

**MINUTES**  
**JAMES CITY COUNTY POLICY COMMITTEE**  
**REGULAR MEETING**  
**Building A Large Conference Room**  
**101 Mounts Bay Road, Williamsburg, VA 23185**  
**March 9, 2017**  
**4:00 PM**

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**A. CALL TO ORDER**

Mr. Rich Krapf called the meeting to order at approximately 4 p.m.

**B. ROLL CALL**

Present:

Mr. Rich Krapf, Chair  
Mr. Danny Schmidt  
Mr. John Wright

Absent:

Mr. Heath Richardson

Staff:

Ms. Tammy Rosario, Principal Planner  
Ms. Christy Parrish, Zoning Administrator  
Ms. Terry Costello, Deputy Zoning Administrator  
Mr. Tom Leininger, Community Development Assistant  
Mr. Maxwell Hlavin, Assistant County Attorney

**C. MINUTES**

1. February 9, 2017 Meeting Minutes

Mr. Danny Schmidt made a motion to approve the February 9, 2017, meeting minutes.

The motion passed 2-0-1, with Mr. Rich Krapf abstaining, stating he was absent from that meeting.

2. February 23, 2017 Meeting Minutes

Mr. Danny Schmidt made a motion to approve the February 23, 2017, meeting minutes.

The motion passed 3 - 0.

**D. OLD BUSINESS**

There was no old business.

**E. NEW BUSINESS**

1. ZO-0015-2016, Updates to Definition of Group Home

Ms. Terry Costello stated that at the November 8, 2017, Board of Supervisors' meeting, the Board adopted an initiating resolution to address group homes in all of the

districts. Ms. Costello stated that the resolution was also for stage to investigate if the County's Code was compliant with the Code of Virginia and the federal regulations. Ms. Costello stated that staff has determined that changes were necessary to comply with the Fair Housing Act (FHA). Ms. Costello stated that staff are proposing to put two groups in the family definitions since they are required by the state. Ms. Costello stated that there are a couple of other improvements such as adding foster care to the definition of family. Ms. Costello stated that staff is looking for the Policy Committee to discuss and recommend items prior to moving forward with a draft ordinance to the Planning Commission.

Mr. Richard Krapf asked why three unrelated persons was chosen as the definition for family in the past.

Mr. John Wright stated that with possibly William & Mary nearby that it could keep the house turning into a dorm environment.

Ms. Tammy Rosario stated that at the time, it could have also correlated to the typical number of bedrooms in a house.

Mr. Wright asked how we know if a facility will be able to handle eight individuals living together.

Mr. Max Hlavin stated that these facilities are licensed by the state to fall into a single-family definition.

Mr. Wright asked if the state goes in to look at the facility.

Mr. Hlavin stated that the Department of Behavioral Services and the Department of Social Services licenses the house by their standards.

Mr. Wright stated that he felt concern with a two-bedroom house with four bunkbeds in each room.

Ms. Christy Parrish stated that it is likely that there are standards that require inspections.

Ms. Costello stated that it is a three- to five-year process to acquire a license with constant inspections.

Mr. Wright asked if it was a state-run enterprise or a commercial enterprise.

Mr. Hlavin did not know the extent of the enterprise.

Mr. Wright asked how we got to the current State Code.

Mr. Hlavin stated that he did not know the history of the Code.

Ms. Costello added that the Code was put into effect in 2012. She stated that in 2014 the Code was revised to include non-resident staff persons.

Mr. Hlavin stated that the Code changes were a move towards community-based therapeutic treatment as opposed to traditional residential facilities with mental illness.

Mr. Hlavin stated it was a matter of lobbying and policy argument at the state level.

Mr. Wright asked if the intent was to mainstream individuals that would be able to do well in a residential environment verses a facility like Eastern State Hospital.

Ms. Costello stated that it is possible that when state facilities were closing that they determined these would be good environments for some residents.

Mr. Krapf clarified that the agenda for the meeting is to discuss the revised definition of a family and the permitted and specially permitted zoning districts for group homes.

