

MINUTES
JAMES CITY COUNTY PLANNING COMMISSION
REGULAR MEETING
County Government Center Board Room
101 Mounts Bay Road, Williamsburg, VA 23185
May 4, 2016
7:00 PM

A. CALL TO ORDER

B. ROLL CALL

Planning Commissioners

Present:

Tim O'Connor
Rich Krapf
Chris Basic
Robin Bledsoe
John Wright
Danny Schmidt

Remote Participation

Heath Richardson

Staff Present:

Paul Holt, Planning Director
José Ribeiro, Senior Planner II
Savannah Pietrowski, Planner
Roberta Sulouff, Planner
Maxwell Hlavin, Assistant County Attorney

Mr. Tim O'Connor called the meeting to order at 7:00 p.m.

Mr. Paul Holt stated that a quorum was present. Mr. Holt stated that Mr. Heath Richardson was attending to a personal matter out of town and has requested to participate in the meeting remotely from Maitland, Florida. Mr. Holt further stated that per the policy adopted by the Commission and consistent with The Code of Virginia the members present must consider and approve a request for remote participation by a majority vote.

Ms. Robin Bledsoe moved to approve the request for remote participation.

On a roll call vote the Commission approved the request 6-0.

Mr. Heath Richardson joined the meeting via telephone.

C. PUBLIC COMMENT

Mr. O'Connor opened the public comment.

As no one wished to speak, Mr. O'Connor closed the public comment.

D. CONSENT AGENDA

1. Minutes Adoption - April 6, 2016 Regular Meeting

2. Development Review Committee Action Item: Case No. SP-0104-2015, Williamsburg Landing Woodhaven Expansion
(DRC Recommendation: Preliminary Approval, 4-0)
3. Adoption of Updated 2016 Calendar

Mr. Rich Krapf moved to approve the Consent Agenda.

The consent agenda was approved by voice vote (7-0).

E. REPORTS OF THE COMMISSION

Mr. Krapf stated that the Policy Committee met on April 14, 2016 to review six proposed Zoning or Subdivision Ordinance amendments, all of which will be brought before the Commission at various points in the near future. Mr. Krapf stated the proposed amendments are related to parking minimums, electric vehicle charging stations, the role of the Development Review Committee in regard to review of site plans and major subdivisions, setbacks and building coverage limits in the LB, Limited Business and B-1, General Business districts, MU, Mixed Use District, development on infill parcels and parcels less than five acres, and elimination of requirements for certification of subdivision monuments. Mr. Krapf stated that the proposed amendments would bring more consistency to the County's processes and provide more flexibility in development review. Mr. Krapf stated that the Committee was generally supportive of the amendments and provided staff with guidance on proposed options.

F. PUBLIC HEARINGS

1. SUP-0004-2015, Hankins Resource Recovery Facility

Ms. Savannah Pietrowski, Planner, presented a report to the Commission on the request to permit the operation of a +/- 100 acre resource recovery facility, which includes an existing borrow pit and the operation of a wood and stone processing facility on properties located at 8196, 8212 and 8220 Croaker Road. Ms. Pietrowski noted that staff finds the proposal compatible with surrounding zoning and consistent with the 2035 Comprehensive Plan. Ms. Pietrowski further noted that the proposal would bring the existing operation into conformance with the Zoning Ordinance.

Mr. O'Connor opened the floor for questions by the Commission.

Mr. Danny Schmidt inquired whether the annual reporting requirement is typical of other resource recovery operations in the County.

Ms. Pietrowski stated that is a standard requirement for borrow pits.

Mr. John Wright inquired how the potential encroachment into the RPA buffer would be handled.

Ms. Pietrowski stated that there is a proposed SUP condition requiring those areas to be restored.

Mr. O'Connor opened the public hearing.

Mr. Vernon Geddy, III, Geddy, Harris, Franck and Hickman, representing the applicant, provided information to the Commission on the history of the property and the existing operation. Mr. Geddy noted that the property is generally well buffered and that additional landscaping is proposed for two areas where there is a gap in the natural buffer.

Mr. Geddy further noted that this is not the highest and best use of the property; however, in the interim, this operation puts the property to a productive use. Mr. Geddy further noted that this use is a form of recycling to make use of debris that might otherwise end up in a landfill.

As no one else wished to speak, Mr. O'Connor closed the public hearing.

Mr. O'Connor opened the floor for discussion by the Commission.

Mr. Rich Krapf stated that the operation is a good interim use for the property and that he would support the application.

Mr. Schmidt stated that he was pleased to see that care is being taken to preserve the cultural resources on the property. Mr. Schmidt stated that he is comfortable with the application.

Mr. Richardson stated that because there is little noise impact from the operation and because of the SUP conditions to mitigate environmental impacts, he would support the application.

Mr. Wright moved to recommend approval of the application.

On a roll call vote, the Commission voted to recommend approval of SUP-0004-2015, Hankins Resource Recovery Facility (7-0).

2. SUP-0009-2015, 100 Lake Drive Rental of Rooms

Ms. Roberta Sulouff, Planner, presented a report to the Commission on the request to allow the rental of up to three rooms in an owner-occupied, four bedroom home. Ms. Sulouff noted that the difference between a request to allow rental of rooms and a request to allow operation of a tourist home is that there is a requirement under rental of rooms that the property be owner occupied. Ms. Sulouff noted the existence of a restrictive covenant which may affect the rental of rooms on this property; however, is a private matter outside of the County's purview. Ms. Sulouff noted that with the proposed conditions, the proposal is compatible with surrounding development and the recommendations of the 2035 Comprehensive Plan.

