

MINUTES
JAMES CITY COUNTY PLANNING COMMISSION
REGULAR MEETING
County Government Center Board Room
101 Mounts Bay Road, Williamsburg, VA 23185
June 1, 2016
7:00 PM

A. CALL TO ORDER

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

B. ROLL CALL

Planning Commissioners

Present:

Tim O'Connor

Rich Krapf

Chris Basic

Robin Bledsoe

John Wright

Heath Richardson

Danny Schmidt

Staff Present:

Paul Holt, Planning Director

José Ribeiro, Senior Planner II

Savannah Pietrowski, Planner

Roberta Sulouff, Planner

Maxwell Hlavin, Assistant County Attorney

Mr. O'Connor recognized the presence of Mr. Richard Bradshaw, Commissioner of the Revenue and Mr. Russ Seymour, Director of Economic Development.

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 - May 4, 2016 Regular Meeting
2. Development Review Committee Action Item: Case No. C-0037-2016, Natural Resources and Farm Link Center, Community Garden

Mr. Chris Basic made a motion to approve the Consent Agenda.

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

E. REPORTS OF THE COMMISSION

Mr. Rich Krapf stated that the Policy Committee met on May 12, 2016 to review three proposed ordinance amendments. Mr. Krapf stated that the amendments included changes to the Planned Unit Development District to allow the manufacture of food, beverages and food products, changes to the Wireless Communications Facilities Ordinance and amendments to Allow Mobile Food

Vending Vehicles in the M-1, Limited Business/Industrial District, the M-2, General Industrial District and the Planned Unit Development-Commercial District.

Mr. Krapf stated that the County has received requests to allow for the manufacture of food in certain areas zoned PUD-C. Mr. Krapf noted that the largest area is in Stonehouse which includes distinct commercial/industrial areas but has a more limited use list than the M-1 and M-2 districts. Mr. Krapf further stated that staff believes it may be beneficial to provide for the manufacture of food, beverages and food products in the PUD-C. The Committee concurred with the staff recommendations and voted to recommend approval of the proposed amendments.

Mr. Krapf stated that review of the Wireless Communications Facilities Ordinance was selected as part of the Planning Division Work Plan to determine if other structures such as microwave towers and radio towers should fall under the provisions of the ordinance. Mr. Krapf further stated that new federal regulations, specifically the Spectrum Act, must also be addressed. Mr. Krapf stated that the Committee voted to recommend that staff begin a review of the WCF Ordinance.

Mr. Krapf stated that the Policy Committee also considered Zoning Ordinance amendments to allow mobile food vending vehicles in the M-1, Limited Business/Industrial District, the M-2, General Industrial District and the Planned Unit Development-Commercial District. Mr. Krapf noted that this review was to fulfil a request by the Board of Supervisors. Mr. Krapf stated that the Committee and staff discussed such items as definitions, permitting, performance standards and operating hours. Mr. Krapf stated that the Committee also reviewed procedures and policies from other localities and provided feedback on staff's planned approach. Mr. Krapf stated that the Committee voted to approve staff preparing draft amendments for future consideration.

Mr. Heath Richardson stated that the Development Review Committee met on May 25, 2016 to review C-0037-2016, Natural Resource and Farm Link Center, Community Gardens for a determination of masterplan consistency. Mr. Richardson stated that Mr. Brian Noyes of the Colonial Soil and Water Conservation District has proposed the first phase of a multi-phase project to build a community agricultural resource center. The initial phase would include community garden plots. Mr. Richardson further stated that as a condition of SUP-0017-2003, "...all development of the Warhill Sports Complex site shall be generally in accordance with the adopted Master Plan (MP-0005-2003), with such minor changes as the DRC determines does not change the basic concept of character of the development." Mr. Richardson stated that the DRC finds that the first phase of the proposed use is consistent with the adopted Master Plan.

F. PUBLIC HEARINGS

1. SUP-0006-2016, 8766 Pocahontas Trail Dollar General

Ms. Roberta Sulouff, Planner, presented a report to the Commission on the request to construct a Dollar General variety store at 8766 Pocahontas Trail. Ms. Sulouff noted that the proposal is subject to policies governing the Limited Business, LB District and properties designated as Neighborhood Commercial. Ms. Sulouff stated that the proposed conditions have been developed to ensure that the proposal is consistent with those policies. Ms. Sulouff stated that staff finds the proposal compatible with surrounding development and consistent with the recommendations of the 2035 Comprehensive Plan. Ms. Sulouff stated that staff recommends that the Commission recommend approval of the application to the Board of Supervisors, subject to the attached conditions.

Mr. O'Connor opened the public hearing.

Mr. Richard Smith, 2860 B NC Highway, Aberdeen NC, stated that he represents Par 5 Development Group. Mr. Smith further stated that it is the intention to comply with all conditions of the Special Use Permit to ensure that the proposed use fits well in the community.

