

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE TENTH DAY OF JANUARY , TWO-THOUSAND AND SEVEN, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101-F MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

1. ROLL CALL

George Billups
Mary Jones
Tony Obadal
Jack Fraley
Shereen Hughes
Jim Kennedy
Don Hunt

STAFF PRESENT

Marvin Sowers, Planning Director
Jenny Lyttle, Assistant County Attorney
Matthew Smolnik, Senior Planner
David German, Planner
Michael Woolson, Senior Watershed Planner
Toya Ricks, Administrative Services Coordinator
Luke Vinciguerra, Planner
Leanne Reidenbach, Planner

2. PUBLIC COMMENT

Mr. Fraley opened the public comment period.

Hearing no requests; the public comment period was closed

3. MINUTES

A. December 4, 2006 Regular Meeting

Ms. Jones corrected the spelling of the a word on page 7 of the minutes.

Ms. Hughes corrected a word on page 8.

Mr. Kennedy motioned to approve the minutes as amended.

Ms. Jones seconded the motion.

In a unanimous voice vote the minutes of the December 4, 2006 regular meeting were approved as amended.

4. DEVELOPMENT REVIEW COMMITTEE REPORT

Mr. Kennedy stated that the DRC met on January 3, 2007 and unanimously approved C-133-06 St. Bede Church Garden Shed Addition subject to agency comments. He asked Mr. Fraley to report on the special meeting.

Mr. Fraley stated that there was an expedited meeting to consider the parking layout for Thomas Nelson Community College. The proposal was unanimously approved subject to agency comments.

The DRC report was approved.

5. PUBLIC HEARINGS

A. SUP-31-06 Toano Middle School Bus Entrance

Mr. Fraley stated that the applicant requested deferral until the February Planning Commission meeting and asked if Staff concurred.

Mr. Sowers stated that Staff concurred.

Mr. Fraley opened the public hearing.

Hearing no requests to speak the public hearing was continued to February 7, 2007.

B. ZO-2-06 Subdivision Ordinance Amendment – Final Plan Submittal Requirement

Ms. Jenny Lyttle presented the staff report stating that section 19-29 of the Subdivision Ordinance incorrectly references a section of the James City County Chesapeake Bay Preservation Ordinance no longer in existence. She stated that a recent revision of the Chesapeake Bay Ordinance renumbered the referenced section. Ms. Lyttle said the proposed amendment will reference the correct section number.

Mr. Fraley asked if this was a housekeeping item.

Ms. Lyttle said yes.

Mr. Fraley opened the public hearing.

Hearing no requests to speak the public hearing was closed.

Mr. Kennedy motioned for approval.

Ms. Jones seconded the motion.

In a unanimous roll call vote the application was recommended for approval (7-0). AYE: Jones, Hughes, Kennedy, Billups, Hunt, Obadal, Fraley (7); NAY: (0).

C. AFD-6-86 Cranston's Pond AFD – Warwick Hunt Withdrawal

Mr. Matthew Smolnik presented the staff report stating that it was discovered that during the creation of the AFD in 1986 the original application regarding the parcel in question was never signed. Mr. Smolnik stated that therefore, according to State Code, it was never legally part of the AFD and no action is necessary.

Mr. Fraley confirmed that property taxes for the parcel were paid at the regular rate.

Mr. Smolnik said that was correct.

Mr. Fraley approved the request and withdrew the case from the agenda.

D. SUP-33-06 Johnny Timbers Tree Service

Mr. Matthew Smolnik presented the staff report stating that Mr. John Hull has applied for a Special Use Permit on the parcel located at 2201 Jolly Pond Road, identified as JCC Tax Map No. 2940100009, zoned A-1, General Agricultural, to bring the current contractor warehouse/office into conformance with the Zoning Ordinance. Mr. Hull has filed the SUP application because the proposal is permitted by SUP only in this zoning district. The site is designated as Rural Lands by the JCC Comp. Plan. Appropriate primary uses include agricultural and forestal activities, together with certain recreational, public or semi-public and institutional uses that are compatible with the natural and rural surroundings.

Ms. Jones asked for the zoning of the property that borders the back of Deerwood Hills.

