

MINUTES
JAMES CITY COUNTY PLANNING COMMISSION
REGULAR MEETING
County Government Center Board Room
101 Mounts Bay Road, Williamsburg, VA 23185
July 6, 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
Savannah Pietrowski, Planner
Roberta Sulouff, Planner
Adam Kinsman, County Attorney

Mr. O'Connor offered condolences to the Hipple family on the loss of Thomas J. Hipple, Jr. Mr. O'Connor noted that Mr. Hipple's influence on his family is seen in their service in the community.

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 - June 1, 2016 Regular Meeting
2. Adoption of Updated 2016 Calendar
3. Development Review Committee Action Item: Case No. C-0045-2016.
Williamsburg Place, Farley Center Expansion

Mr. Rich Krapf made a motion 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 June 16, 2016 to review Stage II updates to three Zoning Ordinance amendments.

Mr. Krapf stated that staff presented draft ordinances with possible changes to the A-1 and R-8 districts as well as possible changes to Article II, Special Regulations to allow privately-run for-profit event facilities on parcels designated as Rural Lands. Mr. Krapf noted that the meeting was attended by members of the public who live in rural lands or who have interest in establishing event facilities. Mr. Krapf noted that there was a good exchange regarding the potential economic benefits as well as concerns related to noise and traffic. Mr. Krapf further noted that concerns were also expressed over special use permits running with the land. Mr. Krapf stated that the Committee directed staff to make further changes to the draft language focusing on performance standards, by-right use for parcels located on arterial roads and special use permits for parcels on collector roads.

Mr. Krapf stated that the Committee also reviewed a draft ordinance to allow electrical vehicle charging stations as an accessory use to off street parking. Mr. Krapf noted that the Committee voted to forward the draft ordinance to the Planning Commission for consideration.

Mr. Krapf stated that the Committee also reviewed a draft ordinance to reduce minimum parking requirements. Mr. Krapf stated that the Committee requested that staff look specifically at the parking minimums for barber and beauty shops and to obtain feedback from other jurisdictions that have reduced parking minimums.

F. PUBLIC HEARINGS

1. SUP-0008-2015/SUP-0011-2016, J.S.G. Mineral Resource Management Expansion and SUP Amendment

Ms. Roberta Sulouff, Planner, stated that the applicant has requested a deferral to the August 3, 2016 meeting. Ms. Sulouff stated that staff concurs with the deferral.

Mr. O'Connor opened the public hearing.

No one came forward to speak.

Mr. Chris Basic made a motion to defer the matter to the August Planning Commission meeting.

On a voice vote the Commission agreed to continue SUP-0008-2015/SUP-0011-2016, J.S.G. Mineral Resource Management Expansion and SUP Amendment to August 3, 2016 (7-0).

2. Z-0006-2016/SUP-0015-2016, Our Saviour's Lutheran Church

Ms. Savannah Pietrowski provided a report to the Commission on the request to rezone the subject property from R-2, General Residential, to LB, limited Business to allow the existing kitchen to be used for commercial catering and meal preparation and to obtain a Special Use Permit for an existing building over 5,000 square feet in an area designated Low Density Residential. Ms. Pietrowski further

noted that the SUP would ensure the existing building would not become a non-conforming structure due to its size if the property is rezoned to LB. Ms. Pietrowski stated that staff finds the proposal to be consistent with the Comprehensive Plan given that the existing place of public assembly will remain the primary use and that the proposed catering use and previously approved day care would be limited commercial uses secondary in nature to the existing church. Ms. Pietrowski stated that staff recommends that the Commission recommend approval to the Board of Supervisors subject to the proposed conditions and acceptance of the voluntary proffers.

Mr. O'Connor opened the public hearing.

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

Ms. Robin Bledsoe made a motion to approve the rezoning and the Special Use Permit.

On a roll call vote, the Commission voted to recommend approval of Z-0006-2016/SUP-0015-2016, Our Saviour's Lutheran Church (7-0).