Mr. Michael W. Lynch, 20 S. Roanoke Street, Fincastle, VA, stated that he represents Engineering Concepts Inc. Mr. Lynch noted that he is available to answer any technical questions related to the proposal.

Mr. John Wright inquired how the visual impacts on the adjacent residential areas would be mitigated.

Mr. Lynch stated that the site would be landscaped.

Mr. O'Connor inquired about landscaping along the road frontage.

Mr. Lynch stated that they would be working with a certified landscape architect to ensure that the proposed landscape plan would be acceptable.

Mr. O'Connor noted that his interest stems from the subject property being directly opposite the entrance to Carter's Grove.

Mr. Krapf inquired whether a new location had been found for the bus stop.

Mr. Lynch stated that they are working with VDOT on the access management and the final location of the bus stop.

Mr. Basic inquired if the applicant would be amenable to modifying the landscape plan so that evergreens would be substituted for some of the deciduous trees.

Mr. Lynch stated that the applicant is more than willing to make modifications that would make the project acceptable to the County.

Mr. Basic requested that staff work toward formalizing that modification.

Mr. Wright inquired if the proposed project was on the table at the time the parcel was withdrawn from the AFD.

Mr. Lynch stated that it was not.

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

Ms. Robin Bledsoe stated that she believes the proposed development will bring needed services to the Grove community.

Mr. Wright noted that there were citizen concerns about another Dollar General store proposed for the Norge area. Mr. Wright inquired if there had been any citizen feedback about this proposal. Mr. Wright noted that it was an important distinction for the public to understand why this case was being heard and the other was not.

Ms. Sulouff stated that no negative feedback has been received. Ms. Sulouff noted that there had been some initial concern about a private drive being used to provide access to the property; however, the private drive will not be used. Ms. Sulouff noted that the difference between the two proposals is that the store proposed in Norge is actually part of a master plan for a rezoning that occurred in 2004. Ms. Sulouff stated that because that property is subject to a master plan and the proposed location for the store is designated as commercial, a legislative application is not required.

Mr. Wright inquired if the property in Norge was rezoned to commercial. Ms. Sulouff stated that the property was rezoned to mixed use.

Ms. Bledsoe clarified that the one in Norge does not require further legislative action, whereas this proposal does.

Mr. Schmidt stated that he is appreciative of the concern for the Carter's Grove property and preserving the scenic quality around the historic property. Mr. Schmidt stated that he would support the application.

Mr. Wright noted that he was concerned about the future of this parcel when it was removed from the AFD and noted that he might be more cautious in the future when voting on such matters. Mr. Wright further noted that absent any community concerns, it makes sense to approve the application.

Mr. Krapf made a motion to approve the application subject to the recommended conditions and the additional condition proposed to modify the landscape plan to substitute evergreens for some of the deciduous trees along the road frontage.

Mr. O'Connor inquired if the applicant is agreeable to the additional condition.

Mr. Smith confirmed.

Mr. Basic noted that his intention was not to screen a new business but to have an emphasis on evergreen trees in the landscaping plan.

Mr. Holt inquired if the intent was to translate the request into an SUP condition or to rely on staff to ensure the matter is handled at site plan stage.

Mr. Basic stated that he would prefer to include it as an SUP condition before the case is considered by the Board of Supervisors.

Mr. O'Connor clarified that the motion is to recommend approval with the additional condition.

On a roll call vote, the Commission voted to recommend approval of SUP-0006-2016, 8766 Pocahontas Trail Dollar General (7-0).

2. SUP-0009-2016, 7206 Merrimac Trail 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 home. Ms. Sulouff noted that staff considered the location of the property, the availability of parking and adequate existing screening of the property to be factors favorable to the project. Ms. Sulouff stated that the SUP conditions mitigated impacts on adjacent properties by limiting the number of guests and the number of guest vehicles allowed on site. Ms. Sulouff stated that limitations have been placed on changes to the exterior of the property that would draw attention to the use. Ms. Sulouff further stated that the property owner will be required to obtain all necessary permits and licensing and pay all required use-based taxes.

Ms. Sulouff noted that staff has been made aware of restrictive covenants that may affect the rental of rooms on the property. Ms. Sulouff stated that the County Attorney has advised that because the County is not a party to this restrictive covenant, staff lacks the legal authority to interpret whether or not the covenant prohibits the proposed use. The applicant has affirmed that it does not. Any disagreement about this affirmation and/or the covenant is a private matter outside of the County's purview.

Ms. Sulouff stated that staff finds the proposal to be compatible with surrounding development and consistent with the 2035 Comprehensive Plan and Zoning Ordinance. Ms. Sulouff stated that staff recommends that the Commission recommend approval of this application to the Board of Supervisors, subject to the proposed conditions.

Ms. Bledsoe inquired how the County will ensure that the proper licenses are obtained and taxes paid.

Ms. Sulouff stated that a clause has been added to the conditions that at the owner must obtain a business license within 12 months of the SUP being approved and must present proof of such to the Director of Planning.