Mr. Smolnik said the zoning is A-1, General Agricultural and the Comprehensive Plan designation is State and County Lands

Mr. Obadal asked if it was Mr. Smolnik's opinion that the conditions attached satisfy the complaints from Ms. Rachel Cole identified in her statement included in the Planning Commission packet.

Mr. Smolnik said he believed so.

Mr. Obadal asked if Ms. Cole had expressed that view.

Mr. Smolnik stated that Ms. Coles has stated her opposition to the use with or without the inclusion of conditions.

Mr. Obadal stated that the attached conditions addressed all the concerns expressed by neighbors. He also stated that conditions 3 & 6 appear to be in conflict and suggested additional language to clarify and give item 6 precedence.

Mr. Smolnik agreed to make the suggested revision.

Ms. Hughes asked if there was a lot of forestry land and timbering land in the vicinity.

Mr. Smolnik said yes.

Ms. Hughes asked if it was reasonable to expect a lot of trucks such as delivery and logging trucks on the road.

Mr. Smolnik answered yes.

Ms. Hughes asked if there were other commercial properties or commercially used properties in the vicinity of the site.

Mr. Smolnik answered not in the direct vicinity.

Mr. Fraley opened the public hearing.

Mr. John Hull, 717 Autumn Trace, stated their willingness to comply with County regulations. Mr. Hull also stated that another property on Jolly Pond Road was granted a Special Use Permit for a similar use.

Mr. Obadal asked if lighting will be used.

Mr. Hull stated that motion lights will be used on the interior of the parcel for security.

Mr. Robert Bayton, 101 Deerwood, stated that he represented several citizens in the audience and submitted a citizens' petition and asked to view the conditions attached to the proposal. Mr. Bayton stated their opposition to the proposal due to concerns regarding noise, road safety, the dam, and open burning.

Mr. Fraley asked for a copy of the petition and asked Mr. Smolnik to highlight the conditions applicable to Mr. Bayton's concerns.

Mr. Smolnik read the pertinent conditions that addressed the citizen complaints.

Mr. Billups asked if the applicant was comfortable with condition number 6.

Mr. Smolnik explained the source of much of the noise and stated that the applicant agreed with the restrictions.

Mr. Sowers stated that the applicant is aware that the condition will prohibit some of the activities previously performed at the site.

Mr. Billups asked if the applicant understood that these activities would be excluded from his capacity to earn a living.

Mr. Sowers said the applicant was aware of how the restrictions will affect his business.

Mr. Hunt asked for the zoning of the parcel.

Mr. Smolnik answered A-1.

Mr. Hunt questioned the restriction on the operation a sawmill in A-1.

Mr. Smolnik stated that Contractor's Warehouses and Offices are a Specially Permitted Use in the A-1 District.

Mr. Kennedy and Mr. Hunt asked if the applicant would be able to operate a sawmill.

Mr. Smolnik was not sure.

Mr. Sowers asked that the public hearing continue while Staff researched the answer.

Mr. Obadal advised Mr. Bayton and other citizens who opposed the proposal that the Planning Commission's decision is advisory and that citizens would have an opportunity to address the Board of Supervisors concerning the case. Mr. Obadal noted the noise that he observed in the area. He also asked that open burning be added to the list of prohibited activities.

Mr. Bayton stated that none of the conditions addressed the safety of the road.

Ms. Hughes asked about the presence of other trucks on the road prior to the dam going out.

Mr. Bayton said the only trucks were traveling to the Refuse Center where there is a double lane road. He said that after the turn off from Centerville Road the road narrows quite a bit and he has not observed the presence of other trucks in that area.

Ms. Jones asked how the proposed conditions will change the activity levels at the site.

Mr. Hull stated that there will be no burning and that he has no desire to operate a sawmill. He explained that the source of much of the noise and resulting complaints and citation were the result of clean up operations at the site when he first purchased it. He stated that approximately 50 trees were cut down with chainsaws, and removed or burned. Mr. Hull stated that debris will no longer be brought to the site and that vehicles would leave in the morning empty and return in the evening empty, occasionally returning during the day to pick-up equipment. He added that much of the traffic is due to the Refuse Center with most other trucks larger than his dump trucks.

Mr. Fraley asked if the access to the County dump is off the same road.

Mr. Hull stated that the access turns off just prior to his property. He stated that prior to the demise of the dam trucks bypassed his property frequently. Mr. Hull stated that another neighbor operates a contractor's warehouse, with a Special Use Permit, on the other side of the Center, who has more dump trucks that are larger than his.

