

MINUTES
JAMES CITY COUNTY PLANNING COMMISSION
REGULAR MEETING
County Government Center Board Room
101 Mounts Bay Road, Williamsburg, Va 23185
April 5, 2023
6:00 PM

A. CALL TO ORDER

Mr. Polster called the Meeting to order at 6 p.m.

B. ROLL CALL

Planning Commissioners Present:

Tim O'Connor
Jack Haldeman
Rich Krapf
Frank Polster
Barbara Null

Planning Commissioners Absent:

Rob Rose
Stephen Rodgers

Staff Present:

Paul Holt, Director of Community Development and Planning
Christy Parrish, Zoning Administrator
José Ribeiro, Senior Planner
John Risinger, Senior Planner
Suzanne Yeats, Planner
Ben Loppacker, Planner

C. PUBLIC COMMENT

Mr. Polster opened Public Comment.

Ms. Vivian Herbert, 141 Wareham's Point, addressed the Commission regarding development in Kingsmill.

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

D. REPORTS OF THE COMMISSION

Ms. Null stated that the Development Review Committee (DRC) met at approximately 4 p.m. on March 29, 2023, to consider two Subdivision Exception Requests.

Ms. Null stated that the Committee considered C-23-0019, a subdivision exception request for a parcel located at 3426 North Riverside Drive. Ms. Null stated that Section 19-17 of the James City County Subdivision Ordinance requires all lots to have an on-site sewage disposal system. Ms. Null further stated that this exception request would allow a three-lot subdivision that has all three septic systems located on one of the lots.

Ms. Null stated that the Committee and the applicant discussed the site layout, the characteristics of the property and the location of the septic tanks. Ms. Null stated that the Committee's concern resided in whether the parcel owners would properly take care of the

septic tanks and whether off-site septic systems could create conflicts between property owners. Ms. Null stated that the Committee also discussed the distance of the septic tank from the homes, how the type of soil located on some of the property would prevent the location of conventional septic systems, and whether there were other options that would allow the applicant to meet the requirements for the location of the septic systems within their own parcels, such as different lot configurations or the use of alternative septic systems.

Ms. Null stated that Mr. Polster made a motion to recommend approval of the exception with the condition that the Virginia Department of Health approve the septic system design. Ms. Null stated that the motion did not pass by a vote of 1-2-1.

Ms. Null stated that the Committee also discussed C-23-0013, a proposed shared driveway exception request for an approved five-lot subdivision at 3148, 3158, 3140, 3120, and 3154 Jolly Pond Road. Ms. Null stated that the proposal seeks to permit direct access to Jolly Pond Road through existing frontage by removing the existing shared 25-foot ingress/egress easement and any notes prohibiting access to Jolly Pond Road for each lot.

Ms. Null stated that the Committee and the applicant team discussed the site layout and traffic flow to the properties. Ms. Null stated that the Committee concluded there was not enough information to determine a vote. Ms. Null stated that Mr. Polster made a motion to defer the matter to April 19, 2023. Ms. Null stated that the Committee voted to defer the matter to its April 19, 2023, meeting with a vote of 4-0.

Mr. Haldeman stated that the Policy Committee met on March 9, 2023, to consider potential amendments to the Zoning Ordinance for the Use List in the R-4, Residential Planned Community, LB, Limited Business, B-1, General Business, M-1, Limited Business/Industrial, PUD, Planned Unit Development, MU, Mixed Use, and EO, Economic Opportunity Districts to require that Vape/ Smoke Shops and Vape/ Smoke Lounges obtain a Special Use Permit (SUP).

Mr. Haldeman stated that staff reviewed the location of schools within the specified Zoning Districts as well as related Ordinances from other localities.

Mr. Haldeman stated that staff presented changes to definitions that would exclude Vape/Smoke Shops and Vape/Smoke Lounges from the definition of retail shops and to include them as separate definitions.

Mr. Haldeman stated that the Policy Committee added hookah pipes and water pipes to the definition.

Mr. Haldeman stated that the Policy Committee unanimously found that the draft changes meet the letter and spirit of the Initiating Resolution and recommended that the Planning Commission recommend approval of the Ordinance amendments to the Board of Supervisors.

Mr. Haldeman stated that the Policy Committee further recommended adding a three-year renewal requirement to the SUP so that if an owner is convicted of a violation of state or federal law concerning sales of these products to minors the SUP will be revoked. Mr. Haldeman further stated that the Policy Committee recommended that the Director of Planning contact officials in York County to express concerns about the availability of smoke/vape products and cannabis close to Williamsburg-James City County Schools.

E. CONSENT AGENDA

1. Minutes of the March 1, 2023, Regular Meeting

Mr. Haldeman made a motion to approve the Minutes.

On a voice vote, the Commission voted to approve the Minutes of the March 1, 2023, Regular Meeting. (4-0-1, with Mr. Krapf abstaining)

2. Minutes of the March 20, 2023, Meeting

Mr. Haldeman made a motion to approve the Minutes.

On a voice vote, the Commission voted to approve the Minutes of the March 20, 2023, Meeting. (5-0)

3. Development Review Committee Action Item: C-23-0019. 3426 N. Riverside Drive Subdivision Exception Request

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

AYES: 3 NAYS: 2 ABSTAIN: 0 ABSENT: 2

Ayes: Haldeman, Krapf, Null

Nays: O'Connor, Polster

Absent: Rodgers, Rose

Mr. Haldeman requested to discuss C-23-0019. 3426 N. Riverside Drive Subdivision Exception Request.

Mr. Haldeman inquired about the recommendation to deny the request.

Mr. Thomas Wysong, Senior Planner, stated that whenever there is a Subdivision Exception Request, staff reviews the application against criteria established in the Subdivision Ordinance which include: strict adherence to the Ordinance will cause substantial injustice or hardship, and the facts upon which the request is based are unique to the property among others. Mr. Wysong further stated that if the request does not meet the criteria, staff will recommend denial.

