

**MINUTES**  
**JAMES CITY COUNTY PLANNING COMMISSION**  
**REGULAR MEETING**  
**County Government Center Board Room**  
**101 Mounts Bay Road, Williamsburg VA 23185**  
**January 4, 2023**  
**6:00 PM**

**A. CALL TO ORDER**

Mr. O'Connor called the meeting to order at 6:00 p.m.

**B. ROLL CALL**

**Planning Commissioners Present:**

Tim O'Connor  
Rich Krapf  
Jack Haldeman  
Frank Polster  
Rob Rose  
Barbara Null  
Stephen Rodgers

**Staff Present:**

Paul Holt, Director of Community Development and Planning  
Liz Parman, Deputy County Attorney  
Thomas Wysong, Senior Planner  
Terry Costello, Senior Planner

**C. PUBLIC COMMENT**

Mr. O'Connor opened Public Comment.

As no one wished to speak, Mr. O'Connor closed Public Comment.

**D. REPORTS OF THE COMMISSION**

Mr. O'Connor stated that the Development Review Committee did not meet and, therefore, there was no report.

Mr. Haldeman stated that Mr. Polster called the meeting to order at 4:00 p.m. on December 8, 2022.

Mr. Haldeman stated that the three Committee members in attendance voted unanimously to permit him to attend by telephone.

Mr. Haldeman stated that the Committee considered a Board of Supervisors resolution "to consider possible amendments regarding community recreation facilities in residential districts."

Mr. Haldeman stated that staff reported that community recreation facilities are a permitted use in all residential districts except R-8 and A-1, which require a Special Use Permit (SUP). Mr. Haldeman stated that some such facilities are reportedly being used by groups and teams not affiliated with the neighborhood, and as such might cause excess traffic, noise, lighting, and

other unwelcome effects not commonly found in those neighborhoods. Mr. Haldeman stated that staff recommended amending the use list for residential and mixed use districts to require an SUP when certain community recreation facilities incur recurring use by teams, organizations, or other entities who are not primarily residents of the neighborhood within which the facility is located.

Mr. Haldeman stated that after some discussion, the Committee determined that it lacked sufficient information to make a recommendation. Mr. Haldeman stated that the Committee asked staff to investigate further and to determine:

- How widespread is the problem? How many complaints have been received? Are homeowners associations handling the problem?
- How would the new Ordinance be enforced
- What specific activities would be covered or excluded: Sports? Weddings? Card games?
- What conditions would apply to the SUP?
- Are there other ways to handle this problem, if it is a problem?

Mr. Haldeman stated that further consideration will be given to this matter at the next Policy Committee meeting on January 12, 2023.

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

1. Minutes of the December 7, 2022, Regular Meeting

Ms. Null made a motion to approve the Consent Agenda.

On a voice vote, the Commission voted to approve the Consent Agenda. (7-0)

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

1. SUP-22-0022. 4711 Rochambeau Drive Tourist Home

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

AYES: 4 NAYS: 3 ABSTAIN: 0 ABSENT: 0

Ayes: Haldeman, Krapf, Rodgers, Rose

Nays: Null, O'Connor, Polster

Ms. Terry Costello stated that Mr. Stuart Burcham, property owner, has applied for an SUP to allow for the short-term rental of a three-bedroom single-family home located at 4711 Rochambeau Drive. Ms. Costello stated that the property is zoned A-1, General Agricultural, is designated Rural Lands on the Comprehensive Plan Land Use Map and is located outside the Primary Service Area (PSA). Ms. Costello stated that the property is served by private well and private sewer. Ms. Costello stated that if granted, this SUP would allow for short-term rentals throughout the year. Ms. Costello stated that no changes to the footprint of the home are proposed.

Ms. Costello stated that staff finds favorable factors for this application include the presence of adequate off-street parking, the location of the property is along a major road, and that the applicant has stated that he will obtain the proper licensing and inspections for this change of use.

Ms. Costello further stated that staff finds the proposed use will not negatively impact

surrounding property or development nor is it expected to negatively impact level of service for roads (LOS) and other public services.

Ms. Costello stated that while staff believes the location is generally considered appropriate for this use, staff finds that the proposal is not fully consistent with the adopted 2045 Comprehensive Plan recommendations for short-term rentals; therefore, staff is unable to recommend approval of this application.

Ms. Costello stated that should the Planning Commission recommend approval of this application; staff has included proposed conditions for consideration.