Ms. Mona Richardson, 2105 Jolly Pond Road, stated her concerns regarding noise, open burning, road safety, and lack of notification. She also confirmed that another neighbor has a Special Use Permit for a landscaping business.

Mr. Ray Kirkland, 2090 Jolly Pond Road, stated his concerns about noise and road safety and detailed his motorcycle accident with a truck while on Jolly Pond.

Mr. Fraley clarified that should a Special Use Permit be granted the applicant would be bound by the conditions attached.

Mr. Paul Sisk, 3907 Grove Gate Lane, stated that he is a driver for Johnny Timbers and that safety is a concern for them also. He also stated that other, larger vehicles such as delivery trucks and school buses travel Jolly Pond Road more frequently.

Mr. Fraley read a statement of opposition from Ms. Rachel Cole, 2202 Jolly Pond Road. Ms. Cole expressed her concerns regarding noise and inconsistency with surrounding uses. She recommended denial of the request.

Mr. Smolnik stated that regarding an earlier question about sawmills; the Zoning Ordinance allows the applicant to cut trees on his own property; however the manufacture and sell of wood products requires a Special Use Permit subject to Zoning Administrator interpretation.

Mr. Fraley asked if Mr. Smolnik had any comments regarding road safety and vehicular size.

Mr. Smolnik stated that he did not observe any large vehicles during a site visit. He stated that the road is narrow in width and that the conditions attached to the proposal such as

the prohibition of large logging trucks would mitigate safety concerns. He also stated that the applicant's trucks are smaller than others currently traveling on that roadway.

Mr. Kennedy confirmed that the parcel is zoned for Agricultural use and that if the applicant had farming equipment there would be no restrictions on the size of the equipment or the applicant's ability to use public roads to move them.

Mr. Smolnik agreed with Mr. Kennedy.

Mr. Kennedy stated that some farming uses could be more intrusive and not subject to regulation.

Mr. Smolnik agreed.

Mr. Kennedy stated that the County does not really have a Noise Ordinance.

Mr. Smolnik said he did not think so.

Mr. Kennedy urged citizens do address the lack of a Noise Ordinance to the Board of Supervisors.

Mr. Fraley said the County Code does address noise.

Mr. Kennedy said it is a passive Ordinance

Ms. Lyttle added that the County Code does prohibit noise in residential areas. She said it does not address industrial areas.

Mr. Kennedy said it does not address agricultural districts either.

Ms. Lyttle confirmed that it does not.

Mr. Fraley said the subject parcel is agricultural while the community across the street is residential stating an overlap between the two.

Hearing no other requests the public hearing was closed.

Mr. Kennedy said he understood citizens' concerns having a similar situation in his own neighborhood. He stated that he felt many of the restrictions were beneficial to the community compared to what could take place by right, such as stipulations on the hours of operation, and on the storage of wood products. Mr. Kennedy stated his inclination to support the project.

Ms. Jones stated her agreement with Mr. Kennedy. She stated that a lot of the noise in the past year seemed to be due to cleaning up the property. She stated her support.

Mr. Billups stated that he had no problem with the Special Use Permit. He stated that he did have concerns with restrictions being placed on this applicant that are not required of others such as school buses, delivery trucks, and farming vehicles. Mr. Billups also stated that the restrictions affect the livelihood of the applicant.

Mr. Hunt said he understands the concerns. He stated that as a farmer he has driven large vehicles on small roads and people need to slow down and that it is the residents that are intruding in A-1 areas. He stated his support.

Mr. Obadal said he thought modifying the conditions would satisfy concerns. He stated that he will reluctantly support the proposal. Mr. Obadal thanked the citizens who came out and presented their points of view.

Mr. Fraley asked for confirmation of a restriction on burning.

Mr. Smolnik said that it was not a part of the conditions but could be added.

Mr. Billups stated that burning would require a permit from the Fire Department.

Mr. Sowers agreed with Mr. Billups and stated that a condition could be added restricting burning if the Commission chose to.

Mr. Hunt, Ms. Jones, and Ms. Hughes suggested leaving the conditions as is.

Ms. Hughes stated that burning is allowed in the A-1 zoning district.

