child day care serving 9 children ranging from 11-months through 12-years old which is due to expire August 20, 2013 and that as part of the license renewal process, she has applied to serve children 16-months through five-years of age.

Ms. Williams offered further documentation in support of her application regarding the need for the requested hours of operation and the location of commercial uses directly adjacent to residential zoning in the vicinity of her home.

Ms. Williams noted that her driveway provided adequate parking for both employees and clients picking up or dropping off. Ms. Williams further stated that to mitigate the traffic impacts she would be providing transportation.

Ms. Williams further stated that she is aware of child day care operations which do not have the appropriate licenses and permits. She is making an effort to ensure that she is in compliance with all regulations.

Mr. Woods opened the floor to questions.

Mr. Krapf inquired how many of the current clients came from the neighborhood.

Ms. Williams responded that there were no neighborhood children in her day care.

Mr. Krapf requested Ms. Williams confirm the hours of operation that she would be willing to conform to.

Ms. Williams responded that the hours would be 5:30 a.m. to 12 a.m. Monday through Friday and 7 a.m. to 12 a.m. Saturday and Sunday.

Mr. Basic noted that there are 22 children enrolled in the program and asked Ms. Williams to confirm whether all 22 children were in the building at the same time.

Ms. Williams responded that not all the children were there at the same time.

Ms. Bledsoe inquired if Ms. Williams' plan was to move out of the house.

Ms. Williams confirmed that she intended to move out of the house in order to provide better accommodations for her own family.

Ms. Bledsoe inquired how many additional children might be enrolled.

Ms. Williams stated that the Virginia Department of Social Services had approved the functional design of the structure for 24 children; however, she is only intending to have 20.

Ms. Bledsoe inquired if that would be 20 children at any given time.

Ms. Williams confirmed that it would be 20 children at any given time. Ms. Williams further noted that the state provides a way of monitoring and regulating pick-ups and

drop-offs so that the approved maximum number of children in the dwelling is not exceeded.

Ms. Bledsoe asked Ms. Williams if it would be necessary for to move out of the residence if she had 20 children in the structure.

Ms. Williams confirmed that she would either need to move out or add on to the structure.

Mr. Maddocks inquired how long Ms. Williams has been operating the day care in the current location.

Ms. Williams stated that she has been operating in the current location for seven years and has been in business for over 12 years with no complaints.

Mr. Woods asked for clarification on whether the child day care center could continue to operate in the wood frame structure with the increased number of children and which agency is responsible for those regulations.

Mr. Ribeiro stated that this regulation falls under Building Safety and Permits.

Mr. Woods inquired whether the child day care center could continue to operate in the current structure if the number of children were increased to 20.

Mr. Ribeiro clarified that it was the 24 hour a day use that would trigger the prohibition on the wood frame structure.

Mr. Woods asked Ms. Williams if she was in agreement with the SUP conditions set forth in the staff report.

Ms. Williams stated that she did not agree with the conditions.

Mr. Woods asked Ms. Williams if she would be willing to work with staff to bridge the gap between her needs, the concerns of the Commission and the SUP conditions proposed by staff.

Ms. Williams stated that she would be willing work further with staff to develop a compromise.

Mr. Holt stated that staff would be happy to continue the conversation with the applicant.

Mr. Woods commended the applicant for her efforts to do things the right way. Mr. Woods further noted that the Commission is approaching the application from a land use perspective and trying to mesh the requirements of the Zoning Ordinance with her proposal to arrive at the best resolution for everyone.

Mr. Woods asked Mr. Holt how the Commission should now proceed.

Mr. Holt stated that it was necessary to hold the Public Hearing.

Mr. Holt noted that many of the Uniform State Wide Building Code requirements kick in at 12 children such as additional means of egress and other structural changes. For staff the structural changes are a clear line between what transforms a traditional single family detached dwelling into a more commercial use. Mr. Holt further noted that it was important for the Commission to keep in mind that the conditions proposed by staff would remain based on some of the Building Code requirements and may not change significantly.

Mr. Basic also noted that regardless of the technical issues, there is still the issue of the private covenants.

