

PRESENT: S.N. Bridge, Chairman
J. Shomo, Vice-Chairman
J. Curd
W. F. Hite
T. H. Byerly

STAFF: J. Wilkinson, Zoning Administrator
J. Sharp, Associate Planner

ABSENT: K. A. Shiflett
J. D. Tilghman
R. L. Earhart, Senior Planner and Secretary

VIRGINIA: At the Regular Meeting of the Augusta County
Planning Commission held on Tuesday, February 12,
2008, at 7:00 p.m. in the Board Meeting Room,
Augusta County Government Center, Verona,
Virginia.

DETERMINATION OF A QUORUM

Mr. Bridge stated as there were five (5) members present, there was a quorum.

MINUTES

Mr. Curd moved to approve the minutes of the Called and Regular meeting held on
January 8, 2008. Mr. Byerly seconded the motion, which carried unanimously.

NEW BUSINESS

Westgate

Located on the west side of Tinkling Spring Road (Rt. 285) between Expo Road (Rt. 935) and Ramsey Road (Rt. 635) in the Beverley Manor District. The plat contains sixty one lots zoned General Business and two lots zoned General Industrial.

Mr. Wilkinson explained the location of the preliminary plat. He stated all of the comments have been addressed and the plat meets the technical requirements of the ordinance.

Mr. Curd moved to recommend approval of the preliminary plat as submitted.

Mr. Byerly seconded the motion which carried unanimously.

Recognition of Justine D. Tilghman

Mr. Curd made a motion to approve a resolution commending Justine D. Tilghman for her service on the Planning Commission. Mr. Byerly seconded the motion, which carried unanimously. Mr. Bridge invited Ms. Tilghman to the Planning Commission's regularly scheduled March meeting, where the resolution can be formally presented to her. He read the following resolution into the record:

WHEREAS, the County of Augusta in consideration of the long and dedicated service of Justine Tilghman; and

WHEREAS, Ms. Tilghman diligently and faithfully served the citizens of Augusta County for more than sixteen years in the capacity of public servant; and

WHEREAS, Ms. Tilghman was first appointed to the Augusta County Planning Commission in January of 1992 and completed her service in February 2008; and

WHEREAS, Ms. Tilghman served in the office of Chairman to that same body in 2000 and 2005; and

WHEREAS, Ms. Tilghman was one of the County's first Certified Planning Commissioners; and

WHEREAS, the Augusta County Planning Commission is desirous of expressing their appreciation to Ms. Tilghman for her loyal service.

NOW, THEREFORE BE IT RESOLVED, that the Augusta County Planning Commission does hereby express their utmost appreciation and heartfelt thanks to Justine Tilghman for her dedicated service on this commission. Ms. Tilghman is commended for the longevity of her service which she has so aptly fulfilled with logic, diligence, and concern for the citizens of Augusta County.

BE IT FURTHER RESOLVED, that this resolution be adopted by the Commission, recorded in its minutes, and a copy forwarded to Ms. Tilghman.

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STAFF REPORTS

A. **CODE OF VIRGINIA – SECTION 15.2-2310**

Mr. Bridge asked if there were any comments regarding the upcoming items on the BZA agenda. The Commission took the following action:

SUP 08-1 Old Dominion Investors, LLC

Mr. Hite expressed regret regarding the situation. He stated the house was built by a contractor and the setback violation was significant. Mr. Hite moved to recommend that the Board of Zoning Appeals deny the request as this does not meet the definition of a hardship as defined in the State Code.

Mr. Curd seconded the motion, which carried unanimously.

B. **ADULT BUSINESS ORDINANCE**

Mr. Bridge explained a worksession was held on January 28, 2008 regarding the Adult Business Ordinance. He stated at that time, the Planning Commission had asked staff to review questions and concerns prior to making their recommendation to the Board of Supervisors.

Mr. Wilkinson stated the Planning Commission had requested the following changes which he discussed as follows. He stated the Planning Commission had asked if the language in the proposed ordinance had to be so specific, in particular the sexual acts description. Mr. Wilkinson stated the Acting County Attorney reviewed and modified the language which he will discuss with the Planning Commission. Mr. Wilkinson stated the Commission had asked staff if other localities have been challenged. He stated that other localities have been challenged with similar ordinances and withstood the challenges, and gave specific examples of Newport News and Henrico Counties. Mr. Wilkinson further stated the Planning Commission asked staff to provide the percentage amount of General Business zoned parcels available for adult businesses under this

ordinance. He stated that Jeremy Sharp will present those findings on a detailed map. The Planning Commission had asked staff to review the option of providing a more specific definition of the words "substantial" and "floor space" under the definitions section of an "Adult Business". Mr. Wilkinson stated after reviewing this with the Acting County Attorney, it was determined this language would allow the County more flexibility. It was also requested to provide locations of all public and private schools and daycares on the maps in regards to the setback requirements. Mr. Wilkinson stated Jeremy Sharp will present this information to the Planning Commission. Lastly, the Planning Commission asked the Acting County Attorney to provide examples of challenges from other localities in regards to the use of security cameras. Mr. Wilkinson stated Henrico County was challenged for this use, but it was proven security cameras were used as enforcement to the secondary affects listed in the proposed ordinance. Mr. Wilkinson proceeded to review the changes made to the language in the proposed ordinance. He stated at the Adult Business Worksession on January 29, 2008, the Planning Commission was given the option of two recommendations by staff. Mr. Wilkinson stated the first recommendation was a setback of 500 feet measured from the structure of any adult business to property zoned residential (Option A), or a setback of 500 feet measured from the parcel of the adult business to the parcel of any property zoned residential (Option B). He stated Mr. Sharp will present the Options on the maps provided.