Ms. Bledsoe inquired whether payment of the transient occupancy tax had been addressed.

Mr. Richard Bradshaw, Commissioner of the Revenue, stated that anyone who is set up to collect the transient occupancy tax and the \$2 per night surcharge are required to file monthly returns, whether there are sales or not, and remit at that time any taxes that have been collected.

Ms. Bledsoe inquired if there was any historical data on whether similar rental of rooms operations are actually collecting and paying the tax.

Mr. Bradshaw stated that if a business license is issued for this activity the business owner will be set up for reporting and remittance of the taxes as part of the licensing process.

Mr. O'Connor inquired if the process was handled similar to a coupon book.

Mr. Bradshaw confirmed and stated that it was similar to how sales tax is collected. Mr. Bradshaw noted that the occupancy tax and sales tax are due on the same day of the month. Mr. Bradshaw further stated that if the return is not submitted, an administrative assessment is made based on best figures that can be determined.

Ms. Bledsoe noted that the County would not necessarily be aware of these businesses unless the owners came forward through the SUP process.

Mr. Bradshaw confirmed and noted that discovery of unreported businesses is exceptionally time consuming.

Ms. Bledsoe noted that to date there are 205 properties in the County being advertised on the Airbnb site.

Mr. Bradshaw noted that unless the rooms are actually rented, there is no requirement for a license. Mr. Bradshaw noted that many of the property owners change their minds after registering with Airbnb; however, the listing remains on the site. Mr. Bradshaw further stated that for enforcement, it is necessary to find where the property is located and confirm that the rooms are actually being rented.

Mr. Basic inquired if staff had considered a sunset clause for the SUP since the type of use is something new for the County.

Ms. Sulouff stated that staff tries to avoid sunset clauses for SUPs in general and did not consider one for this case.

Mr. Basic requested clarification on why sunset clauses are not considered.

Mr. Holt stated that there is no policy that would require a sunset clause for an SUP. Mr. Holt noted that sunset clauses are used for some of the very unique land uses in the County such as surface mines or borrow pits; however, it has been a practice not to include them for most SUPs since the intent of an SUP is for it to run with the land rather than requiring the property owner to go through the process again.

Mr. Basic stated that he felt that the rental of rooms qualified as one of the more unique land uses.

Mr. Wright inquired about the specific language in the restrictive covenants.

Ms. Sulouff stated that the restrictive covenants limit the property to residential uses only.

Mr. Wright inquired if the language specifically barred rental of rooms.

Ms. Sulouff stated that the language is that "no lot or tract shall be used for nonresidential purposes."

Mr. Wright inquired if it was a neighborhood covenant.

Ms. Sulouff stated that the covenants were for the James Terrace subdivision.

Mr. Richardson inquired if the HOA is currently active.

Ms. Sulouff stated that the HOA is not active.

Mr. O'Connor stated that this is the same community where an SUP for a daycare was considered several years earlier.

Mr. Richardson inquired whether all future applications for rental of rooms would be considered by the Commission.

Ms. Sulouff stated that rental of rooms is a specially permitted use, so all applications will be considered by the Commission.

Mr. Richardson inquired if a policy might be developed to assist in the review of applications for this type of use.

Mr. Holt stated that there may be discussion by the Commission later in the meeting whether the Policy Committee should take up the matter.

Mr. O'Connor inquired if, based on the language in SUP Condition 1, the applicant could rent rooms prior to obtaining a business license.

Ms. Sulouff stated that the expectation is that the applicant would operate legally. Ms. Sulouff stated that the condition was modeled off other commencement clauses and that staff believed the one year time frame was appropriate.

Mr. O'Connor inquired if the condition could be amended to add that the applicant would obtain the necessary licenses and permits prior to renting rooms.

Ms. Bledsoe noted that Mr. Bradshaw had stated that a license was not required until or unless the applicant intended to rent rooms.

Mr. Holt stated that to operate it would be necessary to have both the SUP and the business license.

Mr. O'Connor inquired if the Commissioner's Office staff checked to determine if a business license applicant had an SUP.

Mr. Bradshaw stated that for any home based occupation, the applicant must submit a home occupation application which is reviewed by Zoning Enforcement before a business license is issued.

Mr. Holt noted that for any business, both the business license and Zoning approval are necessary.

Ms. Bledsoe requested an explanation for why the applicant for a previous SUP had been paying taxes but did not have the appropriate approvals.

Mr. Bradshaw stated that County Code is very clear that a business license cannot be issued without Zoning approval; however, it does not relieve the business of the obligation to collect and remit the appropriate taxes whether they have a business license or not.

Ms. Bledsoe noted that the previous applicant had stated that they had the business license; however, they did not have the required Zoning approval.

Mr. Bradshaw stated that the other applicant did not have a business license.

Mr. Holt noted that some of the confusion with the previous applicant was that they had received the coupon book to remit taxes and had begun the process to obtain the license but had not been issued the license because they did not have an SUP.