Mr. O'Connor opened the floor for questions from the Commission.

Ms. Bledsoe inquired about the length of time the rooms would be rented.

Ms. Sulouff stated that there is not a restriction on the length of rental. Ms. Sulouff further stated that the applicant has affirmed that it would be short term and that rental of rooms as a use is typically interpreted as short term.

Ms. Bledsoe inquired if the rental of rooms would require payment of the same taxes that are required from hotels and bed and breakfasts.

Ms. Sulouff stated that the applicant would need to register as a licensed business and that that when taxes were discussed, it was the understanding that they would pay the same taxes required from other short term rental establishments.

Ms. Sulouff further stated that to clarify the response to the previous question, the homeowner could rent out the entire house.

Ms. Bledsoe stated that she is concerned about the potential for the rooms to be rented indefinitely which would create a situation with four different families are residing in the same dwelling. Ms. Bledsoe further stated that she believes it is important to set time limits. Ms. Bledsoe further requested confirmation that the business would pay the two dollar per night occupancy tax.

Ms. Sulouff stated that the occupancy was discussed more generally and she would need to get clarification.

Ms. Bledsoe stated that it would be helpful to have the information prior to voting on the application. Ms. Bledsoe further stated that she understands that hotels and bed and breakfasts pay the occupancy tax where Airbnb establishments currently do not. Ms. Bledsoe inquired about the square footage of the house.

Ms. Sulouff stated that she did not have that figure.

Mr. O'Connor requested that Mr. Max Hlavin, Assistant County Attorney, clarify if there was a limit on the number of people who could reside in a single family dwelling.

Ms. Bledsoe stated that if the rental of rooms is allowed without limiting the length of the rental, in theory there could be four different families using the property as a residence indefinitely which is a different type of rental. Ms. Bledsoe further stated that she wants to clarify if that is the type of rental intended or if it is to qualify to participate with Airbnb. Ms. Bledsoe stated that if the purpose is to qualify for Airbnb, then it is necessary to clarify whether the occupancy tax will be paid.

Mr. Hlavin stated that the SUP conditions place limits on the number of rental occupants.

Ms. Sulouff noted that the County has a current standard on the number of unrelated individuals that may occupy a dwelling. Ms. Sulouff stated that she believes that number is four.

Ms. Bledsoe inquired if that limit was for rental.

Ms. Sulouff stated that it was for long term occupancy of a single family dwelling.

Mr. Wright inquired about the legal requirements for filing HOA covenants and restrictions.

Mr. Hlavin stated that these documents generally come forward when a home is purchased so that the prospective owner is aware of any covenants or restrictions that affect the use of the property.

Mr. Wright inquired about the origin of the covenants and restrictions.

Mr. Hlavin stated that covenants and restrictions are usually part of the initial subdivision process and run with the land in perpetuity.

Mr. Wright inquired if the County is obligated to recognize those agreements.

Mr. Hlavin stated that covenants and restrictions are not subject to approval by the Board of Supervisors and are a private matter. Mr. Hlavin noted that disputes over covenants and restrictions would be enforced through the court system.

Ms. Bledsoe requested that Mr. Hlavin clarify the County's scope and role when HOA covenants and restrictions affect a property that is part of a legislative application.

Mr. Hlavin stated that covenants and restrictions are a private agreement between property owners and the County has no authority to enforce them. Mr. Hlavin stated that the Commission and the Board of Supervisors may take the existence of covenants and restrictions into consideration as a formal expression of neighborhood expectations. Mr. Hlavin further clarified that some restrictions are explicit and other such as no commercial use are open to interpretation as to what constitutes a commercial use, particularly in the case of rental of rooms. Mr. Hlavin stated that the interpretation is really a matter for the courts to decide.

Mr. Schmidt inquired what type of system would be used to screen or verify identity of rental occupants.

Ms. Sulouff stated that the question would be best answered by the applicant. Ms. Sulouff further stated that Airbnb has a stringent screening process and the applicant has stated the intention to rent rooms through Airbnb; however, the use is not limited to Airbnb.

Mr. Basic noted that it has been established that there is no limit on how long a rental occupant may stay and that the number of unrelated persons allowed for permanent occupancy had been determined. Mr. Basic inquired about the definition of "permanent."

Mr. Hlavin stated that the SUP approval would provide a use on the property in addition to the single family residential use which would have different parameters.

Mr. Basic inquired how the SUP conditions would be enforced.

Ms. Sulouff stated that the conditions are enforced on a complaint driven basis. Ms. Sulouff further stated that if there is a violation of the SUP conditions, then the SUP would become void.

Mr. Wright requested an update on the status of the Airbnb legislation.

Mr. Hlavin stated that the matter has been referred to committee for research during the break between sessions, so no legislation has been enacted that would currently preempt local regulation.

Mr. O'Connor opened the public hearing.

