

**MINUTES**  
**JAMES CITY COUNTY PLANNING COMMISSION**  
**REGULAR MEETING**  
**County Government Center Board Room**  
**101 Mounts Bay Road, Williamsburg VA 23185**  
**December 6, 2017**  
**7:00 PM**

**A. CALL TO ORDER**

Mr. Rich Krapf called the meeting to order at 7:00 p.m.

**B. ROLL CALL**

**Planning Commissioners Present:**

Rich Krapf  
John Wright  
Heath Richardson  
Jack Haldeman  
Danny Schmidt  
Felice Pete

**Absent:**

Tim O'Connor

**Staff Present:**

Paul Holt, Director of Community Development and Planning  
Christy Parrish, Zoning Administrator  
José Ribeiro, Senior Planner II  
Scott Whyte, Senior Landscape Planner II  
Roberta Sulouff, Senior Planner  
Savannah Pietrowski, Senior Planner  
Max Hlavin, Assistant County Attorney

**C. PUBLIC COMMENT**

Mr. Krapf opened Public Comment.

Mr. Aaron Small, Junior Warden for Hickory Neck Church, addressed the Commission with a concern about a recent change in the Zoning Ordinance which now requires houses of worship to obtain a Special Use permit (SUP) in the A-1, General Agricultural District. Mr. Small noted that this change created nonconforming uses for a number of churches. Mr. Small requested that the County review this change.

As no one else wished to speak, Mr. Krapf closed Public Comment.

**D. REPORTS OF THE COMMISSION**

Mr. Danny Schmidt stated that the Development Review Committee (DRC) did not meet in November.

Mr. John Haldeman stated that the Policy Committee met on November 9 to consider updates

to the Floodplain Ordinance. Mr. Haldeman stated that the amendments focused on construction regulations for small accessory structures in the special flood hazard area. Mr. Haldeman noted that new regulations would provide a lower construction cost option for property owners, while ensuring compliance with the National Flood Insurance Program. Mr. Haldeman stated that the Committee voted unanimously to recommend approval of the amendments and move the matter forward to the Planning Commission for consideration.

Mr. Haldeman further stated that at the same meeting, the Policy Committee considered amendments to the Zoning Ordinance related to short term rentals. Mr. Haldeman stated that the revisions would allow Homestays as a permitted use in most zoning districts. Mr. Haldeman stated that this change would allow for short-term rentals with minimal disruption to the character of the community. Mr. Haldeman stated that for a Homestay the property must be the owner's primary residence. Mr. Haldeman stated that staff has also proposed amendments to the definitions section to which clarify existing definitions and add additional definitions. Mr. Haldeman stated that the Committee also reviewed a policy that would establish standards for SUPs for short-term rentals.

Mr. Krapf requested that Mr. Haldeman report on the Greater Williamsburg Housing Symposium.

Mr. Haldeman stated that he attended the Greater Williamsburg Housing Symposium that was held on November 15. Mr. Haldeman stated that some of the take-aways from the Symposium were the relationship between poverty and health, the increase in poverty in the Greater Williamsburg area and the increase the number of individuals who are housing burdened where the cost of housing exceeds 30% of their income. Mr. Haldeman noted that the kick-off meeting for the County's Workforce Housing Task Force would be held on December 7.

#### **E. CONSENT AGENDA**

##### **1. Minutes of the November 1, 2017 Regular Meeting**

Mr. Haldeman made a motion to approve the minutes of the November 1, 2017 Regular Meeting.

On a voice vote the Commission voted to approve the minutes of the November 1, 2017 Regular Meeting. (6-0)

#### **F. PUBLIC HEARINGS**

##### **1. SUP-0011-2017. 3001 Ironbound Road Tourist Home**

A motion to Approve was made by Jack Haldeman, the motion result was Passed.

AYES: 6 NAYS: 0 ABSTAIN: 0 ABSENT: 1

Ayes: Haldeman, Krapf, Pete, Richardson, Schmidt, Wright III

Absent: O'Connor

Ms. Roberta Sulouff, Senior Planner, stated that this case was postponed from the November 1, 2017 Planning Commission meeting. Ms. Sulouff stated that since that meeting a proposed condition has been added which stipulates that the applicant may only rent the property to one rental party per rental period. The condition is intended to limit the intensity of the use at the property, as the tourist home use might otherwise permit such operations as traditional bed and breakfasts or boarding homes. Ms. Sulouff stated that the applicant supports this condition

and that it is consistent with his intent for the rental of the property.

Ms. Sulouff stated that the proposal is consistent with the language included in the proposed ordinance amendments.

Ms. Sulouff stated that staff finds the proposal to be compatible with surrounding development and consistent with the adopted 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 attached conditions.

Mr. Krapf reopened the Public Hearing.