Mr. Bradshaw stated that as another step in the process, if an application is rejected by Zoning, all forms are returned to the applicant with notification that they need to correct those issues and reapply before a license can be issued. Mr. Bradshaw further stated that a business license for a home based business is never issued without Zoning approval.

Mr. O'Connor opened the public hearing.

Ms. Shelby Dillon, 7206 Merrimac Trail, applicant, addressed the Commission regarding the configuration of the property, historical data on guest stays and taxes remitted. Ms. Dillon affirmed that they wanted to operate in compliance with the necessary regulations going forward.

Mr. Wright stated that he appreciates the applicant's situation and noted that the Commission is having to decide on a matter that not only affects the applicant but also sets some precedent regarding a new type of land use that has farther reaching effects.

Ms. Bledsoe inquired if the applicant has liability insurance.

Ms. Dillon stated that she has insurance through her homeowners policy and would obtain additional coverage if the SUP is approved.

Ms. Bledsoe inquired if Airbnb has requirements for insurance.

Ms. Dillon stated that Airbnb does have insurance available but it is not as comprehensive as what is provided under the homeowners policy.

Mr. Richardson inquired about requirements for ADA accessibility.

Ms. Dillon stated that accessibility does not seem to be a focus for Airbnb; however, they are encouraging host properties to ensure that they are in compliance with local zoning regulations. Ms. Dillon stated that because the host has the right to accept or refuse any guest, she does not advertise the property as accessible.

Mr. O'Connor inquired if the guests were able to use the kitchen.

Ms. Dillon confirmed.

Janice Elko, 660 Fairfax Way, addressed the Commission on safety concerns related to short term rentals. Ms. Elko stated that York County does not allow short term rentals due to safety concerns.

David Dafashy, 716 Autumn Trace, addressed the Commission in support of providing visitors with a variety of lodging options including short term rentals. Mr. Dafashy noted that since visitors want nice places to stay these homes are generally well kept and well landscaped and enrich the community.

Ms. Dianne Scoggins, 7200 Merrimac Trail, addressed the Commission in support of the application. Ms. Scoggins noted that her one concern is that the SUP would run with the land, and that future owners may not operate the property in the same manner as the applicant. Ms. Scoggins noted that the SUP should end with the sale of the property. Ms. Scoggins further stated that there should be a monitoring process in place.

Ms. Beth Singley-Hall addressed the Commission on the need for a monitoring process which does not put the responsibility on the community.

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. Wright inquired if there would be any action on the state legislation this year.

Mr. Max Hlavin stated that the matter is still under study; however, the goal is to introduce legislation by December 2016 for consideration during the next General Assembly session. Mr. Hlavin stated that there is no certainty that the legislation will go forward on that schedule.

Mr. Richardson stated that he is inclined to see what happens with the state legislation. Mr. Richardson further stated that there is a need for overarching policy guidance regarding short term rentals to assist with processing the potential influx of such applications. Mr. Richardson further noted that because we are a unique area of the country, it is necessary to carefully consider the impact of these uses on both the community and the local hotel industry in balance with the needs of the individual entrepreneur. Mr. Richardson noted that he had supported the previous application; however, at the risk of sending mixed signals, based on further thought on the matter, he is inclined not to support the application.

Mr. Schmidt noted that the Board of Supervisors submitted a letter to the State with concerns about prohibiting local regulation of short term rentals.

Mr. Wright stated that he is also concerned about the impact of potential state legislation on both short term rental regulations and the enforceability of neighborhood covenants and he is reluctant to support these types of applications.

Mr. Hlavin stated that the two pieces of legislation that came out of the General Assembly this year would not prevent normal property law from taking effect, so while localities could not regulate the matter, it would not nullify restrictive covenants.

Ms. Bledsoe stated that she believes short term rentals will be a substantial part of the tourism industry going forward; however, she has concerns about how the County will address the shared economy. Ms. Bledsoe stated that there need to have process and policies in place to ensure that it is fair and equitable to the existing hospitality industry. Ms. Bledsoe further stated that if a property is advertised, there is an intent to rent the rooms; however, it is difficult to monitor and compel the property owner to comply with the regulations. Ms. Bledsoe further stated that she believes a property owner has a right to use their property as they desire within the law, but not to the detriment of the community. Ms. Bledsoe stated that

until the County can ensure that the use is fair, safe and equitable she will not support such applications.

Mr. Basic stated that under County Code, if an application is denied, there is a two year waiting period before an applicant can reapply. Mr. Basic stated that he was not fully prepared to support the application. Mr. Basic further stated that he believed a deferral would be more appropriate due to the number of questions that still need to be addressed.