Ms. Kathryn Williamson and Mr. Bruce Williamson, applicants, addressed the Commission to provide information on their plan for rental of rooms and the Airbnb model. Ms. Williamson stated that they do not intend to rent all three rooms at the same time. Ms. Williamson stated that the average stay is one to three nights. Ms. Williamson noted that they are covered with \$100,000 insurance policy through Airbnb for damage to the property and surrounding properties. Ms. Williamson noted that they have a business license and do pay a tax for each room that is rented. Ms. Williamson further noted that Airbnb provides guests an affordable lodging option which allows them more discretionary income to spend during their stay.

Mr. Williamson noted that several Supreme Court cases in Virginia have resulted in rulings that short term rental of a home does not violate restrictive covenants. Mr. Williamson further stated that the Courts have found that language in restrictive covenants is ambiguous and found that the sort term rental is not necessarily in conflict with the restriction for the property to be used for residential purposes only.

Ms. Bledsoe inquired whether the applicant intended to remain with Airbnb exclusively or potentially use other agencies.

Ms. Williamson stated that they intend to remain with Airbnb.

Ms. Bledsoe stated that her main concern is that the area hotels are not reaching capacity and she wants to ensure that the applicant is licensed and is paying the same tax as the hotels as a matter of fairness. Ms. Bledsoe inquired about the procedure for the applicant to pay the required taxes.

Ms. Williamson stated that she maintains a ledger for the rooms rented and calculates the number of room nights for the occupancy tax. Ms. Williamson stated that she is responsible for ensuring that the tax is paid for each room rented.

Mr. Basic inquired about how long the business had been operating.

Ms. Williamson stated that they were in operation in July 2015 and were not aware that their operation violated the Zoning Ordinance. Ms. Williamson stated that they ceased operating when they received the notice of violation.

Mr. Basic inquired if the intent was to rent rooms for only a few nights at a time.

Ms. Williamson confirmed.

Mr. Basic inquired if there had been any incidents between guests and the neighbors.

Ms. Williamson stated that there had not been any incidents and that the guests were generally quiet.

Mr. Basic inquired about the frequency of rentals.

Ms. Williamson stated that it was generally weekend guests but that they did not rent out rooms every weekend.

Mr. Vincent Sutlive, 122 Ware Road, addressed the Commission in opposition to the application. Mr. Sutlive noted that he believes the proposed use is in opposition with the covenants and restrictions filed when the subdivision was first developed. Mr. Sutlive stated that the covenants have been reviewed by an attorney who has opined that the covenants are valid. Mr. Sutlive further stated that he believes the proposed use is a commercial use.

Mr. Roger Smith, 102 Lake Drive, addressed the Commission in opposition to the application. Mr. Smith stated that he also believes that the proposed use is a commercial use and is in opposition to the recorded covenants. Mr. Smith noted that if the application is approved, it may open the way for other such operations in the neighborhood and that it could change the character of the neighborhood.

Mr. James Bradley, 104 Malvern Circle, addressed the Commission in opposition to the application. Mr. Bradley noted that he believes the application is in opposition to the purpose of zoning regulations that promote predictability in the community. Mr. Bradley noted that he is concerned about the additional traffic that would be generated by the proposed use.

Ms. Beth Hull, 116 Lake Drive, addressed the Commission in opposition to the application. Ms. Hull stated that she is concerned that the proposed use would change the fabric of the community.

Ms. Kathleen Exton, 111 Ware Road, addressed the Commission in opposition to the application. Ms. Exton noted concerns that the proposed use would change the character of the neighborhood.

Ms. Lyra Hale, 4608 Massena Drive, addressed the Commission in support of the application and the Airbnb model. Ms. Hale noted that Airbnb guests are often those who would not visit the area otherwise. Ms. Hale also noted that those guests will spend up to twice the amount in the community as other guests, bringing additional revenue. Ms. Hale noted that if the County wants to remain a competitive tourist destination, it must be open to the new shared economy.

Mr. Robert Campbell, 101 Lake Drive, addressed the Commission in support of the application. Mr. Campbell noted that the covenants appear to leave some leeway for the potential to rent out property in the subdivision. Mr. Campbell further stated that he appreciates that the applicant is making an effort to comply with the Zoning Ordinance.

Ms. Doris Pierce addressed the Commission in support of the application.

Ms. Kathleen Exton requested an additional opportunity to speak.

The Commission determined that making an exception to the established public hearing limits would set a precedent for other cases.

Mr. Dorsey Smith, Lake Drive, addressed the Commission in opposition to the application. Mr. Smith expressed concerns that the proposed use would change the nature of the residential neighborhood.

As no one else wished to speak, Mr. O'Connor closed the public hearing.

Mr. O'Connor opened the floor for discussion by the Commission.

Mr. Danny Schmidt stated that he believes citizens value and want predictability in their neighborhood. Mr. Schmidt stated that he cannot support the application at this time. Mr. Schmidt further stated that ultimately such matters may be determined by the outcome of the pending state legislation.

Mr. Basic inquired if there was any data on home based temporary lodging in the county.

Ms. Sulouff stated that she did not have that data at hand but would research the information.

Ms. Bledsoe inquired how the use was defined in County Code.

Ms. Sulouff stated that it is defined as the rental of rooms with a maximum of three rooms and is a specially permitted use in the R-1 zoning district whereas a tourist home is not permitted at all. Ms. Sulouff noted that unless there were a condition attached to the SUP, there was no limit on the length of time the rooms could be rented.

