

MINUTES
JAMES CITY COUNTY PLANNING COMMISSION
REGULAR MEETING
COUNTY GOVERNMENT CENTER BOARD ROOM
101 MOUNTS BAY ROAD, WILLIAMSBURG, VA 23185
September 4, 2024
6:00 PM

A. CALL TO ORDER

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

B. ROLL CALL

Planning Commissioners Present:

Tim O'Connor
Jack Haldeman
Frank Polster
Stephen Rodgers
Jay Everson
Scott Maye
Kira Allmann

Staff Present:

Susan Istenes, Director of Planning
Liz Parman, Deputy County Attorney
Christy Parrish, Zoning Administrator
Josh Crump, Principal Planner
Morgan Risinger, Senior Planner
Will Albiston, Community Development Assistant

C. PUBLIC COMMENT

Mr. O'Connor opened Public Comment.

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

D. REPORTS OF THE COMMISSION

Mr. Rodgers noted the Development Review Committee (DRC) met on August 21. He stated the DRC discussed two New Business items. Mr. Rodgers noted C-24-0023. 6945 was a conceptual plan review for a proposal to rezone properties located at 6945 and 6951 Pocahontas Trail. He stated the rezoning would change the properties from B-1, General Business, to MU, Mixed Use. Mr. Rodgers noted the location was the site of the current Fort Magruder Hotel and Conference Center. He stated the properties were designated MU on the Comprehensive Plan Land Use Map and located in the Routes 60/143/199 Interchanges MU designated area. Mr. Rodgers noted details included conversion of the hotel property into 135 apartments with a breakdown of 47 one-bedroom units, 46 two-bedroom units, and 42 three-bedroom units which equated to a density of 14.75 units per acre. He stated the applicant also proposed 80,000 square feet of commercial space. Mr. Rodgers referenced the Comprehensive Plan in relation to the proposal, adding the properties were located inside the Primary Service Area (PSA) with an approximate size of 9.15 acres. He noted the DRC heard comments from both the applicant and

the project's architects. Mr. Rodgers stated various proposal aspects were discussed including workforce housing, school impacts, and other factors. He noted the DRC favored the project as an adaptive reuse project, adding there were also substantial obstacles for consideration. Mr. Rodgers stated no motion was made as the project was currently not ready and no public hearings were scheduled.

Mr. Rodgers noted the second New Business item was C-24-0040. 3026 Forge Road Subdivision/R-6 Rezoning Conceptual Plan. He stated this case also involved a conceptual plan review for proposed rezoning at 3026 Forge Road. Mr. Rodgers noted the property was currently zoned A-1, General Agricultural, designated Low Density Residential (LDR) on the Comprehensive Plan Land Use Map, within the PSA, and approximately 50.83 acres. He stated Forge Road was a Community Character Corridor (CCC) with a small portion of this property within the Toano Community Character Area. Mr. Rodgers noted the applicant's proposal for rezoning the property to R-6, LDR, was with the intent of creating a five-lot agricultural subdivision for preservation of existing farmland on the property. He provided additional details from staff regarding lot size and allowances with A-1, General Agricultural and R-6, LDR. Mr. Rodgers noted the DRC discussed the mandatory minimum lot differences between the two zoning districts, if this rezoning could set a precedent elsewhere in the County, and ownership and maintenance responsibilities for any shared driveway which could be a subdivision requirement. He noted a potential petition regarding rezoning to subdivide the property into 50 lots which was also consistent with the Comprehensive Plan's density recommendations regarding one unit per acre in LDR areas. Mr. Rodgers cited the DRC's concern regarding this scenario versus a denser proposal with the R-6 rezoning. He noted staff's response was the submittal of a master plan was required for approval along with the rezoning. Mr. Rodgers provided details on the applicant's agreement to the five-lot layout and other details of the master plan. He noted the DRC questioned staff if neighboring properties were similar in size and designation for consideration of a similar project and if staff's assessment would be the same as the current application being considered. Mr. Rodgers stated staff was unaware of other such properties within the PSA and designated LDR on the Comprehensive Plan Land Use Map. He noted the DRC's general support, but no motion was made as the proposal was still in discussion stage and no public hearings were scheduled.

