

**ESSEX COUNTY PLANNING COMMISSION
AGENDA ITEM**

STAFF ANALYSIS AND RECOMMENDATION

Meeting Date: June 6, 2023

Case Number: R-2023003

SUBJECT:

Rezoning Request Case Number R-2023003: In the Central Magisterial District, 7 AND M Development, LLC requests rezoning from B-1, Local Business District to PUD, Planned Unit Development District of 13.186 acres with exceptions to ordinance requirements related to project size, density, building height, number of multi-family units per floor, parking and loading areas, signs, landscaping, and access points requested as Standard Modifications in accordance with Zoning Ordinance Section 36.242(5).

PROJECT DESCRIPTION:

A mixed-use development including up to 139 studio and one- and two-bedroom multi-family residential dwelling units for rent (a density of 10.54 dwelling units per acre) in a maximum of 200,000 square feet of gross floor area plus a maximum of 73,000 square feet of gross floor area of commercial/retail uses and up to 20,000 square feet of community center uses is planned (Proffered Conditions 6 and 7). An exception is requested to allow buildings to have a maximum height of the lesser of 4 stories or 60 feet. The preliminary site plan depicts 176,566 square feet of gross floor area of residential uses, 65,931 square feet of gross floor area of commercial/retail uses and 14,307 square feet of community center uses as part of the 10% public/recreation and open space uses.

The application states that ninety-one (91) of the units are planned for 55+ age restricted independent senior housing units with between 80% and 100% of those units being rent restricted (at up to 50, 60 or 80% Area Median Income (AMI), not to exceed an average household income of 60% AMI (Proffered Conditions 8 and 11). Between 80% and 100% of the remaining 48 units *may be* rent restricted (at up to 50, 60 or 80% AMI, not to exceed an average household income of 60% AMI; however, this will not be committed to or finalized until the applicant receives finance closing (Proffered Condition 12).

Non-residential uses would be limited to uses permitted in the Local Business (B-1) District and certain General Business (B-2) District under circumstances that minimize impacts of vehicular traffic on the desire development pattern and surrounding area, not including automobile-oriented uses such as automobile repair, sales or car washes.

PLANNING COMMISSION ACTION REQUESTED:

Staff recommends DENIAL of the rezoning request and Preliminary Site Plan for the following reasons:

1. The development proposal lacks clarity necessary to offer relative findings as to the exact mix of residential housing types proposed, except that between 80 and 100% of the senior occupied units may be rent restricted based on AMI and between 0 and 100% of the non-senior occupied units may be rent restricted. The application and proffered conditions include language that allows modifications in rent restricted housing types based on the applicant's final financing structure which is undetermined.
2. While the Land Use Map of the County's Comprehensive Plan (Plan) designates the subject property as part of a Development Service District where the County should channel future development, the Plan offers growth objectives where new development should concentrate at the edges of the Town of

Tappahannock given the need for centralized sewer and water facilities and that adequate public facilities should be in place or proposed prior to development approval, regardless of where the development is located. Public sewer is not planned to serve the subject property, unless a modification is approved by the County in its contract for sewer capacity to offer a portion of the capacity to the development. The Plan states that the County has reserved its sewer capacity for industrial development.