Mr. Holt further clarified that there is no prohibition on a property owner renting out or subleasing a home.

Mr. Krapf stated that he is considering the application from the standpoint of a land use application. Mr. Krapf noted that the proposed use is a specially permitted use in the R-1 zoning district. Mr. Krapf further stated that the configuration of the parcel is conducive to allowing the use without a negative impact. Mr. Krapf stated that the proposed conditions limiting the number of rooms to be rented, the maximum number of guests and the number of vehicles would mitigate impacts. Mr. Krapf further stated that many of the speakers indicated that they had been unaware of the use of the property which indicates that it is a fairly unobtrusive use. Mr. Krapf stated that he would support the application.

Mr. Basic inquired if a sunset clause was considered for the SUP to allow reevaluation.

Ms. Sulouff stated that a sunset clause was not considered as it is not a practice that is encouraged on a regular basis.

Ms. Bledsoe inquired why the licensing and tax requirements were not included in the proposed conditions.

Ms. Sulouff responded that they were not typical conditions for SUP cases. Ms. Sulouff stated that there is an overarching assumption that if a business owner is applying for an SUP, they will also comply with licensing and tax regulations.

Ms. Bledsoe inquired if staff has actually seen the business license.

Ms. Sulouff stated that she has been coordinating on this matter with the Commissioner of Revenue's Office and believes she has actually seen the license.

Mr. Wright stated that he believes the County should respect HOA covenants and not make decisions that are in conflict. Mr. Wright noted that he believes the County should wait for a decision on the pending state legislation and incorporate those policies in County policies. Mr. Wright stated that he would not support the application.

Mr. Richardson stated that he believes the HOA covenants are not a matter for consideration by the Commission. Mr. Richardson further stated that he believes that the area would eventually benefit from the new shared economy; however, the matter has not yet been decided by the state. Mr. Richardson stated that he shares the concerns about the effect of short term rental of rooms on the local hotel occupancy. Mr. Richardson stated that because the use is not prohibited and because the occupancy tax requirements are being met, he would support the application.

Mr. Wright stated that he is concerned that if this SUP application is approved, it will open the way for other applications which are in conflict with HOA covenants and restrictions.

Mr. Schmidt stated that he believes the Commission must consider the citizen input in making a recommendation on an application.

Mr. Richardson stated that if an HOA were in existence, the HOA Board would be the property body to consider whether a use is in violation of the covenants.

Mr. Basic stated that he concurs with Mr. Krapf's assessment of the application and noted that the one point that stands out is that many of the neighbors were unaware of the operation. Mr. Basic further stated while there was debate allowing a business in a residential neighborhood, the County Code and the Comprehensive Plan language indicate that home based businesses and some limited commercial activities may be

permitted. Mr. Basic stated that he could support the application as it stands but would also support a sunset clause.

Mr. O'Connor stated that he considers the rental of rooms to be a residential use. Mr. O'Connor further stated that while the current discussion focuses on the Airbnb model, the SUP will run with the land which would open the possibility that future property owners might use other avenues to rent rooms where guests are not as carefully screened. Mr. O'Connor further stated that because the Commission should foster a sense of community, it should not make decisions that set property owners at odds. Mr. O'Connor stated that he would not support the application at this time.

Ms. Bledsoe stated that she believes that the neighbors could feel comfortable with the Airbnb screening process. Ms. Bledsoe stated that she does not believe that running a home based business is necessarily disruptive to a neighborhood; however, this business is somewhat different. Ms. Bledsoe further stated that she does not believe it is the County's role to be involved in HOA covenant issues. Ms. Bledsoe stated that residents have the right to expect predictability in their neighborhood and some neighborhoods lend themselves to that expectation more than others. Ms. Bledsoe stated that the shared economy is taking off in many areas and that measures are not in place to control impacts on the community. Ms. Bledsoe stated that because the neighborhood sentiment runs against the proposed use, she would not support the application.

Mr. Bledsoe moved to recommend denial of the application.

On a roll call vote, the Commission voted to recommend denial of SUP-0009-2015, 100 Lake Drive Rental of Rooms (4-3).

3. SUP-0003-2016, Two Drummers Smokehouse SUP Amendment/SUP-0004-2016, Extra Mile Landscapes

Mr. O'Connor called for disclosures from the Commission.

Mr. Basic stated that he would recuse himself from considering this matter because he has submitted a proposal for design services to the land owner.

Ms. Savannah Pietrowski, Planner, presented a report to the Commission on the request to permit an expansion of the existing Two Drummers Smokehouse restaurant and permit a contractor's office for Extra Mile Landscapes on properties located at 8856 and 8864 Richmond Road. Ms. Pietrowski noted that the properties are shown on a joint Master Plan and because of the shared improvements they are being presented together but are to be considered individually by the Commission. Ms. Pietrowski noted that staff finds that the proposal is compatible with surrounding zoning and consistent with the 2035 Comprehensive Plan. Ms. Pietrowski noted that the landscaping enhancements and relocation of the parking area would improve consistency with the Richmond Road Community Character Corridor guidelines.

Mr. O'Connor opened the public hearing for both cases.