Mr. Hunt stated that if he needed to burn brush he only needed to contact the Fire Department.

Mr. Obadal said the applicant is not operating an agricultural business therefore different conditions could be included.

Ms. Jones said they will not be bringing material onto the property.

Mr. Sowers said that as the conditions are written the applicant could only burn materials from the property.

Mr. Kennedy motioned for approval.

Mr. Hunt seconded the motion.

In a unanimous roll call vote the application was recommended for approval (7-0). AYE: Jones, Hughes, Kennedy, Billups, Hunt, Obadal, Fraley (7); NAY: (0).

E. SUP-34-06 Rawls Byrd Elementary School

Mr. Luke Vinciguerra presented the staff report stating that Mr. Bruce Abbott of AES Consulting Engineers has applied for a Special Use Permit to allow for the construction of 43 additional parking spaces and 14 bus parking spaces. The property is located at 112 Laurel Lane, identified as JCC Tax Map No. 4810600171A, zoned R-2, General Residential District. The Comp. Plan designates this property as Federal, State, and County Land.

Ms. Hughes asked how the buses are loaded at Matthew Whaley Elementary.

Mr. Vinciguerra stated that he did not have an opportunity to observe the buses loading at the school.

Ms. Hughes agreed that there is a parking problem. She stated that her concerns given the residential nature of the school were the impacts to green space used as a neighborhood park.

Mr. Fraley opened the public hearing.

Mr. Bruce Abbott, AES Consulting Engineers, presented the proposal

Mr. Alan Robertson of Williamsburg James City County Schools outlined the creation of the proposal.

Mr. Kennedy asked if there are future plans for parking buses at the school overnight.

Mr. Robertson said that although there are no current plans they would like to keep the option open.

Mr. Kennedy stated that this is a residential neighborhood and he is concerned about the equalities of tractor-trailers and other business being restricted.

Mr. Robertson said that 35-40 buses are not parked at the central garage. He said the schools would have the flexibility of parking on school property.

Mr. Kennedy stated that County citizens own the property and that parking restrictions are placed on other businesses in restricted areas.

Mr. Robertson stated that in the future schools could be designed with parking in the back.

Mr. Fraley asked about the south parking lot.

Mr. Robertson said it is used by staff and is narrow and hard to navigate.

Mr. Fraley stated his concern about what he feels is a lack of regard to the impacts to the community. He asked if the applicant had met with neighbors.

Mr. Robertson answered no.

Mr. Fraley stated that the unsightliness and noise would disturb neighbors.

Mr. Robertson stated that this is a school activity on school property and asked that they not be limited in the use of the property.

Mr. Fraley said the request is for a Special Use Permit and that restrictions can be placed on the use of the property.

Mr. Hunt asked if employees of the school are driving the buses.

Mr. Robertson said some but not many.

Mr. Hunt asked if only a few buses would park there.

Mr. Robertson said that was correct.

Ms. Hughes stated that parking would still be problem even with the proposal. She stated that all the problems should be addressed and not be given an easy fix.

Mr. Kennedy stated that the Commission has asked other applicants to hold community meetings. He stated his experience with the strong parental participation at Rawls Byrd. Mr. Kennedy said he would suggest a motion to defer the application to allow for a meeting with the neighborhood.

Mr. Robertson stated their agreement to meeting with neighbors.

Mr. Obadal said he would support a motion to defer.

Mr. Billups asked about comments from those involved in the different stages of review within the school system.

Mr. Robertson stated that there were some reservations due to reluctance to give up the play area.

Mr. Billups asked what percentage of bus parking is occurring during the day.

Mr. Robertson said there is currently none. He stated their desire to maintain the flexibility in the event it is needed.

Mr. Billups asked if the teachers approve of the proposal.

Mr. Robertson said yes although they do not live in the neighborhood.

Mr. Billups stated that he thought it would be better if the applicant met with the community.

Mr. Robertson stated that they could also show neighbors the other options that were considered.

Ms. Jones asked about any projected change in enrollment.

Mr. Robertson said it will decrease when Motoka Elementary opens.

Mr. Hunt asked if there were plans for expansion.

Mr. Robertson said no.

Mr. Fraley was pleased with the applicant's willingness to meet with neighbors and suggested the consideration of fencing the rear play area from the parking.