Ms. Phana Tung, 2908 Robert Hunt North, addressed the Commission in opposition of the application. Ms. Tung stated that the main concerns are related to excessive noise from outdoor speakers.

Mr. Telmo Contreras, applicant, stated that he had not been notified of the noise concerns. Mr. Contreras stated that he would have addressed the problem if he had been notified.

As no one else wished to speak Mr. Krapf closed the Public Hearing.

Mr. Krapf noted that the purpose of this case coming before the Commission is to determine if this is an appropriate land use. Mr. Krapf further noted that noise issues would be remedied through channels such as enforcement of the Noise Ordinance.

Mr. Krapf opened the floor for discussion by the Commission.

Mr. Haldeman inquired if the Commission could propose a condition that would eliminate the outside speakers.

Mr. Krapf questioned whether this was something that should be regulated through an SUP condition or fall to other avenues for regulation.

Mr. Haldeman stated that there is a greater risk that transient renters would not be respectful of the neighbors.

Mr. John Wright inquired whether an SUP could be revoked if the applicant did not ensure adherence to the conditions.

Mr. Holt stated that revoking the SUP would be initiated by the Board of Supervisors and referred back to the Planning Commission for a recommendation. Mr. Holt stated that the final determination would be made by the Board.

Mr. Schmidt stated that he would like SUP conditions to be consistent for all properties. Mr. Schmidt further stated that such a condition might be getting too detailed and restrictive.

Mr. Richardson stated that he believes that the conditions as they currently stand are sufficient to guide this SUP. Mr. Richardson stated that considering additional restrictive conditions may be going outside of the Commission's scope of making a land use recommendation.

Mr. Schmidt noted that he appreciated the improvements the applicant made to the property. Mr. Schmidt stated that those improvements should benefit the adjacent properties by improving land value and appearance of the community.

Ms. Felice Pete stated that she believes adding a condition regarding outdoor speakers is not

within the Commission's purview. Ms. Pete stated that she believes the use is appropriate for the property and that the applicant has done everything necessary. Ms. Pete stated that she sympathizes with neighbors; however, noise issues would be more properly addressed through the Noise Ordinance.

Mr. Krapf asked that the applicant be sensitive to the noise issues that have been brought forward and work with the adjacent property owners to address those issues.

Mr. Haldeman made a motion to recommend approval of SUP-0011-2017.

On a roll call vote the Commission voted to recommend approval of SUP-0011-2017, 3001 Ironbound Road Tourist Home (6-0).

2. SUP-0013-2017. Kensington School

A motion to Approve was made by John Wright III, the motion result was Passed.

AYES: 6 NAYS: 0 ABSTAIN: 0 ABSENT: 1

Ayes: Haldeman, Krapf, Pete, Richardson, Schmidt, Wright III

Absent: O'Connor

Mr. Scott Whyte, Senior Landscape Planner, stated that The Kensington School applied for an SUP last month. Mr. Whyte stated that since that time the applicant has withdrawn that application and has instead decided to pursue this SUP.

Mr. Whyte stated that Ms. Rachel Salmon has applied for an SUP to operate a second location for The Kensington School day-care center. Mr. Whyte stated that The Kensington School was established in 2010 and now serves over 250 families in James City County from its existing location at 3435 John Tyler Highway. Mr. Whyte further stated that The Kensington School now proposes to expand by adding a second location at 8340 Richmond Road where the historic Hickory Neck Church is located.

Mr. Whyte stated that The Kensington School proposes to serve up to 76 children with seven employees at this location. Mr. Whyte noted that the age of the children range from 6 weeks to 5 years old. Mr. Whyte stated that the hours of operation are proposed to be 7 a.m.-6 p.m., Monday-Friday. Mr. Whyte stated that the drop-off and pick-up schedule is modeled after their current location's schedule.

Mr. Whyte state that the applicant proposes to construct a 4,340 square foot modular building. Mr. Whyte stated that 49 parking spaces exist on-site with a looping drive aisle, which is proposed to be utilized as a drop-off and pick-up area. Mr. Whyte stated that staff has calculated that 26 spaces is the minimum amount of spaces required for 76 children and 7 employees.

Mr. Whyte stated that surrounding properties to the north and west across Richmond Road, contain single-family residential dwellings. Mr. Whyte stated that properties to the south and east contain agricultural uses.

Mr. Whyte stated that the site is designated Low Density Residential on the adopted Comprehensive Plan Land Use Map. Mr. Whyte stated that staff finds that the proposed commercial use of a day-care compatible with the rural character of the Toano area and would support the creation and retention of local small businesses and work force housing in keeping with the intent of the Economic Development section of the Comprehensive Plan.

Mr. Whyte stated that staff finds the proposal to be compatible with the Comprehensive Plan,

the Zoning Ordinance and surrounding development. Mr. Whyte further stated that staff recommends that the James City County Planning Commission recommend approval of this application to the Board of Supervisors, subject to the conditions listed in the Staff Report.

