

MINUTES
JAMES CITY COUNTY PLANNING COMMISSION
REGULAR MEETING
COUNTY GOVERNMENT CENTER BOARD ROOM
101 MOUNTS BAY ROAD, WILLIAMSBURG, VA 23185
November 1, 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:

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

Staff Present:

Susan Istenes, Director of Planning
Liz Parman, Deputy County Attorney
Josh Crump, Principal Planner
Thomas Wysong, Senior Planner II
John Risinger, Senior Planner
Tess Lynch, Planner II

Mr. Polster noted if anyone in attendance was present for Case No. Z-22-0004 and SUP-22-0026. 8290 Richmond Road Hankins-Dunn Rezoning and Residential Cluster Development, that item (Public Hearing Item No. 1) had been withdrawn. He added that item would not be heard.

Ms. Null thanked Mr. Polster for that announcement, adding her initial and current opposition to the project.

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. Haldeman stated that the Policy Committee met on October 12, 2023. He noted staff attendees included Mr. Crump, Mr. Risinger, Mr. Wysong, and Ms. Istenes. Mr. Haldeman further noted the Committee's continued discussion on scenic roadway protection according to the Board of Supervisors' Initiating Resolution and the 2045 Comprehensive Plan's Goals, Strategies, and Actions (GSA) 6.3. He cited the details of staff's draft language per the Board's guidance and the Committee's 3-1 vote in favor of approval. Mr. Haldeman noted clarification

on small farm sheds as restricted structures in setbacks was confirmed by staff. He highlighted additional points discussed during the Policy Committee meeting which included Community Character Corridors (CCCs). Mr. Haldeman noted the portion of Old Stage Road outside of the Primary Service Area (PSA) would no longer be classified as a CCC. He further noted Old Stage Road and Barhamsville Road (at the intersection of Routes 30 and 60 - Anderson's Corner) and the intersection of Barnes Road and Route 30 be reclassified from Open Agricultural to Wooded CCC at the next Comprehensive Plan update. Mr. Haldeman referenced removal of the development standard for the short-term rental requirement to have the owner live on-site in the home during the rental period. He noted the Policy Committee voted unanimously not to remove that standard.

E. CONSENT AGENDA

1. Minutes of the October 4, 2023, Regular Meeting

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

On a voice vote, the Commission approved the Consent Agenda. (7-0)

F. PUBLIC HEARING(S)

Item No. 1 was removed as noted previously in the meeting.

1. Z-22-0004 and SUP-22-0026. 8290 Richmond Road Hankins-Dunn Rezoning and Residential Cluster Development

2. SUP-23-0027. 118 Winston Drive Short Term Rental

Mr. Polster welcomed Ms. Tess Lynch, Planner, to her first Planning Commission meeting.

Ms. Tess Lynch, Planner II, cited the details of the Special Use Permit (SUP) requested by L&A Renovation, LLC, for short-term rental of property at 118 Winston Drive. She noted staff had not recommended approval, adding proposed conditions had been attached if the Planning Commission approved this SUP application. Ms. Lynch further noted the applicant was present if the Commission had any questions.

Mr. Polster opened the Public Hearing.

Ms. Julia Holland, 118 Winston Drive, the applicant, addressed the Board noting she was available for questions.

Mr. Haldeman asked Ms. Holland if she resided at 118 Winston Drive.

Ms. Holland replied no, adding she and her family lived approximately five miles away. She noted possibilities for various uses for the property.

Mr. Polster closed the Public Hearing as there were no additional speakers.

Mr. Haldeman stated a number of rentals were in this particular neighborhood, adding he thought most of the renters were college students. He referenced the four criteria regarding short-term rentals and the difficulty with this particular SUP as it failed to fit any of those criteria. Mr. Haldeman stated he was not in support of the SUP application.

Mr. Krapf echoed Mr. Haldeman's sentiments. He noted he was not in support either.

Ms. Null noted she was not supportive of short-term rentals, but felt a long-term rental, which required no SUP, could be a better option.

Mr. Haldeman concurred.