3. The Plan states that PUDs “can be brought to land only in those areas which meet the standards framed in the County ordinance and consistent with the Plan concepts”. The subject property is located west of Bray’s Fork, away from the Town’s edge. The Plan suggests development should be of a controlled nature, channeled into the most appropriate areas necessary to effectively sustain adequate levels of public services, such as at the edges of the Town of Tappahannock. While some supporting services are possible with the proposed B-1 uses and “could include” services geared toward seniors, there is no commitment that the uses will be limited or developed as those that will support the residents’ convenience and personal service needs.
4. The Plan suggests that the County should encourage development that is in keeping with the character of existing land uses. While the proximity to the hospital may be appropriate for a higher density mixed housing development, residential use immediately adjacent to a County industrial park is not compatible.
5. The front 500 feet of the subject property is identified by the Plan as part of a Highway Corridor Enhancement District which is given to properties lying along major transportation corridors where site design should be considered to protect and improve the quality of visual appearances. The Plan’s policy recommendations and the design standards of the Zoning Ordinance ensure reasonable, quality developments result. For PUD developments, the Plan suggests that threshold size and location requirements will be framed by County ordinances to guide decisions regarding their location. Standard Exceptions requested with this proposal include exceptions to permit a reduced project size which correlates to an overall design with reduced open space and increased overall density. Exceptions also include increased building heights and massing; larger signs; reduced landscaping; and less parking and loading areas provided. Justification, beyond the need for increased density on a smaller than ordinance required 15-acre project size, for these modifications have not been demonstrated to give considerations that they would promote an integrated development plan equally beneficial to the development than would be obtained under the Ordinance’s existing development standards and that they would not have a detrimental influence on the surrounding area.
6. While housing variety is important to the overall vitality of a community, oversaturation and/or a lack variety within a development such as this could negate the benefits. The applicant has not provided substantive analytics supporting the need for what may become a fourth Low Income Housing Tax Credit (LIHTC) property in Essex County or the surrounding region.
7. A Standard Exception is proposed to reduce points of vehicular access into the development from two to one and to allow private roads. For safety and convenience of access, the Zoning Ordinance requires two (2) points of access for developments with over 51 residential units. The property does not contain the necessary frontage to meet VDOT entrance separation requirements without a VDOT approved waiver. Staff is concerned that a lack of a second access, and thereby less traffic distribution could cause safety issues, especially in an emergency, and have a negative influence on area traffic at the project’s intersection and internally for residents and commercial patrons. In addition, the traffic impact analysis indicates the levels of service of Route 360 would likely be diminished.
8. The Preliminary Site Plan does not reflect the proposed increase in gross floor areas of uses allowed in Proffered Condition 6. It would be appropriate for the plan to be revised to offer modified site

designs/layouts to reflect the variations and to offer clarity in where reductions would occur in other uses such as for increased residential gross floor area.

9. Proffered conditions, last revised 6.1.2023, need to be modified before they are accepted to ensure enforceability. Clarity is needed in proffer language relative to: the date of the General Development Plan (Proffered Condition 2); conflicting use of terms multi-family residential, senior and senior living units, workforce housing, residential buildings, residential architecture and building exteriors (Multiple conditions); clarity of the B-2 uses proposed (Proffered Condition 5); use of the term Standard Exception (Proffered Condition 4); assurance that general care and housing will not include assisted living operations (Proffered Condition 9); exterior building materials proposed, definition/treatment of rear elevations and timing for approval (Proffered Condition 13 and 14); ensure the number of parking spaces to be provided – minimum or maximum of 395 spaces (Proffered Condition 15 and Standard Exceptions); and verify standards for private road construction is to VDOT standards for construction and dimensions. (Proffered Condition 17)

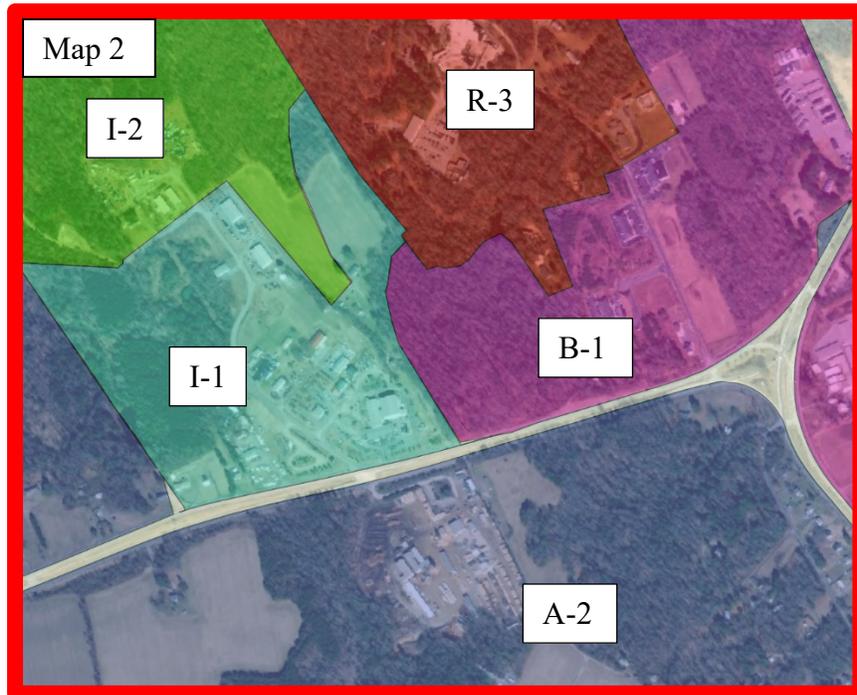
10. Clarity is needed in the relative to Standard Exceptions requested for building height. The application indicates that the site’s topography would allow a 5-story building to appear as a 4-story building, but the Standard Exceptions limit buildings to a maximum of 4-stories or 60 feet whichever is less. In addition, clarity is needed for the proposed number of units per floor in Building C, the difference between the parking exceptions proposed and the minimum of 395 spaces offered in Proffered Condition 15, and for loading area parking.