Ms. Jones asked if the entire neighborhood attends Rawls Byrd. She asked if many of the students walked to school which would limit the amount of traffic.

Ms. Hughes stated that many parents would prefer walking if there were sidewalks.

Mr. Billups asked that information be provided on where the buses are coming from and to see if the parents who would most likely participate in the discussions are the ones who would be affected.

Mr. Robertson asked for a copy of the petition in order to contact the citizen petitioners.

Ms. Hughes suggested contacting the PTA President.

Mr. Fraley asked if others wished to speak.

Mr. William Moss, 41 James Square, stated his concerns regarding drainage.

Mr. Jack Marahrens, 113 Laurel Lane, stated concerns regarding the destruction of green space in front of the school. He stated that the majority of the problems occur in the afternoon. He showed pictures where it appears as though the entire bus loop is not being utilized stating that if the buses were stretched out around the loop rather double stacked, there would be enough room. Mr. Marahrens opposed expanding the bus loop and asked that the memorial to his mother be relocated if the application is approved.

Mr. Hunt asked if Mr. Marahrens parks on Laurel Lane.

Mr. Marahrens said he parks one car on Laurel Lane.

Mr. Frank Triolo, 100 Laurel Lane, stated that 12 buses can park in the loop without parallel parking or stacking if the entire bus loop was utilized and the school only needs room for 9-10 buses.

Mr. Miles Riley, 107 Laurel, stated his concerns with buses blocking the school, removal of green space, exhaust fumes, and devaluing of property.

Mr. Ed Qualtrough, Maintenance Superintendent W-JCC Schools, stated the issue is the safety of the children. He stated the difficulties of loading.

Ms. Hughes asked if previous principals had complained. She stated that the bus loop is not being used the way it was designed.

Ms. Jones questioned the children having difficulty finding their bus since there were only ten buses.

Mr. Qualtrough stated that he and a group of officials observed the buses loading just before winter break and there was chaos.

Ms. Kennedy said the students should recognize their drivers. He suggested staggering times for bus pick-up and parent pick-up. He also recommended the use of pervious surface cover.

Mr. Abbott said each teacher has 25 students and must determine where each child's bus is located and then walk each to their bus every day.

Ms. Hughes said it would be worthwhile to observe the bus loop being used as designed.

Mr. Abbott explained that buses sometimes back into their spots because another bus has arrived earlier and the driver must back in order to be in the correct spaces.

Mr. Kennedy motioned to defer the application indefinitely.

Mr. Obadal seconded the motion.

Mr. Fraley asked if the applications could be separated.

Mr. Sowers said the two requests could be separated when the Commission next considers the case. Mr. Sowers explained that with an indefinite deferral the case would have to be re-advertised when it is considered again.

In a unanimous roll call vote were indefinitely deferred until a public meeting is held (7-0). AYE: Jones, Hughes, Kennedy, Billups, Hunt, Obadal, Fraley (7); NAY: (0).

Mr. Obadal stated that with regard to impervious cover he has submitted information to the Environmental Division that might be useful in this case. He also agreed with Ms. Hughes that other systems could be employed to move the students efficiently without the cost associated of this proposal.

Mr. Hunt stated that the area around the school does not perk well and there are drainage concerns.

The Planning Commission took a 10 minute break and reconvened at 9:40 p.m.

F. SUP-35-06 Kenneth Brooks Contractor's Warehouse

Mr. David German presented the staff report Mr. Timothy Trant has applied, on behalf of Kenneth and Diana Brooks, for a Special Use Permit to allow for the conversion of a 3,840 square-foot pole barn, originally erected as an agricultural building, into a contractor's office and warehouse, located at 101 Brady Drive, identified as JCC Tax Map No. 3620100022, zoned A-1, General Agriculture. The parcel is designated as Rural Lands in the Comp. Plan. Parcels so designated are located exclusively outside the PSA and are primarily used for agricultural and forestall activities, along with certain recreational, public or semi-public and institutional uses that require a spacious site and are compatible with the natural and rural surroundings.

Mr. Obadal stated that the surrounding area is residential and that the proposal is commercial.

Mr. German said that was correct.

Mr. Obadal stated his concerns regarding runoff into what appears to be a perennial stream, and overuse of the site. He stated that had the proposal come forward prior to construction it would probably not have gained approval.