Mr. O'Connor noted his stance against Airbnb rentals was twofold. He further noted for the local community, it reduced available housing stock for the workforce and the affordable housing group. Mr. O'Connor stated the Airbnb rentals also increased the costs of adjacent properties which increased the affordability component. He cited additional factors and stated his opposition to this application.

Mr. Rodgers stated his agreement with his fellow Commissioners. He noted the guiding principles in the Comprehensive Plan and maintaining good stewardship to County properties. Mr. Rodgers further noted the outcome if all four criteria were waived and its future impact, particularly on a property internal to a neighborhood. He stated he was not in support of the short-term rental application.

Mr. Krapf made a motion to deny SUP-23-0027.

On a roll call vote, the Commission voted to deny SUP-23-0027. 118 Winston Drive Short-Term Rental. (7-0)

3. ORD-22-0001. Amendments for Scenic Roadway Protection

Mr. Thomas Wysong, Senior Planner II, addressed the Board citing specifics of the adopted 2045 Comprehensive Plan regarding land use criteria for preservation of County scenic roadways. He noted the Board of Supervisors adopted an Initiating Resolution that pertained to the Zoning Ordinance and Subdivision Ordinance in 2021. Mr. Wysong further noted the Initiating Resolution directed staff to consider additional requirements in both the Zoning and Subdivision Ordinances to preserve scenic roadways such as Forge Road. He stated the term scenic roadway was not defined in the County Code, but with the Comprehensive Plan as guidance, the Policy Committee identified a portion of the CCC, outside the PSA, such as Forge Road, for the sake of this Ordinance. Mr. Wysong noted Forge Road, Old Stage Road, Richmond Road, Monticello Avenue, John Tyler Memorial Highway, and Riverview Road with the latter four classified as Wooded CCCs. He cited classifications and specifics for CCCs, adding the Policy Committee had recommended preservation tools specific to the road types. Mr. Wysong noted the setback requirements in the draft Ordinance before the Commission. He further noted a proposed amendment to the Comprehensive Plan was slated for presentation later in the meeting which proposed removal of a portion of Old Stage Road outside the PSA from the Agricultural CCC category. Mr. Wysong stated he would speak in more detail on that point later. He continued noting additional criteria regarding tiered setback requirements. He added the tiered system was specifically recommended by the Board of Supervisors. Mr. Wysong noted the specific draft language as directed by the Policy Committee regarding landscape buffering along Wooded CCCs, outside the PSA, for inclusion of a 100-foot buffer average for commercial projects. He continued noting a 200-foot-wide buffer average for major residential projects along Wooded CCCs, outside the PSA and a proposed minimum 50-foot timbered setback on properties located along Wooded CCCs, outside the PSA. Mr. Wysong stated the Policy Committee voted in favor 3-1 of the draft language at its October 12, 2023, meeting. He noted a post-meeting amendment for authorization to the major subdivision buffering. Mr. Wysong stated staff recommended the Planning Commission approve the draft language to the Board of Supervisors for approval at its December 12, 2023, Regular Meeting.

Mr. O'Connor referenced the 400-foot setback with 40 nonconforming structures and four exempt parcel structures. He questioned the exemption.

Mr. Wysong explained no tiered system was used initially and the structures nonconforming to the 400-foot setback were removed. He explained 14 residents were nonconforming with 22 nonconforming structures for a total of 36.

Mr. O'Connor questioned if a barn, a stable, shed, greenhouse, and roadside vegetable stand would be considered as structures and not allowed within the 400-foot setback.

Mr. Wysong confirmed yes.

Mr. Polster opened the Public Hearing.

Mr. Polster closed the Public Hearing as there were no speakers.

Mr. O'Connor noted his initial and continued opposition to this point. He further noted the preservation of the rural character of Forge Road, in particular, was impacted by restrictions to a number of permitted uses. Mr. O'Connor stated unwanted uses had been incorporated into SUPs. He noted the impact of the 400-foot buffer to a horse owner who wanted a paddock and referenced other diminishment to landowners. Mr. O'Connor stated he would not support this Ordinance amendment nor the Comprehensive Plan amendment (Item No. 4).