Mr. O'Connor inquired if a family subdivision must remain in the family or if a lot can be deeded or sold to someone outside the family.

Mr. Holt stated that under the Family Subdivision regulations, the property must stay in the family for three years from the date of approval; after three years a parcel may be sold to someone outside the family.

Mr. Krapf inquired if the property owners have considered alternate options which would allow the septic system to be contained on each individual parcel.

Mr. Wysong stated that he would defer to the applicant.

Mr. Chase Grogg, Landtech Resources, Inc. 205 Bulifants Boulevard, stated that the lots could handle an on-site alternative system and that the intent of the project is not cost savings, but rather to make use of where the soil on the third lot is appropriate for a traditional system. Mr. Grogg further stated that a permanent easement would be placed over the lot to ensure future use of the septic system for the other two lots.

Mr. O'Connor inquired if there were three separate septic fields and three separate back up septic fields and who would ultimately be responsible if the septic systems failed.

Mr. Grogg stated that there would be three separate primary drainfields and three reserve drainfields. Mr. Grogg further noted that the County does track maintenance on the septic systems and can take action if they are not maintained.

Mr. O'Connor inquired how conflict over access to the septic systems would be mitigated.

Mr. Grogg stated that there is a legal ingress/egress easement that allows access to the parcel in perpetuity. Mr. Grogg further stated that the easements for the septic system would be done in the same manner and would cover not only the drainfields but also the pump and force main.

Mr. O'Connor stated that his concern is whether there is a requirement incorporated in the documentation for the property owners to maintain the septic system so that the owner of the parcel that the septic system is on is not responsible for maintenance of all the septic systems.

Mr. Grogg stated that the document has not yet been created, so the language to require each property owner to maintain the drain field serving that property. Mr. Grogg further stated that it is in the interest of each property owner to ensure that the drain field is maintained.

Mr. O'Connor stated that he would want to see a document that outlines the responsibilities of each property owner regarding the maintenance of the septic system.

Mr. Grogg stated that those requirements could be incorporated.

Mr. Haldeman inquired if the feed for the two parcels to the drainfield crosses wetlands.

Mr. Grogg confirmed. Mr. Grogg stated that the wetlands were not within a Resource Protection Area (RPA). Mr. Grogg noted that the lines would run under existing disturbed area so there would not be additional impact to the wetlands.

Mr. Polster stated that the individual property owners would be responsible for maintenance of the septic system for their property. Mr. Polster stated that since the County now has a mechanism to track maintenance of septic systems and has options to enforce the maintenance requirements.

Ms. Null stated that she was concerned about the limitations on the use of the property that would contain the drainage systems.

Mr. Grogg noted that the area for the drainfields is small and there is still a substantial amount of room on the lot for most residential uses.

Ms. Null noted that there are options for each parcel to have an alternative system.

Mr. Grogg stated that while each property could have an alternative system, the preference is to have a traditional system which uses better soil.

Mr. Haldeman made a motion to deny the exception.

On a roll call vote, the Commission voted to deny Development Review Committee Action Item: C-23-0019. 3426 N. Riverside Drive Subdivision Exception Request. (3-2)

F. PUBLIC HEARINGS

1. SUP-23-0004. Chickahominy Riverfront Park Master Plan Amendment

A motion to Approve was made by Tim O'Connor, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 2

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

Absent: Rodgers, Rose

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

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 2

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

Absent: Rodgers, Rose

Ms. Suzanne Yeats, Planner, stated that Mr. Alister Perkinson, Parks Administrator, James City County Parks & Recreation, has submitted a request to amend SUP-0014-2009 to formally update the adopted Master Plan for Chickahominy Riverfront Park Board dated September 2020. Ms. Yeats stated that furthermore, this SUP application includes an updated Master Plan for Chickahominy Riverfront Park, dated January 2023.

Ms. Yeats stated that the subject property is located at 1350 John Tyler Highway, zoned Public Lands, designated as Community Character Conservation, Open Space, or Recreation on the 2045 Comprehensive Plan, and located outside the Primary Service Area (PSA).

Ms. Yeats stated that by formally amending this SUP and adopting the revised Master Plan, staff finds the proposed conditions will mitigate impacts to surrounding properties and development. Ms. Yeats stated that staff finds that this proposal is compatible with surrounding zoning and development and is generally consistent with the 2045 Comprehensive Plan and Zoning Ordinance. Ms. Yeats stated that staff recommends that the Planning Commission recommend approval of this application to the Board of Supervisors, subject to the proposed conditions.

Mr. Haldeman inquired if there would be a facility for launching kayaks.

Ms. Yeats stated that there would be two.

Mr. Haldeman inquired about the parcel set aside for a water treatment facility.

Mr. John Carnifax, Director of Parks & Recreation, stated that there are no immediate plans for the County to provide water; however, the site has been identified to comply with the Department of Environmental Quality requirements in the event it is needed in the future.

Mr. Polster opened the Public Hearing.

Mr. Chris Henderson, 101 Keystone, addressed the Commission with suggestions on the application.

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

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

Ms. Null inquired about the camping spaces being removed.

Mr. Carnifax stated that no campsites are being removed; however, some have been relocated to other areas in the park. Mr. Carnifax stated that some campsites will be improved and become glamping sites. Mr. Carnifax further stated, in response to the public comments, that consideration has been given to adding dry stack storage; however, finding a location within the park where the visual impacts can be mitigated has been an issue.

Mr. Haldeman inquired about the surface for the proposed parking area.

Mr. Carnifax stated that it would be a gravel surface.

Mr. Polster noted that during the Capital Improvements Program review, the Policy Committee recommended that projects should be combined where feasible to achieve cost savings. Mr. Polster further noted that during the DRC review, it was recommended that the bike trail be rerouted where it comes off the Judith Stewart Dresser Memorial Bridge to go into the park and come out at the park exit to improve safety.