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. Krapf stated that short-term rentals is an issue that the Commission has struggled with for a number of years. Mr. Krapf stated that even with the performance standards established with the Comprehensive Plan update, it is not enough guidance to work through the types of applications that are coming forward. Mr. Krapf further stated that the intent of the performance standards is to protect residentially zoned areas and prevent established neighborhoods from becoming transient. Mr. Krapf stated that in this instance, the property is not within a neighborhood and there would be oversight of the property by a family member working in the area. Mr. Krapf stated that this would provide the necessary safeguards.

Mr. Haldeman stated that he intends to support the application. Mr. Haldeman noted that SUPs run with the land in perpetuity and that eventually the property will continue as a short-term rental and may no longer have owner supervision. Mr. Haldeman stated that a number of short-term rentals have been approved without adhering to all of the performance standards. Mr. Haldeman stated that it might be necessary to take another look at the performance standards.

Mr. Polster stated that his greatest concern is the fact that SUPs are issued in perpetuity. Mr. Polster stated that the County Attorney is of the opinion that sunset clauses are not supported by State Code; however, many localities in the Commonwealth do put limits on SUPs. Mr. Polster stated that he is not certain the County is ready for that step; however, he is very concerned with the implications for the future use of the property. Mr. Polster stated that he would like to address these concerns with the Board of Supervisors with hopes that a dialogue would be opened with the County Attorney's Office about possible SUP conditions. Mr. Polster stated that he would like to see a condition limiting the SUP to the current owner. Mr. Polster noted that the issue of SUPs being granted in perpetuity will continue to be a concern until the question of what conditions or limitation are permissible has been resolved.

Ms. Null stated that another issue is taking a property out of the affordable housing stock.

Mr. O'Connor stated that he also has concerns about issuing an SUP in perpetuity. Mr. O'Connor stated that the issue of sunset clauses needs to be resolved by the state legislature.

Dr. Rose stated that in this instance it appears that the owner resides on the property and is only seeking to do short-term rentals when he is not in residence. Dr. Rose noted that the Commission and the Board of Supervisors have made frequent exceptions to the performance standards. Dr. Rose noted that a decision needs to be made whether to use the existing standards as general guidance or to develop an updated set of criteria that will be adhered to.

Mr. Rodgers stated that he believes the Comprehensive Plan is an aspirational document and not a regulatory set of conditions. Mr. Rodgers stated that he believes each individual case should be considered on its unique circumstances. Mr. Rodgers stated that his understanding is that the property owner intends to reside on the property and only rent the dwelling when he is not in residence. Mr. Rodgers stated that he is inclined to support the application.

Mr. O'Connor stated that his greatest concern is the permanent nature of the SUP and the implications for the future use of the property.

Mr. Polster stated that he agrees that the Comprehensive Plan is aspirational in nature which is part of the difficulty. Mr. Polster stated that he believes it is important to revisit the standards and for the Board of Supervisors to decide on whether the standards should be established in an Ordinance to ensure better regulation.

Mr. Haldeman made a motion to recommend approval with the proposed conditions.

On a roll call vote, the Commission voted to recommend approval of SUP-22-0022. 4711 Rochambeau Drive Tourist Home with the proposed conditions. (4-3)

2. SUP-22-0023. 2878 Monticello Avenue Tourist Home

A motion to Approve w/ Conditions was made by Jack Haldeman, the motion result was Failed.

AYES: 3 NAYS: 4 ABSTAIN: 0 ABSENT: 0

Ayes: Haldeman, Krapf, Rodgers

Nays: Null, O'Connor, Polster, Rose

Ms. Terry Costello stated that Mr. Jeffrey Russett has applied for an SUP to allow the short-term rental of a three-bedroom single-family home at 2878 Monticello Avenue. Ms. Costello stated that the property is zoned A-1, General Agricultural, is designated Rural Lands on the Comprehensive Plan Land Use Map, and is located outside the PSA. Ms. Costello further stated that the property is served by private well and septic. Ms. Costello stated that if granted, this SUP would allow for short-term rentals throughout the year. No changes to the footprint of the home are proposed.

Ms. Costello stated that staff finds some favorable factors for this application, such as adequate off-street parking, the size of the lot, the existing screening and buffering to most adjacent properties, and that the applicant has stated that he will obtain the proper licensing and inspections.

Ms. Costello stated that staff also finds the proposed use will not negatively impact surrounding property or development nor is it expected to negatively impact LOS for roads and other public services.