Mr. Krapf noted his support of the 400-foot setback for numerous reasons. He cited community citizen surveys during the Comprehensive Plan revisions, adding the highest scoring item was preservation of the rural lands and viewsheds within those lands. Mr. Krapf stated the importance as a visual component of the beauty and its desirability to live in James City County. He noted the agricultural use of the land and local farmer markets, adding this action preserved a significant feature of the County. Mr. Krapf further noted the new construction at the 400-foot setback along Forge Road. He referenced the Photoshop analysis of properties at the various setbacks and the visual impact. Mr. Krapf addressed several points including the potential for future compensation for the 400-foot setbacks or other factors. He noted his support of this item.

Mr. Haldeman stated his strong support of the Wooded character buffering. He noted he was amenable to a smaller setback of 250 feet versus 400 feet but concurred with Mr. Krapf's comment on the Photoshop depictions at those setbacks. He noted his support of this item in its entirety.

Mr. O'Connor addressed the question of open lands in a rural landscape or promotion of agricultural uses. He noted if agricultural uses were wanted then why were solar farms being placed on agricultural land. Mr. O'Connor questioned the intent.

Mr. Polster concurred with Mr. Haldeman on the Wooded character buffering. He noted review of Barhamsville Road as Wooded and not Agricultural at the next Comprehensive Plan review. Mr. Polster further noted he had no objection to the 400-foot setback but rather the unintended consequences. He cited Old Hickory Church on Forge Road as an example.

Several Commissioners noted it was St. John Baptist Church.

Mr. Polster noted if St. John Baptist Church had wanted to put in a paved parking lot they would not be allowed to do so. He added the preacher had a mobile home and if he wanted a permanent one he would be able to do so. Mr. Polster noted if anything happened to the church and the congregation could not start rebuilding within a year then they would not be able to do so due to the lack of the 400-foot setback. He referenced accessory structures outside of the feeding areas at horse farms along the beginning of Forge Road. Mr. Polster noted if those structures were wooden and older then they were not replaceable if they collapsed. He further noted these were unintended consequences. Mr. Polster stated he was not in support, but not

based on the 400-foot setback, but rather the unintended consequences. He noted other points such as the accessory structures for consideration.

Mr. Krapf stated the accessory structures were not detriments to the rural vista in his opinion and they served a practical use. He noted Policy Committee discussion on several of these points. He cited reference to concern of an overlay district. Mr. Krapf stated the draft Ordinance language was good, but added there were valid revisions to consider in the future, particularly in reference to Mr. Polster's points.

Discussion ensued on legally nonconforming uses.

Mr. Rose noted he aligned with the majority of the Commissioners' comments with the exception of the solar farm use. He stated he felt solar farms were a totally appropriate use in agricultural land. Mr. Rose noted the definition and interpretation of rural vista and the Comprehensive Plan and the varied responses to that phrase. He further noted allowing landowners to use their land accordingly. Mr. Rose stated he felt the 400-foot setback was excessive in this case, adding he felt this was a flawed plan that may not have these necessary issues addressed. Mr. Rose stated he was not in support.

Ms. Null commented on rural lands and corridors and how they looked. She noted this language limited a landowner's ability to put up a roadside vegetable stand. Ms. Null stated she was not in support as she felt this language lacked leeway for change.

Mr. Rodgers stated he felt 400 feet was an excessive amount. He noted he was not in support as the Ordinance was drafted.

Mr. Krapf made a motion to approve the draft language of ORD-22-0001.

Mr. Polster asked Ms. Istenes to verify the yes and no vote designations.

Ms. Istenes stated a vote of yes for the motion would show support of the amendments as presented by staff.

On a roll call vote, the motion failed. (2-5)

Mr. Haldeman noted the Board of Supervisors had requested a draft Ordinance amendment to protect scenic viewsheds. He asked if the Policy Committee reworked this language to a more acceptable form or was this forwarded to the Board in its current language.

Ms. Istenes noted the Commission would be making a recommendation to the Board based on the language presented at the current meeting. She further noted this item would continue to move forward to the Board with the Planning Commission's recommendation not to support the amendments. Ms. Istenes added the Board would then consider the amendments at the Public Hearing during its meeting for a final vote.

Ms. Parman noted a motion to recommend denial would be appropriate on the Planning Commission's decision.

