

MINUTES
JAMES CITY COUNTY PLANNING COMMISSION
REGULAR MEETING
County Government Center Board Room
101 Mounts Bay Road, Williamsburg, Va 23185
May 3, 2023
6:00 PM

A. CALL TO ORDER

Mr. Frank 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
Rob Rose
Stephen Rodgers

Planning Commissioners Absent:

Barbara Null

Staff Present:

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

C. PUBLIC COMMENT

Mr. Polster opened Public Comment.

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

D. REPORTS OF THE COMMISSION

Mr. Rodgers stated that the Development Review Committee (DRC) met on April 19, 2023, to discuss C-23-0013. 3150 Jolly Pond Road Subdivision Shared Driveway Exception Request which was continued from its March 29, 2023, meeting. Mr. Rodgers stated that the plan proposes a shared driveway exception to Section 19-73 of the James City County Subdivision Ordinance and seeks to permit direct access to Jolly Pond Road for an approved five-lot subdivision at 3148, 3158, 3140, 3120, and 3154 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.

Mr. Rodgers stated that the plats were originally created as part of a family subdivision with an intended access road which would run along parallel to Jolly Pond Road whereby five driveways would access an easement road which would allow one direct access onto Jolly Pond Road. Mr. Rodgers further stated that the family subdivision was not built; and subsequently the lots were sold and now are owned by unrelated parties, each of which has built or intends to build a residence on their lot. Mr. Rodgers stated that as various site plans and permits were presented to and approved by the County, the single access easement road disappeared from discussions and site plans. Mr. Rodgers stated that as a result, septic fields have been situated beneath the proposed access road. Mr. Rodgers stated that at this point compliance with the originally proposed 25-foot ingress/egress easement would result in overly complicated driveway layouts and then traveling upon the actual septic fields. Mr. Rodgers stated that the Virginia Department of Transportation (VDOT) has reviewed the newly proposed driveways and has no objection to their construction. Mr. Rodgers further stated that the entrances are already in place for Lots 1, 2,3, and 4. Mr. Rodgers stated that with the exception of Lot 5 all necessary access entrances are already in-place. Mr. Rodgers noted that lot five will tie into an existing shared driveway.

Mr. Rodgers stated that the Committee and the applicant team discussed a newly proposed plan that allowed the least amount of access to Jolly Pond Road and still permitted the development on the parcels that have already been approved.

Mr. Rodgers stated that a motion was made to recommend approval of the exception with the condition that the exception request must match the Exhibit provided. Mr. Rodgers stated that the motion passed by a vote of 4-0.

Mr. Polster stated that the Policy Committee met on April 13, 2023, to discuss ORD-22-0001. Amendments for Scenic Roadway Protection.

Mr. Polster stated that at its January 24, 2023, meeting, the Board of Supervisors provided the following guidance to Planning staff and the Policy Committee:

1. Prepare an analysis of the 400-foot setback proposed for Old Stage Road and Forge Road with a proposed setback of 200 feet for the parcels 500 feet deep or less (shallow parcels) to examine the number of non-structures that would become nonconforming.
2. Examine whether a family subdivision could be exempt from the 400-foot or 200-foot proposed setback.
3. Consider the possibility of an overlay district (a County initiated rezoning) instead of or in addition to a zoning text amendment.

Mr. Polster noted that the staff report indicated that different setback for family subdivision was not recommended.

Mr. Polster stated that at its April 13, 2023, meeting, the Policy Committee recommended that the Planning Commission recommend that the Board of Supervisors approve the buffering requirements along Wooded Community Character Corridors (CCCs).

Mr. Polster stated that the Policy Committee deferred a decision on the 400- and 200-foot setbacks on Old Stage Road and Forge Road and Overlay District and requested that staff examine an alternate position with a setback approach based on building height for the two Agricultural CCCs, Old Stage Road and Forge Road.

Mr. Polster stated that in addition, staff was requested to examine a requirement that would limit the height of a structure on an Agricultural Community Corridor to a one-story structure.

E. CONSENT AGENDA

1. Minutes of the April 5, 2023, Regular Meeting

Mr. Haldeman made a motion to approve the Minutes of the April 5, 2023, Regular Meeting.

