



PUBLIC NOTICE
WILLIAMSBURG PLANNING COMMISSION

The Williamsburg Planning Commission will hold a public hearing on Wednesday, July 17, 2013, 3:30 P.M. in the Council Chambers of the Stryker Building, 412 North Boundary Street, to consider the following:

PCR #13-026: Request of Great Knights, Inc. for a special use permit to increase the residential density for 501-517 Prince George Street and 214-220 North Boundary Street from 14 dwelling units/net acre to 15.1 dwelling units/net acre. It is proposed to add eight new multifamily dwelling units to the existing two dwelling units on the site. This property is zoned B-1 Downtown Business District, and is identified as Williamsburg Tax Map Nos. 465-0A-00-030>034.

PCR #13-027: Amend the Zoning Ordinance by revising the text of Article VII. Site Plans and Article IX. Architectural Review pertaining to granting waivers for site plan requirements. It is proposed to grant waiver authority to the Zoning Administrator instead of the Planning Commission because the Virginia Supreme Court has ruled that Planning Commission cannot be granted authority to grant waivers. The Zoning Administrator's decision can be appealed to the Board of Zoning Appeals.

Additional information is available at www.williamsburgva.gov/publicnotice or at the Planning Department (757) 220-6130, 401 Lafayette Street. Interested citizens are invited to attend this hearing and present their comments to Planning Commission.

If you are disabled and need accommodation in order to participate in the public hearing, please call the Planning Department at (757) 220-6130, (TTY) 220-6108, no later than 12:00 noon, Wednesday, July 10, 2013.

A handwritten signature in black ink that reads "Reed T. Nester". The signature is written in a cursive, flowing style.

Reed T. Nester
Planning Director



CITY OF WILLIAMSBURG

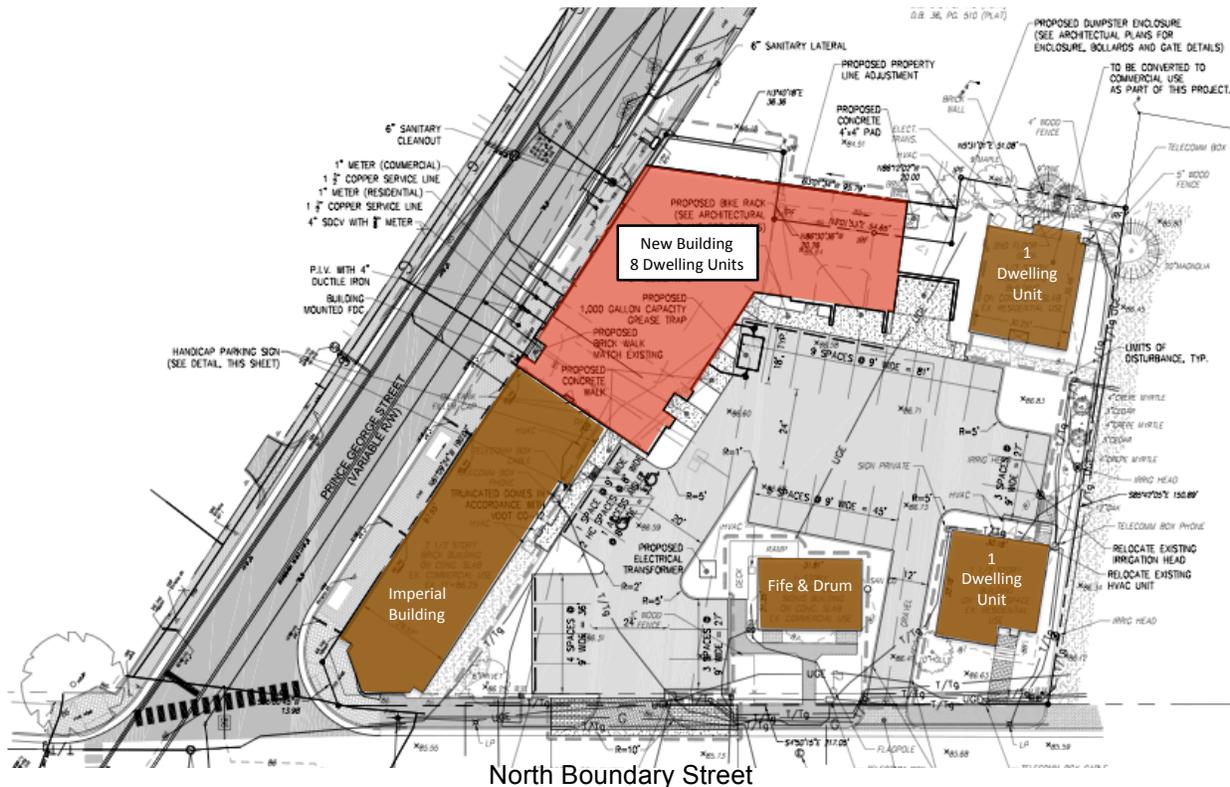
MEMORANDUM

TO: Planning Commission

DATE: June 13, 2013

SUBJECT: PCR #13-026
Request of Great Knights Inc. for a special use permit to increase residential density from 14 to 15.1 dwelling units/net acre.