Mr. Vernon Geddy, III, Geddy, Harris, Franck and Hickman, representing the applicant, provided an overview to the Commission regarding the proposed improvements. Mr. Geddy noted that the owner of both properties is also the owner of Extra Mile Landscapes. Mr. Geddy clarified that the SUP conditions limit the three materials stockpiles to 2,500 square feet each. Mr. Geddy further noted that the landscaping and proposed restaurant expansion would effectively screen the parking in its new location and that the current parking area would be landscaped to provide a buffer. Mr. Geddy

stated that the applications represent local small business success stories and that approval of the applications would allow the expansion of two thriving local businesses.

Mr. Wright inquired if there would be a berm between the stockpiles and the BMP to prevent materials from flowing into the BMP.

Mr. Geddy responded that the plan had not yet reached that level of design.

Ms. Pietrowski stated that a dry swale is shown on the Master Plan to accept the drainage for stormwater management. Ms. Pietrowski stated that stormwater management would be addressed by the Engineering & Resource Protection Division at the site plan stage.

Mr. O'Connor inquired whether this would qualify under stockpile regulations and require a silt fence.

Ms. Pietrowski stated that they would not because they will be under the size threshold in the Zoning Ordinance.

Mr. Jonathan Schy, 8874 Richmond Road, addressed the Commission with concerns about the potential effect of the development on the RPA and a stream on his property.

Mr. Wright noted that the effect on the RPA was his main concern as well.

As no one else wished to speak, Mr. O'Connor closed the public hearing.

Mr. O'Connor opened the floor for discussion by the Commission.

Mr. O'Connor inquired what the limitations were on the location, number and size of the materials stockpiles.

Mr. Holt stated that the SUP condition states that material and equipment storage shall be limited to the areas designated as such on the Master Plan and material stockpiles shall not exceed than eight feet in height and shall not exceed 2,500 square feet in land area. Mr. Holt further stated that if the applicant determines that they need to have several different types of mulch or stone, then it can be reflected on the site plan and a determination can be made for Master Plan consistency.

Mr. O'Connor noted that he wanted to ensure that the applicant had some flexibility.

Mr. Krapf stated that he commends the applicant for the number of improvements being made along the Community Character Corridor. Mr. Krapf further stated that he appreciates that these are thriving local businesses and that the proposal will be a benefit to the community. Mr. Krapf stated that he would support the application.

Ms. Bledsoe stated that she believes the proposal will be a benefit to the County and that the businesses are investing in the community. Ms. Bledsoe stated that she would support the application.

Mr. Schmidt stated that he approves of the proposed improvements. Mr. Schmidt would support the application.

Mr. Richardson stated the improvements are a significant benefit to the County and he is pleased to see this type of enterprise in the upper end of the County. Mr. Richardson stated that he would support the application.

Mr. O'Connor stated that he believes this is the type of enterprise that is needed in the upper end of the County. Mr. O'Connor stated that there are a number of constraints on

the property and that the applicant has provided a good design that fits with the Community Character Corridor.

Mr. Wright moved to recommend approval of SUP-0003-2016, Two Drummers Smokehouse SUP Amendment.

On a roll call vote, the Commission voted to recommend approval of SUP-0003-2016, Two Drummers Smokehouse SUP Amendment (6-0-1).

Ms. Bledsoe moved to recommend approval of SUP-0004-2016, Extra Mile Landscapes.

Mr. Holt clarified that the SUP condition for materials stockpiles limited the stockpiles to 2,500 square feet each.

On a roll call vote, the Commission voted to recommend approval of SUP-0004-2016, Extra Mile Landscapes (6-0-1).

4. SUP-0007-2016, Atlantic Septic Systems Contractors' Warehouse and Office

Mr. José Ribeiro, Senior Planner II, presented a report to the Commission on the request to allow the operation of a contractor's warehouse and office on a parcel zoned A-1, General Agricultural. Mr. Ribeiro stated that the proposed new site would accommodate a \pm 2,400-square-foot warehouse with a small office area and a parking area of \pm 6,000 square feet. Mr. Ribeiro stated that staff finds that the proposal is not compatible with surrounding zoning and development and that it is inconsistent with the 2035 Comprehensive Plan. Mr. Ribeiro further stated that staff believes that permitting such a use at this location would begin to undermine the long-range land use objectives of the County's Comprehensive Land Use Plan for residential uses in this area. Mr. Ribeiro stated that he believes the applicant intends to request a deferral of the matter to the June Planning Commission meeting.

Mr. O'Connor opened the floor to questions from the Commission.

Mr. Richardson inquired about what a deferral would entail.

Mr. O'Connor stated that it would still be necessary to open the public hearing and that the Commission would decide whether to agree to the deferral or vote on a recommendation.

Mr. O'Connor opened the public hearing.

Ms. Keisha Gibson, representing Atlantic Septic Systems, stated that they would like to request a deferral. Ms. Gibson stated that they had not anticipated the outpouring of opposition and would like the opportunity to work with the community to alleviate their concerns.

Ms. Crystal Jones, Atlantic Septic Systems, stated that they were unaccustomed to presenting a case to a legislative body and would like an opportunity to be able to present their case favorably.

Mr. Krapf inquired if 30 days was sufficient.

The applicants confirmed.

Ms. Bledsoe inquired if the applicant had met with staff.