ZONING AND LOCATION:

In the Central Magisterial District, the subject property fronts approximately 554 feet on the westward lane of Route 360 approximately 1500 feet west of the light at the Bray’s Fork intersection and is known as Tax ID 36_43 in the vicinity of Brays Fork, VCU hospital, Tidewater Lumber Corporation, and directly adjacent to the LaGrange Industrial Park. Additionally, the red area (inside the white rectangle) on Map 1 generally depicts the proposed development.



Map 2 depicts the current zoning of the subject and surrounding parcels. The proposed development is located on the edge of the LaGrange Industrial Park, a large area zoned I-1 and I-2.



COMPREHENSIVE PLAN:

Map 3 on the following page shows the designations of the subject and surrounding properties per the County’s Adopted Comprehensive Plan. The subject and surrounding properties are designated as Development Service District areas as indicated in yellow, with properties along the major corridors, shown in pink, as Highway Corridor Enhancement District areas.

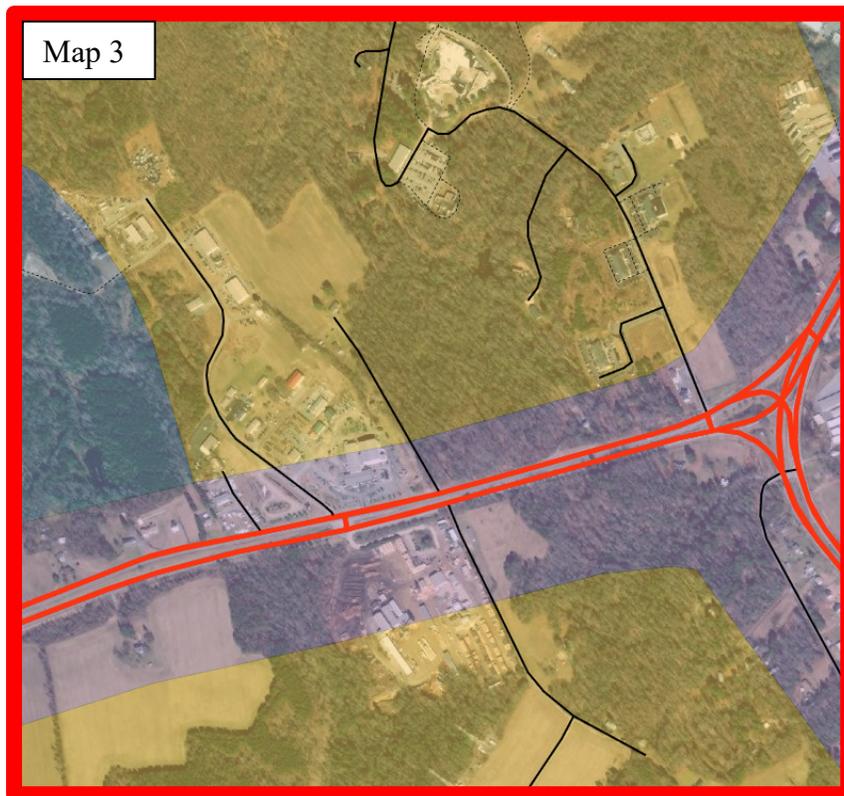
The Development Service District areas are identified as areas to be developed where adequate public facilities can be provided and recognizes these areas as areas that may be appropriate for PUD development, subject to guidelines of the Zoning Ordinance and as provided in the Plan.

The Plan is a long-term, 20-30 year, planning document. The Plan provides that the Development Service District areas generally corresponds to locations where growth can be most cost effectively supported within the planning period and contains approximately 3,200 acres and adds that how development in this area will be managed in this district will be dependent on both the County and Town’s relationship as they will guide growth in the area based on mutual decisions. The Plan notes the importance of the County and Town to determine how growth objectives in these areas may be best accommodated while protecting the qualities of rural character both currently enjoy.

