

AUGUST 22, 2010

MEMORANDUM TO POLICY COMMITTEE – PUBLIC HEARING (AUGUST 24<sup>TH</sup>)

FROM: JAMES CITY COUNTY CITIZENS COALITION (J4C)

SUBJECT: MIXED USE ZONING

In 2007, the Board of Supervisors approved an amendment to Section 24-527 of the Mixed Use District (MUD) Ordinance, specific to reducing setbacks. At that time, the J4C opposed the amendments for a number of reasons that apply equally today:

1. A few recent applications are insufficient reason for amending an established ordinance that has worked well overall.
2. Developers are using the MUD to avoid restrictions and to increase density. This places additional stress on water resources, schools, traffic, etc.
3. The proposed amendment is confusing. It appears to remove the Board's authority to determine setbacks in specific cases. We believe the Board has ultimate responsibility to define and protect the character of the district by prescribing required setbacks. This authority must be retained by the Board.
4. The Comprehensive Plan should be followed. We should not be using the MUD ordinance outside of its designated mixed use areas.
5. We favor making an exception for affordable housing if the area meets all the requirements for mixed use.
6. School and other proffers need to be required of mixed use, as well as other types. In many instances, these could be expected to be higher due to the uncertainty of what the mixed use might be in the long term.
7. One of the important purposes of any Mixed Use project is to make more efficient use of the land. Buildings should be tightly packed to accommodate walking and biking. Any Mixed Use design should therefore produce a significant amount of open space, either on site or off (TDR).

As reflected in a number of our positions, we believe Mixed Use zoning should only be used when specifically defined in the Comp Plan. The J4C supports a removal of, or at least a major revision of the Mixed Use Ordinance that will make it more consistent with the current Comp Plan. We specifically believe the ordinance needs to be tightened and cover only particular development types not currently covered by the business and commercial zoning ordinances (M1, M2 and LB, etc.). We, and it seems, the majority of residents, believe it is essential to maintain the rural character of much of James City County and thus would oppose the rezoning of any A-1 land to Mixed Use (MU).

Likewise, the J4C is opposed to the addition of an Economic Opportunity (EO) zoning designation until such time as a thorough examination of its impacts has been completed. Governmental processes, like its services must be sustainable over time. We believe that defining a zoning category for a one time case is wrong and the ordinance should prohibit it. In general, we believe that there are already far too many ordinances governing the development process –for the benefit of developers, development staff and citizens.

We also believe that mixed use should not be applied to an application that does not bring with it a fully designed site plan. Local government officials still carry the responsibility for approving land uses only when they have been specifically defined and it is clear what the “mixed uses” will be and how they will look.

A comprehensive review of MU could determine that there is no need for this specific ordinance. The current business and commercial, and residential zoning ordinances appear to cover current requirements for MU. The review needs to examine carefully the permitted uses, the setbacks, and the use of this designation for areas proposed for development and/or requiring rehabilitation.

The J4C has reviewed the Comprehensive Plan text and its GSAs, as well as independent and local government “mixed use” documents, and find nothing that would not support our recommendations. Our review of the GSAs resulted in Figure 1 below, a summary of the 2009 Comp Plan’s GSA’s relative to mixed use (MUD). **(SHOW FIGURE 1) AND READ THIS:**

A large number of these uses would apply primarily in agricultural and forested areas of the County. If agricultural ones are determined to be of value and cannot be incorporated in the A-1 ordinance, they should then be separated into rural applications as opposed to urban or suburban development, within the MUD’s several sections. Another example of misplacement of uses would appear to be in the rental of rooms to a maximum of three. Isn’t this a factor in residential zoning districts? These questions lead to our suggestion that if an MU zoning is retained, it should be tied to the other residential and commercial districts where specific design standards can be retained.

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As has been mentioned earlier, we believe the following Land Use GSA should be removed, consistent with citizens’ desires relative to growth and until the MU ordinance has been reviewed and determined to be relevant to lands not developed within the PSA.

***“LAND USE GSA 1.4.6, pg. 248 – Encourage developments which provide mixed use development, as further defined in the Mixed Use Land Use Designation and Development Standards, within the Primary Service Area. Support design flexibility to promote mixing of various types of residential and non-residential uses and structures.”***

During the last few months, we have examined a number of ordinances and program descriptions from other jurisdictions. Attached to our paper submissions is a power point description of the

City of Chesapeake's program that we believe would meet James City County's needs, should the need for such an ordinance be identified. It describes the benefits of the designation as well as specific aspects of how it works.

