

MINUTES
JAMES CITY COUNTY PLANNING COMMISSION
REGULAR MEETING
County Government Center Board Room
101 Mounts Bay Road, Williamsburg, VA 23185
September 4, 2019
6:00 PM

A. CALL TO ORDER

Mr. Jack Haldeman called the meeting to order at 6:00 p.m.

B. ROLL CALL

Planning Commissioners Present:

Jack Haldeman
Rich Krapf
Tim O'Connor
Danny Schmidt
Frank Polster
Julia Leverenz
Odessa Dowdy

Staff Present:

Paul Holt, Director of Community Development and Planning
Adam Kinsman, County Attorney
José Ribeiro, Senior Planner II

C. PUBLIC COMMENT

Mr. Haldeman opened Public Comment.

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

D. REPORTS OF THE COMMISSION

Mr. Frank Polster stated that the Development Review Committee (DRC) met on August 21, 2019 to consider C-19-0041 Hill Pleasant Farm Solar Farm. Mr. Polster stated that the Conceptual Plan was presented to the DRC prior to submitting an application for a Special Use Permit (SUP) for a solar farm located at 7150 Richmond Road. Mr. Polster stated that the property is designated Economic Development on the 2035 Comprehensive Plan Land Use Map. Mr. Polster stated that the applicant had requested that this proposal go before the DRC to seek input and questions from the DRC members. Mr. Polster stated that no action by the DRC was required. Mr. Polster further stated that the applicant has applied to remove 192.76 acres from the Hill Pleasant Farm Agricultural and Forestal District (AFD). Mr. Polster noted that the AFD withdrawal case would be presented concurrent with the SUP.

Mr. Polster stated that questions from the Committee revolved around conditions from a previous solar farm application in Norge and the willingness to conform to those same requirements such as a nutrient management plan and buffering requirements. Mr. Polster stated that the applicant assured the Committee that with the 50-foot buffer along the CSX rail line and Route 60, the elevation of the rail line, and the height of the mixed buffer plantings, the solar array would not be visible from Route 60. Mr. Polster noted that the applicant also

discussed their concept of planting pollinator-friendly plants among the solar panels. Mr. Polster stated that the Committee endorsed that idea and suggested that an added SUP condition could require an agricultural best management practice stipulating planting pollinator-friendly plants. Mr. Polster stated that the applicant agreed in principal, but the extent of the plantings in the project area would be determined at the design review stage.

Mr. Polster noted that the lease agreement for the property is for 30 years with extensions of 5-year increments. Mr. Polster stated that the Committee inquired if the company, Strata, were bought out by another firm halfway through the lease agreement, could the new firm unilaterally terminate the lease and use it for some other purpose. Mr. Polster stated that the response was that the lease could be terminated with the agreement of both parties.

Mr. Polster stated that the Committee inquired if the lease agreement required Strata to budget for the removal and restoration of the land at the end of the lease. Mr. Polster stated that Strata confirmed that they do.

Mr. Polster stated that staff from the Stormwater Division inquired about the sediment control plan for the project's nutrient reduction requirements. Mr. Polster stated that the applicant responded that the preliminary design called for a series of dry swales around the perimeter. Mr. Polster stated that, according to the applicant, the survey completed by the ecological consultant may lead to additional best management practices.

Mr. Polster stated that the Committee expressed concern on the retention of the remaining 198 acres in the Hill Pleasant Farm AFD since it has not been farmed for 10 years. Mr. Polster noted that it also appeared that a considerable portion of the remaining acreage was in the Resource Protection Area (RPA) and could not be developed. Mr. Polster stated that Strata had recently updated its survey of the project and agreed to provide the RPA acreage for the remainder of the parcel. Mr. Polster stated that staff previously determined that removing the entire 391 acres from the AFD would cause the district to drop below the minimum of 200 acres required for an AFD district. Mr. Polster stated that the Committee suggested that this could be overcome by the inclusion of the remaining AFD properties in the nearby Croaker AFD.

Mr. Polster stated that the Committee was generally supportive of the proposal. Mr. Polster stated that among the favorable aspects were the positive reputation of the firm in the solar industry, the movement towards greenness with a renewable energy source, that this was a preferable alternative to development, and the potential to add an SUP condition for an agricultural best management practice of planting pollinator-friendly plants among the solar panels.

Ms. Julia Leverenz stated that the Policy Committee met on August 8, 2019, to consider Stage I Ordinance amendments to regulate the keeping of inoperable motor vehicles on residential, commercial, and agricultural properties less than two acres in size.