Great Knights Inc. is requesting a special use permit to increase the residential density allowed from 14 to 15.1 dwelling units/net acre for 501-517 Prince George Street and 214-220 North Boundary Street. It is proposed to add eight new multifamily dwelling units to the two existing dwelling units on the site. The applicant proposes a new mixed-use building on Prince George Street with commercial on the first floor with a total of eight residential units on the second and third floors. Currently, nine units are allowed by right and the applicant is seeking a special use permit for one additional unit.



COMPREHENSIVE PLAN

The Comprehensive Plan designates this area as *Downtown Commercial* land use. This land use category is intended to promote a variety of business uses in the Downtown Planning Area, and includes Merchants Square and other predominately retail business areas adjacent to the Colonial Williamsburg Historic Area and the College of William and Mary. Continued use and adaption of residential dwellings is supported in the Downtown area, and residential uses are recommended at a base density of 14 dwelling units/net acre, with increased density with a special use permit. The primary consideration for the approval of increased density should be how the scale and character of the proposed project relates to its immediate surroundings and to the Downtown Planning Area as a whole. This category is implemented by the B-1 District and by the PDC District for student dwellings with up to four unrelated persons per dwelling unit.



ZONING

These properties are located in the B-1 Downtown Business District, and the Statement of Intent reads:

This district is established to promote harmonious development and redevelopment in the downtown business area adjacent to the Colonial Williamsburg district and the College of William and Mary. The regulations are designed to maintain and encourage the existing small scale pedestrian character of this area, and to encourage a harmonious mixture of commercial, residential, office and institutional uses.

The special use permit section of the Zoning Ordinance (Sec. 21-42) establishes the following criteria for special use permits:

- (a) *The proposed use shall be:*
 - (1) *In harmony with the adopted comprehensive plan;*
 - (2) *In harmony with the intent and purpose of the zoning district in which the use is proposed to be located;*
 - (3) *In harmony with the character of adjacent properties and the surrounding neighborhoods, and with existing and proposed development.*
- (b) *The proposed use shall be adequately served by essential public services such as streets, drainage facilities, fire protection and public water and sewer facilities.*
- (c) *The proposed use shall not result in the destruction, loss or damage of any feature determined to be of significant ecological, scenic or historic importance.*
- (d) *The proposed use shall be designed, sited and landscaped so that the use will not hinder or discourage the appropriate development or use of adjacent properties and surrounding neighborhoods.*

Additional reasonable standards as deemed necessary to protect the public interest and welfare may be imposed, including: more restrictive sign standards; additional open space, landscaping or screening requirements; additional yard requirements; special lighting requirements; limitation on hours of operation; and additional off-street parking and loading requirements.

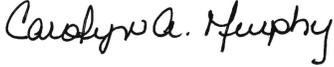
The Planning Director or Planning Commission may require the following additional information:

- (1) A traffic impact analysis, showing the effect of traffic generated by this project on surrounding streets and neighborhoods.
- (2) A public utility analysis, showing the effect of this project on public water, sewer and/or storm drainage facilities.
- (3) A fiscal impact analysis. The Planning Director or the Planning Commission may request the City Council to provide funds for the preparation of this study by the City.

Staff does not feel that any additional studies are needed in order to make a decision on this request.

PUBLIC HEARING DATE

The Planning Commission public hearing on this case is scheduled for the regular Planning Commission meeting on July 17.


Carolyn A. Murphy, AICP
Deputy Planning Director



CITY OF WILLIAMSBURG
MEMORANDUM

TO: Planning Commission

DATE: June 12, 2013

SUBJECT: PCR #13-027

Amend the Zoning Ordinance by revising the text of Article VII. Site Plans and Article IX. Architectural Review pertaining to granting waivers for site plan requirements

The Site Plan section of the Zoning Ordinance allows Planning Commission to grant waivers to the site plan requirements contained in Article VII. Site Plans, as it has since the revised zoning ordinance was first adopted in 1991. However, in 2012, the Virginia Supreme Court opined that "...we have not identified a single provision of state law authorizing planning commissions to consider and rule upon departures from a zoning ordinance." However, the Court further observed that the State Code specifically empowers local governing bodies to enact ordinances that authorize their zoning administrator to grant modifications from any provision contained in the locality's zoning ordinance with respect to physical requirements on a lot or parcel of land when certain specified conditions are met. For this reason, the attached ordinance proposes to grant waiver authority to the Zoning Administrator. The Zoning Administrator's decision can be appealed to the Board of Zoning Appeals.