On a voice vote, the Commission voted to approve the Minutes of the April 5, 2023, Regular Meeting. (6-0)

2. Development Review Committee Action Item: C-23-0013. 3150 Jolly Pond Road
Subdivision Shared Driveway Exception Request

A motion to Approve w/ Conditions was made by Rich Krapf, the motion result was Passed.
AYES: 5 NAYS: 1 ABSTAIN: 0 ABSENT: 1
Ayes: Haldeman, Krapf, Polster, Rodgers, Rose
Nays: O'Connor
Absent: Null

Mr. O'Connor requested to pull Development Review Committee Action Item: C-23-0013. 3150 Jolly Pond Road Subdivision Shared Driveway Exception Request for discussion.

Mr. Holt stated that staff did not have a formal presentation on C-23-0013. 3150 Jolly Pond Road Subdivision Shared Driveway Exception Request; however, he would be happy to answer any questions.

Mr. Krapf inquired how the proposal went from a proposed five-lot family subdivision with the shared access easement to five individual owners with plats that do not show the access road and further, where septic fields now lie within that easement.

Mr. Holt stated that it was never a family subdivision, but rather a minor subdivision. Mr. Holt further stated that the subdivision was approved with the shared driveway in accordance with the Subdivision Ordinance. Mr. Holt stated that for the three driveways installed, that was not done in accordance with the approved plans and the builder commenced construction and ended up selling off all the lots. Mr. Holt stated that this was an after-the-fact request to obtain approval for what now exists.

Mr. Polster inquired if the County had to approve the plans for the three homes.

Mr. Holt stated that the plats for construction of the homes are a separate process from the subdivision approval. Mr. Holt further stated that the shared driveway was shown on the plats reviewed by staff for the subdivision approval.

Mr. Polster inquired if the Virginia Department of Health (VDH) would have reviewed and approved the location of the septic fields.

Mr. Holt stated that VDH did approve the location of the septic fields; however, that approval was based on the subdivision plat with the shared driveway.

Mr. Haldeman inquired how, then, the septic fields came to be located within the shared driveway easement.

Mr. Holt stated that the builder did this without the appropriate approvals.

Mr. O'Connor inquired if the DRC or applicant looked at alternate access options to allow for a shared driveway.

Mr. Polster stated that when it was deferred, the DRC requested that the applicant and staff to come back with a revised plan showing the least number of separate entrances possible. Mr. Polster further noted concerns from the Fire Department and VDOT. Mr. Polster stated that all the reviewing agencies agreed to the proposal that was recommended for approval. Mr. Polster noted that he was swayed by the fact that with the shared driveway, there would be no access to Lot 2 without having to cross the septic field. Mr. Polster stated that whether the

builder did this intentionally or not, the County is stuck with the impacts.

Mr. O'Connor stated that, in his opinion, the builder should be held responsible for the impacts. Mr. O'Connor further suggested an access road going between Lots 1 and 3 that would serve all the parcels.

Mr. Polster stated that the concern with that scenario is the existing drive and garage access as well as the size of the easement that would be required for the shared drive.

Mr. O'Connor noted that we have tools to use to preserve rural lands; however, allowing frequent exceptions to the Subdivision and Zoning Ordinances requirements is counterproductive.

Mr. Haldeman stated that the owners of the lots were likely operating in good faith where the builder is a professional and should have known and followed the requirements.

Mr. Krapf inquired if there were any action, legal or financial, that could be taken against the builder.

Mr. Holt stated that nothing can receive approval without matching up to approved plans. Mr. Holt further stated that the exception request was made to not have to remediate what is currently in place.

Dr. Rose inquired if there might have been a missed opportunity for the County to prevent the problem.

Mr. Polster stated that this occurred over the several years between the original subdivision approval and the build-out of the lots and that even with the various reviews, the changes were not caught. Mr. Polster noted that the DRC felt that the property owners should not be penalized for the builder's actions.

Mr. Krapf made a motion to approve the DRC action.