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

Mr. Holt noted that the Commission would need to make a finding regarding Comprehensive Plan consistency in each of the Park SUP cases.

Mr. O'Connor made a motion to find the facilities consistent with the Comprehensive Plan.

On a roll call vote, the Commission voted to find the public facilities consistent with the Comprehensive Plan. (5-0)

On a roll call vote, the Commission voted to recommend approval of SUP-23-0004. Chickahominy Riverfront Park Master Plan Amendment. (5-0)

2. SUP-23-0005. Jamestown Beach Event Park Master Plan Amendment

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

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 2

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

Absent: Rodgers, Rose

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

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 2

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

Absent: Rodgers, Rose

Mr. Ben Loppacker, Planner, stated that Mr. Alister Perkinson, Parks Administrator, James City County Parks & Recreation, has submitted a request to amend SUP-0010-2015 to formally update the Jamestown Beach Event Park's Board adopted Master Plan, dated September 2020.

Mr. Loppacker stated that the subject property is located at 2205 Jamestown Road, zoned PL, Public Lands, classified as Community Character Conservation, Open Space, or Recreation on the 2045 Comprehensive Plan, and located inside the PSA.

Mr. Loppacker stated that by formally amending the SUP and adopting the revised Master Plan, staff finds the proposed conditions will mitigate impacts to surrounding properties and development. Mr. Loppacker further stated that staff finds that this proposal is compatible with surrounding zoning and development and is generally consistent with the 2045 Comprehensive Plan and Zoning Ordinance. Mr. Loppacker stated that to date, there have been no citizen comments regarding this case. Mr. Loppacker stated that taking all factors favorable into account, staff recommends that the Planning Commission recommend approval of this application to the Board of Supervisors, subject to the proposed conditions.

Mr. Polster opened the Public Hearing.

Mr. Chris Henderson, 101 Keystone, addressed the Commission with suggestions on the application.

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

Mr. Krapf made a motion to find the facilities consistent with the Comprehensive Plan.

On a roll call vote, the Commission voted to find the public facilities consistent with the Comprehensive Plan. (5-0)

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 SUP-23-0005. Jamestown Beach Event Park Master Plan Amendment. (5-0)

3. SUP-23-0006. Upper County Park Master Plan Amendment

Absent: Rodgers, Rose

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

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 2

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

Absent: Rodgers, Rose

Mr. Ben Loppacker, Planner, stated that Mr. Alistair Perkinson, Parks Administrator, James City County Parks and Recreation, has submitted a request to amend SUP-0029-1994 to formally update the adopted Master Plan for Upper County Park.

Mr. Loppacker stated that the subject property is located at 180 Leisure Road, zoned PL, Public Lands, classified as Community Character Conservation, Open Space, or Recreation on the 2045 Comprehensive Plan, and located outside the PSA.

Mr. Loppacker stated that in formally amending this SUP and adopting a revised Master Plan, staff finds the proposed conditions will mitigate impacts to surrounding properties and development. Mr. Loppacker further stated that staff finds that this proposal is compatible with surrounding zoning and development and is generally consistent with the 2045 Comprehensive Plan and Zoning Ordinance. Mr. Loppacker stated that to date, there have been no citizen comments regarding this case. Mr. Loppacker stated that taking all factors favorable into account, staff recommends that the Planning Commission recommend approval of this application to the Board of Supervisors, subject to the proposed conditions.

Mr. Polster opened the Public Hearing.

Mr. Chris Henderson, 101 Keystone, addressed the Commission with suggestions on the application.

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

Mr. Haldeman made a motion to find the facilities consistent with the Comprehensive Plan.

On a roll call vote, the Commission voted to the public facilities consistent with the Comprehensive Plan. (5-0)

Mr. Krapf 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-23-0006. Upper County Park Master Plan Amendment. (5-0)

4. SUP-23-0007. Warhill Sports Complex Master Plan Amendment

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

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 2

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

Absent: Rodgers, Rose

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

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 2

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

Absent: Rodgers, Rose

Ms. Suzanne Yeats, Planner, stated that Mr. Alister Perkinson, James City County Parks & Recreation, has submitted a request to amend SUP-0014-2016, and MP-0002-2016, for the Warhill Sports Complex to formally adopt the Warhill Sports Complex Master Plan, dated September 2021, which was previously approved by the Board of Supervisors at its meeting on January 25, 2022.

Ms. Yeats stated that the subject properties are located at 4900 Stadium Trail, 5700 Warhill Trail, and 5720 Warhill Trail, zoned PL, Public Lands, classified as Community Character Conservation, Open Space, or Recreation on the 2045 Comprehensive Plan, and located inside the PSA.

Ms. Yeats stated that staff finds the proposed conditions will mitigate impacts to surrounding properties and development. Ms. Yeats further stated that staff finds that this proposal is compatible with surrounding zoning and development and is generally consistent with the 2045 Comprehensive Plan and Zoning Ordinance. Ms. Yeats stated that to date, the feedback received from citizens included one phone call, one drop in, and two emails seeking clarification of the proposed changes. Ms. Yeats stated that taking all factors favorable into account, staff recommends that the Planning Commission recommend approval of this application to the Board of Supervisors, subject to the proposed conditions.

Mr. Polster opened the Public Hearing.

Mr. Chris Henderson, 101 Keystone, addressed the Commission with suggestions on the application.

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

Mr. Krapf made a motion to find the facilities consistent with the Comprehensive Plan.