Mr. Sharp proceeded to show the Planning Commission the map which displayed items 1–10 listed under Subsection A of Section 25-310 of the proposed ordinance with a setback of 500 feet measured from the business structure (Option A). He stated parcels zoned General Business that included proffers which restricted retail businesses were removed from the map. Mr. Sharp stated with this setback there were 1,300 available acres zoned General Business. This available acreage includes all parcels. There are some parcels that may not be large enough for adult business use. He stated the 1,300 available acres was 40% of the total 3,400 acres zoned General Business in Augusta County, but less than 1% of the total amount of acreage in the County. He stated of the 1,300 acres, the largest portions of property are owned by Expoland and by Augusta Medical Center. Mr. Sharp proceeded to show the Planning Commission a map with a setback of 500 feet measured from the property line (Option B) of all parcels zoned residential, and all parcels containing items 1–10 listed under Subsection A of Section 25-310 of the proposed ordinance. He stated with this option, there are 527 available acres.

Mr. Shomo asked the location of the available parcels in the Greenville area.

Mr. Sharp answered Option A permits adult businesses to be located near the Colonial Mall and on Route 11 in the Orchard Hill Shopping Center. In Greenville, he stated available properties would be in the area of the Pilot Truck Stop and the Riverheads School Complex.

Mr. Shomo asked how close an adult business can be located to a school.

Mr. Sharp stated Option A is a setback of 500 feet from the school building and Option B is a setback of 500 feet from the property line of the school. He stated the same setback goes for homes, daycares, etc.

Mr. Wilkinson stated the Board of Supervisors is asking the Planning Commission to make a recommendation on either Option A or B.

Mr. Byerly stated he prefers Option B. However, he asked if the County is challenged under Option B, would the court establish the criteria, or would staff be asked to “re-vamp”. He voiced concern on how strong of a stand the County could take if it were challenged.

Mr. Shomo asked if the court was to allow a challenge, would there be a possibility of the case being overturned.

Mr. Curd answered that could be a possibility.

Mr. Shomo stated he prefers Option B.

Mr. Curd stated if an adult business suffers damages, and it can prove the County is acting unjustifiable, it could cost the County more in damages. He stated the language should not be so restrictive that it encourages challenges. Mr. Curd stated an ordinance is needed, but it is a hard decision on the amount of available acreage of 40% versus 15%. He stated he prefers Option B, but he is concerned with challenges this may provoke with uses of security cameras for example. Mr. Curd stated the language implies the County is trying to regulate the customer rather than the proprietor. He concluded by stating he is concerned with the challenges that may be provoked with the restrictive language, but he can go with Option B.

Mr. Bridge questioned how the County can legally be restrictive and prejudice to one type of business but not others. He stated this however was upheld in other jurisdictions and by other County Attorneys. Therefore, he can support this ordinance based on previous evidence.

Mr. Curd stated he feels the County will be challenged in court whether they decide on Option A or B. Therefore, he will support Option B.

Mr. Byerly asked how the court could define “damages” if the business has not been established.

Mr. Curd explained it is subjective, but if an adult business was operating in another locality and could prove what profit it “could be making” in this County if not for the restrictions, it may stand in court. Or, he stated the business owner could list what the business “could be making” in today’s market.

Mr. Byerly stated he prefers Option B.

Mr. Shomo asked if the County Attorney would be council for the County if this proposed ordinance were to be challenged.

Mr. Curd stated not necessarily. The County may look for outside resources. This would depend on the workload, etc.

Mr. Byerly stated the Shenandoah Valley is known as the "Bible Belt" and he strongly feels the County should send that message to adult businesses.

Mr. Bridge asked Mr. Sharp, of the 109 parcels available under Option B, if the land at Expoland, Augusta Medical Center, and smaller parcels that have no potential for an adult business were to be removed, how many parcels would be available.

Mr. Sharp stated he was hesitant to guess, but he would state approximately 40 to 50 parcels would be removed.

Mr. Curd asked why Expoland's parcels could not be utilized.

Mr. Sharp stated he assumes the current ownership of the properties would not be supportive of such a business.

Mr. Hite stated he too supports Option B as long as the language is not so restrictive that it does not allow any locations for adult businesses. He stated his only concern with Option B would be eliminating parcels, and in turn inviting legal challenges.

Mr. Sharp stated if Option B was recommended the largest parcel would be located in Mint Spring. He stated if the vacant property is about .25 acres or greater, it could be assumed it would be available for adult business use.

Mr. Wilkinson stated the Planning Commission is to make a recommendation on the specific language to be included on the site plan for adult businesses. He stated the County would require items A-J under Section 25-310 of the Zoning Ordinance to be included on the site plan at the time of submittal.

Mr. Curd moved to recommend adoption of the proposed ordinance to the Board of Supervisors in regards to Option B, which states the business be located at least 500 feet away from any residential zoning district, and at least 500 feet away from the property line of any land used for the purposes described in items 1-10 of Subsection A of Section 25-310 of the proposed ordinance. Mr. Curd further moved to recommend to the Board of Supervisors, the appropriate language listed as items A-J under Section 25-310 of the Zoning Ordinance be included on the site plan at the time of submittal.

Mr. Byerly seconded the motion which carried unanimously.

C. Fishersville Small Area Plan

Mr. Sharp distributed announcements to the Planning Commission regarding the Fishersville Small Area Plan. He stated the meeting will be the second out of three public open houses and will consist of several stations where the public can view maps and ask questions to the Community Development Staff. The open house will be held at Wilson Middle School on Tuesday, February 19, 2008 from 7:00 to 8:30 p.m.

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There being no further business to come before the Commission, the meeting was adjourned.

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Chairman

Secretary