Mr. Krapf stated that the Zoning Ordinance allows for specially permitted uses and he has concerns about taking a stance that the Commission will not approve SUPs for a particular type of use. Mr. Krapf noted that the issue is not Airbnb but the rental of rooms. Mr. Krapf stated that he is concerned about the idea of denying tourist homes and rental of rooms to protect the hotel industry. Mr. Krapf further noted that the free enterprise system is built on entrepreneurs coming forward with competitive options. Mr. Krapf further stated the objections raised regarding rental of rooms could easily apply to bed and breakfast establishments which is a different category of use but different only in that a meal is provided. Mr. Krapf further noted the existence of transient occupancy hotels in proximity to residential neighborhoods and noted that there was little the County could do to regulate who stayed at those establishments. Mr. Krapf further stated that each SUP must be considered as a separate entity in the context of its location. Mr. Krapf stated that he has concerns about the Commission indicating for this application that the use is not appropriate for the location. Mr. Krapf further stated that he has concerns about the Commission moving from considering the application from a land use perspective to an enforcement stance. Mr. Krapf stated that it is not the role of the Commission to put mechanics in place to ensure compliance. Mr. Krapf stated that once an SUP is approved, it triggers the processes to ensure compliance with license and tax requirements. Mr. Krapf stated that he would support the application.

Mr. O'Connor noted that rental of rooms limits the rental to a maximum of three rooms and requires that the property be owner occupied. Mr. O'Connor inquired if the ability to close off the rented portion and the use of the kitchen would change staff's perspective on the application.

Ms. Sulouff stated that staff recognizes the unique configuration of the home; however, if the applicant chooses to provide kitchen access to guests it does not change staff's perspective on the compatibility of the use. Ms. Sulouff noted that if the portion of the home to be rented had more than three bedrooms, it would require a different use designation.

Mr. Basic noted that Mr. Holt had clarified that the required interval between a denial and resubmitting an SUP application is one year. Mr. Basic stated that his previous recommendation to consider deferral stands since any reapplication would carry a negative connotation from the denial.

Mr. Richardson stated that he would be inclined to concur with a deferral. Mr. Richardson stated that this is a unique land use and there are larger concerns to discuss.

Mr. Schmidt stated that his main concern is the issue of neighborhood covenants. Mr. Schmidt stated that he has concerns about setting a precedent by disregarding the neighborhood covenants.

Mr. O'Connor stated that he concurs that by disregarding neighborhood covenants, it creates discord in the neighborhood and detracts from the sense of community; however, restrictive covenants are a contractual obligation. Mr. O'Connor stated that if it is a deed restriction, the obligation is neighbor to neighbor; if it is a restrictive covenant, it is the purview of the HOA to enforce the covenants. Mr. O'Connor further stated that there has been guidance at state level regarding home occupations that would not be in conflict with covenants restricting the property to residential uses. Mr. O'Connor stated that the County Attorney has indicated that these are private matters between the HOA and an individual owner or between property owners.

Mr. Richardson stated that neighbors need to ensure that the covenants are enforceable by maintaining an active association.

Mr. Hlavin noted that if a deed restriction or covenant explicitly prohibits the use, the Commission may take that into account in making a recommendation; however, the County does not have the authority to determine what does or does not qualify as a residential use. Those determinations must be made by the Courts.

Mr. Basic noted that in an earlier SUP for a daycare where the property was restricted to residential uses, the applicant provided proof that the neighbors did not object to the land use requested. Mr. Basic noted that with the proof provided, the Commission had a comfort level to recommend approval.

Ms. Bledsoe noted that the legislation to be considered by the General Assembly is a strong lobbying effort by the shared economy. Ms. Bledsoe noted that Airbnb is investing a great amount of money to bring Airbnb to Virginia. Ms. Bledsoe stated that she would be happy to see short term rental of rooms, but wants to ensure that when it happens, it is handled in a way that is fair, safe and equitable for everyone. Ms. Bledsoe stated that she wants to ensure having a process that is fair to everyone who is already complying with the rules. Ms. Bledsoe stated that she would support a deferral so that the Commission could discuss how to proceed with developing a policy regarding short term rental of rooms. Ms. Bledsoe stated that she hopes consideration of the matter will include substantial research and thoughtful dialogue to develop the best possible process for the community. Ms. Bledsoe stated that if a reasonable policy is developed, it will encourage those properties currently operating in violation of the Zoning Ordinance to come forward to bring the use of their property into compliance.

Mr. O'Connor clarified that there are four options available: the Commission may bring the matter to a vote as currently proposed; the applicant may opt to withdraw the application; the Commission could recommend the addition of a sunset clause; or the Commission could defer the matter to a date certain.

Mr. Hlavin noted that if the matter is deferred to a date certain, the Commission must take action within 100 days.

Mr. O'Connor noted that if the matter is deferred and then action is taken to forward the matter to the Board, there is an option for the Board to defer the matter for one year.

Mr. O'Connor stated that he does not believe that a deferral would be beneficial to the applicant.

Mr. Holt noted that the Commission can add a one or two year sunset clause where the applicant will have time to address any concerns and come back through the SUP process.

Mr. Krapf stated that he believes the SUP process, followed by all the other mechanisms to ensure a business license is obtained and taxes are collected, is a satisfactory process and that he does not believe that it is necessary to change that process.