On a roll call vote, the Commission voted to approve DRC Action Item C-23-0013, 3150 Jolly Pond Road Subdivision Shared Driveway Exception Request as shown in the submitted exhibit. (5-1)

F. PUBLIC HEARINGS

1. SUP-23-0003. 2884 Chickahominy Road Tourist Home

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

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

Ayes: Haldeman, Krapf, Polster, Rodgers, Rose

Nays: O'Connor

Absent: Null

Ms. Terry Costello, Senior Planner, stated that Mr. James Carter of Hunter Law Firm has applied for a Special Use Permit (SUP) to allow the short-term rental of a four-bedroom single-family home at 2884 Chickahominy Road. Ms. Costello stated that the property is zoned R-8, Rural Residential, is designated Rural Lands on the 2045 Comprehensive Plan Land Use Map, and is located outside the Primary Service Area (PSA). Ms. Costello stated that the property is served by public water and private sewer. Ms. Costello stated that if granted, this SUP would allow for short-term rentals throughout the year. Ms. Costello further

stated that no changes to the footprint of the home are proposed.

Ms. Costello stated that staff finds some favorable factors for this application, such as the presence of adequate off-street parking, and that the applicant has stated that he will obtain the proper licensing and inspections.

Ms. Costello stated that staff finds the proposed use will not negatively impact surrounding property or development nor is it expected to negatively impact Levels of Service (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; 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. Polster opened the Public Hearing.

Mr. James A. Carter, Hunter Law Firm, 910 West Mercury Boulevard, Suite 2A, Applicant, addressed the Commission in support of the application.

Mr. Polster inquired if the former owners were the ones to initially use the property as a short-term rental.

Ms. Costello stated that staff did not become aware of the short-term rental until December 2022 and the notice of violation was sent to the current property owners.

Mr. Carter stated that the caretaker was working for the previous owner and the current owner simply continued business as normal.

Mr. Polster inquired if the current owner had any indication that there might be a problem with using the property as a short-term rental.

Mr. Carter stated that the current owner did not know there was any reason for concern and adopted the business model used by the previous owner.

Mr. Polster inquired if staff finds the caretaker living on or near the property to be acceptable.

Ms. Costello stated that staff evaluates the applications strictly on the basis of the performance standard in the Comprehensive Plan.

Mr. O'Connor inquired about which rental platform was being used by the current property owners.

Mr. Carter stated that it was Vacation Rentals by Owner.

Mr. O'Connor noted that most of the short-term rental platforms make it clear that the property owner should be aware of and comply with local regulations.

Mr. Carter stated that he could not confirm or deny whether the current owner was aware of the regulations. Mr. Carter further stated that he believed they simply continued operation of the rental under the same model as the previous owner.

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 his perspective is that the performance standards were developed to address concerns about short-term rentals within established neighborhoods and the impact of transient occupancy. Mr. Krapf further stated that he tries to differentiate short-term rental properties based on whether it is within a neighborhood or not and whether the use would impact a residential area. Mr. Krapf further stated that with the new SUP conditions that allow for periodic review to ensure the property owner is in compliance. Mr. Krapf further stated that having a property manager within a reasonable distance of the property is a good guarantee that the property will be monitored. Mr. Krapf stated that he will support the application.

Mr. Haldeman 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-23-0003. 2884 Chickahominy Road Tourist Home. (5-1)

2. SUP-23-0009. 2868 Lake Powell Road Tourist Home

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

AYES: 4 NAYS: 2 ABSTAIN: 0 ABSENT: 1

Ayes: Haldeman, Krapf, O'Connor, Polster

Nays: Rodgers, Rose

Absent: Null

Ms. Terry Costello, Senior Planner, stated that Ms. Mary Waltrip has applied for an SUP to allow the short-term rental of up to five bedrooms in a single-family home at 2868 Lake Powell Road. Ms. Costello the property is zoned R-2, General Residential, is designated Low Density Residential on the 2045 Comprehensive Plan Land Use Map and is located inside the PSA. Ms. Costello stated that the property is served by private water and public sewer. Ms. Costello stated that if granted, this SUP would allow for short-term rentals throughout the year. Ms. Costello further stated that no changes to the footprint of the home are proposed.

Ms. Costello stated that staff finds some favorable factors for this application, such as the presence of adequate off-street parking and that the owner will live on-site. Ms. Costello further stated that staff finds the proposed use will not negatively impact LOS for roads and other public services.