Mr. Haldeman inquired about the reference to a directional factor in the Staff Report.

Mr. Whyte stated that he would defer to the applicant's representative to answer that question.

Mr. Krapf called for disclosures from the Commission.

There were no disclosures.

Mr. Krapf opened the Public hearing.

Mr. Aaron Small, Junior Warden for Hickory Neck Church, stated that the Church welcomes The Kensington School to the property.

Mr. Small requested that the Commission consider removing three conditions from the SUP. Mr. Small stated that Condition No. 3 regarding the archaeological study should be removed because the Virginia Department of Historic Resources (VDHR) has already approved the archaeological study.

Mr. Small further stated that Condition No. 5 regarding turnlane and taper warrants should be removed as the information has already been provided.

Mr. Small stated that Condition No. 7 regarding the height of exterior lighting is inconsistent with the existing features of the property as the existing lights are 35 feet tall.

Mr. Small stated that to address the question about the directional factor. A total volume for the road is determined and the directional factor is applied to determine the amount of traffic in each direction. Mr. Small stated that in this case it is slightly more than 50% and is applied to the direction of concern.

Mr. Krapf inquired if the change to SUP conditions had been discussed with staff.

Mr. Small stated that it had been mentioned to staff early on.

Mr. Holt stated that the SUP conditions were standard language and that staff would be reluctant to change that language, especially for Condition No. 3. Mr. Holt stated that staff has not yet received the Virginia Department of Transportation (VDOT) response on the Traffic Study and that staff would prefer that Condition No. 5 remain until VDOT has responded. Mr. Holt stated that Condition No. 7 applied only to new lighting and not existing fixtures. Mr. Holt stated that staff would work with the applicant to address concerns over the lighting requirements.

Mr. Krapf inquired if the applicant was satisfied regarding Condition No. 7.

Mr. Small stated that he would be comfortable working with staff on the lighting requirements.

Mr. Richardson inquired if there was a concern about Condition Nos. 3 and 5 being time consuming to complete.

Mr. Small stated that the items were essentially completed but leaving them as SUP conditions would require extra steps in the process.

Mr. Schmidt inquired about the process to confirm completion of Condition No. 3.

Mr. Holt noted that the Letter from the VDHR has been received.

Mr. Krapf noted that retaining the SUP conditions formalizes the process and ensures that all the project complies with all requirements.

Rev. Jennifer Andrews-Weckerly, Rector of Hickory Neck Episcopal Church, addressed the Commission in support of the application. Rev. Andrews-Weckerly stated that by partnering with the Kensington School, the Church would fulfil its mission to provide child day-care in the community. Rev. Andrews-Weckerly requested that the Commission recommend approval of the application.

As no one else wished to speak, Mr. Krapf closed the Public Hearing.

Mr. Richardson stated that he believes the use is appropriate for the site. Mr. Richardson stated that he believes there is a great demand for day-care in that area and that he would support the application.

Ms. Pete stated that she believes the use is in accord with the Comprehensive Plan. Ms. Pete further stated that she appreciates seeing the partnership between the Church and the School to provide needed services in the Community.

Mr. Wright stated that he finds this to be the better location for the School and that he supports the application.

Mr. Krapf stated that he finds the use to be compatible with the Comprehensive Plan and that he would support the application.

Mr. Wright made a motion to recommend approval of SUP-0013-2017.

On a roll call vote the Commission voted to recommend approval of SUP-0013-2017, The Kensington School (6-0).

3. SUP-0028-2016. Solar Electrical Generation Facility at Norge

A motion to Approve was made by Heath Richardson, the motion result was Passed.

AYES: 6 NAYS: 0 ABSTAIN: 0 ABSENT: 1

Ayes: Haldeman, Krapf, Pete, Richardson, Schmidt, Wright III

Absent: O'Connor

A motion to Approve was made by Jack Haldeman, the motion result was Passed.

AYES: 5 NAYS: 1 ABSTAIN: 0 ABSENT: 1

Ayes: Haldeman, Krapf, Pete, Richardson, Schmidt

Nays: Wright III

Absent: O'Connor

Mr. José Ribeiro, Senior Planner II, stated that at its April 5, 2017 meeting, the Commission recommended approval of this application by a vote of 5-2, with changes to SUP Condition No. 5, Vehicular Access. Mr. Ribeiro further stated that the Commission also approved, by a vote of 5-2, a resolution to find the proposal consistent with the Comprehensive Plan.

Mr. Ribeiro stated that since April, the applicant has requested that the Board of Supervisors

defer consideration of this application to allow time to develop ways to further mitigate impacts associated with construction traffic and the feasibility of an alternative access to the site. Mr. Ribeiro stated that on October 10, 2017, the Board of Supervisors remanded this application back to the Planning Commission for its consideration at the December 6, 2017 meeting, due to substantive changes proposed by the applicant.