Mr. Kinsman noted that although he is not able to interpret the covenants, there is a provision in the covenants which only requires a majority of the property owners to approve changes as opposed to requiring all property owners to approve.

Mr. Maddocks noted that the issue of the covenants was between the applicant and her neighbors.

Mr. Kinsman confirmed and noted that his comment was made to clarify how many property owners would be required to approve changes to the covenants.

Mr. Maddocks inquired if it would alleviate some of staff's concerns if the applicant were to obtain letters of support from a broader segment of the subdivision.

Mr. Holt noted that additional letters of support would not have an impact on the current status of the covenants. Mr. Holt further noted that the Planning Division's recommendation is based on trying to mitigate impacts to the existing residential neighborhood. Mr. Holt stated that based on all of the information in hand staff has done a good job of articulating the conditions, hours of operation notwithstanding under which staff would be comfortable having this use as part of an existing single family neighborhood.

Ms. Williams inquired why there were other more obviously commercial businesses on residentially zoned property in and adjacent to her neighborhood.

Mr. Holt stated that he would need to research those businesses to determine the history of their status.

Ms. Bledsoe asked Ms. Williams how many children she currently serves.

Ms. Williams stated that she serves 22 children but only has nine under her care at any one time.

Ms. Bledsoe stated that she would like to see the Commission arrive at a point where a decision could be made so that the business could continue to operate legally.

Ms. Bledsoe stated that she has concerns about approving the increase to 20 children because of the additional requirements that would come into play to allow the business to function legally under the Uniform Statewide Building Code and Virginia Department of Social Services.

Ms. Bledsoe inquired if there was a number below 20 that would allow the applicant to continue operate her business legally.

Mr. Kinsman noted that it is the number of children in the structure at any given time, not the number of students which triggers the Uniform Statewide Building Code requirements.

Mr. Drummond stated that he believed the greatest consideration in land use cases is the impact on the neighborhood. Mr. Drummond further stated that he felt the proposal would not have a negative effect on the neighborhood. Mr. Drummond also noted the existence of other commercial businesses in the neighborhood; therefore, this case would not be that much of an exception.

Mr. Basic noted that the Commission also considers public benefit. Denying the application would be contrary to public benefit because a number of children would then be without day care.

Ms. Bledsoe asked Mr. Kinsman if it would be the applicant's responsibility to deal with everything that comes afterward should the Planning Commission recommend approval of the application.

Mr. Kinsman confirmed that it would be the applicant's responsibility to comply with all the requirements of other governmental regulations. The applicant would also assume the risk, if any, related to the private covenants.

Ms. Bledsoe asked Ms. Williams if she fully understands those responsibilities.

Ms. Williams confirmed that she understands the responsibilities.

Mr. Woods opened the public hearing.

There being none, Mr. Woods closed the public hearing.

Mr. Woods opened the floor to discussion.

Mr. Woods stated that what appears to be on the table is an agreement from the applicant to continue to work with staff to develop conditions which are satisfactory to staff and meet her expectations and needs for the business.

Mr. Woods asked Ms. Williams if she would be willing to bring the case back to the Planning Commission in a month.

Ms. Williams agreed but noted that her license expires on August 20, 2013 and the application needs to be submitted 60 days in advance. Ms. Williams noted that she would need to submit a form from the Zoning Administrator stating that she is going through the local approval process.

Mr. Holt noted that he would prefer that the applicant not be in the position of not being successful with the DSS permitting process, even if she is successful with the SUP.

Mr. Purse stated that he has reviewed the DSS form; however, he is not able to sign it for the number of students indicated because the SUP has not been approved. Mr. Purse further noted that he would only be able to sign the form for 5 children until the Board of Supervisors acts on an approval for an increase in the number of students. Mr. Purse noted that the applicant would not be able to meet the DSS renewal time frame if the case is deferred.

Mr. Drummond stated that he moved to approve the application.

Mr. Woods inquired if there were any further discussion before the motion is called.

Mr. Krapf stated that he appreciated the applicant's intentions in seeking approval for her business through proper channels.

Mr. Krapf stated that he could not support the motion at this time and that he had several concerns about the proposal.