Ms. Bledsoe noted that a property owner wishing to rent three rooms or fewer while living in the home would apply for rental of rooms, where a property owner wishing to rent five rooms while not living in the home would apply for a tourist home.

Mr. Krapf noted that both are short term rental of rooms and both require a special use permit and that the SUP application is the process.

Ms. Bledsoe noted that she is looking at a process to ensure that the properties comply with all regulations.

Mr. Krapf noted that there are likely many properties conducting one type of enterprise or another that are not in compliance with the Zoning Ordinance. Mr. Krapf stated that the Commission is charged with making land use recommendations, not with determining how many properties are in violation of the Zoning Ordinance.

Ms. Bledsoe stated that the Commission considers land use issues related to hotels and bed and breakfasts and the County has standard that they must comply with. Ms. Bledsoe stated that rental of rooms is not any different. Ms. Bledsoe stated that hotels and bed and breakfasts must have a business license and pay taxes.

Mr. Krapf stated that this applicant would have to comply with the same standards.

Ms. Bledsoe noted that the County does not know about all of the properties doing short term rental of rooms.

Mr. O'Connor stated that the Commission is not charged with enforcement. Mr. O'Connor further stated that he is not in favor of recommending approval where the use is contrary to covenants and restrictions. Mr. O'Connor stated that while the Commission does look at these applications individually, this application does have any of the negative aspects of the earlier application. Mr. O'Connor further stated that he does have concerns about the SUP running with the land in perpetuity which would leave uncertainty about how a future owner might operate the business. Mr. O'Connor stated that he could support the application if a sunset clause were included.

Mr. Basic inquired if the applicant would have to pay another fee if they reapplied.

Mr. Holt confirmed that the fee would have to be paid again.

Mr. Richardson inquired what benefit would come from consideration by the Policy Committee.

Mr. Holt stated that fully developing a policy and potentially amending the Zoning Ordinance could not be accomplished in time to act on the application within the 100 day limit.

Mr. Basic noted that the Commission seems uncomfortable about the enforcement component as well as the number of other properties operating under the radar. Mr. Basic stated that if an applicant goes through the land use process, the matter does go to the Commissioner of the Revenue's Office for enforcement. Mr. Basic further stated that most SUPs rely on community vigilance for enforcement when there are conditions involved.

Mr. Basic made a motion to recommend approval of the application with a sunset clause.

Mr. O'Connor inquired if it would be possible to require the SUP to be reconsidered on a recurring basis.

Mr. Hlavin stated that the clause should set the SUP to expire on a given date so that the burden is on the applicant to reapply timely to ensure that they have a continuing SUP.

Mr. O'Connor noted that two years might be sufficient to determine the effect of state legislation and to possibly have the Policy Committee take up the matter in parallel.

Mr. Richardson inquired about other cases approved with a sunset clause.

Mr. Holt stated that the most recent was for a daycare in Winston Terrace.

Mr. O'Connor noted that the daycare was part of the same neighborhood and that having a sunset clause for this application would ensure consistency.

Ms. Bledsoe noted that the state legislation will most likely not provide specific guidance for how this type land use should be handled.

Mr. Basic noted that the state legislation was geared more toward taxation matters.

Mr. O'Connor stated that the sunset clause would allow an applicant who is trying to do the right thing to operate while the County considers how to address the other issues.

Ms. Bledsoe requested that the SUP conditions be amended to require proof of liability insurance for the rental portion of the home.

Mr. Hlavin stated that he would not recommend that amendment based on considering the application from a land use perspective.

Mr. O'Connor requested that Mr. Basic state his intention for term of the SUP.

Mr. Basic stated that he would want the SUP to expire after 24 months.

Mr. Richardson inquired if a vote would preclude further consideration by the Policy Committee. Mr. Richardson further stated that he would strongly recommend that the matter be taken up by the Policy Committee.

Mr. O'Connor stated that the Commission would discuss potential Policy Committee involvement at a later point in the meeting.

Mr. Holt clarified that the motion was to recommend approval of the application with the conditions attached to the staff report with an additional condition for the SUP to expire 24 months from the date of approval by the Board of Supervisors.

Mr. O'Connor inquired if the additional condition was acceptable to the applicant.

Ms. Dillon confirmed that the condition was acceptable.

Mr. Holt clarified that a "yes" vote would approve the application with the conditions attached to the staff report with an additional recommendation that the Board add a condition for the SUP to expire 24 months from the date of approval.

On a roll call vote, the Commission voted to recommend approval of SUP-0009-2016, 7206 Merrimac Trail Rental of Rooms (4-3).

3. SO-0002-2016, Subdivision Ordinance Amendments Regarding Monuments

Mr. José Ribeiro, Senior Planner II, presented a report to the Commission regarding proposed amendments to the Subdivision Ordinance to eliminate language requiring certification of a surveyor's monument. Mr. Ribeiro noted that the certification is not a requirement under the Code of Virginia. Mr. Ribeiro further stated that land surveyors are governed by other licensures and are held to stringent professional standards set by the Code of Virginia. Mr. Ribeiro stated that staff recommends the Planning Commission recommend approval of these amendments to the Board of Supervisors.