Ms. Parrish stated that the state requires localities to treat a group home as if it were a single-family home.

Ms. Rosario stated that there is a third item on the agenda, which is to define group home.

Mr. Krapf asked if sexual predators, people convicted of crimes or deemed not guilty by reason of insanity, were issues that would get pulled into the group home discussion.

Ms. Parrish stated that the group home in Westmoreland falls into the category that allows up to eight persons, licensed by the state and permitted to reside in a single-family home without any authority of County government. She stated that they are regulated by the state and would fall under the new definition of family. Ms. Parrish stated that the homes that may want to exceed the family definition and want to live together will be discussed. Ms. Parrish stated that we may want to redefine group home to ensure that protected classes are protected by the FHA. Ms. Parrish stated that we are taking the current group home as defined and morphing it into the new family definition so as to capture the ones not regulated by the state into the new group home definition.

Mr. John Wright asked if it is a possibility for a group home to have eight cars.

Ms. Parrish stated that it is a possibility, but it is regulated by the state if a person living there can have a car. She stated that there is a possibility of a means of transportation being provided to them.

Mr. Wright asked if someone had an issue with a group home, would they go to the state.

Ms. Parrish confirmed that they would be directed to the state unless there was a zoning ordinance issue such as long grass or trash.

Mr. Krapf asked if the first step was to get feedback on the revised definition of family.

Ms. Parrish confirmed.

Mr. Krapf stated that he agreed with the changes. Other Policy Committee members concurred.

Ms. Parrish concurred now that the new state definition of group home is incorporated into family, the definition of group home needs to be redefined to capture all the other

examples not regulated by the state.

Ms. Costello stated that the current group home definition is what is included in the new definition of family. Ms. Costello stated to comply with the FHA there are two suggested ways to redefine group home. Ms. Costello stated Option 1 is a residential facility housing the aged, infirm, disabled or individuals with handicaps, mental illness, intellectual disabilities or developmental disabilities, not meeting the definition of family in this chapter. Ms. Costello stated that this would include four or more persons in a setting not regulated by the state or nine or more persons in a setting regulated by the state.

Mr. Wright asked if a church would be able to purchase a home to house members of the congregation without going through the state.

Ms. Costello stated that currently they would not be able to, but they would under Option 1.

Ms. Parrish stated that they are trying to develop a category and a process for them to go through.

Mr. Wright asked if it could be a special use permit.

Ms. Parrish confirmed.

Ms. Costello stated that Option 2 is a residential facility shared by more than three unrelated individuals who live together as a single housekeeping unit which does not qualify as a family as defined in this chapter.

Mr. Danny Schmidt stated that it was dangerous territory to allow Option 2.

Mr. Wright stated that he agreed with Option 1 and that Option 2 is too broad of a category. Mr. Wright stated that it would open a lot of issues. Mr. Wright stated that if there was limited housing that Option 2 could work, but he does not see it as a fit for James City County.

Mr. Krapf stated that it broadens the definition considerably beyond the intent of the regulations.

Ms. Costello stated that the intent is to comply with the FHA to provide reasonable accommodations.

Mr. Schmidt asked where a homeless shelter would fall.

Ms. Parrish stated that there are local churches take people in at a week at a time. Ms. Parrish stated that it is not considered a land use issue because it is temporary. She stated that a permanent homeless shelter is not defined in the ordinance. Ms. Parrish stated that an ordinance change would have to be done prior.

Mr. Wright asked about a shelter for women and children.

Ms. Parrish stated that a retreat facility is defined and has been added to the ordinance. Ms. Parrish stated that staff would have to look at the different scenarios due to the

temporary uses. Ms. Parrish stated that a retreat is a special use permit in the A-1 Zone. Ms. Parrish stated that staff wanted to keep the new group home definition narrow to capture mental illness or to open it up to ensure that we are covered with all protected classes.