Mr. O'Connor thanked Mr. Rodgers for the DRC report. He noted that he had asked Mr. Haldeman to recap the Policy Committee report as the Planning Commission considered the Ordinance rewrite.

Mr. Haldeman noted the Policy Committee met on July 11, 2024, and had no August meeting. He stated the Policy Committee had been directed by the Board of Supervisors to implement Comprehensive Plan Land Use Goals, Strategies, and Actions (GSA) 6.3 by amending the Zoning Ordinance with the creation of an Overlay District to protect and preserve scenic roadways. Mr. Haldeman noted parcels included in the Overlay District would be over 40 acres and outside the PSA with frontage on Forge Road, Diascund Road, and North Riverside Drive. He stated staff had prepared maps of the affected areas and created a draft Ordinance addressing tiered setbacks. Mr. Haldeman noted the tiered setbacks of up to 400 feet applied to unimproved parcels that would be rezoned to the Overlay District. He stated the lots with a depth greater than 300 feet and up to and including 500 feet would be required to have a 200-foot setback while lots with depths greater than 500 feet would have a 400-foot setback with the tiered approach. Mr. Haldeman stated that lots with a 300-foot depth or less as well as flag lots would continue to have setbacks determined by the underlying zoning district. He noted after discussion regarding the draft Ordinance and a study of the maps, the Committee deemed there was limited benefit of the Ordinance was not worth the significant negative impact to the selected property holders. Mr. Haldeman stated the entire Committee voted unanimously for recommendation to the entire Planning Commission to recommend denial to the Board of Supervisors. He noted the enhanced buffering for four Wooded CCCs which had been unanimously recommended to the Policy Committee at its November 10, 2022, meeting, would advance to the Planning Commission for consideration.

Mr. O'Connor inquired if any Commission members had questions. As there were none, Mr. O'Connor moved to the next item, the Consent Agenda.

E. CONSENT AGENDA

1. Minutes of the August 7, 2024, Regular Meeting

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

On a voice vote, the Commission approved the Consent Agenda with Dr. Allman voting absent as she was not at the August meeting. (6-0-1)

F. PUBLIC HEARING(S)

1. ORD-22-0001/Z-24-0008. Amendments for Scenic Roadway Protection

Mr. O'Connor asked the Commission prior to the presentation if one vote or two votes was preferred for this case.

Mr. Polster responded two votes with one for the Wooded CCCs and one for Forge Road.

The Commission concurred with Mr. Polster's suggestion of two votes.

Ms. Morgan Risinger, Senior Planner, addressed the Commission referencing the October 2021 adoption of the 2045 James City County Comprehensive Plan and details pertaining to the Plan's Land Use (LU) Chapter. Ms. Risinger noted LU 6.3 addressed preservation of scenic roadways such as Forge Road and other factors as well as consideration of 400-foot setbacks along CCCs outside the PSA. Ms. Risinger provided additional history on the Initiating Resolution and the Board of Supervisors' consideration of the creation of an Overlay District. She noted the Overlay District creation would apply setback regulations to parcels of at least 40 acres in size and located outside the PSA along Forge Road, North Riverside Drive, and Diascund Road from Forge Road to the CSX railroad. Ms. Risinger stated the Board directed staff to prepare amendments to the Zoning Ordinance in relation to the Overlay District creation in May 2024. She provided details on the tiered setback approach which specified unimproved parcels with depths greater than 500 feet would have a setback requirement of 400 feet, unimproved parcels with a depth greater than 300 feet and up to 500 feet would have a setback requirement of 200 feet, and unimproved parcels with a depth less than 300 feet or approval as a flag lot would continue to have a 75-foot setback per the A-1 Zoning District criteria. Ms. Risinger noted the Policy Committee at its July 11, 2024, meeting recommended the full Planning Commission recommend denial of the Ordinance to the Board with a 4-0 vote. Ms. Risinger referenced flag lots as consideration regarding suggested changes to the proposed Section 24-567(b) of the County Code as it pertained to Section 19-41 of the Subdivision Ordinance. She provided additional details to this point. Ms. Risinger noted staff had prepared a draft Rezoning Ordinance which specified the 22 parcels identified by the Board and as shown on the accompanying map in the Agenda Packet. She stated the parcels were zoned A-1, General Agricultural, designated Rural Lands, and outside the PSA. Ms. Risinger noted if approved, these parcels would still retain the A-1 zoning, but be governed by the Overlay District in terms of setback requirements.