Ms. Costello stated that while staff believes the location is generally considered appropriate for this use, staff finds that the proposal is not fully consistent with the adopted 2045 Comprehensive Plan recommendations for short-term rentals since one of the four development standards, the property owner living on the property during its use as a tourist home is not met; therefore, staff is unable to recommend approval of this application.

Ms. Costello stated that should the Planning Commission recommend approval of this application; staff has included proposed conditions for consideration.

Mr. O'Connor noted that there is an existing Master Plan for the Kennel and inquired if the Master Plan would need to be amended to account for the Tourist Home.

Mr. Holt stated that the Master Plan was specific to the Kennel use and would not need to be changed.

Mr. O'Connor opened the Public Hearing.

Mr. Jimmy Edwards, 136 Saw Mill Road, addressed the Commission in opposition to the application.

Mr. Dion Pollock, 2968 Monticello Avenue, addressed the Commission in opposition to the application.

Mr. Jeffrey Russett, 2878 Monticello Avenue, Property Owner, addressed the Commission in support of the application.

Ms. Null inquired about the private road signage.

Mr. Russett stated that he did not have such signage on the road to the property.

As no one further wished to speak, Mr. O'Connor closed the Public Hearing.

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

Mr. Polster requested clarification on where the other short-term rental was located.

Ms. Costello stated that she was not aware of any other short-term rentals in that area; however, she would follow up on the question.

Mr. Krapf stated that for this type of use, he would support the option for a requirement that if the property is sold, the new owner would have to reapply for the SUP. Mr. Krapf stated that he would; however, support this application.

Mr. Polster noted that this property has the potential to be subdivided and should that occur, the short-term rental would be interior to a subdivision. Mr. Polster stated that this is one more example of why he is concerned about issuing SUPs in perpetuity.

Mr. Rodgers inquired about whether the dwelling subject to the SUP fronts on Monticello Avenue.

Mr. Holt stated that the dwelling does not front on a public or private right-of-way.

Mr. Rodgers inquired about the location of the new wedding venue.

Mr. Holt pointed out the location and indicated that the facility would take access from John Tyler Highway.

Dr. Rose stated that this is similar to the short-term rental at the airport. Dr. Rose stated that this application would have an impact on the adjacent property owners.

Mr. O'Connor stated that he is struggling with the long-term impact of these applications and is not inclined to support the application.

Mr. Haldeman made a motion to recommend approval of the application with the proposed conditions.

On a roll call vote, the motion to recommend approval of SUP-22-0023. 2878 Monticello Avenue Tourist Home did not pass. (3-4)

3. SUP-22-0025. 7504 Richmond Road Starbucks

A motion to Approve w/ Conditions was made by Barbara Null, the motion result was Passed.

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

Ayes: Haldeman, Krapf, Null, O'Connor, Polster, Rodgers, Rose

Mr. Thomas Wysong, Senior Planner, stated that Ms. Lauren Sweeney with Kimley-Horn and Associates, Inc. has applied for an SUP to allow the operation of a coffee shop with drive-thru that will generate more than 100 additional trips to and from the site during the peak hours of operation.

Mr. Wysong stated that the property is located at 7504 Richmond Road, is zoned B-1, General Business, with proffers, is designated Community Commercial on the 2045 Comprehensive Plan Land Use Map, and is located inside the PSA.

Mr. Wysong stated that this proposal is for an adaptive re-use of the vacant bank and drive-thru. Mr. Wysong further stated that the adaptive reuse of commercial buildings within the Primary Service Area is specifically recommended within the goals of the Land Use chapter of the 2045 Comprehensive Plan.

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

Mr. O'Connor opened the Public Hearing.

Ms. Lauren Sweeney, Kimley-Horn and Associates, Inc. addressed the Commission in support of the application.

Mr. Polster inquired why the Traffic Impact Analysis (TIA) identified only a 1% increase.

Ms. Sweeney stated that the 1% is a standard recognized by the Virginia Department of Transportation (VDOT).

Mr. Wysong noted that he had discussed the TIA in detail with VDOT and the traffic engineer; however, he would follow up for more information.

Dr. Rose inquired about access to the site.

Ms. Sweeney stated that traffic would come in from the Norge Crossing Shopping Center and there would not be direct access from Richmond Road.

Ms. Null inquired about the location of the patio.

Ms. Sweeney stated that the patio would be at the front of the building facing Tractor Supply.

Mr. O'Connor inquired if there is sufficient room on the parcel for the queue of vehicles so that it would not spill out on the entrance road.

Ms. Sweeney stated that there is room for approximately 12 to 13 cars in the stack which is

anticipated to be adequate.