There are a number of site plan requirements that could be subject to waiver requests, and waivers for many of these items have been approved in the past by Planning Commission in conjunction with site plan review:

- New construction on slopes in excess of 30% [Sec. 21-782(e)]
- Aisle width in parking lots [21-783(3)d.]
- Required landscaping [Sec. 21-784]
- Parking lot landscape requirements including perimeter landscape strips and landscape islands [Sec. 21-784(d)]

The proposed ordinance lists specific standards for the granting of waivers, requiring the Zoning Administrator to find in writing that:

- The strict application of the ordinance would produce undue hardship
- Such hardship is not shared generally by other properties in the same zoning district and same vicinity
- The authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification

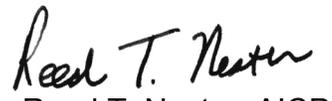
Prior to granting a waiver, the Zoning Administrator is required to give all adjoining property owners written notice of the request and an opportunity to respond to the request within 21 days of the date of the notice. The Zoning Administrator is also required to issue a written decision with copies provided to the applicant and to any adjoining landowner who responds in writing to the notice. Any person aggrieved by a decision of the Zoning Administrator may appeal the decision to the Board of Zoning Appeals within 30 days.

ANALYSIS

The best process for considering site plan waivers is to have Planning Commission consider waivers as a part of the site plan review process. However, this procedure has been precluded by the decision of the Virginia Supreme Court in 2012. The next best solution is to grant authority to the Zoning Administrator to grant the waiver, with an appeal to the Board of Zoning Appeals. This can easily be integrated into the existing site plan review process, and the Site Plan Review Committee will have an opportunity to review the waiver request prior to the Zoning Administrator's decision.

PLANNING COMMISSION PUBLIC HEARING

The Planning Commission public hearing on this case is scheduled for the regular Planning Commission meeting on July 17.


Reed T. Nester, AICP
Planning Director

ORDINANCE #13-__
PROPOSED ORDINANCE #13-__

**AN ORDINANCE AMENDING CHAPTER 21, ZONING,
ARTICLE VII. SITE PLANS AND ARTICLE IX. ARCHITECTURAL REVIEW,
PERTAINING TO WAIVERS OF SITE PLAN REQUIREMENTS
(PCR #13-027)**

WHEREAS, the Virginia Supreme Court recently decided that Virginia law does not allow local governments to authorize their planning commissions to grant zoning waivers (283 Va. 567, 727 S.E.2d 40 Sinclair v. New Cingular Wireless PCS, LLC, 727 S.E.2d 40); and

WHEREAS, the Court opined that "...governing bodies may delegate the exercise of these legislative functions to subordinate bodies, officers, or employees ... only if allowed by statute" and then observed that "after reviewing the seventy sections in which the term 'planning commission' appears in Title 15.2 of the Code, we have not identified a single provision of state law authorizing planning commissions to consider and rule upon departures from a zoning ordinance." However, the Court further observed that unlike the powers allocated to planning commissions, none of which include the granting of zoning waivers or modifications, Virginia Code § 15.2-2286(A)(4) specifically empowers local governing bodies to enact ordinances that authorize their zoning administrator to grant modifications from any provision contained in the locality's zoning ordinance with respect to physical requirements on a lot or parcel of land when certain conditions specified in said Code Section are present; and

WHEREAS, Williamsburg Code Sections 21-782, 21-788, 21-789 and 21-859 provide that the City's Planning Commission may waive certain zoning requirements and it is, therefore, necessary to amend said City Code Sections to comply with the Court's decision;

NOW, THEREFORE, BE IT ORDAINED, that Chapter 21, Zoning, Article VII. Site Plans, Sections 21-782, 21-788 and 21-789; and Article IX. Architectural Review, Section 21-859, shall be amended to read as follows:

ARTICLE VII. SITE PLANS

Sec. 21-782. - General performance standards.

(a) No more land shall be disturbed than is reasonably necessary to provide for the desired use or development. All site plans shall clearly designate land areas to be disturbed.

(b) Indigenous vegetation shall be preserved to the maximum extent possible consistent with the proposed use and development.

(c) Best management practices shall be applied to all land-disturbing activities regulated by this article.

(d) Land development proposals shall be designed to minimize impervious cover consistent with the particular use proposed.

(e) New construction on slopes in excess of 30 percent shall be prohibited, unless waivers are granted by the ~~planning commission~~ zoning administrator in accordance with section 21-788.

(f) If a building, structure or site improvement is demolished or removed, the area shall be graded, topsoiled and seeded within 30 days unless a minor site plan or site plan has been submitted and approved.

Sec. 21-788. Waivers and revisions.