Mr. Ribeiro stated that the applicant is no longer proposing vehicular access to the site via Farmville Lane/Oslo Court but, instead, through Old Church Road. Mr. Ribeiro stated that the proposed access route will accommodate all vehicular traffic during and after the construction period and that traffic through Old Church Road is expected to create less impact to the neighborhood than vehicular access through Farmville Lane, as previously proposed. Mr. Ribeiro stated that both VDOT and the Fire Department concur with the change. Mr. Ribeiro further stated that based on feedback received by citizens, the applicant has proposed to use an off-site parking lot location to accommodate parking for workers during the construction period of the project. Mr. Ribeiro stated that according to SunPower, the construction period is typically completed within nine months. Mr. Ribeiro noted that the peak volume of traffic and the number of construction workers visiting the site lasts between four and five months. Mr. Ribeiro stated that during the peak construction period it is expected that at any one time there could be 60 to 80 workers on-site. Mr. Ribeiro stated that SunPower anticipates that the proposed off-site parking area will accommodate up to 80 vehicles for their workforce during the construction period. Mr. Ribeiro stated that workers would be transported from the off-site parking lot location, to the construction site via a shuttle bus, thereby reducing the volume of construction related traffic created by private passenger vehicles. Mr. Ribeiro stated that after the construction period is over, the site will likely receive around four trips per day during normal operation. Mr. Ribeiro stated that staff has created a new SUP condition to address the proposed off-site parking.

Mr. Ribeiro stated that in addition to an SUP issued by the County this project will require an agreement with Dominion Energy to interconnect into the electrical power distribution network. Mr. Ribeiro stated that the applicant has submitted an interconnection request to Dominion Energy and expects to execute an interconnection agreement in early 2018. Mr. Ribeiro stated that the project also requires issuance of a Renewable Energy "Permit by Rule" by the Virginia Department of Environmental Quality (DEQ). Mr. Ribeiro stated that the applicant has initiated the "Permit by Rule" process with an initial notice of intent filing and pre-application meeting with DEQ.

Mr. Ribeiro stated that the land for the project will be leased and the lease term of the land agreement is 35 years which is the estimated operational life for this facility. Mr. Ribeiro stated that at the end of the project life cycle, SunPower will implement a decommissioning and restoration plan as outlined in the SUP conditions.

Mr. Ribeiro stated that Section 15.2-2232 of the Code of Virginia requires that unless a utility facility is shown on the adopted Comprehensive Plan or other master plan for the County, the local planning commission shall review the facility to determine whether the location, character and extent of the project is substantial in accord with the adopted Comprehensive Plan. Mr. Ribeiro stated that the proposed solar electrical generation facility is not currently shown on the County's adopted Comprehensive Plan, therefore, requires this additional level of review by the Planning Commission.

Mr. Ribeiro stated that staff finds the proposal to be compatible with surrounding zoning and development and that it is consistent with the Comprehensive Plan. Mr. Ribeiro stated that staff recommends the Commission recommend approval of this application to the Board of Supervisors subject to the attached conditions. Mr. Ribeiro further stated that staff recommends that the Commission find this application consistent with the Code of Virginia Section 15.2-2232.

Mr. Richardson inquired whether it was staff or the applicant that developed the proposal for the change in vehicular access.

Mr. Ribeiro stated that the change evolved as the applicant met with residents in Norvalia in response to citizen concerns over traffic impacts in the community.

Mr. Schmidt inquired about the additional parcels that would be included.

Mr. Ribeiro stated that there were five small parcels added to the application which will make up the private right-of-way access from the end of Church Lane.

Mr. Krapf called for disclosures from the Commission related to the current hearing.

There were no disclosures. Mr. Krapf opened the Public Hearing.

Mr. Peter Toomey, Senior Manager, Utility Origination, SunPower Corp, provided an overview of the project. Mr. Toomey noted that the existing Resource Protection Area serves to buffer the majority of the project. Mr. Toomey further noted that a 50 foot evergreen buffer would be installed where the property abuts the neighboring community.

Mr. Toomey confirmed the status of the various necessary permits.

Mr. Toomey provided a list of common questions related to solar installations which included concerns over property value, noise and glare. Mr. Toomey noted that similar projects have not affected property value. Mr. Toomey further noted that solar installations generate very little noise and that there would be no glare due to the nature of the panels.

Mr. Toomey stated that benefits of the project include minimal impact to the land, minimal impact to public services and the potential to attract businesses that seek to use solar power.

Mr. Toomey requested that the Commission support the application.

Mr. Richardson inquired about ownership of the existing fence line. Mr. Richardson further inquired if the Community is satisfied with the buffer plan.

Mr. Toomey stated that they have not received specific feedback on the buffer.