Ms. Leverenz stated that at the County's request, the General Assembly granted an amendment to the County charter allowing the definition of inoperable vehicle on properties less than two acres to include vehicles that are not in operating condition, not shielded from view, and have either invalid license plates or an invalid inspection decal. Ms. Leverenz stated that previously, the definition required both expired/missing plates and decal. Ms. Leverenz further stated that the amendment also allows the County to regulate inoperable vehicles on agricultural properties that are two acres or less.

Ms. Leverenz stated that the Zoning Administrator also asked the Committee for comments on regulating oversized commercial vehicles in areas zoned residential since staff has received a number of complaints over the years, and the Zoning Ordinance does not currently address

this issue.

Ms. Leverenz stated that the Committee discussed the types of vehicles that would be considered "oversized," versus work vehicles used by the residential owner. Ms. Leverenz stated that the Committee asked about the legality of regulating oversized vehicles in private driveways, whether "commercial" would include recreational vehicles, and if the Planning Director could designate particular neighborhoods to prohibit parking oversized commercial vehicles on the street. Ms. Leverenz stated that staff explained the jurisdiction for inoperable and oversized vehicles on private property (zoning administration), public right-of-way (police department), and maintaining access for emergency vehicles (fire department).

Ms. Leverenz stated that staff will coordinate with the police, fire, and legal departments while drafting proposed Ordinances for Stage II Committee consideration.

E. CONSENT AGENDA

1. Minutes of the August 7, 2019 Regular Meeting
2. S-0008-2015. Colonial Heritage Phase 6 Section 2, Construction Plan

Mr. Rich Krapf made a motion to approve the Consent Agenda.

On a voice vote the Commission voted to approve the Consent Agenda.

F. PUBLIC HEARINGS

1. Case No. ORD-19-0001. Zoning Ordinance Amendment to Section 24-16, Proffer of Conditions

A motion to Approve was made by Rich Krapf, the motion result was Passed.

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

Ayes: Dowdy, Krapf, Leverenz, O'Connor, Polster, Schmidt

Nays: Haldeman

Mr. Paul Holt, Director of Community Development and Planning, stated that this agenda item should be familiar to the Commission as it was first considered on June 5, 2019. Mr. Holt stated that since that time staff has continued to work with the County Attorney's Office and the Ordinance has been updated to more specifically reference the applicable State Code reference. Mr. Holt stated that since this was considered a significant change, it has been remanded back to the Commission for a reconsideration.

Mr. Polster inquired if this ordinance was specifically related to proffers for school impacts or whether it would also cover archaeology, transportation, and so forth.

Mr. Holt stated that the Ordinance amendment does not address any one impact; it is amending the section of code that will generally allow proffers to be submitted again. Mr. Holt further stated that when staff reaches the point in the analysis of an application, if there are any anticipated impacts, proffers can be submitted to mitigate those impacts. Mr. Holt noted that for those policies that were rescinded by the Board, this change to the Zoning Ordinance does not reinstate them. Mr. Holt further noted that the County cannot have written proffer policies.

Mr. Polster stated that he thought the policies had been incorporated into the Zoning

Ordinance to ensure that certain impacts would still be mitigated in the absence of proffers.

Mr. Holt stated that many of the items that were previously addressed through proffers such as archeology, pedestrian accommodations, street trees, etc. have been incorporated in the Zoning Ordinance. Mr. Holt further stated that there are some things, such as off-site improvements, that cannot be addressed in the Zoning Ordinance.

Mr. Polster inquired if affordable housing could be addressed through proffers.

Mr. Holt stated that those items could include affordable housing, off-site transportation improvements, and/or impacts to the James City Service Authority (JCSA) infrastructure.

Mr. Polster stated that he thought the JCSA impacts were already covered under County Code.

Mr. Holt stated that items such as tap fees are covered, but, for example, proffers might be submitted to upgrade an off-site pump station.

Mr. Polster stated that he was trying to understand what would be covered by this Ordinance amendment, what has already been incorporated in the Zoning Ordinance and what might be left over.

Mr. Haldeman opened the Public Hearing.

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

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

Mr. Polster stated that when the Ordinance amendment was considered previously, he did not support it due to the ambiguous language in terms of what was reasonable and the lack of any definition of what would be considered reasonable. Mr. Polster stated that following clarification from the County Attorney's Office, he is satisfied that there are new procedures that will be put in place that address those concerns. Mr. Polster stated that he would now support the Ordinance Amendment.