Mr. Rodgers made a motion to deny the draft language of ORD-22-0001.

Mr. Polster noted the importance of conveying to the Board where the Planning Commission was on the language. He further noted three to four Commissioners were accepting of the 400-foot setback of which the unintended consequences are a part. Mr. Polster added there were no issues with the Wooded component as that piece had been supported all along. He wanted the Board to know the Commission's areas of concern. He asked if there were other exceptions for consideration as part of this motion or leave the matter as currently presented.

Mr. Krapf questioned language to address accessory structures.

Mr. Polster concurred. He noted with the denial motion, he wanted the motion to convey the consensus was for the Wooded piece and for the possibility of the accessory facilities. Mr. Polster asked if the Commissioners were in agreement on those points.

Mr. O'Connor noted the Commission was mixed on the 400-foot setback piece.

Discussion ensued.

On a roll call vote, the motion to deny was approved. (5-2)

4. Comprehensive Plan Amendment: Community Character Corridor and Short-Term Rental Development Standards Revision

Mr. Wysong addressed the Commission with the details of the September 12, 2023, Board of Supervisors meeting where Planning staff was directed to prepare a very focused and very limited amendment to the Comprehensive Plan to include only these two items. He noted the first item was the revision of the CCC table list that included the portion of Old Stage Road, outside of the PSA, would no longer be classified as a CCC. Mr. Wysong further noted the second item was removal of the recommended development standard for short-term rentals regarding the property owner living and residing on the property during rental. He stated the other three criteria would remain in effect for staff's use in evaluating applications. Mr. Wysong noted staff's review process would remain unchanged with this amendment. He stated the Policy Committee, at its October 12, 2023, meeting, recommended approval of the amendment to the CCC table by a 3-1 vote. Mr. Wysong noted the development standard for short-term rentals was unanimously recommended for denial by a 4-0 vote. He further noted Planning staff recommended the Planning Commission recommend approval of both revisions to the Board.

Mr. O'Connor questioned if the CCC revision would allow the Board to remove Forge Road and allow for the 400-foot setback.

Mr. Wysong noted the revision would remove Old Stage Road.

Mr. O'Connor questioned if it would preserve the 400-foot setback on Forge Road.

Mr. Wysong responded essentially yes. He added the category revision would only include Forge Road. Mr. Wysong noted if the Board approved the revision, then the 400-foot setback would only apply to Forge Road as it was the only road in this category.

Mr. O'Connor questioned if that point was due to the 400-foot setback not working for both Old Stage Road and Forge Road.

Mr. Wysong confirmed yes. He added the setback would work, but noted the Board saw no value in doing that.

Mr. Polster opened the Public Hearing.

Mr. Polster closed the Public Hearing as there were no speakers.

Mr. O'Connor reiterated some earlier points of revisions to the Comprehensive Plan and unintended consequences. He noted he was not in support of this amendment for two reasons: the 400-foot setback on Forge Road and intermittent, spot amendments to the Comprehensive Plan.

Mr. Haldeman noted he had no objections to spot amendments as it was difficult to see everything. He further noted he had no objections to Old Stage Road's removal from the CCC designation. Mr. Haldeman indicated his support of the revision.

Mr. Krapf commented the Comprehensive Plan was not stagnant but evolved where necessary for particular situations. He noted his support of the amendment revision.

Mr. Rose indicated he was not in support of the revision.

Mr. Rodgers noted he was in favor of the ability to spot fix the Comprehensive Plan.

Mr. Polster noted the 400-foot setback in the CCC. He further noted he was in favor of removal of the area outside the PSA and not in the CCC. Mr. Polster concurred with Mr. Haldeman on the point regarding the intersection of Anderson's Corner to Interstate 64 and its reclassification from Open Agricultural to Wooded CCC at the next Comprehensive Plan update. He noted a 100-foot setback was already included in the property at that location. Mr. Polster addressed the second piece of this item which referenced the short-term rental criteria. He asked Ms. Parman about the reasoning behind the decision.