Mr. Dave Stoner, SunPower Corp, stated that the existing fence is on a neighboring parcel. Mr. Stoner stated that to buffer the project, in addition to filling in vegetation where necessary, there would be a fabric fence installed for additional screening.

Mr. Richardson inquired if the existing residential structure on the property would be demolished.

Mr. Toomey confirmed.

Mr. Schmidt noted that the property feeds into the Yarmouth Creek watershed and inquired if fertilizer would be used on the property to maintain the grassy areas.

Mr. Cory Howell, Kimley-Horn and Associates, Inc., stated that fertilizer would be used only to establish the initial vegetation.

Mr. Holt stated that SUP Condition No. 3 calls for a nutrient management plan to ensure compliance with best practices. Mr. Holt noted that the nutrient management plan will be



reviewed by Stormwater and Resource Protection.

As no one else wished to speak, Mr. Krapf closed the Public Hearing.

Mr. Krapf opened the floor for discussion by the Commission.

Mr. Krapf noted that the Commission would need to vote separately on the resolution for consistency with the Comprehensive Plan and the SUP.

Mr. Haldeman made a motion to find the project in substantial accord with the Comprehensive Plan.

On a roll call vote the Commission voted to find the project consistent with the Comprehensive Plan (6-0).

Mr. Richardson stated that he appreciates the efforts of the applicant to find solutions to the community concerns.

Mr. Wright stated that he has concerns about the effect of the project on the Primary Service Area (PSA) as the properties fall within the PSA. Mr. Wright stated that by allowing this type of development which removes a substantial amount of land from the PSA which could be used for residential development, it could eventually put pressure on the County to extend the PSA.

Mr. Haldeman stated that he supports the application because it does make the property unavailable for residential development which would put more burden on the County's infrastructure and resources.

Mr. Schmidt noted that in addition to relieving the strain on County resources, it also drastically reduces the traffic impacts that residential development would have on the existing neighborhood. Mr. Schmidt stated that he will support the application.

Mr. Krapf stated that he appreciates the efforts of the applicant to resolve concerns over traffic. Mr. Krapf stated that he approves of the intent to remediate the property at the end of the project lifecycle. Mr. Krapf further stated that he finds the project to be in accord with both the Comprehensive Plan and the County's Strategic Plan.

Mr. Richardson made a motion to recommend approval of SUP-0028-2016 subject to the proposed SUP Conditions.

On a roll call vote, the Commission voted to recommend approval of SUP-0028-2016. Solar Electrical Generation Facility at Norge subject to the proposed Conditions (5-1).

4. ZO-0001-2017. Amendments to the Zoning Ordinance, Division 3, Floodplain Area Regulations

A motion to Approve was made by Jack Haldeman, the motion result was Passed.

AYES: 6 NAYS: 0 ABSTAIN: 0 ABSENT: 1

Ayes: Haldeman, Krapf, Pete, Richardson, Schmidt, Wright III

Absent: O'Connor

Ms. Christy Parrish, Zoning Administrator, stated that in response to recent guidance from the Federal Emergency Management Agency (FEMA) and the Department of Conservation and Recreation (DCR), staff has identified the need to update the Floodplain Ordinance to address

the construction regulations of small accessory structures in the special flood hazard area. Ms. Parrish stated that the current regulations only permit the construction of nonresidential structures in the floodplain when the lowest floor of that structure is either elevated or watertight flood-proofed up to the level of two feet above the base flood elevation. Ms. Parrish stated that all structures that are not used for dwelling purposes are considered nonresidential, which includes residential detached garages and sheds. Ms. Parrish stated that as a result of the recent FEMA determinations, DCR guidance and model regulations have been recently updated to address wet-proofing construction standards for small accessory structures in the floodplain. Ms. Parrish stated that if adopted locally it would provide a lower construction cost option for property owners. Ms. Parrish further stated that staff has used this opportunity with consult with DCR to re-review all sections of the Floodplain Area Regulations to ensure compliance with the National Flood Insurance Program. Ms. Parrish stated that staff did receive minor clarifying updates to various sections, but did not receive any large substantive changes.

Ms. Parrish stated that on November 9, 2017, the Policy Committee voted 4-0 to recommend approval of all the proposed changes. Ms. Parrish stated that staff recommends that the Commission recommend approval of the ordinance amendments to the Board of Supervisors for consideration at its January 9, 2018 meeting.

Mr. Haldeman inquired if manufactured homes would now be treated the same way as accessory structures.

Ms. Parrish stated that new manufactured homes are not permitted within the Special Flood Hazard Area. Ms. Parrish stated that existing manufactured homes would have to be elevated if they are modified.

Mr. Krapf opened the Public Hearing.

As no one wished to speak Mr. Krapf closed the Public Hearing.

Mr. Haldeman made a motion to recommend approval of the Ordinance amendments.