Mr. Hunt stated that a pole barn does not require a building permit.

Mr. Obadal stated that it is no longer a pole barn and is therefore in violation. He stated that the owner is a developer and is aware of regulations. Mr. Obadal also stated that he observed sediment in the stream and asked why Staff recommended approval.

Mr. German stated that granting the Special Use Permit would allow conditions to be placed on the permit to mitigate the environmental impacts.

Mr. Obadal stated that other citizens in the area are then affected. He stated that the applicant is familiar with the regulations and ignored. He also stated that the proposal should be rejected due to overuse of the land and runoff problems.

Mr. Billups asked what accessory uses are anticipated in the reference on page 59.

Mr. German answered deliveries, well houses, and similar uses would be allowed for the continued operation of the business.

Mr. Fraley reconfirmed the facts of the case. The structure was originally built legally as a pole barn. Its use was later converted into a contractor's warehouse without the necessary permits. Mr. Fraley asked if the proposal was being considered as a completely new project or was it being considered as permitting a use already in operation.

Mr. German stated that Staff chose to look at the situation as it exists and determine the best way to approach it.

Mr. Fraley asked what kind of signal that sends to the community.

Mr. Sowers stated that the SUP allows Staff to address and control the environmental issues and assist a small business.

Mr. Kennedy stated that he was aware of a similar situation with violations where the fines were paid and the use was continued. He stated that this was an opportunity for government to work with people and establish environmental controls.

Ms. Hughes asked if the stream had been determined to be perennial.

Mr. Woolson stated that it was his opinion that the stream will be determined to be perennial; however the analysis will not be submitted until the site plan phase. He stated the Special Use Permit will allow remediation for past activities and that there was no Chesapeake Bay Ordinance in 2003 when the structure was built.

Ms. Hughes asked if there were any hazardous materials stored on the site that would be a concern.

Mr. German stated that he did not observe any and deferred the question to the applicant.

Mr. Woolson clarified that if the stream is deemed perennial Staff would not automatically require the structure be torn down.

Ms. Hughes stated that the Chesapeake Bay Board may reject the location of the BMP.

Mr. Woolson said there other BMP types that might handle the runoff from the site.

Mr. Obadal asked if the stream is determined to be perennial then the current location of the proposed BMP would be in the RPA buffer.

Mr. Woolson said yes.

Mr. Billups asked about the impacts to the septic capacity. He stated that the property is already overused due to the existing duplexes.

Mr. German stated that when the duplexes were built they were permitted by the Health Department. He stated that the contractor's warehouse is on a different system that is manually drained.

Mr. Billups asked if those types of systems are allowed and if it had been reviewed by the Health Department.

Mr. German answered no and stated that the Health Department will review the site plan.

Mr. Sowers added that Health Department approval would be a requirement in approving the site plan.

Mr. Billups stated his agreement with Mr. Obadal and his displeasure with the applicant bypassing the approval process.

Ms. Jones stated that if the stream is determined to be perennial then a Special Use Permit if approved can improve the environmental issues. She stated that if the permit is denied the structure can potentially convert back to a pole barn and the environmental concerns would still exist.

Mr. Obadal asked what type of agricultural use the applicant conducts on the site.

Mr. German deferred the question to the applicant.

Mr. Fraley opened the public hearing.

Mr. Timothy Trant, Kaufman and Canoles, represented the applicant stating that the applicant is not a developer but operated a heating and air conditioning business on Mooretown Road and lives adjacent to the site. Mr. Trant explained that the structure was initially built as a pole barn to store equipment. He stated that once the applicant entered semi-retirement he utilized his free time to enclose the structure and later he and his son began to operate the contractor's warehouse.

Mr. Hunt asked if the applicant voluntarily came forward.

Mr. Trant stated that the applicant received a notice of the need for a building permit.

Mr. Fraley asked who built the pole barn.

Mr. Trant answered Mr. Brooks.

Mr. Fraley stated that in the case Mr. Kennedy cited earlier the building had been constructed illegally but was used for its intended purpose. He stated that in this case the structure is not being used for its intended purpose. Mr. Fraley asked how the applicant conducted his business when the structure was being used as a pole barn.

Mr. Trant said he conducted a heating and air conditioning business on Mooretown Road in York County for several years prior to his semi-retirement.