We have not had the time to review specific problems we have with the current ordinance other than those mentioned earlier in this statement. We hope to be able to factor these into our review of the revisions that will be made over the coming months. We would ask that specific attention be paid to citizens' concerns and that their wishes be incorporated into the final text. Where these apply to a very limited number of lots/developments, they should be considered for elimination. We believe that MU is one that fits this category. No attempt from developers to use this designation for dubious reasons should be approved. If it is to be retained, then it needs to be more specific and completely revised.

Specifically we offer the following recommendations:

1. Consider removing the "mixed use" ordinance from Code; relying on related ordinances
2. Reduce the number of permitted uses, if the ordinance is retained.
3. Remove Land Use GSA 1.4.6, page 248 from the Comp Plan.
4. Require binding and specific site plans to show approving officials the exact layout and configuration for any mixed use application.
5. Remove potential for variances and exceptions from applications; require specific setbacks and buffers, particularly on Community Character Corridors.
6. "If an MU ordinance is retained, it should be divided into "residential", commercial", "business", etc.
7. Mixed Use must not result in an increase in population over that expected from by-right.
8. Mixed Use data from the Kimley-Horn "James City County 200 Development Potential Analysis" should be updated and factored into decisions on the ordinance.

We will be pleased to be part of any working group considering the "Mixed Use" rewrite.

**FIGURE 1. Goals, Strategies and Actions (GSAs) from the 2009 Comprehensive Plan that impact on Mixed Use District ordinance.**

**Environment.** 1.1.5 continues regional efforts to ...identifies lands best suited for development. This should include type of development.

**Economic Development.** 1.1 would indicate expansion of the Enterprise Zones rather than creating a new category (EO). 1.4 places more emphasis on infill development, much of this may end up in a request for mixed use zoning.

**Community Character.** 1.1.1 focuses on development along Community Character Corridors protecting the natural and historic views of the area; development along the CCCs often includes MUD zoning.

1.1.3 encourages initiatives to ensure the development of quality industrial and office parks for potential economic development prospects.

1.2.1 relates primarily to development along CCCs in New Town Toano and Five Forks; possibly mixed use zoning.

1.3.9 focuses on consistency with the Development Standards in the Comp Plan.

1.5 relates to the preservation of existing vegetation during development.

**Land Use,** 1.2.1 provides for connecting neighborhoods with retail employment centers, parks, etc.

1.4 directs growth into designated growth areas. within PSA.

1.4.5 focuses on infill development, redevelopment within the PSA, providing strategies. Within 1.4.6 and 1.4.7 developments using MUD are encouraged (not supported by J4C).

**FIGURE 2. PERMITTED USES (all structures to be erected or land to be used) THAT MIGHT BE CONSIDERED FOR DELETION**

**Residential Uses:**

**Accessory structures**, as defined in section 24-2. (If this remains, it must have more specific descriptions)

**Non-Residential Uses:**

**Automobile repair and service**

**Automobile service stations**

**Funeral homes, cemeteries and memorial gardens**

**Group quarters for agricultural workers**

**Heavy equipment sales and service**

**Home occupations** as defined. (NOTE: Aren't these covered in Residential ordinances?)

**Convention centers**

**Houses of worship and cemeteries accessory hereto**

**Manufacture and bottling of soft drinks and wine**

**Manufacture and processing of textiles and textile products**

**Manufacturing, compounding, assembly or treatment of products**

**Manufacturing, compounding, processing or packaging of cosmetic, toiletry and pharmaceutical products**

**Manufacture of carpets and carpet yarns**

**Manufacture or assembly of appliances, tools, firearms, hardware products and heating, cooling or ventilating equipment**

**Manufacture or assembly of electronic instruments, electronic devices or electronic components.**

**Manufacture of assembly of medical, drafting, metering, marine, photographic and mechanical instruments.**

**Processing, assembly and manufacture of light industrial products or components**

**Warehouse, storage and distribution centers**

**Welding and machine shops with storage**

### **FIGURE 3. RECOMMENDATIONS**

1. Consider **removing the “mixed use” ordinance** from Code; relying on related ordinances
2. **Reduce the number of permitted uses**, if the ordinance is retained.
3. **Remove Land Use GSA 1.4.6, page 248 from the Comp Plan.**
4. **Require binding and specific site plans** to show approving officials the exact layout and configuration for any mixed use application.
5. **Remove potential for variances and exceptions** from applications; require specific setbacks and buffers, particularly on Community Character Corridors.
6. **“If a Mixed Use ordinance is retained, it should be divided into “residential”, commercial”, “business”, etc.**
7. **Mixed Use must not result in an increase in population** over that expected from by-right.
8. **Mixed Use data from the Kimley-Horn “James City County 2002 Development Potential Analysis” should be updated and factored into decisions on the ordinance.**

We will be pleased to be part of any working group considering the “Mixed Use” rewrite.