On a roll call vote, the Commission voted to recommend approval of ZO-0001-2017. Amendments to the Zoning Ordinance, Division 3, Floodplain Area Regulations (6-0).

5. ZO-0002-2017. Zoning Ordinance Revisions to Permit Short-Term Residential Rentals

A motion to Approve was made by Danny Schmidt, the motion result was Passed.

AYES: 6 NAYS: 0 ABSTAIN: 0 ABSENT: 1

Ayes: Haldeman, Krapf, Pete, Richardson, Schmidt, Wright III

Absent: O'Connor

Ms. Roberta Sulouff, Senior Planner, stated that during the course of two public hearing cases, members of both the Planning Commission and the Board of Supervisors expressed a desire for a policy addressing the emerging issue of short-term residential rentals, also known as homesharing. Ms. Sulouff stated that this request was echoed at the May 23, 2017, Joint Board of Supervisors and Planning Commission Work Session and again at the Planning Commission's November 1, 2017 meeting, at which the Commission formally initiated the consideration of Zoning Ordinance amendments to permit short-term residential rentals in residentially zoned areas. Ms. Sulouff stated that staff has also received several public inquiries and conceptual plan applications from citizens interested in pursuing this use on their properties.

Ms. Sulouff stated that during the 2017 General Assembly Session, the legislature approved SB 1578 which allows a locality to create a short-term rental registry. Ms. Sulouff stated that this legislation does not prohibit, limit, or otherwise supersede existing local authority to regulate the short-term rental property through general land use and zoning authority.

Ms. Sulouff stated that on July 13, 2017, the Policy Committee met to discuss initial planning for policies and Ordinance amendments to address the emerging topic of short-term residential rentals. Ms. Sulouff stated that at that meeting, the Committee expressed interest in pursuing a hybrid approach to permitting such rentals, similar to the approach taken during the recent amendment process addressing rural event facilities, wherein certain aspects of the use would be permitted by-right and others would require the issuance of an SUP. Ms. Sulouff stated that the Committee directed staff to research and develop draft language to define and develop a permitting process for short-term residential rentals. Ms. Sulouff stated that staff met with the Committee again at its September 16, November 9 meetings to receive feedback on draft Ordinance and policy language. Ms. Sulouff stated that staff incorporated feedback from these meetings, as well as feedback from the Commissioner of the Revenue and the County Attorney, into the language in the attached policies and amended ordinances.

Ms. Sulouff stated that staff has worked to provide draft language that makes clear distinctions between uses based on the intensity and nature of those uses with the intent of providing transparency for the applicant and clarity to the Commission and the Board of Supervisors.

Ms. Sulouff stated that staff has also developed performance standards that will assist staff, the Commission and the Board in reviewing SUP conditions for short-term rentals. Ms. Sulouff further stated that the policy attempts to draw distinctions between the residential uses that fall under the Homestay definition and the more commercial uses that fall under the tourist home definition.

Ms. Sulouff stated that the Ordinance amendments, performance standards and administrative policy provide a logical and predictable framework for short-term residential rentals in the County. Ms. Sulouff stated that staff recommends that the Commission recommend approval of the ordinance amendments and the administrative policy to the Board of Supervisors.

Mr. Krapf expressed appreciation for staff's efforts in preparing the Ordinance amendments.

Mr. Richardson inquired how the administrative review fee would be collected.

Ms. Sulouff stated that the fee is the same as the Conceptual Plan review fee and will be collected at the time of submittal as all other Planning fees are collected.

Mr. Wright inquired if Airbnb falls under the category of Homestay.

Ms. Sulouff stated that Airbnb is a medium for many different types of rentals.

Ms. Sulouff stated that a tourist home could be rented through Airbnb well as a Homestay. Ms. Sulouff stated that the Homestay is required to be the owner's primary residence. Ms. Sulouff stated that Homestays are what you generally find on Airbnb.

Mr. Wright inquired how the County would ensure that the properties are not in violation of home owners association (HOA) restrictions.

Ms. Sulouff stated that the County does not enforce HOA covenants which are private matters; however, the process and application could certainly be developed to notify the applicant that they must ensure that they are in compliance with HOA covenants.

Mr. Holt stated that staff will be developing a customer service guide for the process and similar to the guide for Chicken Keeping applications it would require that the applicant confirm that the HOA does not have any restrictions that would prevent short-term rental of the property.

Mr. Haldeman inquired if the proposed amendments would remove the number of rooms that can be rented as a tourist home.

Ms. Sulouff confirmed that the new definitions for tourist home removes that distinction. Ms. Sulouff stated that since tourist homes require an SUP it is possible for the applicant to request fewer or more rooms based on the property.

Mr. Krapf opened the Public Hearing.