Mr. Fraley stated that the applicant could have continued to legally operate his business.

Mr. Trant said the business on Mooretown was on a much larger scale and continuation would not have allowed the applicant to enter semi-retirement.

Mr. Kennedy asked if the business is licensed and if so what address was given on the application.

Mr. Brooks said his son's address at 232 Thompson Lane was given. He stated that that business is his son's and that his son operates it solely with one helper. Mr. Brooks stated that his son has property in James City County and that if necessary he would force his son from the location.

Mr. Trant added that Mr. Brooks is trying to help facilitate his son's entrance into his trade.

Mr. Fraley questioned such a small business willing to bare millions in cost to make the proposed environmental repairs.

Mr. Hunt asked where the term “millions” came from.

Mr. Fraley said the costs will be considerable.

Mr. Trant said the applicant is committed to making an investment in his son of considerable amounts of money in order to facilitate his entrance into his business.

Mr. Fraley said a one-man operation will not be able to recoup that amount of money which makes him think more is going on.

Mr. Trant said people sometimes make unwise business decisions when it comes to their family.

Mr. Kennedy asked if the Thompson Lane address given on the business license application was ever verified.

Mr. German said that business licenses were handled by a department other than planning.

Mr. Sowers confirmed that there is a process for that and offered to have Staff research the information and report back to the Commission.

Mr. Obadal and Mr. Hunt suggested a deferral of the application.

Ms. Hughes stated that as a businessman in the applicant’s field he knew he needed a permit. She stated her concern that by agreeing to the environmental remediation the applicant was undertaking more than the business could support. Ms. Hughes supported the suggestion for deferral. She also advised the applicant consider a different location where the business can operate without the additional costs to an SUP.

Mr. Richard Francilla, 180 Thompson Lane, stated his concern regarding Fire Department access due to the narrowness of the road. He also asked if the business is sold would the new business require an SUP.

Mr. Fraley explained that a new SUP would not be required if the use continued and that the same conditions would still apply.

Mr. Hunt added that if a use or condition change were desired the owner would have to apply for a modification.

Mr. German said the Fire Department reviewed the SUP application and did not express any concerns regarding access.

Mr. Fraley closed the public hearing.

Ms. Jones motioned to defer the application.

Mr. Hunt seconded the motion.

Mr. Sowers confirmed that the motion is for a 30 day deferral. He also confirmed that the only information staff was being asked to submit was on the issuance of the business license.

Mr. Obadal requested the perennial stream analysis if it becomes available.

Mr. Billups requested a copy of the Health Department report.

Mr. German stated the Health Department review is usually done at the site plan phase due to cost of engineering the plans.

Mr. Fraley said the request is for historical data.

Mr. Billups, Ms. Hughes, and Mr. Kennedy detailed the type of information the Commission was seeking.

Mr. German explained that the only septic drain fields or systems the Health Department is aware of are those serving the duplexes.

Mr. Billups requested the Health Department opinion on the type of septic system in use for the contractor's office.

Mr. German confirmed that the Planning Commission members were looking for information on how the contractor's warehouse was supplied with water, what type of septic tank it had, how the tank was serviced, and whether it would be legal in James City County, and the address and name on the current business license of the business being run from the contractor's warehouse, identified as "Commercial Electrical & Mechanical, LLC."

Ms. Lyttle explained that the public hearing will need to be re-opened since the case is going to be deferred.

Mr. Fraley re-opened and continued the public hearing.

In a unanimous roll call vote the application was deferred (7-0). AYE: Jones, Hughes, Kennedy, Billups, Hunt, Obadal, Fraley (7); NAY: (0).

G. Z-7-06 New Town Sections 3 & 6 Proffer Amendment

Ms. Leanne Reidenbach presented the staff report stating that Mr. Timothy Trant of Kaufman and Canoles has applied on behalf of New Town Associates to amend the proffers for 65.4 acres located in New Town Sections 3 and 6. The request seeks to amend a 2004 proffer which required a minimum of two lanes departing Ironbound Road on Watford Lane to require only one departing lane. The property is generally located in New Town north of the intersection of Discovery Park Boulevard and Ironbound Road at 4201 Ironbound Road and is designated Mixed Use on the Comp. Plan. Examples of uses envisioned for this Mixed Use area include a mixture of commercial, office, and limited industrial, with some residential as a secondary use. The property is further identified as JCC Tax Map No. 3910100157.