Ms. Costello stated that staff finds the proposal to be incompatible with surrounding development and not consistent with the recommendations for short-term rentals in the 2045 Comprehensive Plan. Ms. Costello stated that staff therefore does not recommend approval of this application. Ms. Costello stated that should the Planning Commission wish to recommend approval, staff has included proposed conditions for consideration.

Mr. Polster opened the Public Hearing.

Ms. Lisa Waltrip, 2868 Lake Powell Road, Applicant, addressed the Commission in support of the application.

Mr. Tracy Douglas, 2862 Lake Powell Road, addressed the Commission in support of the application.

Ms. Emily Martel, 2886 Lake Powell Road, addressed the Commission in support of the application.

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

Mr. Haldeman made a motion to recommend denial of the application.

On a roll call vote, the Commission voted to recommend denial of SUP-23-0009. 2868 Lake Powell Road Tourist Home. (4-2)

3. SUP-23-0010. 2884 Lake Powell Road Tourist Home

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

AYES: 4 NAYS: 2 ABSTAIN: 0 ABSENT: 1

Ayes: Haldeman, Krapf, O'Connor, Polster

Nays: Rodgers, Rose

Absent: Null

Ms. Terry Costello stated that Ms. Dena Waltrip has applied for an SUP to allow for the short-term rental of a four-bedroom single-family home at 2884 Lake Powell Road. Ms. Costello stated that the property is zoned R-2, General Residential, is designated Low Density Residential on the 2045 Comprehensive Plan Land Use Map and is located inside the PSA. The property is served by private water and public sewer. Ms. Costello stated that if granted, this SUP would allow for short-term rentals throughout the year. Ms. Costello further stated that no changes to the footprint of the home are proposed.

Ms. Costello stated that staff finds some favorable factors for this application, such as the presence of adequate off-street parking and that the owner will obtain the proper licensing and inspections. Ms. Costello stated that staff finds the proposed use will not negatively impact LOS for roads and other public services.

Ms. Costello stated that staff finds the proposal to be incompatible with surrounding development and not consistent with the recommendations for short-term rentals in the 2045 Comprehensive Plan. Ms. Costello stated that staff therefore does not recommend approval of this application. Ms. Costello stated that should the Planning Commission wish to recommend approval, staff has included proposed conditions for consideration.

Mr. Polster opened the Public Hearing.

Ms. Dena Waltrip, 2884 Lake Powell Road, Applicant, addressed the Commission in support of the application.

Mr. Tracy Douglas, 2862 Lake Powell Road, addressed the Commission in support of 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.

Mr. O'Connor stated that he has concerns about recommending approval of short-term rentals when they do not meet the criteria set forth in the Comprehensive Plan. Mr. O'Connor stated that he finds this application to be inconsistent with the Comprehensive Plan and will not support the application.

Mr. Polster inquired about the locations of existing approved and proposed short-term rentals on Lake Powell Road.

Staff provided a map showing the location of the approved and proposed short-term rentals.

Mr. Polster stated that he asked for the map in order to see the impact of short-term rentals within neighborhoods. Mr. Polster further stated that he has concerns about the number of applications for this particular location.

Mr. Krapf stated that while this property is not within a subdivision, he does not find it compatible with the Comprehensive Plan and the land use designation. Mr. Krapf stated that he is concerned about the increasing number of short-term rental SUP applications and the cumulative impact on the County. Mr. Krapf stated that he will not support the application.

Dr. Rose inquired about the land use designation for the previously approved short-term rentals in that area.

Ms. Costello stated that all of the properties are designated Low Density Residential.

Mr. Polster noted that one of the properties was designated Airport. Mr. Polster further noted that he tries to go by a scorecard where the application meets three out of the four Comprehensive Plan criteria.

Mr. O'Connor stated that he feels the issue is part of the larger discussion on affordable housing stock and density within the PSA.

Mr. Haldeman noted that in some instances, the income from short-term rental can help the property owner afford to remain in the home, so while approving a short-term rental might remove a property from the affordable housing stock, it could make the home affordable for the current owner. Mr. Haldeman noted that there seems to be a saturation point with these applications which may affect approval of ones coming in now and hereafter.