On a roll call vote, the Commission voted to find the public facilities consistent with the Comprehensive Plan. (5-0)

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

On a roll call vote, the Commission voted to recommend approval SUP-23-0007. Warhill Sports Complex Master Plan Amendment. (5-0)

5. ORD-22-0004. Amendments to the Zoning Ordinance Regarding Community Recreation Facilities in Residential Districts

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

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 2

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

Absent: Rodgers, Rose

Mr. José Ribeiro, Senior Planner, stated that at its meeting on April 12, 2022, the Board of Supervisors adopted an Initiating Resolution to consider amendments to the James City County Zoning Ordinance regarding community recreation facilities. Mr. Ribeiro stated that currently, the County's Zoning Ordinance defines recreation facilities and further classifies them as being either "commercial" or "community."

Mr. Ribeiro stated that staff understands that at least one neighborhood's community recreation facility is being used by group and team sports not affiliated with the neighborhood. Mr. Ribeiro further stated that such additional group and team sport use does bring with it the potential for impacts such as increased vehicular traffic, noise, lighting, and a duration of use not commonly found with typical neighborhood facilities.

Mr. Ribeiro stated that the purpose of this Ordinance amendment would be to classify community recreation facilities with recurring use by outside entities as a specially permitted use, allowing public input, analysis, and mitigation of impacts, as determined.

Mr. Ribeiro stated that at its meeting on December 8, 2022, the Policy Committee discussed the proposed amendment and requested address several questions including how widespread the problem is, how many complaints have been received, and if homeowners associations (HOA) are handling these issues.

Mr. Ribeiro stated that at its meeting on February 9, 2023, the Policy Committee reviewed and discussed the information provided by staff and found that, overall, the issue was a very infrequent problem and would require substantial staff oversight; and that there are perhaps easier ways to handle issues involving community recreation facilities. Mr. Ribeiro stated that the Policy Committee recommended by a vote of 4-0 that the Planning Commission not recommend adoption of this Ordinance amendment unless the problem becomes more frequent.

Mr. Polster opened the Public Hearing.

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

Mr. Haldeman stated that the Policy Committee was not eager to create yet another Ordinance to be enforced. Mr. Haldeman stated that many of the concerns can be addressed through existing Ordinances for noise, parking, etc.

Mr. O'Connor noted that there was only one complaint submitted and that this would be a wide sweeping measure to address a small issue. Mr. O'Connor stated that requiring an SUP for public use of community recreation facilities would be a bit of an overreach into the operations of an HOA.

Mr. Haldeman noted that existing facilities would be able to continue as nonconforming uses and, therefore, an Ordinance amendment would not address concerns related to these facilities.

Mr. Haldeman made a motion to not recommend approval of the Ordinance amendment.

On a roll call vote, the Commission voted to not recommend approval of ORD-22-0004, Amendments to the Zoning Ordinance Regarding Community Recreation Facilities in Residential Districts. (5-0)

6. ORD-23-0001. Amendments to the Zoning Ordinance Regarding Vape and Smoke Shops

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

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 2

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

Absent: Rodgers, Rose

Ms. Christy Parrish, Zoning Administrator, stated that on January 24, 2023, the Board of Supervisors adopted an Initiating Resolution to consider possible amendments to the James City County Zoning Ordinance to require vape and smoke shops to obtain an SUP.

Ms. Parrish stated that staff has received numerous calls from citizens regarding vape and smoke shops in the County. Ms. Parrish stated that, specifically, citizens have voiced concerns over the location of these shops in close proximity to schools and the Toano Commercial Historic District. Ms. Parrish further stated that staff has received complaints of noncompliant

lights on the exterior of windows or buildings and of individuals smoking outside the retail store near other places of business. Ms. Parrish noted that staff is aware of nine existing retail shops in the County.

Ms. Parrish stated that staff understands that the purpose of the Initiating Resolution and this Ordinance amendment is to define and classify vape and smoke shops as a standalone specially permitted use and ensure all associated or accessory uses are addressed.

Ms. Parrish stated that uses listed in each Zoning District are either permitted by-right or permitted by an SUP. Ms. Parrish stated that the current Ordinance generally permits vape and smoke shops under the retail and service stores use category which includes tobacco and pipes stores.

Ms. Parrish stated that retail sales of tobacco and pipes are permitted by-right in the R-4, Residential Planned Community, LB, Limited Business, B-1, General Business, M-1, Limited Business/Industrial, PUD, Planned Unit Development, MU, Mixed Use, and EO, Economic Opportunity Districts.

Ms. Parrish stated that should the Ordinance be amended to specially permit vape and smoke shops, the existing stores will become nonconforming. Ms. Parrish further stated that Section 24-629 of the Zoning Ordinance states that “a nonconforming use may continue as it existed when it became nonconforming provided however, if any nonconforming use is discontinued for a period of two years, it shall lose its nonconforming status....”

Ms. Parrish stated that the City of Williamsburg amended its Zoning Ordinance in January 2023 to require vape and smoke shops obtain an SUP in various commercial districts. Ms. Parrish stated that staff surveyed several other localities and found that most permit vape and smoke shops as a general retail use.

Ms. Parrish stated that staff presented materials at the March 9, 2023, meeting of the Policy Committee and recommended the following changes to the Ordinance to address this directive:

- Add new definitions for vape/smoke shops and vape/smoke lounges within Section 24-2, Definitions.
- Amend the existing “retail stores and shop” definition to exclude vape/smoke shops and vape/smoke lounges within Section 24-2, Definitions.
- Remove “tobacco and pipe” from the retail and service stores use category in the R-4, LB, B-1, M-1, PUD, MU, and EO Districts.
- Add vape/smoke shop and vape/smoke lounge as a specially permitted use in the R-4, LB, B-1, M-1, PUD, MU, and EO Districts.

Ms. Parrish stated that the Policy Committee voted to recommend approval of the proposed changes to the Planning Commission with a few minor additions. Ms. Parrish further stated that the Policy Committee also discussed that they would favor including a compliance review condition to any future SUP requests similar to short-term rentals to address any noncompliant activity.