Ms. Beth Hall, 116 Lake Drive, addressed the Commission in opposition to the Ordinance amendments. Ms. Hull requested that short-term rentals not be allowed in the R-1 District.

Mr. James Bradley, 104 Malvern Circle, addressed the Commission in opposition to the Ordinance amendments and requested that short term rentals not be permitted in the R-1 District.

As no one else wished to speak, Mr. Krapf closed the Public Hearing.

Mr. Krapf opened the floor for discussion by the Commission.

Mr. Richardson stated that since the General Assembly did not preempt a locality's ability to regulate short-term rentals, it falls to the locality to develop ordinance language and standards to govern this type of activity and ensure it will be in keeping with the character of the community.

Mr. Wright inquired if the County could incorporate state law into the Ordinance that is being adopted.

Mr. Holt clarified that the state has not adopted laws or policies related to short-term rentals to preempt local zoning ordinances. Mr. Holt stated that the County's language related to the registry does come directly from State Code. Mr. Holt noted that the County is not requiring the \$500 registry fee which is more appropriate for localities that do not require business licenses or require review fees.

Mr. Krapf stated that in addition to bringing the registry language over from State Code, the amendments and policy guidelines were developed to make conflicting guidelines more consistent.

Mr. Wright noted that the registry language allows the County to deny or revoke the ability to do short-term rentals if there are violations. Mr. Wright inquired about the types of violations that would apply.

Mr. Holt stated that this would be violations of local code.

Mr. Hlavin clarified that it could include violations of local codes such as Building Code violations, Zoning violations or violation of the registry ordinance. Mr. Hlavin stated that multiple violations would allow the Commissioner of the Revenue to prohibit short-term rentals at that location.

Mr. Wright inquired if, after the Ordinance amendments are adopted, a neighborhood could

establish new covenants that would prohibit short-term rentals.

Mr. Hlavin stated that the Ordinance amendments would not trump existing HOA covenants. Mr. Hlavin noted that there is a very specific legal process requiring concurrence of all property owners to amend or establish new covenants. Mr. Hlavin noted that enforcement of HOA covenants is a private action of the HOA against the homeowner.

Mr. Schmidt inquired if the County could take action if it were reported that a property has not complied with the registration process.

Mr. Hlavin confirmed.

Mr. Haldeman inquired if Rental of Rooms is permitted in the R-1 Zoning District.

Ms. Sulouff stated that Rental of Rooms currently requires an SUP in the R-1 Zoning District. Ms. Sulouff stated that under the current language rental of rooms applies to both long-term and short-term rentals. Ms. Sulouff stated that if the Ordinance amendments are approved, Rental of Rooms will only apply to long-term uses that exceed the definition of family.

Mr. Haldeman inquired if Homestays would be permitted in R-1 if the Ordinance amendments are approved.

Ms. Sulouff stated that currently Tourist Homes are not permitted in the R-1 Zoning District. Ms. Sulouff stated that Rental of Rooms which currently encompasses short-term rentals requires an SUP. Ms. Sulouff stated that currently there are no by-right uses for short-term rentals in the R-1 Zoning District.

Ms. Sulouff stated that if the ordinance amendments are approved, there will be a by-right option to rent one room in the owner's primary residence for less than 180 days.

Mr. Haldeman inquired if the by-right option is a Homestay.

Ms. Sulouff confirmed.

Mr. Haldeman inquired if registration would be required for Homestays.

Ms. Sulouff stated that they would need to register, have a business license and pay taxes.

Mr. Schmidt inquired if the County could note on the customer service guide that the HOA could take legal action if the applicant is in violation of HOA covenants.

Mr. Hlavin stated that the County could note that County approval does not supersede HOA covenants which can be enforced by that private organization.

Mr. Krapf stated that in addition to making the process consistent for all zoning districts, the by-right use is only for one room rental in a property owner's primary residence with a limit on the number of days of operation. Mr. Krapf stated that anything outside of that would require an SUP. Mr. Krapf stated that the strength of the process lies in the guidelines which allow for conditions to be applied to address specific concerns for each property. Mr. Krapf further stated that this will bring an underground economy out in the open and minimize the problems that arise. Mr. Hlavin clarified that in the A-1, R-8 and R-4 Zoning Districts, the one room restriction does not apply to Homestays.

Mr. Schmidt made a motion to recommend approval of the Ordinance amendments and the proposed policies for Tourist Homes and Homestays.

On a roll call vote the Commission voted to approve ZO-0002-2017, Zoning Ordinance Revisions to Permit Short-Term Residential Rentals and the proposed policies for Tourist Homes and Homestays (6-0).

#### **G. PLANNING COMMISSION CONSIDERATIONS**

1. Z-0004-2017. Powhatan Terrace Proffer Amendment

A motion to Approve was made by John Wright III, the motion result was Passed.