Mr. Basic inquired if staff had received any feedback from licensed surveyors in the area.

Mr. Ribeiro stated that staff has not received any feedback. Mr. Ribeiro further stated that York County uses similar language in its ordinance and has not noted any problems.

Mr. Wright inquired what the recourse is if monuments are not properly set.

Mr. Ribeiro stated that surveyors are governed by state code and could risk losing their license if their work is not up to standards.

Mr. Wright noted that there are probably required to have liability insurance to cover such issues.

Mr. O'Connor opened the public hearing.

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

Mr. Krapf made a motion to recommend approval of the ordinance amendment.

On a roll call vote the Commission voted to recommend approval of SO-0002-2016, Subdivision Ordinance Amendments Regarding Monuments (7-0).

4. ZO-0002-2016, B-1, General Business District, Amendments to Setback Requirements and Building Coverage Limits and ZO-0003-2016, LB, Limited Business District.

Mr. José Ribeiro, Senior Planner II, presented a report to the Commission regarding proposed amendments to the B-1, General Business District and the LB, Limited Business District to make guidance regarding setbacks and setback reduction procedures clear and consistent between the two districts and to increase the building coverage to up to 60% and delete requirements regarding floor area ratio (FAR). Mr. Ribeiro noted that the application of FAR requirements can restrict building height. Mr. Ribeiro stated that other sections of the code also speak to height limitations and that the FAR language is not necessary. Mr. Ribeiro stated that staff recommends that the Commission recommend approval of these amendments to the Board of Supervisors.

Mr. Wright inquired about the process to amend building coverage limits for project approved under the previous requirements.

Staff responded that it would depend on the original approval; a legislative case would require an amendment through the legislative process and an administrative case would require an administrative site plan amendment.

Mr. O'Connor opened the public hearing.

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

Mr. Basic made a motion to approve ZO-0002-2016.

On a roll call vote the Commission voted to recommend approval of ZO-0002-2016, B-1, General Business District, Amendments to Setback Requirements and Building Coverage Limits (7-0).

Mr. Krapf made a motion to approve ZO-0003-2016.

On a roll call vote the Commission voted to recommend approval of ZO-0003-2016, LB, Limited Business District, Amendments to Setback Requirements and Building Coverage Limits (7-0).

5. ZO-0004-2016 & SO-0003-2016, Amendments to the Zoning and Subdivision Ordinances Regarding Development Review Committee (DRC) Review Criteria and Procedure

Ms. Roberta Sulouff, Planner, presented a report to the Commission on ordinance amendments to align ordinance language and policy with the current scope and purpose of the

Development Review Committee. Ms. Sulouff stated that the amendments would allow for submission of an enhanced conceptual plan where a site plan must be reviewed by the DRC. Ms. Sulouff noted that this would enhance consistency and predictability of the review process and identify concerns earlier in the process. Ms. Sulouff further stated that staff is proposing to remove language requiring DRC review of major subdivisions. Ms. Sulouff noted that in practice, DRC review of subdivisions under 50 lots is very rare, unless otherwise required by proffer or Special Use Permit conditions. Ms. Sulouff stated that under state code, any major subdivision of 50 or more lots obtain preliminary approval from the Planning Commission. Ms. Sulouff stated that staff recommends that the Commission recommend approval of these amendments to the Board of Supervisors.

Mr. Richardson inquired how the changes would affect the plans that the DRC would customarily review.

Ms. Sulouff stated that with the amended language, multifamily dwellings, shopping centers and a building or group of buildings over 30,000 square feet would now be required to submit an enhanced conceptual plan which would be reviewed by the DRC.

Mr. Wright inquired how major subdivisions of less than 50 lots would be handled.

Ms. Sulouff stated that those subdivisions, unless the requirement was waived by the Planning Director, would still come before the Planning Commission as a consideration item.

Mr. O'Connor opened the public hearing.

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

Ms. Bledsoe stated that she believes these amendments are a good step toward simplifying the review process and meeting the needs of the development community.

Mr. Wright made a motion to approve ZO-0004-2016.

On a roll call vote the Commission voted to recommend approval of ZO-0004-2016. Amendments to the Zoning Ordinance Regarding Development Review Committee Review Criteria and Processes (7-0).

Mr. Krapf made a motion to approve SO-0003-2016.

On a roll call vote the Commission voted to recommend approval of SO-0003-2016, Amendments to the Subdivision Ordinance Regarding Development Review Committee Review Criteria and Processes (7-0).