Mr. Krapf further stated that he would not support the applicant moving out of the residence. Mr. Krapf noted that the covenants were in place to maintain the residential flavor of the neighborhood. If the applicant moves out of the residence and raises the number of children, it becomes a commercial enterprise which he could not support.

Mr. Krapf also noted that he could support flexibility with the hours of operation to accommodate clients on shift work. Mr. Krapf also stated that he would also support an increase up to 12 children because of the building code requirements.

Mr. Krapf noted that he was also making a distinction between County policy not to approve a land use that conflicts with private covenant versus a legally binding ordinance requirement.

Mr. Krapf clarified that he cannot support the application as it is currently presented; however he could support an increase in the number of children up to but not more than 12 and that he could support some additional flexibility in the hours of operation and noted that he supports the other staff restrictions particularly the requirement to renew the SUP every three years.

Mr. Drummond recommended approving the SUP with the exception of approving the applicant's plan to move out of the residence.

Mr. Woods asked Mr. Kinsman if the Commission could approve the SUP with the condition that she may not move out of the residence.

Mr. Kinsman responded that one of the staff conditions was that Ms. Williams remain in residence for the duration of the validity of the SUP and that Mr. Woods' motion was to approve the SUP with those restrictions. Mr. Kinsman stated that the Commission could amend the motion in order to amend some of the conditions.

Mr. Holt requested Mr. Drummond to clarify whether his motion was to approve with the nine conditions in the staff report and it appears that there is no consensus on the first three conditions relating to occupancy, hours of operation and residency.

Mr. Krapf stated that he appreciated the clarification because he believed Mr. Drummond's motion was to approve the applicant's request, not the staff conditions.

For clarification, Mr. Holt stated that Mr. Drummond's motion was for approval of the application with an occupancy not to exceed 20 children at any one time, with the hours of operation being Monday through Friday 5:30 a.m. to 12 a.m. and Saturday and Sunday 7 a.m. to 12 a.m. and leaving in place staff condition number 3 which requires residency on the property and leaving in place proposed conditions numbers 4 through 9 as presented in the staff report.

Mr. Drummond confirmed that Mr. Holt captured his intent in the motion as clarified.

Mr. Maddocks asked Ms. Williams if she had any concerns about doing any building modifications that might be required.

Ms. Williams responded that she has no concerns about going forward with the required modifications. Ms. Williams further stated that the only modifications that would currently be required are a monitored fire alarm and the exit doors.

Mr. Basic stated that he could support the modification of condition number 2 for the hours of operation. Mr. Basic stated that he had concerns about the occupancy but noted that he would rely on the applicant to obtain the necessary permits. Mr. Basic noted that the hours of operation would in fact benefit the traffic situation in that not all children would be arriving and leaving at the same time. Mr. Basic noted that the location might not be the best fit for everything the applicant hopes to do. Mr. Basic commented that the applicant might be better served to consider finding a location that accommodated the proposal without the number of significant hurdles encountered with the current location.

Ms. Williams stated that she would be willing to look into an alternate location.

Ms. Bledsoe stated that in general if there were a public policy in place, she would not go against it; however, she recognizes the public need for the applicant's services. Ms. Bledsoe stated that she agrees with the motion as set forth.

Mr. Krapf asked Ms. Williams if the business was currently operating 24 hours a day.

Ms. Williams confirmed.

Mr. Krapf noted that the new hours of operation proposed would actually increase traffic volume because the traffic flow would not be spread out over the longer time. Mr. Krapf inquired if the applicant would be amenable to a cap of twelve children.

Ms. Williams stated that she hoped to go over 12. Ms. Williams further stated that she provides transportation which would minimize the impact on the neighborhood.

Mr. Krapf asked Ms. Williams if she would be picking up the majority of the children.

Ms. Williams confirmed that she would be picking up the majority of children at night.

Mr. Basic noted that in this instance he did not have concerns about going against the County policy on private covenants in this one instance because this is not a new use. Mr. Basic further noted that if the application were denied, it would impact a number up to sixteen families needing reliable child care which is contrary to the public good.

Mr. Woods asked Mr. Holt to call the vote.