Mr. Hlavin stated that the FHA is a broad brush federal law that says that you cannot discriminate against disabled people in housing. Mr. Hlavin stated that a broad definition at the local level helps with compliance. He stated that Option 1 allows the use to be applied to disability as defined in the FHA. Mr. Hlavin stated that if the definition changes, they are still in compliance without having to go back through a zoning process. Mr. Hlavin stated that it comes down to what the disability is. He stated that there is a process through the Board of Zoning Appeals if someone believes that it is not consistent with what is used in the definition.

Mr. Schmidt asked if we would see ones that would require a special use permit.

Mr. Wright stated he thought so. Mr. Wright stated that he was comfortable with Option 1 as the definition.

Mr. Schmidt stated he was also comfortable with Option 1.

Mr. Krapf stated he was comfortable with Option 1.

Ms. Parrish stated that a retreat is a special use permit in A-1. She stated that a retreat is a private or secure place of refuge and education. She stated that a retreat can include a temporary, short-term residential facilities, recreational amenities and education activities. Ms. Parrish stated that retreat facilities must be voluntary in nature and differ from group homes which must be licensed by the Department of Behavioral Health and Department of Services.

Ms. Costello moved to the topic of the zoning districts where group home would be permitted. She stated that currently A-1, R-1, R-2, R-3, R-4, R-5, PUD-R and MU are the permitted districts for eight and fewer persons. She stated that facilities with nine or more adults are specially permitted in A-1, R-3, R-4, R-5, PUD-R and MU. Ms. Costello stated that group homes are not permitted in R-6. Ms. Costello stated that R-8 has a different definition addressing that five such persons is a specially permitted use. Ms. Costello looked to create a process where there is more uniformity among districts.

Mr. Schmidt asked if we need to accommodate group homes in all districts.

Mr. Hlavin advised that the standard is that there be no discriminatory action. Mr. Hlavin stated that there would be some by-right use established and a special use in other districts.

Mr. Wright asked if R-8 covered much of James City County.

Ms. Costello referred to a map and pointed out that all of the green is R-8.

Mr. Wright asked if these rules and the Code would override the declarations of the Homeowners Association (HOA).

Mr. Hlavin stated that the FHA only applies to a government action and not to private

covenants. Mr. Hlavin stated that as a County, we cannot discriminate against people with disabilities in housing policies and choices. Mr. Hlavin stated by shifting these definitions around that the County will be consistent.

Mr. Wright asked where the County falls in the process dealing with private HOA's.

Mr. Hlavin stated that if it was a permitted use then it is not a zoning issue and it would be a landowner's dispute.

Mr. Krapf stated that eight residents would be the tipping point between permitted use and special use permit. Mr. Krapf also asked if staff is recommending to say the permitted use is in R-8 and all other districts would require a special use permit.

Ms. Parrish stated that anything over eight or does not meet the family definition would need a special use permit. Ms. Parrish stated that there could be four, but if they are not licensed by the state, they would need a special use permit. She stated the County needs to provide an avenue whether that is a special use permit or by-right. Ms. Parrish stated that the County could permit a group home that is not under the new family definition, by-right in one zoning district and with special use permit in other districts. She also stated that the County could also make all districts require a special use permit.

Mr. Hlavin stated that he did not think a special use permit requirement is a discriminatory act, but he does not make that decision. Mr. Hlavin stated that it is a safer practice to have a by-right option in certain zoning districts.

Mr. Krapf asked what the definition is for R-8.

Ms. Parrish stated that the minimum lot size for R-8 is three acres. Ms. Parrish stated that there are some R-8 lots with less than three acres.

Ms. Rosario stated that in the 1990's the ordinance changed to three acres and prior to then there could be up to five lots at one acre each.

Ms. Parrish stated that the Rural Residential district, R-8, is intended to apply to rural areas of the County that remains inside the Primary Service Area (PSA) where utilities and urban services are planned, but not yet fully available and where urban development may be expected in the near future. Ms. Parrish stated that the district may also be applied to certain outlying areas where residences exist in similar densities or may be appropriate in view of housing needs. Ms. Parrish stated that the district is intended to maintain a rural environment suitable for farming, forestry and low-density rural residences, together with certain recreational and public or semipublic and institutional uses, until such time as an orderly expansion of urban development is appropriate.