Ms. Parman noted this recommendation was to remove one of the performance standards for short-term rentals which required owners to live on-site. She cited a recent opinion from the 5th Circuit that a residency requirement such as that discriminates against interstate commerce. Ms. Parman noted while James City County was not in the 5th Circuit jurisdiction, it was a persuasive opinion that could potentially be applied in the County's circuit. She further noted the County Attorney's Office felt that performance standard should be omitted.

Mr. Polster asked the location of the 5th Circuit.

Ms. Parman responded Louisiana was the appeal location.

Mr. Polster asked if any other Virginia localities had been considered in this performance standard decision. He questioned if Hampton, Newport News, Danville, or the City of Richmond had issues and what policies these localities implemented. Mr. Polster also inquired if these localities had policies which were in conflict with the recent 5th Circuit opinion.

Ms. Parman stated she had not reviewed those localities' policies, but she would obtain that information.

Mr. Polster noted he had seen recent articles which addressed that same requirement. He further noted references to a sign-in addition to fire and safety inspections which were not currently required. Mr. Polster addressed decisions over the past few years regarding the on-site criteria. He noted he was not in support of the short-term rental change but was in support of the CCC.

Discussion ensued.

Mr. Krapf asked Mr. Polster to clarify that his comment was to retain the residency requirement in the performance factors.

Mr. Polster confirmed yes. He noted a better solution and language were needed. Mr. Polster further noted other comparable localities were experiencing this same situation and he recommended reviewing their policies on this point.

Mr. Krapf stated his viewpoint, adding the on-site residency component created a filter on short-term rentals. He discussed that point in more depth.

Mr. O'Connor asked for a point of clarification regarding an approval or denial motion.

Ms. Istenes suggested two votes as the topics were distinctly separate.

Mr. Polster requested a motion on the CCC component.

Mr. Haldeman made a motion for recommendation of approval for the Comprehensive Plan amendment for Community Character Corridor revision.

On a voice vote, the Commission approved the motion. (6-1)

Mr. Polster sought a motion on the short-term rental piece.

Mr. Haldeman made a motion for recommendation of approval for the short-term rental development standards revision.

Mr. O'Connor questioned if the motion was to remove the performance standard.

Mr. Haldeman confirmed yes.

Mr. Polster asked that the motion be restated.

Mr. Haldeman made a motion to deny the short-term rental development standards revision.

On a voice vote, the Commission approved the denial motion. (6-1)

G. PLANNING COMMISSION CONSIDERATIONS

1. Yarmouth Creek Watershed Management Plan Update

Ms. Toni Small, Director of Stormwater and Resource Protection, noted the Division was working with a consultant for updates on the Yarmouth Creek Watershed Management Plan, originally approved by the County in 2003. She further noted two public meetings were held and the draft plan was available on the County's website until November 9 for review and public comments. Ms. Small stated final revisions and draft plan would then be presented to the Board of Supervisors for consideration. She introduced Mr. Daniel Proctor and Mr. Ari Daniels from Stantec, consultants on the plan, who would provide an update and answer any questions.

Mr. Proctor, Principal Water Resources Engineer, addressed the Board noting this update was similar to the Powhatan Creek Watershed Management Plan presented to the Planning Commission earlier in the year. He noted a brief presentation highlighting the plan's components would be presented with a three-part approach to the plan. Mr. Proctor further noted the three components were review of past information, field-level reconnaissance, and desktop-level analysis and modeling. He continued the presentation with key findings regarding water quality, flood risk, and other factors. Mr. Proctor stated overall much of the watershed was very healthy despite some impairments. He added development along the Route 60 corridor could impact the watershed health if left unmitigated. Mr. Proctor highlighted the type of recommendations in the presentation. He continued the presentation highlighting public engagement elements.

Mr. O'Connor questioned Mr. Proctor's reference to Route 60 development and future impacts if unmitigated. He inquired if the impact was due to older development without stormwater infrastructure or failing stormwater infrastructure. Mr. O'Connor questioned if the current work was part of the mitigation plan and were benefits expected as part of that plan.

Mr. Proctor replied it was a variety of issues with some older development with little stormwater controls in place. He added that a fair amount of development had occurred since stormwater requirements. Mr. Proctor noted the modeling systems accounted for some system failures.

Mr. O'Connor questioned if the runoff was nutrient loaded from fertilizer. He also asked about the downstream effects.