Ms. Risinger noted staff had prepared draft Ordinance language regarding additional landscape buffering and timber setback requirements along Wooded CCCs outside the PSA. She noted a 100-foot average buffer width for commercial development, a 200-foot width for major

subdivisions, and a timbering setback of 50 feet was included in the language. Ms. Risinger noted staff found the proposed Ordinances (proposed Overlay District with language to Section 24-567(b), rezoning of the 22 identified parcels, and approval of the timber setback and buffering along Wooded CCCs) fulfilled the intent of the Board's Initiating Resolution and recommended the Planning Commission's approval recommendation to the Board of Supervisors.

Mr. Haldeman noted the Wooded CCCs had newly proposed 100-200-foot buffering requirements outside the PSA. He questioned if 200 feet was acceptable along John Tyler Highway, why was 400 feet required for Forge Road.

Ms. Risinger noted the difference was based on a structural setback where a building could be constructed versus landscape buffer requirements. She stated the landscape buffer addressed preservation of existing vegetation and if necessary, the location of additional landscape buffering. Ms. Risinger referenced additional points to Mr. Haldeman's question.

Mr. Polster noted the scenic road discussion had been ongoing for the past three years. He stated the discussions between the Policy Committee, the Planning Commission, and the Board of Supervisors had only focused on Forge Road and the Overlay District. Mr. Polster noted this latest draft language included 10 lots on Diascund Road and North Riverside Drive. He questioned the rationale for the 10-lot inclusion in this Ordinance.

Ms. Risinger noted the previous application focused on the established category of Open Agricultural CCC outside the PSA which only included Forge Road for that particular section. She stated the overlay approach allowed for expansion of the area with those 10 parcels included. Ms. Risinger replied that based on discussion some of those particular characteristics were noted in the areas of Diascund Road and North Riverside Drive. She noted inclusion also allowed greater protection for that part of the County.

Mr. Polster expressed his surprise, adding neither of those roads had been mentioned as scenic or rural during Comprehensive Plan discussions. He added that no mention of agricultural or wooded had been noted either. Mr. Polster questioned the rationale regarding the 10 parcels which had never been considered previously.

Mr. O'Connor opened the Public Hearing.

Mr. Michael Sim, 8000 Diascund Road, addressed the Commission noting he was a successor property owner under the Purchase of Development Rights program. He noted his contract stipulated he could not build any closer than 630 feet from the center line of Diascund Road. Mr. Sim noted his contract contained a buyout provision and he questioned the effect of the proposed Ordinance on his property value. He stated he had a contract with the County and would like answers on the value impact.

Ms. Patricia Hunter, 5801 Maple Green Circle, Richmond, VA, addressed the Commission noting she was a descendant of the Cowles family. She stated her family had three parcels which would be impacted by this action. Ms. Hunter noted specifics to her family's stewardship of the land. She questioned potential compensation for the 400 feet of land, and what, if any, advantages were obtained with the setbacks. Ms. Hunter noted excessive fencing, equipment and housing along the road, and no scenic view along Diascund Road. She stated negative points included no gathering place, no ecosystem, and no increased fiscal or human value. Ms. Hunter questioned if a traffic survey had been completed and if the number warranted the forfeiture of the landowners' property.

Ms. Harriet Meader, P.O. Box 138, Goochland, VA, addressed the Commission noting she was also a member of the Cowles family. She noted the Cowles family had owned the land for over 400 years and the scenic overlay would adversely affect the family as landowners. Ms. Meader

stressed the importance of equity highlighting two-acre parcels could be cluttered while the setback would adhere to the 40 acres. She noted the family had no development plans, adding these restrictions seemed very unfair. Ms. Meader echoed Ms. Hunter's comments regarding the lack of scenic views along Diascund Road and even parts of Forge Road. She addressed the family's consideration of placing some property into an easement conservation, but added the value of the land was a factor in that consideration with the proposed setback and land reduction. Ms. Meader stated additional points in more detail.