Ms. Costello stated that the staff were thinking that the group homes would be best located in the PSA with utilities the number of people living in a home and located on a larger lot.

Mr. Krapf agreed and stated that it provides enough of a buffer between neighboring residents.

Mr. Wright asked if the Code can state that group homes are permitted by-right in R-8 and the other districts are a special use permit.

Ms. Parrish stated that it is an option.

Mr. Wright stated that R-8 covers majority of the County and allows a group home to be placed anywhere in the County. Mr. Wright stated that he agreed with Mr. Krapf to look for the larger lots to provide a buffer between homes.

Ms. Parrish stated that there is some R-8 located near the Five Forks area as well as the northern portion of the County.

Ms. Rosario stated that there is not a rule stating whether or not it is only permitted in the PSA.

Mr. Krapf asked it is legal to add performance standards to the Code and if it would be acceptable to say R-8 provided inside the PSA with lot sizes three acres minimum.

Mr. Hlavin stated that it is reviewed under the same standard and does not think it is unreasonable. He also stated it that as long as it is justified by legitimate policy concerns, he does not think it is a discriminatory act.

Ms. Parrish stated that we can take this information and look at the R8 statistics and provide some feedback.

Mr. Krapf asked for some recommended performance standards to underscore that the intent is not to discriminate, but to provide a sufficient buffer and public services to the property that is developing in as a group home.

Mr. Wright stated that for smaller lots it would be harder to accommodate any special events that could occur.

Mr. Schmidt agreed.

Ms. Parrish stated that staff can look at what is in the PSA and over three acres and their locations. She also stated that we can work with Mr. Hlavin to come up with some performance standards. Ms. Parrish stated the other districts would require a special use permit. Ms. Parrish stated a draft ordinance can be written up for committee review.

Mr. Krapf asked if any other jurisdictions were stricter than the direction we are going.

Ms. Parrish stated that they are all over the place.

Ms. Costello stated that some localities were less straightforward with their Code.

Mr. Krapf stated that this is a difficult task.

Ms. Parrish stated the goal is to be in compliance with the FHA.

Mr. Wright stated that there is always an option to change it in the future.

Mr. Krapf asked if there is a timeline for a decision.

Mr. Hlavin stated that there was no direction given regarding timeline. Mr. Hlavin stated

the County is in compliance with the FHA, but currently handles cases on a case-by-case basis.

Mr. Krapf asked for additional draft material, statistics and the performance standards to be reviewed at a later meeting.

Mr. Krapf stated that he would like to discuss the March 20 special meeting. Mr. Krapf stated that it was possible to highlight a few cases in the meeting, in particular for the schools. Mr. Krapf stated that there was discussion regarding the Montague parking lot with the Americans with Disabilities Act (ADA) issue, the Matthew Whaley Elementary School parking lot expansion, and the Berkeley Middle School well removal. Mr. Krapf stated that the staff would be doing a staff report to summarize the Capital Improvements Program and discussing the ADA issue. Mr. Krapf asked to change the process to allow the staff presentations to highlight only the ADA issue and if the other commissioners have questions about other projects, the Policy Committee can help answer those questions. Mr. Krapf stated he would call Mr. Richardson and get his opinion.

Mr. Schmidt agreed with Mr. Krapf.

Mr. Wright also agreed.

Mr. Krapf asked if Williamsburg-James City County school representatives were invited.

Ms. Rosario stated that they have been invited, but that staff had not received final confirmation.

Mr. Krapf stated that there is a possibility that a school representative could be there to help answer questions. Mr. Krapf stated that this will make for a cleaner presentation.

#### **F. ADJOURNMENT**

Mr. Wright made a motion to adjourn.

Mr. Krapf adjourned the meeting at approximately 4:45 p.m.

  
Mr. Rich Krapf, Chair

  
Mr. Paul Holt, Secretary