Mr. Holt restated that Mr. Drummond's motion was to approve subject to total occupancy being for up to a total of 20 children as condition 1; hours of operation being limited to Monday through Friday 5:30 a.m. to 12 a.m.; and Saturday and Sunday 7 a.m. to 12 a.m.

as condition 2; and for conditions 3 through 9 as presented in the staff report including a residency requirement would remain in place as proposed.

Mr. Drummond confirmed.

In a roll call vote, the Commission recommended approval of the application as modified and as noted. (6-0)

C. Case Nos. ZO-0005-2013/SO-0001-2013 Ordinances to amend JCC Code, Chapter 24, Zoning and Chapter 19, Subdivisions

Mr. Jason Purse, Zoning Administrator stated that staff recently completed the 18-month comprehensive ordinance update process. The various districts were updated in groups, but were also amended at staggered times throughout the process. Now that the fully revised ordinance has been in daily use for some time, a number of consistency and clarity issues have been identified. With the exception of the M-2, General Industrial District, these proposed changes do not represent policy changes in the ordinance; they are merely an attempt to bring an additional level of consistency to the ordinance.

Mr. Purse noted that more accurate cross references have been added for the Highways, Streets, Parking and Loading; Landscaping; Off-street Parking; and Site Plan articles of the ordinance which are currently cross referenced in multiple sections. Similarly, new position titles and division names have been updated. A definition for “Places of public assembly” is being added to the ordinance in an effort to stream line the use list tables. In the R-4, Residential Planned Community District, one section of the ordinance was inadvertently deleted from the previous approved version. The proposed amendments would re-insert this language. In the LB, Limited Business, B-1, General Business, and M-1, Limited Business/Industrial District’s, a small number of uses are proposed to be renamed, moved or added to correct formatting errors and omissions inadvertently made when the use lists were converted into the currently adopted use tables.

Mr. Purse further stated that based on a recent analysis of undeveloped M-2 properties in concert with the Office of Economic Development, the recommended changes to the General Industrial District also propose a broader list of revisions that correct formatting errors and inadvertent omissions and removes many commercial uses that do not represent the highest and best use of the most intense industrially zoned land in the County, which is limited in the amount remaining.

Mr. Purse stated that staff recommends that the Commission recommend approval of the changes to the Zoning Ordinance to the Board of Supervisors. Mr. Purse noted that at the

May 31, 2013 meeting, the Policy Committee voted 3-0 to recommend approval of the changes.

Mr. Woods opened the floor to questions.

There were no questions.

Mr. Woods opened the public hearing.

Mr. Tim Trant, Kaufman and Canoles, PC, stated that he represents the Peninsula Pentecostals, Inc. Mr. Trant noted that the congregation consists of over 500 active members and they are seeking a location to accommodate an expanded church campus. Mr. Trant stated that his client has identified and focused on the properties located at 9230, 9240 and 9250 Pocahontas Trail as suitable their needs. The property is zoned M-2 totaling approximately 40 acres and is designated Mixed Use on the Comprehensive Plan. Mr. Trant stated that his client's grand vision for the property includes the expanded church campus as well as a more retail oriented development on the remainder that would serve the adjacent industrial park. Mr. Trant stated that a contract has been executed with the sellers to purchase the property and that upon execution of that contract, a meeting was held with Planning and Economic Development staff to discuss that vision. In that meeting it was noted that churches are permitted by-right in the M-2 district. Mr. Trant noted that the meeting concluded with the promise that Planning staff would review the plan in more detail. Ultimately, Planning staff notified Mr. Trant that staff had concerns about the amount of M-2 land involved which would not be used for more industrial purposed and that it would be challenging to obtain support for the plan. It was further noted that a more limited proposal for the church campus could proceed by-right; however the proposed day care center would trigger the SUP requirement. Mr. Trant noted that his client was agreeable to the more limited plan including a smaller day care that would not require legislative approval. Mr. Trant noted he had only become aware that day of the proposed ordinance amendments which would eliminate churches as a by-right use in the M-2 district. Mr. Trant noted that at no time in the earlier discussions with staff had there been any mention of the proposed change.