AYES: 6 NAYS: 0 ABSTAIN: 0 ABSENT: 1

Ayes: Haldeman, Krapf, Pete, Richardson, Schmidt, Wright III

Absent: O'Connor

Ms. Savannah Pietrowski, Senior Planner, stated that Ms. Brandie Weiler, of Housing Partnerships, Incorporated, has submitted a request to amend Condition No. 1 of the adopted Proffers for Powhatan Terrace. Ms. Pietrowski stated that the development was approved by the Board of Supervisors on March 28, 2008, as a cluster development consisting of 36 townhouse units.

Ms. Pietrowski stated that the applicant is requesting to amend the Proffers to allow rental units within the development in order to develop Powhatan Terrace as an affordable rental community. Ms. Pietrowski stated that there are no other proposed changes to the master plan or other proffered conditions.

Ms. Pietrowski stated that staff finds that the requested Proffer amendment would be consistent with the recommendations of the Comprehensive Plan and the Strategic Plan regarding affordable housing. Ms. Pietrowski stated that staff also finds that the requested Proffer amendment would not negatively impact surrounding development. Ms. Pietrowski stated that staff recommends that the Planning Commission recommend approval of the proposed Proffer amendment to the Board of Supervisors.

Mr. Wright inquired about the parcel shown in the middle of the development.

Ms. Pietrowski stated that the boundary line would be extinguished as part of the subdivision process.

Mr. Krapf inquired if there were any meetings with existing residents in the development to discuss the changes.

Ms. Pietrowski stated that she was not aware of any meetings.

Mr. Krapf inquired if renters would be required to join the HOA.

Ms. Pietrowski stated that there is a Proffer Condition that requires an HOA once the project is developed.

Mr. Krapf inquired if the applicant wished to address the Commission.

Ms. Brandie Weiler, Executive Director, Housing Partnerships Inc., addressed the Commission in support of the request. Ms. Weiler noted that there are no existing residents as the project is still under development, therefore, no public meeting was held.

Mr. Wright made a motion to recommend approval of Z-0004-2017.

On a roll call vote the Commission voted to recommend approval of Z-0004-2017. Powhatan Terrace Proffer Amendment (6-0).

#### **H. PLANNING DIRECTOR'S REPORT**

##### **1. Planning Director's Report - December 2017**

Mr. Holt stated that he had nothing in addition to the report provided in the Agenda Packet.

#### **I. PLANNING COMMISSION DISCUSSION AND REQUESTS**

Mr. Krapf stated that he would cover the Board of Supervisors meeting for December.

Mr. Krapf stated that in an effort to communicate more effectively, he would like to propose to the Board of Supervisors that the Commission provide the Board with a monthly Chairman's Report. Mr. Krapf stated that the report would highlight Planning Commission initiatives and be provided to the Board with their agenda materials. Mr. Krapf noted that the Commission representative each month would have the same report and be able to address any questions that come forward. Mr. Krapf further stated that he would like the Commission to be on the Board's Work Session schedule once each quarter to provide updates and see where the Board stands on various initiatives.

Mr. Richardson concurred with the proposal.

Mr. Schmidt inquired whether the Policy Committee and DRC should provide a condensed version of their reports.

Mr. Krapf stated that he would work with the Chairs of the DRC and Policy Committee to develop the report and ensure all pertinent information was covered.

Mr. Haldeman requested that staff address Mr. Small's concerns regarding requirements for Houses of Worship in the A-1 Zoning District.

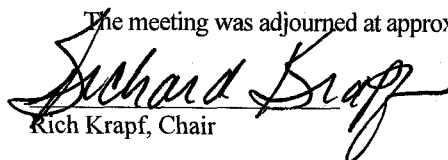
Mr. Holt noted that the amendments to the A-1 and R-8 Zoning Districts are consistent with what was done in the other districts regarding incorporating fraternal organizations and Houses of Worship as Places of Public Assembly. Mr. Holt stated that he would provide the Commission with additional information on those changes.

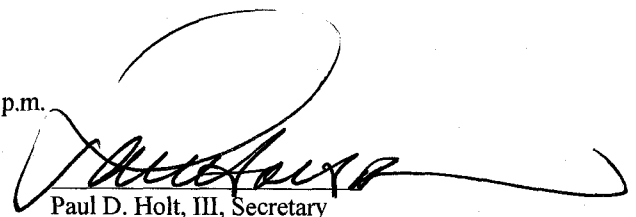
Mr. Schmidt noted that he has joined the Steering Committee for the Pocahontas Trail Corridor Study. Mr. Krapf thanked the Commissioners and staff for their efforts over the last year and wished everyone the very best for the holidays.

#### **J. ADJOURNMENT**

Mr. Wright made a motion to adjourn.

The meeting was adjourned at approximately 9:07 p.m.

  
Rich Krapf, Chair

  
Paul D. Holt, III, Secretary