Mr. Greg Findlay, 3408 North Riverside Drive, addressed the Commission identifying himself as the property owner of one of the 20 properties listed on the proposed amendment. He noted only 10 properties should be highlighted as the remaining 10 properties either already had structures built on them or they had narrow stems that reached to the road. Mr. Findlay expressed his opposition to the amendment. He noted he traveled the three roads and used a range finder to count the number of properties within the 400 feet. Mr. Findlay stated Forge Road had approximately 50% of the properties less than 400 feet from the road in addition to four lots for potential building. He noted 58 of 60 homes or 96% on Diascund Road were in very close proximity to the road. Mr. Findlay commented the appearance of the road already seemed established with that percentage of homes on the road's edge. He noted on North Riverside Drive, from Diascund Drive to Otey Drive, 20 of 26 homes were less than 400 feet from the road. Mr. Findlay stated that number represented over 75% of the properties. He addressed the vacant lots across from his property which would be developed in the future, adding those homes could be built on the road while his property required a 400-foot setback. Mr. Findlay noted the majority of the homes on the discussed roads were less than 400 feet and he felt his property was unfairly restricted with the 400-foot setback requirement from the current 75-foot setback. He addressed additional points in more detail including compensation for the impact to affected property owners. Mr. Findlay reiterated his opposition to the amendment.

Mr. Steve Massie, 2406 Forge Road, addressed the Commission noting he owned one of the flag properties. He stated the amendment addressed issues with his property regarding the setback, but added that overall, he was against the concept. Mr. Massie noted the uniqueness of Forge Road and stipulations to roadside vegetable stands if the amendment was implemented. He expressed his appreciation to the Commissioners for their responsiveness to his calls, but added he was not in favor of the amendment.

Mr. Henry Branscome, 3298 North Riverside Drive, addressed the Commission noting he concurred with his neighbors' stance against the amendment. He stated that he felt the amendment affected property values. Mr. Branscome addressed several other points.

Mr. O'Connor closed the Public Hearing as there were no additional speakers. He looked to the Commissioners for discussion.

Mr. Maye disclosed he had spoken with Mr. Massie via telephone the previous week.

Mr. Everson disclosed he had also spoken with Mr. Massie previously.

Mr. Polster disclosed he had also spoken with Mr. Massie previously.

Mr. O'Connor noted while Mr. Massie was not the applicant, he was appreciative of the disclosure notifications.

Mr. Maye thanked staff for all its work. He noted the Agenda Packet was informative and very easy to navigate.

Mr. Haldeman echoed Mr. Maye's comments on the Agenda Packet material on this amendment for various committee and commission meetings.

Mr. Maye commented on the value of the scenic view and preservation of the rural nature. He stated he felt landowners had already experienced negative impact with the 20-lot subdivision criteria. Mr. Maye noted this amendment would create additional burden on the landowners without compensation. He added compensation could potentially be diminished regarding land value and the land use. Mr. Maye expressed concern about taking land from the owners.

Mr. Polster noted a three-year struggle had ensued over this proposed amendment. He addressed the unintended consequences of the various scenarios on the different Ordinances. Mr. Polster noted the large- and small-scale impacts. He acknowledged the good stewards of the land and spoke to that point in detail regarding the Cowles' property. Mr. Polster stated this proposed amendment really had no impact to Forge Road itself in terms of the properties which would be affected with this change. He noted he was not in support citing that point as well as the addition of the other two roads.

Mr. Haldeman noted he voted against this proposed amendment at the Policy Committee's July 11, 2024, Regular Meeting. He stated his vote was based primarily on the 400-foot setback. Mr. Haldeman cited the County's Comprehensive Plan and its designation regarding the A-1, General Agricultural District, adding residential development was specifically discouraged in that district. He stated 400 feet was unnecessary in addition to the use of 40-acre parcel versus the 20-acre parcel for consistency. Mr. Haldeman noted he could support a setback less than 400 feet that was also applicable to smaller parcels. He stated, however, as the proposed amendment currently stood, he would again vote against it.