Ms. Parrish stated that staff recommends that the Planning Commission recommend approval of the Ordinance to the Board of Supervisors.

Mr. Polster inquired about language for SUP conditions.

Ms. Parrish stated that the SUP conditions would be drafted for each SUP application.

Mr. Polster opened the Public Hearing.

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

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

On a roll call vote, the Commission voted to recommend approval of ORD-23-0001. Amendments to the Zoning Ordinance Regarding Vape and Smoke Shops. (5-0)

7. ORD-22-0003. Amendments for Calculation of Residential Development Density

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

AYES: 2 NAYS: 3 ABSTAIN: 0 ABSENT: 2

Ayes: Haldeman, Polster

Nays: Krapf, Null, O'Connor

Absent: Rodgers, Rose

A motion to Deny was made by Tim O'Connor, the motion result was Passed.

AYES: 3 NAYS: 2 ABSTAIN: 0 ABSENT: 2

Ayes: Krapf, Null, O'Connor

Nays: Haldeman, Polster

Absent: Rodgers, Rose

Mr. John Risinger, Senior Planner, stated that at the March 8, 2022, Board of Supervisors meeting, a request was made to consider amending how residential density is calculated with a direction to explore using a net acreage calculation. Mr. Risinger stated that the Initiating Resolution was adopted by the Board of Supervisors at its April 12, 2022, meeting. Mr. Risinger further stated that at its January 24, 2023, Business Meeting, the Board of Supervisors provided further guidance that the intent of the Initiating Resolution is to avoid pockets of high-density residential development and to reduce impacts to the environment. Mr. Risinger stated that the Policy Committee considered this ordinance amendment at its January 12, 2023, and February 23, 2023, meetings.

Mr. Risinger stated that currently, the EO, Economic Opportunity District utilizes a net acreage approach while the R-1, Limited Residential, R-2, General Residential, R-3, Residential Redevelopment, R-4, Residential Planned Community, R-5, Multifamily Residential, PUD, Planned Unit Development, and MU, Mixed Use Districts along with the Residential Cluster Development Overlay District utilize a stepped approach to calculate density. Mr. Risinger stated that the stepped approach allows properties with lower percentages of non-developable areas to calculate density using the total area of the parcel while properties with higher percentages of non-developable areas calculate density with the developable area plus a certain percentage of the total parcel area. Mr. Risinger stated that the Zoning Ordinance currently defines developable areas as being the total area of the parcel minus the non-developable areas which are defined as areas in the RPA, areas within floodplains designated as having a 1% annual chance storm event and areas with steep slopes. Mr. Risinger stated that the A-1, General Agricultural, R-6, Low-Density Residential and R-8, Rural Residential Districts do not currently have density requirements except for cluster subdivisions in the A-1 District.

Mr. Risinger stated that policy guidance from the Comprehensive Plan includes the recommended density ranges for the land use designations, recognizing that residential growth should be directed to occur inside the PSA where it results in more efficiency for public services, goals for providing opportunities for affordable housing, and having a consistent character and compatibility between adjacent developments. Mr. Risinger stated that the net density approach could potentially reduce the residential capacity in the PSA, reducing the efficiency of public services, increase growth pressure on areas outside the PSA, and reduce opportunities for affordable housing. Mr. Risinger stated that the net density approach could, however, result in adjacent developments having a consistent intensity of development if they are in the same Zoning District.

Mr. Risinger stated that to meet the direction of the Initiating Resolution, staff has prepared draft Ordinance language which would implement a net acreage approach in all of the Zoning Districts referenced. Mr. Risinger further stated that the draft Ordinance language adds a definition for "net density" to Section 24-2 to state that "net density is calculated by dividing the number of dwelling units by the developable area of the parcel." Mr. Risinger stated that the draft language includes revisions to each Zoning District to reference the definition of net density as necessary and remove sections and language pertaining to the current density calculation methods.

Mr. Risinger stated that the A-1 and R-8 Districts have historically controlled development intensity with the minimum lot sizes established for the districts. Mr. Risinger stated that the draft Ordinance language includes adding new sections which would apply net density for major subdivisions as well as updating the A-1 cluster configuration subdivision section to specify net density. Mr. Risinger stated that the Rural Lands designation in the Comprehensive Plan recommends a density of one unit per 20 acres but does not specify that it should be based on net acreage. Mr. Risinger stated that previous Ordinance revisions made the minimum lot sizes in these Zoning Districts consistent with the Rural Lands designation in the Comprehensive Plan and implementing a density section could result in lot sizes that are considerably larger than 20 acres. Mr. Risinger stated that staff finds that the minimum lot size provisions currently in place adequately ensures that the character of residential development in the A-1 and R-8 Zoning Districts is compatible with the Rural Lands designation and does not recommend revising these Zoning Districts to implement the net density calculation.

Mr. Risinger stated that the R-6 Zoning District also does not currently have a density requirement and instead requires lots to be a minimum of one acre in size. Mr. Risinger stated that the draft language includes adding a new section to this Zoning District which applies a net density calculation for major subdivisions. Mr. Risinger stated that all land zoned R-6 is part of existing platted subdivisions which are mostly built out and the Zoning District is not envisioned for future development and instead remains in place to govern the existing subdivisions. Mr. Risinger stated that staff finds that no substantial benefit would be received from implementing net density in this district and does not recommend revising it.

Mr. Risinger stated that the R-1, R-2, R-3, R-4, R-5, and PUD Zoning Districts along with the Residential Cluster Development Overlay District districts currently utilize the stepped approach for calculating density. Mr. Risinger stated that to implement net density, the draft Ordinance includes deleting language pertaining to the stepped approach and referencing net density within the use lists and density sections where necessary in each of the districts. Mr. Risinger further stated that the Low-Density Residential (LDR) and Moderate-Density Residential (MDR) Comprehensive Plan designations have recommended densities based on gross acreage meaning that a gross acreage calculation would be most consistent with the designations. Mr. Risinger stated that a net density approach would likely result in adjacent developments having a more even intensity of development. Staff finds that the current stepped approach serves as a compromise between these considerations.