~~(a) *Waivers.* The planning commission may waive a site plan requirement in particular cases upon a finding that~~

- ~~(1) Because of unusual size, topography or shape of the property, location of the property, or any other unusual conditions, strict application of the site plan requirements would result in significant degradation of the site or adjacent properties; and~~
- ~~(2) The granting of the waiver is not detrimental to the public health, safety or welfare, orderly development of the area, or sound engineering practice, or to properties located within the project impact area.~~

(a) *Waivers.* The zoning administrator may waive a site plan requirement set forth in Article VII. Site Plans if the administrator finds in writing that:

- (1) The strict application of the ordinance would produce undue hardship; and
- (2) Such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
- (3) The authorization of the waiver will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification.

Prior to the granting of a waiver, the zoning administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for waiver, and an opportunity to respond to the request within 21 days of the date of the notice. The zoning administrator shall make a decision on the request for waiver and issue a written decision with a copy provided to the applicant and any adjoining landowner who responds in writing to the notice sent pursuant to this paragraph.

(b) *Revisions.*

- (1) *Authorization.* No change, revision, addition or deletion shall be made on any site plan or on any accompanying data sheet where approval has been endorsed on the plan or sheet unless authorization for such change is granted in writing by the zoning administrator.
- (2) *Minor revisions.* Minor revisions to a site plan may be approved by the zoning administrator, without submission to the planning commission. Revisions shall be considered minor if they:
 - a. Are substantially in compliance with the approved site plan together with all conditions imposed by the planning commission.
 - b. Will not change the general character of the approved site plan.
 - c. Will not reduce any required buffer area.
 - d. Will not result in any substantial change of major external access points.
 - e. Will have no adverse impact on public facilities or properties located within the immediate project area.
- (3) *Major revisions.* Major revisions to a site plan shall be filed and processed in the same manner as the original site plan.

(c) *Filing of request for waivers or revisions.*

- (1) ~~A developer~~ **An applicant** requesting a waiver or revision pursuant to this section shall file with the zoning administrator a written request which shall state reasons and justifications for such request together with such alternatives as may be proposed by the ~~developer~~ **applicant**.
- (2) ~~No such request~~ **site plan that requires waiver of any applicable site plan requirement set forth in Article VII. Site Plans** shall be considered by the planning commission ~~without receiving a written recommendation from the zoning administrator, who may recommend approval, approval with conditions, or denial.~~ **until the zoning administrator has waived such requirement(s) in accordance with Section 21-788.**
- (3) ~~A recommendation of approval or approval with conditions shall be accompanied by a statement from the zoning administrator as to the public purpose served by such recommendation, particularly in regard to the purpose and intent of the site plan regulations, the zoning ordinance and the comprehensive plan.~~

Sec. 21-789. Appeals.

- (a) *Appeal of zoning administrator's decision concerning minor site plans and site plans.* Any person aggrieved by a decision of the zoning administrator may appeal such decision ~~in writing within 30 days~~ **to the board of zoning appeals within 30 days from the date of issuance of the written decision, as provided by section 21-98 of the zoning**

~~ordinance. The appeal shall be reviewed by the planning commission at a regularly scheduled meeting, and the planning commission may approve, modify or deny the decision upon review of facts and findings.~~ The decision of the board of zoning appeals may be appealed to the circuit court as provided by section 21-101 of the zoning ordinance.

(b) *Appeal of planning commission decision.* Any person aggrieved by a decision of the planning commission may present to the circuit court of the city a petition specifying the grounds on which aggrieved within 30 days after the rendering of the decision by the planning commission. The proceedings before the circuit court shall be in accordance with applicable state law.

(c) "Any person aggrieved" for the purposes of section 21-789 shall mean the owner of property that abuts or lies directly across the street from the subject property or is otherwise in such close proximity thereto that the development of such property will be seen, smelled or heard from such person's property or be subject to discharge emissions from the subject property to the extent that the approved development of the subject property will cause such person to suffer a denial of some personal or property right, legal or equitable.

ARTICLE IX. ARCHITECTURAL REVIEW

Sec. 21-859. Zoning exceptions.

Due to peculiar conditions of design and construction in historic neighborhoods in the architectural preservation district, where buildings and structures are often close to the lot lines, it may be in the public interest to retain a neighborhood's historic appearance by granting exceptions to normal zoning requirements. Where it is deemed that such an exception will not adversely affect neighboring properties, and that it is necessary to retain and enhance the neighborhood's historic appearance and character, the review board may recommend to the board of zoning appeals that a special exception to the standard yard, transitional screening, height, landscaped open space and/or parking requirements be made, subject to the provisions of section 21-97(f); and/or may recommend to the ~~planning commission~~ zoning administrator that waivers be granted to site plan requirements, subject to the provisions of section 21-788.

EXCEPT, as here amended, the Williamsburg Code shall remain unchanged.

Adopted: _____

Clyde A. Haulman, Mayor

Attest: _____
Donna Scott, City Council Clerk