Mr. Haldeman stated that he remains convinced that this is not the right time to reinstate the ability to accept proffers. Mr. Haldeman stated that since the June 5 meeting the Commission has seen the results of the Comprehensive Plan Survey. Mr. Polster stated that 93% of the respondents believe that there is already enough or too much residential development in the County. Mr. Haldeman further stated that with the number of previously approved home sites, the County's population will soon exceed 100,000. Mr. Haldeman stated that based on the Comprehensive Plan, the Strategic Plan, the Housing Conditions Study, and reports from the Workforce Housing Task Force and the Business Climate Task Force all warn that the impact of this type of growth on the economy and the quality of life is dangerous. Mr. Haldeman further stated that the previous proffer policy did not come close to covering the impacts of development. Mr. Haldeman stated that the legal risks have been reduced but not removed. Mr. Haldeman further stated that after considering the previous discussion on the Ordinance Amendment, he believes that easements are equally as enforceable as proffers; however, the subject is almost moot as there has been only one residential rezoning in that time. Mr. Haldeman stated that he would not support the amendment.

Mr. Krapf stated that he believes that the issue of residential growth and the issue of mitigating the impacts of residential growth are two separate things. Mr. Krapf stated that when the County stopped taking proffers for residential development, applicants found workarounds that were, in his opinion, more cumbersome. Mr. Krapf further stated that he looks at proffers

as a manageable and more flexible tool to mitigate impacts from residential developments. Mr. Krapf stated that he would support the Ordinance amendment.

Mr. Tim O'Connor stated that he may have been the only one who did not agree with not accepting proffers in the first place. Mr. O'Connor stated that he believes proffers are a right of the property owner or applicant to make their application more acceptable. Mr. O'Connor further stated that he views proffers as a way to have a discussion with the development community on how growth can be mitigated appropriately.

Ms. Leverenz stated that as part of the Comprehensive Plan update, work would be done to quantify impacts. Ms. Leverenz stated that she would support the Ordinance Amendment with the understanding that the County will have better tools once there is quantifiable data.

Mr. Krapf made a motion to recommend approval of the Ordinance Amendment.

On a roll call vote the Commission voted to recommend approval of ORD-19-0001. Zoning Ordinance Amendment to Section 24-16, Proffer of Conditions. (6-1)

G. PLANNING COMMISSION CONSIDERATIONS

1. Z-19-0011. Mason Park Proffer Amendment

A motion to Approve was made by Julia Leverenz, the motion result was Passed.

AYES: 7 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Dowdy, Haldeman, Krapf, Leverenz, O'Connor, Polster, Schmidt

Mr. José Ribeiro, Senior Planner II, stated that Mr. Jonathan Cramer of HHHunt Homes LLC has submitted a request to amend the Proffers for Mason Park which were adopted in 2006. Mr. Ribeiro stated that the applicant is requesting that references to "detached garages" be deleted from the proffered language to allow the construction of residential units with attached garages. Mr. Ribeiro stated that in 2006 the approximately 9.11-acre property located at 1916 Jamestown Road was rezoned from R-8, Rural Residential to R-2, General Residential, with proffers, along with an SUP for a cluster overlay and a request for reduced street width. Mr. Ribeiro further stated that Mason Park was approved as residential development with 15 single-family detached units with detached garages.

Mr. Ribeiro stated that according to the applicant, there is currently a preference in the housing market for residential units with attached garages. Mr. Ribeiro further stated that the applicant has indicated that attached garages will be located behind the house such that the front of the homes will remain the dominant visual structure from the street. Mr. Ribeiro noted that the application does not affect conditions of use or density and that staff does not anticipate any impacts from the change.

Mr. Ribeiro stated that the Comprehensive Plan designates the property as Low Density Residential. Mr. Ribeiro noted that residential land use standards encourage locating garages at the rear or side of the property to deemphasize the garage and associated driveway. Mr. Ribeiro stated that while the garages would no longer be detached, they would still be consistent with this language by being located at the rear of the property. Mr. Ribeiro further stated that the adopted Master Plan places the garages at the rear of the property. Mr. Ribeiro stated that staff finds the proposal to be consistent with surrounding development, the Comprehensive Plan and the Zoning Ordinance. Mr. Ribeiro stated that staff recommends that the Planning Commission recommend approval of the application to the Board of Supervisors.

Ms. Leverenz inquired if this change would create additional greenspace. Mr. Ribeiro stated that staff has not yet looked at that aspect.

Ms. Leverenz made a motion to recommend approval of the application.