Mr. Risinger stated that the MU District currently utilizes the stepped approach. Mr. Risinger further stated that the draft Ordinance deletes the language pertaining to the stepped approach and references the net density definition. Mr. Risinger stated that the EO District currently utilizes net density; however, updating the district to reference the proposed net density definition would make it more consistent with the other districts should they be revised to use net density. Mr. Risinger stated that the Mixed Use (MU) and Economic Opportunity (EO) - Mooretown Road/Hill Pleasant Farm Area Comprehensive Plan designations have recommended densities based on net acreage. Mr. Risinger stated that staff finds that using net density in the MU and EO districts would be consistent with the Comprehensive Plan and recommends revising these districts.

Mr. Risinger stated that at its February 23, 2023, meeting, the Policy Committee recommended approval of the draft language for the R-1, R-2, R-3, R-4, R-5, PUD, MU, and EO Districts. Mr. Risinger stated that the Policy Committee did not recommend approval of the draft language for the A-1, R-8, and R-6 Districts.

Mr. Risinger stated that should the Planning Commission recommend utilizing the net density approach for one or more of the districts discussed, draft ordinance language has been provided for consideration.

Mr. Krapf requested that staff provide a brief summary of the stepped approach to calculating density.

Mr. Risinger stated that the stepped approach is based on a table, where if a parcel has between 0 and 20% undevelopable acreage, the entire lot acreage can be used to calculate density. Mr. Risinger further stated that if the parcel has above 20% undevelopable area, the stepped approach allows a certain percentage of that undevelopable area to be counted toward the developable area.

Mr. Krapf inquired if the stepped approach gives the developer more area to count toward the density calculations.

Mr. Risinger confirmed.

Mr. Krapf inquired if most residential districts used the stepped approach.

Mr. Risinger confirmed.

Mr. Krapf inquired whether the net density approach could have unintended consequences such as discouraging applications for conservation easements.

Mr. Holt stated that this is a more complicated question with a number of factors that go into making that calculation. Mr. Holt further stated that this is not a calculation that County staff is involved in. Mr. Holt stated that the calculation starts with independent appraisers and works its way through a number of other professions. Mr. Holt stated that some of the factors considered are whether the development is by-right or requires legislative approval. Mr. Holt stated that if the highest and best use can only be granted through legislative approval, the appraiser does not assume that the legislative approval will be given and therefore, they do not factor that use into the valuation. Mr. Holt stated that because of the intricacies in such calculations, Planning staff would not necessarily be comfortable in giving a definitive answer.

Mr. Krapf stated that it appears that lower density might affect the value of a conservation easement; however, the effect is not fully known until such a time as a conservation easement is proposed.

Mr. Holt noted that the valuation would also depend on the type of easement, the quality of the easement, and the value of the easement to the recipient.

Mr. O'Connor noted that if parcel was less developable, with fewer lots created, then the value of the lots that cannot be developed is lost.

Mr. Holt stated that development potential is certainly a factor; however, there is a value to the resources that are being preserved such as environmentally sensitive areas, natural heritage, or archeologically significant locations.

Mr. Polster opened the Public Hearing.

Ms. Kimberly Magee, 248 William Barksdale, addressed the Commission regarding the Ordinance amendment and was generally supportive of lower density.

Ms. Juanita Crawford addressed the Commission regarding the Ordinance amendment with questions regarding the impact of the Ordinance amendment.

Mr. Chris Henderson, 101 Keystone, addressed the Commission with concerns about the unintended impacts of the Ordinance amendment.

Mr. Jay Everson, 6923 Chancery Lane, addressed the Commission regarding the Ordinance amendment.

Mr. Hunter Taylor, 999 Jolly Pond Road, addressed the Commission regarding potential impacts of the Ordinance amendment.

Ms. Vivian Herbert, 141 Wareham's Point, addressed the Commission regarding the Ordinance amendment.

Mr. Stephen Zabinski, 5133 Ginger Court, addressed the Commission regarding the Ordinance amendment.

Mr. Gary Moore, 158 Forest Heights Road, addressed the Commission with concerns over the impacts of the Ordinance amendment.

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

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

Mr. Krapf stated that two of the important elements in the 2045 Comprehensive Plan are restricting growth in Rural Lands and driving growth to be within the PSA where utilities and infrastructure are in place, where infill development is needed, and where existing vacant structures could be creatively repurposed for workforce housing. Mr. Krapf stated that by increasing the minimum lot size in the A-1 and the R-8 Zoning Districts, the density has effectively been reduced along with the growth pressure on Rural Lands. Mr. Krapf further stated that by shifting to net density in the residentially zoned districts, it could have the unintended consequence of putting demand back on Rural Lands. Mr. Krapf further stated that he believes that the County needs to consider reinstating the Housing Opportunities Policy to encourage workforce housing. Mr. Krapf stated that the County has not put all the tools in place to address critical issues. Mr. Krapf stated that he believes that using stepped density in residential areas is a good compromise between using gross density and net density. Mr. Krapf further stated that driving all the density calculations to net density would be a disservice to landowners and people in need of workforce housing. Mr. Krapf stated that he is not inclined to support the Ordinance amendment.