Mr. Proctor responded it was nutrient runoff and bacteria load from pet waste and agricultural uses. He added those factors were accounted for in the analysis.

Mr. Haldeman referenced page 5 of the presentation and the field assessment note on 30% of field channels being classified as poor or marginal condition. He asked if that point referenced erosion.

Mr. Proctor noted erosion was one aspect. He further noted a variety of factors were considered and accounted for in the analysis.

Mr. Haldeman asked if this was pollution.

Mr. Proctor responded it was the health of the stream and not just pollution itself.

Ms. Small noted that 30% reflected the percentage of stream channels evaluated as all the stream channels could not be accessed. She further noted some stream channels could not be evaluated as the property owners had not granted permission.

Mr. Proctor highlighted the stream assessment in the PowerPoint that Ms. Small referenced.

Mr. Polster questioned improvements and developer involvement to address stormwater issues. He noted the upstream impact to people downstream.

Mr. Proctor noted the suggestions for upstream improvement were in the plan.

Mr. Polster noted the funding to fix the watersheds. He addressed the missing hydrology component in this plan as identified in the Powhatan Creek plan. Mr. Polster asked if that impact was known or was modeling required.

Mr. Proctor noted the modeling would need to be reviewed.

Mr. Polster noted upcoming Capital Improvements Program (CIP) budget projects. He asked Ms. Small if the CIP would include the hydrology issue for Diascund Creek, Powhatan Creek, and Yarmouth Creek.

Ms. Small noted that was a logical next step as these plans moved forward.

Discussion ensued.

Mr. Haldeman asked if development was accounted for in projections.

Mr. Proctor confirmed yes based on known future development.

Mr. Haldeman addressed headwater pollution and erosion and that impact downstream as development continued along Route 60.

Mr. Proctor confirmed yes.

Discussion ensued on these points.

Mr. Polster thanked Mr. Proctor for the presentation.

H. PLANNING DIRECTOR'S REPORT

1. Planning Director's Report - November 2023

Ms. Istenes stated she did not have anything in addition to what was provided in the Agenda Packet.

Mr. Polster noted Mr. Rodgers was the Planning Commission representative for the Board of Supervisors November meeting.

Mr. Haldeman expressed concern with the Commission's advance reading format and difficulties accessing parts of the Agenda Packet.

Mr. Polster noted some issues when files were downloaded.

Discussion ensued.

Ms. Istenes noted she would investigate those concerns.

Mr. Rose addressed light pollution in the County, adding it was possibly a statewide problem also. He noted Dominion Energy was replacing streetlights with high-intensity LEDs with no shielding. Mr. Rose further noted the LEDs were harmful to birds and bird migrations. He stated he had checked with the County and had been notified there were no regulations on Dominion Energy regarding the lights.

Ms. Null referenced Dominion Energy's program to replace the bulbs in homes and the intensity of those lights. She noted Colonial Heritage's lanterns and regulations on lumens there in reference to the LEDs.

Mr. O'Connor noted this trend was prevalent in Northern Virginia. He further noted the removal of the shield around streetlights.

I. PLANNING COMMISSION DISCUSSION AND REQUESTS

Mr. O'Connor noted there was no policy regarding affordable housing and workforce housing. He further noted the cost of local rent and looking in surrounding localities for affordable housing. Mr. O'Connor stated those were the reasons he felt so strongly about some of these issues.

Mr. Crump addressed some of Mr. O'Connor's concerns. He noted staff had been working with Mr. Vaughn Poller, Neighborhood Development Administrator, and Ms. Marion Paine, Neighborhood Development Assistant Administrator, to review State Code and development of a County affordable housing policy in the future.

Mr. Rose noted the challenges of housing within the County. He stated the frustration of hiring yet there was no good solution for housing rentals or purchases for the employees. Mr. Rose noted a County-wide policy was important and questioned if the occasional short-term rentals had much impact.

Discussion ensued on growth, density, and affordable housing.

J. ADJOURNMENT

Ms. Null made a motion to adjourn.

The meeting was adjourned at approximately 7:43 p.m.

Susan Istenes, Secretary

Frank Polster, Chair