G. PLANNING COMMISSION CONSIDERATIONS

H. PLANNING DIRECTOR'S REPORT

1. Planning Director's Report - July 2016

Mr. Paul 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

1. Changes Related to New Residential Rezoning Applications

Mr. Adam Kinsman, County Attorney, stated that on June 28, 2016 the Board of Supervisors adopted a resolution to eliminate the acceptance of voluntarily proffered conditions as part of new applications for residential rezoning or zoning map amendment, or any residential component of a multi-use district rezoning or zoning map amendment. Mr. Kinsman further stated that the resolution also repealed a number of policies as they apply to new applications for residential rezonings.

Mr. Kinsman noted that since 1983, the County has adopted more than 190 proffer documents which have guided development in the County. Mr. Kinsman further noted that in 1978, when proffers first came about, they were requested by the developers in order to address some of the impact that localities were seeing with residential development. Mr. Kinsman stated that initial proffer legislation was fairly broad; however, later amendments increased limitations on what localities could require for impact mitigation.

Mr. Kinsman stated that the most recent legislation, approved this year, instituted such substantial restrictions that the Board determined that the potential liabilities of accepting proffers far outweighed any benefits. Mr. Kinsman further stated that the limitations on cash proffers was such that most localities have ceased to accept cash proffers. Mr. Kinsman stated that once cash proffers are removed from the

mix little remains that is substantive. Mr. Kinsman stated that, further, the state legislation provided that if at any time during case review an illegal proffer suggestion were made and the rezoning is denied, it would be assumed that the reason for denial was that the developer did not comply with the suggestion. Mr. Kinsman further noted that the term "illegal proffer suggestion" was not defined and could include even off hand comments such as noting a desire to see enhanced landscaping. Mr. Kinsman stated that if the matter were litigated, the required penalties would be substantial and the Board would be ordered to approve the rezoning. Mr. Kinsman stated by establishing that the County does not accept proffers for residential rezonings, it eliminates the potential for making a proffer suggestion.

Mr. Kinsman stated that the Commission will need to be very diligent in reviewing the information prepared by staff. Mr. Kinsman stated that the Commission would need to focus on the maximum development potential for the requested zoning and base the recommendation on whether what is being proposed is better than what is recommended by the Comprehensive Plan. Mr. Kinsman stated that without proffers there is no way to tie the developer to any promise.

Mr. Kinsman stated that this change is not all negative. Mr. Kinsman noted that many of the policies and guidelines have been in place for a number of years and would benefit from review and updating. Mr. Kinsman stated that the Board has directed staff to consider which proffer conditions should be incorporated in the Zoning Ordinance so that the development would not be by proffer but by ordinance.

Mr. Kinsman stated that in the interim a Zoning Ordinance amendment would be brought forward to specify that the County does not accept proffers for residential rezoning. Mr. Kinsman further stated that the County would continue to accept proffers for non-residential rezonings.

Mr. John Wright inquired if it was anticipated that these changes might eventually impact proffers for commercial development.

Mr. Kinsman stated that he does not believe that it will. Mr. Kinsman noted that the legislation most likely provided more than what the Home Builder's Association anticipated and that he is not certain the outcome is what they expected. Mr. Kinsman further stated that due to timing for introducing new legislation for the General Assembly, there would probably not be any changes in the coming year.

Ms. Bledsoe inquired if it would be items such as infrastructure that would be incorporated in the Zoning Ordinance.

Mr. Kinsman stated that there is potential to bring in a number of various policies and requirement.

Mr. Holt noted that there are limitations on what can be done with impact fees. Mr. Holt stated that impact fees will most likely not be equivalent to what the cash proffers were.

Ms. Bledsoe noted that this would impact the County's budget.

Mr. Danny Schmidt noted that the localities will not be able to provide the same level of amenities because of the budget impact.

Mr. Kinsman noted that there is the potential to revisit impact fees with the General Assembly. Mr. Kinsman further stated that this may move Virginia toward an impact fee system.