Mr. Haldeman stated that he does intend to support the Ordinance amendment. Mr. Haldeman stated that the purpose of the Ordinance amendment is to reduce the amount of credit a property owner receives for the non-developable portion of a parcel. Mr. Haldeman stated that this would essentially reduce the number of homes that could be built. Mr. Haldeman stated that he does understand that this will drive up the housing costs and reduce affordable housing; however, that could be mitigated by reinstating the Housing Opportunities Policy and instituting density bonus points. Mr. Haldeman stated that density bonus points are already included in the Comprehensive Plan and the Zoning Ordinance for developments that incorporate affordable housing. Mr. Haldeman stated the factors that lead him to support the Ordinance amendments include protecting the community character, protecting the natural environment, and protecting the County's rural character. Mr. Haldeman stated that citizen feedback during the Comprehensive Plan update indicate that there is too much residential development. Mr. Haldeman stated that this Ordinance amendment would address those concerns as well as reduce the demands on infrastructure, water supply, schools, roadways, and public services. Mr. Haldeman noted that the cost of public services for residential development is greater than the tax revenue received. Mr. Haldeman stated that he believes the Ordinance amendment to be crucial to preserving the character and natural resources of the County.

Mr. O'Connor stated that he does not support this Ordinance amendment. Mr. O'Connor further stated that he did not support the change in lot size in rural lands. Mr. O'Connor stated that he does recognize the importance of preserving environmentally sensitive areas. Mr. O'Connor further stated that a large percentage of citizen feedback during the Comprehensive Plan update ranked providing affordable housing for the County's workforce as very important. Mr. O'Connor noted that as part of the quality of life, citizens indicated that many of the requested improvements included pedestrian and bicycle accommodations, internet service, library improvements, and public water. Mr. O'Connor stated that some of the policy guidance in the Comprehensive Plan includes providing a more compact development pattern that can support multimodal transportation options and provide more transportation options; foster more housing choices, and increase affordability for the County's workforce, seniors, and those suffering from homelessness; increase accessibility to education and job training services; foster the development of complete communities by locating new housing near transit services, shopping areas and community facilities; provide more housing options for the local workforce and individuals entering new lifestyle periods; create complete communities with walkable environments and a mix of residential and commercial uses that 21st century businesses and employees desire; include new retail and office space as part of mixed use communities rather than as stand-alone business centers; reduce commuting times by locating homes, businesses, and supportive uses in closer proximity within the PSA; encourage local job development to create higher paying jobs in the County; create a better jobs to housing balance and reduce the need for cross commuting to job locations in the County or in other localities, and reduce in coming commuting for workers who cannot afford to live in the County. Mr. O'Connor stated that there is much in the Comprehensive Plan that is not supported by reducing density inside the PSA. Mr. O'Connor stated that if the concern is reducing development in rural lands there are already tools to prevent that. Mr. O'Connor noted that development that is done smartly is not necessarily detrimental. Mr. O'Connor stated that absent a Housing Opportunities Policy and a Clustering Ordinance, reducing density will not allow for the crucial workforce housing.

Mr. Polster stated that the recently adopted Comprehensive Plan focused on what the County would look like in 2045. Mr. Polster stated that the issue of growth came up. Mr. Polster stated that the current population in the County is around 79,000. Mr. Polster stated that the projection for 2045 put the population at 120,000. Mr. Polster stated that the projection was based on the current zoning. Mr. Polster stated that in setting Goals, Strategies, And Actions, the Commission was careful to limit growth in Rural Lands and encourage growth inside the PSA where services are already available. Mr. Polster stated that based on available land, the Upper County is where all the growth would have taken place; however, the infrastructure is not in place to handle the traffic impacts, the demand for public utilities, and the need for public services. Mr. Polster stated that one of the things the Commission grappled with was what the density should be for the Upper County. Mr. Polster stated that there was some interest in placing Mixed Use in the Upper County which would be high density. Mr. Polster stated that ultimately the Commission settled on limited residential development which means one house per acre. Mr. Polster further stated that there is nothing to stop a landowner to seek a rezoning. Mr. Polster stated that at gross density, that would mean that on a 220-acre parcel, around 220 homes could be built. Mr. Polster further stated that if the parcel were rezoned to MU, and credit were given for the non-developable area, 549 lots could be created. Mr. Polster stated that this is a far cry from what the Commission intended to limit where growth takes place. Mr. Polster stated that the growth has historically been an issue in the County over the last 20 or 30 years. Mr. Polster stated that in those years the County has allowed development within the RPA if it was platted by 2012. Mr. Polster further stated that over the last several years, the Chesapeake Bay Board has approved around 30 parcels for development that are 100% in the RPA. Mr. Polster stated that this is an environmental issue. Mr. Polster further stated that most of the County's watersheds are critically endangered, particularly those like the Powhatan Creek watershed which is located in the heart of the PSA. Mr. Polster stated that credits should not be given for steep slopes and RPA and development should be calculated with net density. Mr. Polster stated that a reason that the County does not have an affordable housing policy is because the development community was able to have legislation passed that did not allow localities to require proffers and therefore the County cannot require affordable housing when considering a legislative case for development. Mr. Polster stated that, however, the Ordinance for each residential district provides that developers can voluntarily offer benefits to the County such as affordable housing or enhanced buffering for greenspace and receive a density bonus. Mr. Polster stated that the impacts on a property owner are based on the amount of the property that is not considered developable. Mr. Polster noted that, absent an affordable housing policy, this is the best hope to provide incentives for a developer to give back a bit to the County. Mr. Polster stated that he intends to support the Ordinance amendment.

Mr. O'Connor noted that the current owners of larger parcels are the ones who have been good stewards of their property and are now bearing the brunt of the decisions made by previous Planning Commissions and Boards of Supervisors. Mr. O'Connor stated that if the developable acreage is reduced, the County most likely cannot provide enough incentives to create affordable housing. Mr. O'Connor noted that the cost of building materials continues to rise and already limits the potential for affordable housing.

Mr. Polster stated that he believes there are other opportunities to achieve affordable housing, including partnerships with state and federal government. Mr. Polster noted that there are currently one or two such projects underway in the County.