Ms. Gibson stated that they had not met in person, but had exchanged email and telephone calls.

Mr. O'Connor stated in order for the public to make an informed decision about whether they wished to speak at this meeting, he wanted to get a sense of whether the Commission was supportive of a deferral.

Ms. Bledsoe noted that if a citizen spoke during the public hearing at this meeting, they would not be able to speak again at the next meeting.

Mr. Krapf stated that he would be generally supportive of a deferral to allow the applicant more opportunity to prepare the case.

Mr. Schmidt inquired whether a decision about granting a deferral was a matter for the Commission or whether the public could express a preference.

Mr. O'Connor stated that citizens could voice an opinion during the public hearing. Mr. O'Connor stated that he wanted to ensure that the public understand that they may choose to speak at the public hearing this evening and that the comments will become part of the record; however, if the Commission chooses to grant the deferral, anyone who speaks tonight will not be able to speak again at the next meeting.

Ms. Bledsoe noted that if the Commission grants the deferral, there may be additional information made available at the next meeting that is important for the public to consider.

Mr. Basic stated that he is supportive of a deferral. Mr. Basic stated that he is sympathetic of the citizens who have been waiting to speak; however, he believes the applicant should have an opportunity to prepare additional information.

Mr. Wright inquired whether the matter could be moved ahead of other items on the next agenda if a deferral is granted.

Mr. Holt stated that it could be set as the first public hearing item.

Ms. Bledsoe stated that she wonders why the applicant is not better prepared for this meeting.

Mr. O'Connor stated that he appreciated getting the sense of where the Commissioners stand on the deferral.

Mr. O'Connor stated that the Commission would now move forward with the public hearing. Mr. O'Connor stated that those who wished to speak would be able to do so and the comments would be considered by the Commission as they decide whether to defer the matter or vote on a recommendation on the matter. Mr. O'Connor stated that the citizens may decide whether or not to speak at this meeting and that any comments will become part of the record; however, anyone who speaks tonight may not speak again if the matter is deferred to the next meeting.

Mr. Paul Engbersen, 301 Elmwood Lane, representing the Elmwood Civic Association, addressed the Commission in opposition to the application. Mr. Engbersen noted concerns about potential odor, contamination from spills and the unsuitability of the roadway for large vehicles. Mr. Engbersen further noted concerns about the potential purpose of the retention basin.

Ms. Kim Griffith, 8201 Old Mill Lane, representing the Glenwood Acres HOA, addressed the Commission in opposition to the application. Ms. Griffith noted concerns about the unsuitability of the roadway to support commercial vehicles. Ms. Griffith requested that the Commission not defer the matter.

Mr. James Boyd, 200 Elmwood Lane, addressed the Commission in opposition to the application. Mr. Boyd noted concerns about the safety impact of commercial vehicles on the roadway and the incompatibility of the proposed use with the adjacent residential communities.

Ms. Elizabeth Dabney, 307 Elmwood Lane, addressed the Commission in opposition to the application with concerns about Cedar Point Lane accommodating the heavy equipment and large vehicles and the unsuitability of the proposed use adjacent to the residential communities.

Ms. Millie Webb, 201 Elmwood Lane, addressed the Commission in opposition to the application. Ms. Webb noted concerns about the narrowness of Cedar Point Lane, potential drainage issues and the incompatibility of the proposed use adjacent in a residential community.

Ms. Maggie Coleman addressed the Commission on concerns related to the condition of Cedar Point Lane in inclement weather, the narrowness of the road and the difficulty of navigating the sharp curves on the road. Ms. Coleman further expressed concerns about the potential for contamination of the groundwater.

Mr. Charles Pratt, 209 Elmwood Lane, addressed the Commission in opposition to the request to defer the application.

Mr. Nathan Walker, 101 Locust Place, addressed the Commission in opposition to the application with concerns about potential contamination affecting Elmwood Pond and the incompatibility of the use adjacent to residential properties.

Ms. Amy Feurer, 108 Tanbark Lane, addressed the Commission in opposition to the application. Ms. Feurer noted concerns about the incompatibility of the use adjacent to residential properties and concerns about the safety impact of commercial vehicles on a narrow roadway.

Ms. Lillian King, 110 Tanbark Lane, addressed the Commission in opposition to the application. Ms. King noted concerns about the methods used to notify the neighborhoods of the legislative application.

Ms. Kay Tarrant, 108 Tanbark Lane, addressed the Commission in opposition to the application.

Mr. Travis Worthington, 135 Tanbark Lane, addressed the Commission in opposition to the application. Mr. Worthington noted concerns about the compatibility of the use with the adjacent residential communities. Mr. Worthington also noted his opposition to the request for deferral.

Mr. BJ Gibson, Atlantic Septic System Systems, addressed the Commission in support of the application. Mr. Gibson provided details on how the business operates and requested the opportunity to provide additional information to address citizen concerns.

Mr. Jason Charest, addressed the Commission in opposition to the application. Mr. Charest noted concerns about large and heavy vehicles on Cedar Point Lane. Mr. Charest also expressed concerns about the potential for contamination of the groundwater.