Mr. Krapf inquired about a scenario where a residential development was proposed but the developer is not offering any mitigation for traffic impacts; would staff include information on the impact to level of service and would the Commission be able to potentially recommend denial based on determining that the degradation of level of service is unacceptable. Mr. Krapf further requested clarification on whether the staff comment about level of service would taint the decision.

Mr. Kinsman stated that because the County will not be accepting any residential proffers, there would be no possibility of making a proffer suggestion. Mr. Kinsman stated that he would expect the Commission to look at the Zoning Ordinance, look at the Comprehensive Plan and look at the potential impacts as identified by staff for any residential development and determine whether the anticipated impacts are within levels to allow the Commission to recommend approval or of a magnitude that the Commission would determine that it is not good for the County.

Mr. Holt stated that, going forward, the staff report would speak more to the development potential for the project which, if approved, would become by right zoning. Mr. Holt further stated that agency comment letters would be attached to the staff report so that the Commission could see where triggers are met and specific improvements are warranted.

Mr. Krapf further inquired about how an amended plan from the developer, based on agency review and staff analysis, would be viewed.

Mr. Holt stated that it would not be possible to tie the improvement to a specific trigger such as level of service or issuance of building permits.

Mr. Kinsman stated that the County would need to rely on VDOT to require the improvement as a condition of obtaining permits or approvals.

Mr. O'Connor noted, for example, that if the proposal is to build six units per acre but the maximum allowable density for the zoning is ten units per acre, the Commission must keep in mind that the developer could ultimately build ten units per acre by-right.

Mr. Kinsman stated that, going forward, staff will provide the maximum development potential is for the proposed zoning. Mr. Kinsman further stated that the applicant may present something less but there is no way to make the proposal binding.

Mr. Heath Richardson inquired about the status of previously approved developments and whether those proffers are still in effect.

Mr. Kinsman stated that the legislation is prospective and does not affect previously approved developments. Mr. Kinsman further stated that amendments

to previously approved applications would be treated in accordance with the law in existence prior to July 1, 2016.

Mr. Richardson noted that the DRC would need to approach certain applications a bit differently.

Mr. Holt stated that if the plan is being reviewed for master plan consistency and there are historical proffers in place, those proffers would remain in place. Mr. Holt further stated that if there are other ordinance triggers that apply to by-right development, the DRC would continue to review those as well.

Mr. O'Connor inquired how this legislation would affect mixed use zoning.

Mr. Kinsman stated that the County would not accept proffers for any residential component.

Mr. Schmidt inquired how these changes came about and whether any of them were tied to action by the Supreme Court.

Mr. Kinsman stated that these changes were related to General Assembly legislation. Mr. Kinsman noted that the County did litigate a proffer case at the Supreme Court level; however, it had no bearing on this legislation.

Mr. Schmidt noted that many localities have expressed concerns over the impact of the legislation.

Mr. O'Connor inquired about the Housing Opportunities Policy.

Mr. Kinsman stated that the Board has directed staff to see how the Housing Opportunities Policy and other policies can be brought into the Zoning Ordinance.

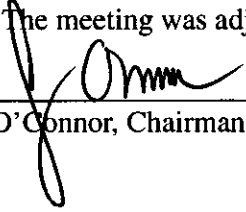
Mr. O'Connor welcomed Mr. Kevin Onizuk, Board of Supervisors and Mr. Bryan Hill, County Administrator.

Mr. O'Connor reminded the Commission that there would be a joint work session with the Board of Supervisors on July 26, 2016 at 4:00 p.m.

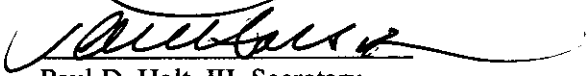
J. ADJOURNMENT

Mr. Krapf made a motion to adjourn to the joint work session on July 26.

The meeting was adjourned at approximately 7:29 p.m.



Tim O'Connor, Chairman



Paul D. Holt, III, Secretary