Mr. Rodgers noted that this application seems to have a number of protections in place to ensure compatibility with the neighborhood. Mr. Rodgers inquired if the other approved short-term rentals provide similar assurances.

Mr. Holt stated that he did not have a synopsis of Planning Commission discussion and action for the previous applications; however, he could request that staff look at the minutes for those applications.

Mr. Polster stated that short-term rentals are a recent phenomenon and that the Commission has struggled with finding a way to review the applications and apply appropriate criteria. Mr. Polster stated that as with many of the recent innovations in land use, the Commission is having to learn as it goes along and see what the impacts are based on approved applications. Mr. Polster stated that the one improvement in the process is that a SUP condition has been brought forward to ensure periodic review of the SUP and a mechanism to revoke the SUP if problems arise.

Mr. Haldeman stated that he is concerned about this application being within an existing neighborhood and not on a main road.

Dr. Rose inquired if the SUP would still run with the land even if the property is sold.

Mr. Holt stated that the SUP would have a condition requiring review by the Board of Supervisors at a specific time.

Ms. Costello stated that the Board would review the SUP in February of 2026.

Dr. Rose stated that few of the short-term rental applications meet all the criteria in the Comprehensive Plan and that the Commission has used discretion on past cases based on the impacts to the adjacent community. Dr. Rose stated that in this instance there has not been any concern raised about the impact of this application.

Mr. O'Connor stated that he is concerned that the SUPs are approving the short-term rental of the property and not just tourist homes or vacation rentals which could potentially lead to other transient occupancy uses. Mr. O'Connor stated that other short-term rentals could change the tone and tenor of a neighborhood.

Mr. Haldeman made a motion to recommend denial of the application.

On a roll call vote, the Commission voted to recommend denial of SUP-23-0010. 2884 Lake Powell Road Tourist Home. (4-2)

G. PLANNING COMMISSION CONSIDERATIONS

There were no items for Planning Commission Consideration.

H. PLANNING DIRECTOR'S REPORT

1. Planning Director's Report - May 2023

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

Mr. Polster inquired about the purpose of including the Board of Supervisors resolution regarding solar farms in the packet.

Mr. Holt stated that the Resolution was included for informational purposes to keep the Commission in the loop.

I. PLANNING COMMISSION DISCUSSION AND REQUESTS

Mr. Polster suggested a discussion on ORD-22-0001. Amendments for Scenic Roadway Protection.

Mr. Holt stated that it would be helpful to have a consensus from the Commission on the preferred options.

The Committee discussed setbacks for scenic roadways and the differences between the several scenic corridors in the County.

Mr. Krapf was supportive of the 400-foot setback.

Mr. Haldeman stated that he supports the 200-foot setback since the homes tend to be placed further back on the lots. Mr. Haldeman stated that he would support delaying the decision until the next Comprehensive Plan Update.

Mr. O'Connor stated that he supports the 75-foot setback and does not feel that it would change the rural character of the corridor. Mr. O'Connor further stated that he has concerns about further restricting the use of a property without compensating the property owner.

Mr. Krapf noted that he would support a rural cluster with a small density bonus.

The Commission further discussed viewsheds on scenic roads in other localities and how the smaller setbacks could still achieve the desired results without restricting the use of the property.

Mr. Polster noted that it appeared that the Board of Supervisors had several options to consider for further action.

Mr. Polster opened the floor for other discussion.

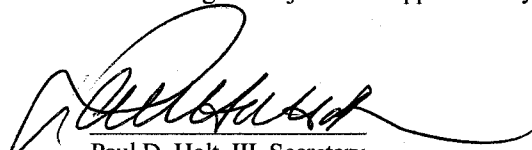
Mr. Haldeman inquired about parliamentary procedure for further discussion on a case once a motion has been made.


Mr. Holt stated that there could be discussion on the motion. Mr. Holt stated that there are many layers to that process; however, the Commission has historically not used that option.

J. ADJOURNMENT

Mr. Krapf made a motion to adjourn to the Joint Meeting with the Board of Supervisors on May 23, 2023.

The meeting was adjourned at approximately 7:46 p.m.


Paul D. Holt, III, Secretary


Frank Polster, Chair