6. ZO-0005-2016, PUD, Planned Unit Development, Zoning Ordinance Amendments, Article V, Section 24-493, Use List

Ms. Roberta Sulouff, Planner, presented a report to the Commission on the proposed amendments to the Planned Unit Development-Commercial, PUD-C, District to allow for the manufacture of food or food products as either a by-right use where the activities were conducted in a fully enclosed building with no external impacts or as a specially permitted use where that criteria was not met. Ms. Sulouff further noted that the revisions reflect an effort to encourage a balanced mixture of commercial, industrial and residential land uses that support strategies for economic development recommended in the 2035 Comprehensive Plan.

Mr. O'Connor opened the public hearing.

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

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

Mr. Basic noted that there had been discussion from the Board of Supervisors about opening up this opportunity in several districts. Mr. Basic inquired if the Policy Committee had considered adding this use to other districts.

Mr. Krapf clarified that this amendment was not related to mobile food vendors. Mr. O'Connor further stated that the matter of food trucks is still being considered and that this amendment is strictly related to the manufacture of food and food products in the PUD-C District.

Mr. Schmidt noted that one of the concerns considered was the impact of odors on adjacent properties; however, it was determined that if there were concerns about odors or other external impacts, a special use permit would be required.

Mr. Richardson made a motion to recommend approval of the ordinance amendment.

On a roll call vote the Commission voted to recommend approval of ZO-0005-2016, PUD, Planned Unit Development, Zoning Ordinance Amendments, Article V, Section 24-493, Use List (7-0).

G. PLANNING COMMISSION CONSIDERATIONS

1. Initiation of Consideration of Amendments to the Wireless Communications Facilities Regulations in the Zoning Ordinance

Mr. Holt presented a report to the Commission on the request to initiate consideration of amendments to the Wireless Communications Facilities ordinance. Mr. Holt noted amendments would address how WCF performance standards should be applied when considering SUP applications for other types of communications towers. Mr. Holt further noted that the amendments also would incorporate processes to comply with the 2012 Spectrum Act. Mr. Holt stated that the changes to the WCF Ordinance and the process for reviewing these applications would be a multiple stage process. Mr. Holt stated that adoption of the resolution was part of the formal process required to initiate amendments to the Zoning Ordinance and would not change the Zoning Ordinance at this time. Mr. Holt stated that staff recommends the Planning Commission adopt the attached resolution to formally initiate consideration of such amendments to the Zoning Ordinance and refer this matter to the Policy Committee.

Mr. Krapf made a motion to adopt the initiating resolution.

On a roll call vote the Commission adopted the resolution to initiate consideration of amendments to the Wireless Communications Facilities Ordinance.

H. 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 Mr. Basic would represent the Planning Commission at the Board of Supervisors meeting in June.

Ms. Bledsoe requested that the Policy Committee research other localities processes and consider how the County can ensure that the required permits and licenses are obtained and taxes paid for short term rentals.

Mr. Holt stated that the matter be discussed at the upcoming Policy Committee meeting and further consideration given to what type of data and information should be gathered.

Ms. Bledsoe requested that Mr. Bradshaw participate in the discussion and research.

Mr. Krapf stated that it would be helpful to understand how other localities handle this type of use and what limits and stipulations are applied. Mr. Krapf further stated that it would be helpful to develop a matrix to understand how the process flows.

Ms. Bledsoe stated that she believes the majority of individuals who are advertising short term rentals are simply not aware of the permit and license requirements and that it would be helpful to consider a community education piece.

Mr. O'Connor stated that the Commission should consider the effect of short term rentals on the local hotel industry from a land use perspective due to concerns expressed in the community over vacant retail and hotel space.

Ms. Bledsoe stated that it is necessary to look at the matter from the perspective of the Strategic Plan.

Ms. Bledsoe stated that the June 6 Strategic Plan meeting was canceled; however, the June 24 meeting was still on.

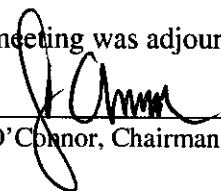
Mr. O'Connor thanked Mr. Bradshaw and Mr. Seymour for attending the meeting.

Mr. O'Connor noted that a motion to adjourn would adjourn the meeting to the joint meeting with the Board of Supervisors on June 28 at 4:00 p.m.

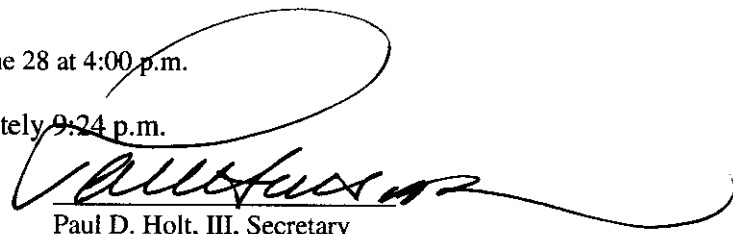
J. ADJOURNMENT

Ms. Bledsoe made a motion to adjourn to June 28 at 4:00 p.m.

The meeting was adjourned at approximately 9:24 p.m.



Tim O'Connor, Chairman



Paul D. Holt, III, Secretary