Mr. Trant also noted that regardless of the impact on his client's proposal, the proposed changes would have wide spread impact on the by-right development potential of M-2 land throughout the County and would negatively impact the value of that property. Mr. Trant further noted concerns about the potential impact on individuals who may be in the process of purchasing land and are unaware of the proposed changes.

Mr. Trant stated that the ordinance amendment should be remanded to the Policy Committee for additional review and consideration. Mr. Trant further stated that such a sweeping change should require direct notification of affected property owners and discussion with the property owners regarding the impact of the changes.

Mr. Woods thanked Mr. Trant for his remarks. Mr. Woods further noted that he had given Mr. Trant considerable latitude in the length of remarks; however, public comments are limited to five minutes.

Ms. Diana Peters noted that the church has been searching for a new campus for more than three years. Ms. Peters further noted that the church would be a benefit to the community through its various ministries and draws a number of families to the area. Ms. Peters requested that the proposed changes be reconsidered to allow churches to continue in the M-2 district by-right.

Mr. John McSharry, Church Administrator, Peninsula Pentecostal, Inc., stated that the Kirby Tract is a fitting location for the new worship center, providing a bridge between the existing residential area and the GreenMount Industrial Park. Mr. McSharry noted that during the entire process, they have sought to work with County staff to create their plan. Mr. McSharry noted that the Church seeks to serve the community in which it is located. Plans include a worship center, a community center and a day care center. Mr. McSharry noted that the Church has made a significant investment financially, emotionally and time wise to accomplish the vision. Mr. McSharry stated that the Church requests the opportunity to establish the new worship center by-right.

Mr. Douglas E. Beck, 9915 Swallow Ridge, Board Trustee, Peninsula Pentecostal, Inc., stated that is concerned about the changes to by-right uses in the M-2 District and requested that the amendment be denied.

Mr. Donald Patton stated that he is a co-manager of the Kirby Tract. Mr. Patton noted that they have worked to be good stewards over the property and its development. Value has been added to the property to the benefit of the community. Mr. Patton further stated that they believed the Peninsula Pentecostal, Inc. proposal would be in the best interest of the Grove community and the County as a whole. Mr. Patton stated that he was also unaware of the proposed ordinance changes until the last minute. Mr. Patton further requested that the amendments be reconsidered and stated that it would have been appropriate to individually notify stakeholders with property in the M-2 district of the proposed changes.

Ms. Diane Green stated that she has been a member of Peninsula Pentecostal for 18 years. Ms. Green noted that the Grove community would benefit from the services and amenities of the Church. Ms. Green further requested that the Commission reconsider the ordinance amendments.

Mr. David Green stated that he has been commuting to worship at Peninsula Pentecostal for many years and that there is no similar congregation in the County. Mr. Green stated

that the Church would be a positive influence in the community. Mr. Green requested that the Commission reconsider the ordinance changes so that the Church could be built.

Mr. Steven Barrs, GreenMount Associates, stated that he opposed further limits to how properties can be used. Mr. Barrs stated that the thrust of economic recovery is to stimulate business. Mr. Barrs stated that business owners need the ability to choose how and where they will grow their business. Mr. Barrs noted that the ordinance changes to the M-2 district eliminate 30% of the options to expand business. Mr. Barrs stated that there was no higher and better use for the particular parcel in question than a church in a community that desperately needs service. Mr. Barrs further noted that the Church would bring value to the community. Mr. Barrs requested that the Commission reject the proposed ordinance amendment.

As no one further wished to speak, Mr. Woods closed the public hearing.

Mr. Woods opened the floor to discussion.

Mr. Krapf stated that he had spoken with Mr. Trant that afternoon and that Mr. Trant had shared many of his concerns about the proposed ordinance amendment.

Mr. Krapf stated that in considering permitted uses and specially permitted uses for a zoning district he refers to the statement of intent for the district. In this instance the statement of intent reads "The primary purpose of the General Industrial District, M-2, is to establish an area where the principal use of land is for industrial operations which are not compatible with residential or commercial service establishments..."

Mr. Krapf noted that typically following a Comprehensive Plan update, the final steps are housekeeping ordinance amendments to ensure that the Zoning Ordinance is in keeping with the intent of the Comprehensive Plan. Mr. Krapf noted that most of the amendments presented are housekeeping in nature with the exception of the changes to the M-2 district.