Mr. Rodgers echoed similar comments regarding the 400-foot setback and the view. He noted he could not support the proposed amendment in its current version.

Mr. Everson noted he was not in support. He stated he visited the area and questioned how much more property would owners have to give up in reference to land changes.

Dr. Allman noted she was part of the Policy Committee's review of this proposal, adding she was not in favor then and still was not in support. She commented that the objectives were not aligned with the solution as presented. Dr. Allman stated an Overlay District presented many exclusions. She noted she did not envision a dramatic impact to the scenic quality of the road with the proposal. Dr. Allman stated the negative impact to the affected properties was also a consideration.

Mr. Polster asked how the voting would be divided.

Mr. O'Connor noted he was unsure. He expressed his appreciation for the Commissioners' input, adding this subject was an important community discussion. Mr. O'Connor addressed the importance of rural lands and understanding what comprises rural lands within the community. He cited Anderson's Corner as being viewed as rural land, but development was inevitable. Mr. O'Connor noted the struggle to find the right balance with rural land preservation and development. He noted he had not approved the 2045 Comprehensive Plan because he felt there was insufficient preservation evident for the larger stakeholders along Forge Road. Mr. O'Connor stated the importance of the preservation issue, adding he would not support the proposed amendment. He noted inequity and a number of competing pieces impacted his decision.

Ms. Istenes noted four Ordinances were attachments to the proposed amendment. She welcomed the Planning Commission's input as well as Ms. Risinger's on the voting piece. Ms. Istenes noted the four Ordinances were combined and included one for the Overlay District which determined the setbacks, and a Rezoning Ordinance which identified the properties affected by the Overlay District application. She stated the second set addressed the Timber Setback and Landscape Ordinance, and the Subdivision Buffering Ordinance. Ms. Istenes asked

if two votes would be taken which included two Ordinances each.

Ms. Risinger noted two motions could be done with one addressing the Overlay District and a second one for the other items related to buffering and timber setbacks.

Mr. Polster made a motion that the Planning Commission not recommend approval to the Board of Supervisors on the approval of ORD-22-0001/Z-24-0008 as it applied to the Forge Road Scenic Roadway Protection.

Mr. O'Connor asked if there would be a motion to deny.

Mr. Polster confirmed yes.

Mr. O'Connor stated there was a motion to deny on the overlay and rezoning. He noted a yes vote was affirmation of the denial.

On a roll call vote, the Commission voted to recommend denial. (7-0)

Mr. Polster made a motion that the Planning Commission recommend approval to the Board of Supervisors on the approval of ORD-22-0001 as it applied to the timber setback.

Mr. O'Connor asked if that motion included the subdivision setback.

Mr. Polster confirmed yes.

Mr. O'Connor stated there was a motion to approve ORD-22-0001 for the timber setback and the subdivision buffering.

On a roll call vote, the Commission voted to recommend approval. (6-1)

Mr. Polster thanked the meeting attendees for their feedback. He stated this case would go before the Board of Supervisors to be discussed again.

G. PLANNING COMMISSION CONSIDERATIONS

There were no items for Planning Commission consideration.

H. PLANNING DIRECTOR'S REPORT

1. Planning Director's Report - September 2024

Ms. Istenes stated that she did not have any additional information.

Mr. Everson asked if there was an upcoming Policy Committee meeting.

Ms. Istenes confirmed no.

Mr. Rodgers asked if a DRC meeting was upcoming.

Mr. Crump responded no.

I. PLANNING COMMISSION DISCUSSION AND REQUESTS

Mr. O'Connor noted Mr. Everson had duty for the September Board of Supervisors meeting. He noted Mr. Maye had duty for the October Board of Supervisors meeting. He asked the Planning Commission if there was additional discussion or any questions.

J. ADJOURNMENT

Mr. Rodgers made a motion to adjourn.

The meeting was adjourned at approximately 6:58 p.m.

Susan Istenes, Secretary

Tim O'Connor, Chair