As no one else came forward to speak, Mr. O'Connor opened the floor for discussion by the Commission. Mr. O'Connor noted that the Commission was at liberty to ask questions of staff or the applicant. Mr. O'Connor further noted that if the Commission chooses to grant the deferral, the public hearing would be continued to the June meeting; if the Commission chooses not to grant the deferral, the public hearing would be closed and there would be discussion by the Commission on a recommendation.

Mr. Richardson stated that he did not support a deferral. Mr. Richardson further stated that he does not find the application to be consistent with the surrounding zoning or the Comprehensive Plan land use goals. Mr. Richardson stated that he would oppose the application.

Mr. Krapf stated that normally a deferral is requested to allow additional time to work with staff to craft SUP conditions or revise proffers. Mr. Krapf stated that he did not feel that this situation met that scenario. Mr. Krapf noted that the Commission is an advisory body and that if the Commission voted on the matter, the applicant would have approximately 30 days to prepare for the presentation to the Board of Supervisors and could address any issues in that time frame. Mr. Krapf stated that he was not supportive of a deferral.

Ms. Bledsoe stated that she is not supportive of a deferral. Ms. Bledsoe further stated that it appears that the considerable negative public response is the main reason for requesting the deferral.

Mr. Wright stated that he believed a deferral would appear to lend support to having a commercial activity in a residential area. Mr. Wright stated that he would not support a deferral.

Mr. Basic stated that he had supported the idea of a deferral because it does not appear that there has been dialogue between the applicant and the property owners. Mr. Basic stated that if the Commission concurs he would support bringing the matter to a vote.

Mr. Schmidt inquired when the deferral was requested.

The applicant stated that the request was made earlier in the day.

Mr. O'Connor noted that requests for deferral are often last minute.

Mr. O'Connor stated that he would like to allow the applicant an opportunity to speak to address the questions and issues that have been raised and allow the Commission an opportunity to consider all sides of the matter.

Ms. Crystal Jones addressed the Commission on behalf of Atlantic Septic Systems. Ms. Jones provided information on the retainage pond and noted that its purpose was to accommodate stormwater. Ms. Jones provided an overview of the regulations and measures in place to ensure that the business did not pose a health hazard to the community or a danger to the traveling public.

Mr. Wright inquired why the applicant did not seek an industrial location for the business.

Ms. Jones stated that they were looking for a larger location without other tenants.

Mr. Wright inquired if the applicant already owned the land.

Ms. Jones stated that they were looking to purchase the land.

Mr. O'Connor inquired if there was anyone else wishing to speak.

Ms. Terry Thon, 101 Tanbark Lane, addressed the Commission in opposition to the application.

Mr. O'Connor requested a decision on the request for deferral.

Mr. Richardson stated that he cannot support the application and moved to deny the application.

Mr. O'Connor stated that the public hearing had not been closed and that the motion was premature.

The consensus of the Commission was not to grant a deferral.

Mr. O'Connor closed the public hearing.

Mr. Krapf stated that his lack of support stems from the fact that the application is clearly not compatible with the surrounding zoning or the intent of the Comprehensive Plan.

Ms. Bledsoe stated that she also believes that the proposed use is not appropriate in this location.

Mr. Wright stated that he concurs with the staff determination that the use is not compatible with the surrounding zoning or the Comprehensive Plan. Mr. Wright further stated that there are many other industrial sites in the County where the business would be better located.

Mr. Schmidt stated that he also cannot support the application.

Mr. Richardson stated that he concurs with the other Commissioners and the staff recommendation.

Ms. Bledsoe move to recommend denial of the application.

On a roll call vote the Commission recommended denial of SUP-0007-2016, Atlantic Septic Systems Contractors' Warehouse and Office (7-0).

The Commission took a brief recess before moving to Planning Commission Considerations.

G. PLANNING COMMISSION CONSIDERATIONS

1. Z-0005-2016, The Promenade at John Tyler Proffer Amendment - CCC Buffer

Ms. Savannah Pietrowski, Planner, presented a report to the Commission on the request to amend Condition No. 8 of the Adopted Proffers, for the Promenade at John Tyler and to amend the narrative description and conceptual cross-section of the Route 199 Community Character Corridor (CCC) buffer that was submitted with the original rezoning application in order to allow the placement of a 5.5-foot berm within the

northern portion of the buffer. Ms. Pietrowski stated that the southern portion of the buffer will remain subject to selective clearing and supplemental planting, consistent with the cross-section provided with the original rezoning application. Language was also provided to allow for the Planning Director or his designee to inspect the southern portion of the buffer once completed to ensure it complies with Condition No. 8 of the Proffers. Ms. Pietrowski noted that landscaping within the buffer will still be provided in accordance with the Enhanced Landscaping Policy, adopted by the Board of Supervisors April 9, 2013, and there will be no change in the total number of plantings that will be provided within the buffer. Ms. Pietrowski further noted that there are no other proposed changes to the Adopted Proffers or Master Plan. Ms. Pietrowski further noted that the requested Proffer amendment would not negatively impact the development, surrounding development or the Route 199 CCC.

Mr. O'Connor opened the floor for questions from the Commission.

Mr. Wright inquired if there would be a slope to the berm.

Ms. Pietrowski stated that there would be a slope.

Mr. Schmidt moved to recommend approval of the proffer amendment.

On a roll call vote, the Commission voted to recommend approval of Z-0005-2016, The Promenade at John Tyler Proffer Amendment - CCC Buffer (7-0).