As no one further wished to speak, Mr. O'Connor closed the Public Hearing.

Ms. Null made a motion to recommend approval of the application with the proposed conditions.

On a roll call vote, the Commission voted to recommend approval of SUP-22-0025. 7504 Richmond Road Starbucks. (7-0)

## **G. PLANNING COMMISSION CONSIDERATIONS**

There were no items for Planning Commission consideration.

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

### **1. Planning Director's Report - January 2023**

Mr. Holt stated that other than what was included in the Agenda materials, he only had one additional item of interest.

Mr. Holt noted that as of the end of 2022, the normal traffic levels for a.m. and p.m. peak levels have returned to pre-pandemic normal.

Mr. Holt stated that staff would follow up with the Commission on the projected 1% increase in the TIA.

Mr. Polster noted that the location for the proposed Starbucks is very close to the intersection with Croaker Road where there has been an increase in traffic accidents.

Mr. Holt noted that some of the data is dependent on whether it is viewed from a road segment or an intersection perspective. Mr. Holt further stated that there is an approved site plan in place for a connection from the Norge Crossing Shopping Center to Croaker Road.

Mr. O'Connor noted that he has concerns about the permissive left turn at Norge Lane.

Mr. Holt stated that it is likely that this signal will be redone in the next year with anticipated road improvements.

Mr. Haldeman inquired if the traffic counts also account for population growth.

Mr. Holt stated that it should. Mr. Holt noted that the volumes at the Port of Virginia have also impacted the traffic counts.

Mr. Haldeman inquired about traffic impacts from people moving to Hampton Roads to work from home rather than remaining in more congested areas and the impacts of truck traffic from increase activity at the ports.

Mr. Holt stated that a good reference would be the socio-economic model formally adopted for use at the Hampton Roads Transportation Planning Organization which is usually updated prior to an update of the Long-Range Transportation Plan. Mr. Holt stated that the County often relies on this data. Mr. Holt noted that it does appear that employment figures will be lower in the 2050 update and the population growth would be lower. Mr. Holt stated that perhaps the historical trend is not continuing at the same pace.

The Commission discussed the traffic volume, various components and causes of traffic, and the increase in accidents along Interstate 64.

Mr. Polster noted that he would like to see the socio-economic data for the Upper County.

Mr. Holt noted that the socio-economic data will be reflective of land use policies which will account for the lower growth figures.

Mr. Polster noted that New Kent County is now the second highest growth county in Virginia. Mr. Polster further noted that this makes sense due to its location and the ability to commute to Richmond and Northern Virginia. Mr. Polster stated that the County needs to keep an eye on this trend.

Mr. Polster commented on the fact that improvements have been made in the CSX railroad tunnels that now make using the Port of Virginia more effective in the transport of goods.

Mr. Holt noted that there is funding to deepen the channel to accommodate the larger ships and put the Hampton Roads area at a competitive advantage.

#### I. PLANNING COMMISSION DISCUSSION AND REQUESTS

Mr. Polster stated that his upcoming comments to the Board of Supervisors regarding the Hicks Island Tourist Home include the following: "...still an issue for some Commissioners is that the approval of an SUP for short-term rentals conveys with the parcel in perpetuity and they would prefer that the SUP sunset when the parcel changes ownership."

Mr. Holt stated that there will be some Zoning Ordinance amendment check-in points with the Board of Supervisors, and this may be a potential topic for discussion for the full joint meeting with the Board in the spring.

Mr. O'Connor stated that he would take on the task of compiling the recommendations and thoughts from each Commissioner and provide an outline of the Commission's recommendation. Mr. O'Connor noted that Virginia is a Dillon Rule state, and the County Attorney is of the opinion that since the General Assembly has not granted specific authority for localities to impose sunset clauses, the Board may not do so.

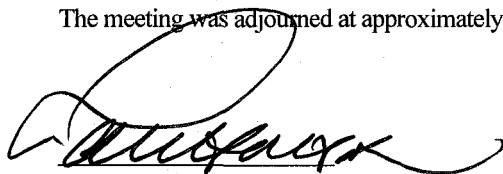
Dr. Rose inquired about the unwelcome effects of non-residents using community recreation facilities.


Mr. Haldeman stated that this question is why the Policy Committee is reviewing the matter to determine what the effects are and how they might be mitigated.

#### J. ADJOURNMENT

Mr. Haldeman made a motion to adjourn.

The meeting was adjourned at approximately 7:19 p.m.

  
Paul D. Holt, III, Secretary

  
Tim O'Connor, Chairman