Mr. Krapf stated that, keeping in mind the statement of intent, he had reviewed some of the items that remain as a by-right use and some of those that are being removed. Mr. Krapf noted that the subject of concern was the deletion of places of public assembly which include houses of worship and meeting halls. Mr. Krapf stated that the deletion was an attempt to meet the statement of intent for the particular district. Mr. Krapf noted that some of the by-right items that did remain included funeral homes, government offices, libraries, post offices, and schools. Mr. Krapf noted that with those uses remaining, it appeared that the use list was still not entirely in harmony with the statement of intent if the goal of the M-2 district is maximizing industrial space for operations that would not better fit in a commercial or business district.

Mr. Krapf stated that he would recommend taking the revisions to the M-2 district back to the Policy Committee for further consideration.

Ms. Bledsoe noted that she had also spoken with Mr. Trant. Ms. Bledsoe stated that the Policy Committee should reconsider the amendments to the M-2 district to flesh out the concerns.

Mr. Maddocks noted that the greater ramifications of the amendments to the M-2 district were not obvious to him until after hearing from Mr. Trant. Mr. Maddocks further stated that any time land owners property is affected by a decision, the County should take the extra step provide direct notification to those individuals.

Mr. Basic noted that he was in agreement with sending the amendments back to the Policy Committee for significant review.

Mr. Drummond concurred that the amendments should be reconsidered by the Policy Committee. Mr. Drummond further stated that he was troubled by the fact that staff was aware of the development plans proposed by the Peninsula Pentecostal Church and had not taken steps to provide notice of the proposed amendments that would affect their investment. Mr. Drummond noted that he believed that particular proposal should be grandfathered because it was close to fruition prior to the amendments being considered.

Mr. Kinsman noted that the issue of vesting would be better served in a different forum.

Mr. Basic inquired what type of motion would be required to send the ordinance amendments back to the Policy Committee.

Mr. Holt sated that if it was the desire of the Commission to postpone the matter until the July meeting, with the direction that in the interim the amendments be reconsidered by the Policy Committee, that would be the form of the motion.

Mr. Krapf inquired if the Commission could address the housekeeping amendments and only send the M-2 amendments back to the Policy Committee.

Mr. Holt noted that for clarity and to be consistent with the advertising, it would be best to keep all the amendments together.

Ms. Bledsoe moved to defer the ordinance amendments to the Commission's July 2013 with the amendments to be reviewed at the June 2013 Policy Committee meeting.

In a roll call vote, the Commission deferred consideration of the ordinance amendments to its July 2013 meeting and requested that the Policy Committee review the amendments at its June 2013 meeting. (6-0)

Mr. Kinsman noted that to avoid the necessity of readvertising the ordinance amendments, it would be appropriate to reopen the public hearing and continue the matter to the July 2013 meeting.

Mr. Woods reopened the public hearing.

Mr. Woods asked Mr. Kinsman if the Peninsula Pentecostal Church was precluded from moving forward with their plans in the interim.

Mr. Kinsman stated that he would need to do research on the status of the various approvals; however, that consideration should not affect the Commission's decision.

Mr. Woods noted he was seeking clarification because he felt there were still concerns on the part of the Peninsula Pentecostal Church.

Mr. Trant stated that he believed longer term deliberation would be required to address the issues at hand and provide opportunity for the stakeholders to have a more thorough discussion with the County over their concerns.

Mr. Woods noted that the public hearing was continued until the Planning Commission's next regularly scheduled meeting.

7. PLANNING DIRECTOR'S REPORT

Mr. Holt stated that he had nothing to add to the printed report that had been provided.

Mr. Drummond noted concerns regarding approving an ordinance that would prevent a

8. PLANNING COMMISSION DISCUSSION AND REQUESTS

There were no requests from the Commissioners or additional items for discussion.

9. ADJOURNMENT

Mr. Krapf moved to adjourn the meeting.

The meeting was adjourned at 9:34 p.m.



Al Woods, Chairman



Paul D. Holt, III, Secretary