2. **Initiation of Consideration of Amendments to Article III, Site Plan, of the Zoning Ordinance and Article II, Procedures and Documents to be Filed, of the Subdivision Ordinance, With Respect to the Development Review Committee**
3. **Initiation of Consideration of Amendments to the Subdivision Ordinance to Alter the Procedures and Documents to be Filed and Requirements for Design and Minimum Improvements**
4. **Initiation of Consideration of Amendments to the Mixed Use District of the Zoning Ordinance**
5. **Initiation of Consideration of Amendments to the Limited Business District (LB) and the General Business District (B-1) of the Zoning Ordinance**
6. **Initiation of Consideration of Amendments to the Highways, Streets, Parking and Loading Division and Definitions section of the Zoning Ordinance to Reduce Parking Requirements**
7. **Initiation of Consideration of Amendments to the Special Regulations and Definitions Articles of the Zoning Ordinance to Add Electric Vehicle Charging Stations**

Mr. Paul Holt, Planning Director, stated that as part of the Planning Division's 2015/2016 work program staff has been considering amendments to the Subdivision and Zoning ordinances to ensure that the ordinances are up to date, consistent and continue to provide flexibility in the development review process. Mr. Holt noted that the items before the Commission are resolutions to initiate consideration of ordinance amendments which is a procedural step required under state code. Mr. Holt stated that the amendments will be referred to the Policy Committee and/or the Commission and that the amendments would follow the required public hearing process through the Commission and the Board of Supervisors before any code changes are enacted.

Ms. Bledsoe inquired if the amendments reflect changes made in the Comprehensive Plan.

Mr. Holt confirmed.

Mr. Basic requested that, for the amendment to the parking requirements, staff consider incorporating bonuses where parking reductions are offered by an applicant or penalties where an excessive amount over ordinance minimums has been requested.

Ms. Bledsoe moved to approve the Initiation of Consideration of Amendments to Article III, Site Plan, of the Zoning Ordinance and Article II, Procedures and Documents to be Filed, of the Subdivision Ordinance, With Respect to the Development Review Committee.

On a roll call vote the Commission approved the Initiation of Consideration of Amendments to Article III, Site Plan, of the Zoning Ordinance and Article II, Procedures and Documents to be Filed, of the Subdivision Ordinance, With Respect to the Development Review Committee (7-0).

Mr. Krapf moved to approve the Initiation of Consideration of Amendments to the Subdivision Ordinance to Alter the Procedures and Documents to be Filed and Requirements for Design and Minimum Improvements.

On a roll call vote the Commission approved the Initiation of Consideration of Amendments to the Subdivision Ordinance to Alter the Procedures and Documents to be Filed and Requirements for Design and Minimum Improvements (7-0).

Mr. Wright moved to approve the Initiation of Consideration of Amendments to the Mixed Use District of the Zoning Ordinance.

On a roll call vote the Commission approved the Initiation of Consideration of Amendments to the Mixed Use District of the Zoning Ordinance (7-0).

Ms. Bledsoe moved to approve the Initiation of Consideration of Amendments to the Limited Business District (LB) and the General Business District (B-1) of the Zoning Ordinance.

On a roll call vote the Commission approved the Initiation of Consideration of Amendments to the Limited Business District (LB) and the General Business District (B-1) of the Zoning Ordinance (7-0).

Mr. Schmidt moved to approve the Initiation of Consideration of Amendments to the Highways, Streets, Parking and Loading Division and Definitions section of the Zoning Ordinance to Reduce Parking Requirements.

On a roll call vote the Commission approved the Initiation of Consideration of Amendments to the Highways, Streets, Parking and Loading Division and Definitions section of the Zoning Ordinance to Reduce Parking Requirements (7-0).

Mr. Basic moved to approve the Initiation of Consideration of Amendments to the Special Regulations and Definitions Articles of the Zoning Ordinance to Add Electric Vehicle Charging Stations.

On a roll call vote the Commission approved the Initiation of Consideration of Amendments to the Special Regulations and Definitions Articles of the Zoning Ordinance to Add Electric Vehicle Charging Stations (7-0).

H. PLANNING DIRECTOR'S REPORT

1. Planning Director's Report

Mr. Holt stated that there was nothing more to add other than what was submitted in the Planning Commission packet.

I. PLANNING COMMISSION DISCUSSION AND REQUESTS

Mr. O'Connor stated that he would be sending out a revised schedule for Board of Supervisors coverage. Mr. O'Connor noted that he would be the Commission representative to the Board of Supervisors for May.

Mr. Schmidt inquired how the schedule was determined.

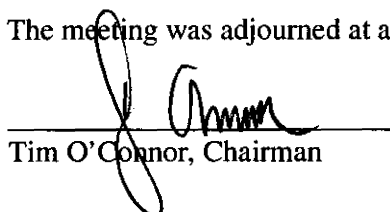
Mr. O'Connor stated that generally the Commissioners provided their avoid dates.

Ms. Bledsoe noted that she appreciated Mr. Richardson attending the Strategic Plan Advisory Group meeting in her absence.

J. ADJOURNMENT

Mr. Richardson moved to adjourn.

The meeting was adjourned at approximately 10:52 p.m.


Tim O'Connor, Chairman


Paul D. Holt, III, Secretary