Mr. Billups confirmed that the second lane was included in the original proffers and asked the benefit the County will receive in allowing the reduction.

Ms. Reidenbach stated that the benefits are decreased impervious surface and fewer traffic lanes making the area more pedestrian friendly.

Mr. Billups asked for the amount of the reduction in square feet.

Ms. Reidenbach stated that it was approximately 2,000 square feet and deferred to the applicant for an exact figure.

Mr. Billups asked if that applicant's savings could be transferred elsewhere in the New Town development such as in creating low income housing.

Mr. Reidenbach said the right-of-way will remain the same even though the area being paved is being reduced.

Mr. Billups said his statement was made to generate thinking about low income housing as opposed to affordable housing which he stated is no longer adequate.

Mr. Obadal asked if the road would be public or private.

Ms. Reidenbach said it would be public.

Mr. Obadal asked if it would be the County's responsibility.

Ms. Reidenbach stated that it would be Virginia Department of Transportation's (VDOT) responsibility since after it is constructed it is likely to be accepted into the VDOT Secondary Road System.

Mr. Obadal thought it would have to have a certain amount of traffic in order be accepted into VDOT's system.

Ms. Reidenbach stated that she was not sure of the traffic level requirement.

Mr. Sowers agreed with Mr. Obadal and stated that this road would be the main entrance into Oxford Apartments.

Mr. Obadal asked who would pay for widening if it were later deemed to be necessary.

Mr. Sowers stated that Staff was comfortable that the additional entry lane will not be needed in the future.

Mr. Hunt stated that there is a finite source of traffic based on use.

Mr. Hunt and Mr. Sowers discussed the number of entrances that will exist off Ironbound Road into the complex.

Mr. Fraley opened the public hearing.

Mr. Timothy Trant, Kaufman and Canoles, represented the applicant stating the request is not a monetary issue but one of better site design. He stated that the cost to construct the additional lane is approximately \$1,500 to \$2,000 and that the applicant will spend more than that seeking the proffer amendment.

Mr. Obadal questioned the suggested cost of the additional lane.

Mr. Trant gave the dimensions of the road.

Mr. Obadal said the asphalt has to cost more than that.

Mr. Trant stated the contracts are not for a specific lane width. He explained that the incremental costs when buying large volumes of asphalt is approximately the amount stated.

Mr. Obadal again questioned the cost of installing the additional lane after all the equipment leaves the site.

Mr. Trant stated that the figure he was quoting was not for installing the additional lane. He stated that the additional lane is not expected to be required even when calculating the highest traffic projections.

Mr. Fraley closed the public hearing.

Mr. Kennedy motioned to approve the application.

Mr. Hunt seconded the application.

In a unanimous roll call vote the application was recommended for approval (7-0).
AYE: Jones, Hughes, Kennedy, Billups, Hunt, Obadal, Fraley (7); NAY: (0).

6. COMMISSION COMMENTS

Mr. Kennedy acknowledged the Mr. Hunt will be leaving the Planning Commission and thanked him for his 15 years of service. He stated his appreciation of the work Mr. Hunt has done for the County and that he will be missed.

Mr. Hunt said it has been a privilege to be on the Commission and represent agricultural interests. He said he tried to do his best and to be fair and honest. Mr. Hunt stated that he will continue to examine things from both sides and wished everyone well.

Mr. Fraley asked that a plaque of acknowledgement be prepared for presentation.

7. PLANNING DIRECTOR'S REPORT


Mr. Marvin Sowers presented the Planning Director's Report reminding Commissioners that the Rural Lands Committee will present its recommendations on January 29th at 6:30 p.m. at Legacy Hall the community building in New Town.

Mr. Fraley stated that the Commission will hold its Organizational meeting next month where officers will be elected and committee appointments made. Mr. Fraley asked if Commissioners desired to follow the same protocol as last year and hold the Organizational meeting at 6:30 and then recess until approximately 7:00 to begin the regular meeting.


The Commissioners agreed.

8. Adjournment

There being no further business the Planning Commission was adjourned at 11:10p.m. until February 7, 2007 at 6:30 p.m.



Jack Fraley, Chairman



O. Marvin Sowers, Jr., Secretary