Mr. Krapf stated that the stepped approach does provide a reasonable compromise between gross and net density. Mr. Krapf expressed appreciation to the citizens who attended and participated in the meeting. Mr. Krapf further encouraged citizens to participate in the various public hearings and provide feedback on projects and legislation that affect the future of the County.

Mr. Haldeman offered a summary of the recommendations of the Policy Committee.

- Density in the A-1 and R-8 Zoning Districts relies on lot size to determine density, and the Policy Committee recommended that no change be made to this method.
- The R-6 Zoning District also relies on lot size, to determine density, and the Policy Committee recommended that no change be made to this method.
- The R-1, R-2, R-3, R-4, R-5, PUD, and Residential Cluster Development Overlay Zoning Districts all currently use the stepped approach, and the Policy Committee recommended that these districts use the net density approach to calculate density.
- The MU Zoning District currently uses the stepped approach and the Policy Committee that the calculations be changed to net density.
- The EO Zoning District currently base density on developable area, effectively a net density calculation and no changes are recommended.

Mr. Polster called for a motion on the Ordinance Amendment

Mr. Polster requested advice on how a motion should be framed.

Mr. Holt stated that the draft Ordinance did not incorporate the Policy Committee recommendations and proposes using net density across all Zoning Districts.

Mr. Holt stated that a motion could be made to recommend approval of the draft ordinance as presented. Mr. Holt further stated that a motion could be made to do amend some districts and not others.

Mr. Haldeman made a motion to recommend that the density calculations for residential districts be changed consistent with the recommendations made by the Policy Committee at its February 23, 2023, meeting.

Mr. O'Connor inquired about which Ordinance would be advertised and forwarded to the Board of Supervisors.

Mr. Holt stated that the ad would remain the same as the one for the Planning Commission Public Hearing.

Mr. Krapf inquired about the difference between the items included in the motion and the draft Ordinance provided in the Agenda Packet.

Mr. Haldeman stated that as drafted, the Ordinance changes the A-1, R-8, R-6 Zoning Districts to net density.

Mr. Krapf noted that he believed this was more grammatical than functional because of the parcel size for the R-6 Zoning District.

Mr. Holt stated that he was not certain that was necessarily the case for every parcel in the R-6 Zoning District.

Mr. O'Connor stated that he is concerned about effect of the net density approach on the value of a parcel in the A-1 Zoning District.

Mr. Polster asked for clarification on whether the change to net density was advertised for all Zoning Districts.

Mr. Holt stated that the change to net density was advertised for all Zoning Districts and the same ad will be used for the Board of Supervisors. Mr. Holt further stated that the draft Ordinance will go forward to the Board of Supervisors as it is currently presented, along with a recommendation for any changes recommended by the Planning Commission.

Mr. Polster stated that the Planning Commission has the ability to recommend changes to the draft Ordinance.

Mr. Haldeman stated that his intent is to recommend that the Board of Supervisors change the draft Ordinance language to be consistent with the recommendations of the Policy Committee.

Mr. O'Connor requested clarification on whether the draft Ordinance will go to the Board of Supervisors as it stands or if it will be rewritten to incorporate the changes recommended by the Planning Commission.

Mr. Holt stated that the draft language will go forward to the Board of Supervisors as currently written.

Mr. Holt requested that Mr. Haldeman recapture the Policy Committee recommendations as part of his motions.

Mr. Haldeman stated that the A-1 and R-8 Zoning Districts relies on lot size to determine density, and the Policy Committee recommended that no change be made to this method; the R-6 Zoning District also relies on lot size, to determine density, and the Policy Committee recommended that no change be made to this method; the R-1, R-2, R-3, R-4, R-5, PUD, and Residential Cluster Development Overlay Zoning Districts all currently use the stepped approach, and the Policy Committee recommended that these districts use the net density approach to calculate density; the MU Zoning District currently uses the stepped approach and the Policy Committee that the calculations be changed to net density; the EO Zoning District currently base density on developable area, effectively a net density calculation and no changes are recommended by the Policy Committee. Mr. Haldeman stated that this is added to his motion as clarification.

Mr. O'Connor inquired if the motion could be amended to not recommend approval of the Ordinance as written and to recommend that the Ordinance language be amended to incorporate the Policy Committee recommendations as elaborated.

Mr. Haldeman stated that this was the intent of his motion.

Mr. Holt stated that under Mr. Haldeman's motion, the method of calculating density for the A-1, R-8, R-6, and EO Zoning Districts would not be changed from the way it is currently calculated; within the R-1, R-2, R-3, R-4, R-5, PUD, Residential Cluster Development Overlay, and MU Zoning Districts, the method of calculating density would be changed to net density.

Mr. Polster made some clarifications for the citizens attending the meeting.

Mr. O'Connor noted that the Board of Supervisors will make the final determination on the final language in the Ordinance.

On a roll call vote, the motion did not pass. (2-3)

Mr. O'Connor made a motion to recommend denial of the changes proposed in the draft Ordinance.

On a roll call vote, the Commission voted to recommend denial of the changes proposed in the draft Ordinance. (3-2)

G. PLANNING COMMISSION CONSIDERATIONS

There were no items for Planning Commission Consideration.

H. PLANNING DIRECTOR'S REPORT

1. Planning Director's Report - April 2023

Mr. Holt stated that he did not have anything to add to what was provided in the Agenda Packet.

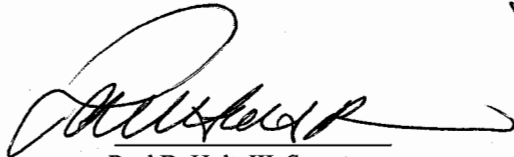
I. PLANNING COMMISSION DISCUSSION AND REQUESTS

There were no Planning Commission requests or items for discussion.

J. ADJOURNMENT

Mr. Haldeman made a motion to adjourn.

The meeting was adjourned at approximately 8:30 p.m.



Paul D. Holt, III, Secretary



Frank Polster, Chair