On a roll call vote, the Commission voted to recommend approval of Z-19-0011, Mason Park Proffer Amendment. (7-0)

H. PLANNING DIRECTOR'S REPORT

1. Planning Director's Report - September 2019

Mr. Holt stated that he had nothing in addition to what was provided in the report.

I. PLANNING COMMISSION DISCUSSION AND REQUESTS

Mr. Haldeman noted that Mr. Krapf has Board of Supervisors coverage for September.

Mr. Schmidt noted that the Commission should look carefully at any requests regarding school parking lot paving to ensure that the number of parking spaces is not reduced.

Ms. Leverenz stated that she wanted to call the Commissions attention to public comments about the impact of short-term rentals on the Community. Ms. Leverenz noted that citizens are concerned that the proliferation of these properties might change the character of the Community. Ms. Leverenz stated that the Commission should think about whether new standards or policies are needed.

Mr. Schmidt stated that he did not see the County as having the same visitor demographic as Virginia Beach or other localities that might be a party destination; however, he concurs with Ms. Leverenz.

Mr. Polster inquired about sunset clauses for SUPs.

Mr. Holt stated that zoning runs with the land. Mr. Holt further stated that SUP conditions cannot be tied to a particular owner. Mr. Holt noted that there are very few temporary uses that would be covered by an SUP, therefore, the County generally did not set SUPs to expire.

Ms. Leverenz inquired if short-term rentals could be defined as a temporary use. Mr. Holt responded that once an SUP is granted, the Board of Supervisors is the only entity that can revoke and SUP. Mr. Holt further stated that there is no mechanism for an interim review.

Mr. Krapf inquired if the review could be set as an SUP condition.

Mr. Adam Kinsman, County Attorney, stated that if an SUP is granted and if things are not going well, a citizen could file a complaint with the Zoning Administrator. Mr. Kinsman further stated that the Zoning Administrator would determine if there is a violation of the conditions and, if so, the Board of Supervisors could revoke the SUP. Mr. Kinsman further stated that, while there are two schools of thought on sunset clauses, he falls on the side that believes they are not appropriate. Mr. Kinsman stated that State Code is very explicit that a Board of Zoning Appeals may establish a sunset clause when it grants an SUP; however, the same language is not contained in the description of a Planning Commission's authority. Mr. Kinsman stated that he takes that omission to mean that the authority is not given to a Planning Commission or the Board of Supervisors to establish sunset clauses.

Mr. Polster stated that the main area of concern is where short-term rentals exist in an

established neighborhood.

Mr. Kinsman stated that in those instances, the Commission and the Board have the most control since those are the ones considered on a case-by-case basis with conditions tailored to the specific property. Mr. Kinsman stated that there are some Zoning Districts where short-term rentals are allowed by-right and the County would not have the ability to regulate them.

Mr. Schmidt noted that it does appear that the County has sufficient power to deal with problems as they arise and that if problems persist, the Board of Supervisors could initiate consideration of changes to the Zoning Ordinance.

Mr. Holt noted that in the case of the sunset clause for the day care, it was the Board's idea to give the applicant time to work with the neighborhood to amend the covenants.

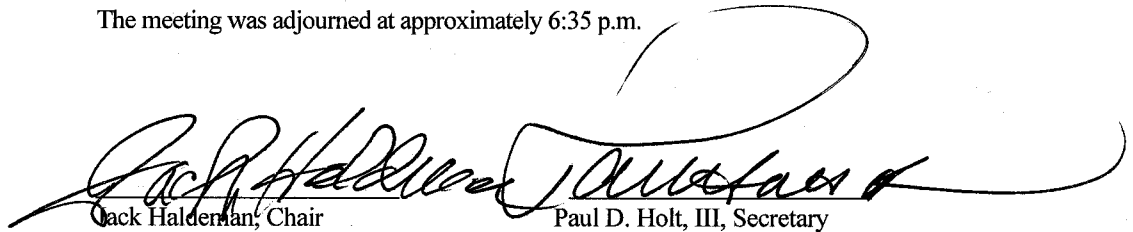
Ms. Odessa Dowdy noted that in the resort destinations, visitors come for a different reason and are more prone to holding parties. Ms. Dowdy stated that she did not see that as being an issue in this locality.

Mr. O'Connor noted that in light of the Mason Park Proffer Amendment, it might be a worthy discussion to consider if the current streetscape recommendations are compatible with how people actually live.

J. ADJOURNMENT

Mr. Haldeman made a motion to Adjourn.

The meeting was adjourned at approximately 6:35 p.m.



Jack Haldeman, Chair

Paul D. Holt, III, Secretary