One growth objective provided the Plan suggests is that the County should encourage development that is in keeping with the character of existing land uses. Additionally, the Plan offers growth objectives where new development should concentrate at the edges of the Town of Tappahannock given the need for centralized sewer and water facilities and that adequate public facilities should be in place or proposed prior to development approval, regardless of where the development is located.

The Plan further provides that PUDs “can be brought to land only in those areas which meet the standards framed in the County ordinance and consistent with the Plan concepts”. The subject property is located west of Bray’s Fork, away from the Town’s edge. The Plan suggests development should be of a controlled nature, channeled into the most appropriate areas necessary to effectively sustain adequate levels of public services, such as at the edges of the Town of Tappahannock.

Finally, as noted, the frontage of the subject and area properties is designated as a Highway Corridor Enhancement District. This designation is given to properties lying along major transportation corridors where site design should be considered to protect and improve the quality of visual appearances. The Plan’s policy recommendations and the design standards of the Zoning Ordinance ensure reasonable, quality developments result. For PUD developments, the Plan suggests that threshold size and location requirements will be framed by County ordinances to guide decisions regarding their location.



ZONING ORDINANCE AND PROPOSAL:

June C. Monterio and Developer, 7 & M Development, LLC requests rezoning approval, in accordance with Zoning Ordinance Sections 36.110 and 36.111 and a Preliminary Site Plan approval, in accordance with Zoning Ordinance Sections 36.181. Proffered Conditions have been offered in this case as permitted in Article III, Division 4. Staff recommends that prior to acceptance the proffered conditions should be revised to remove conflicting language and ensure enforceability.

STANDARD EXCEPTIONS AND WAIVER REQUEST

With the approval of this request, the applicant is requesting exceptions to Ordinance standards as outlined in the table on the following page. The Ordinance provides that an applicant may request to develop portions of the

development at higher densities than stated for that particular use or may request flexibility in ordinance standards to accommodate the planned design and to encourage innovative and creative site design and high-quality development. In this case, justification has not been provided to indicate that the site design is innovative or creative, but moreover, is the result of over development of a property with an area less than (13.186 acres) than the minimum suggested 15-acre project size for a single use residential multi-family development. Staff is concerned with the ability to develop a high-quality development considering the number and type of Standard Exceptions being requested.

Standard Exceptions	Location	Request	Zoning Ordinance Standards	Recommend Approval of Exception	Comment
Private Roads	Main Entrance and throughout	Main entrance and site roads are proposed as private instead of public	VDOT maintained roads	No	A project this size needs VDOT maintained roads
Density	Sitewide	10.54 du/ac	10 du/ac	No	Out of place with surrounding residential areas; represents over development of property
Maximum Number of Multifamily Dwelling Units Per Floor	Building C	Over 10 units per floor in Building C	10 units/floor	No	Creates large building mass; clarity needed in the number of units proposed per floor
Height	Buildings C, A2 and B2	The lesser of 4 stories or 60 feet in height	35 feet	No	Concern with high quality and visual appearance along corridor; conflicts narrative which identifies 5-story buildings being proposed
Parking	Sitewide	Reduced parking; possibly maximum of 395 spaces	Various	No	There are too many variables regarding final disposition of residential and non-residential space; reduced parking could result in site congestion and future parking issues; justification of reduced numbers not accepted

Standard Exceptions	Location	Request	Zoning Ordinance Standards	Recommend Approval of Exception	Comment
Project size	Sitewide	Minimum 13.186 acres	15 acres	No	Approximately 8% of the project area is a private road (Mt Clements) that does not benefit the project; the actual project size is smaller; density is calculated on the complete acreage; represents over development of the property; the 15-acre minimum is required for single use multi-family residential development; a larger site would be appropriate when incorporating mixed uses
Off-street loading	Building A1, A2, and B2	Reduced spaces and dimension	Various	No	There are too many variables regarding final disposition of residential and non-residential space to commit to a parking exception; reduced parking could result in site congestion and interior site movement issues
Freestanding Sign	Entrance	Increased Area and Height	Various	No	Ordinance allowance for signage is appropriate
Wall Sign	Building A1, A2, and A4	Increased Area	Various	No	Ordinance allowance for signage is appropriate
Landscape	Sitewide	Parking islands every 10 spaces	Parking islands every 10 spaces with 10% of the area landscaped in addition to perimeter landscaping	No	Parking lot landscaping minimizes/softens visibility of parking areas and breaks-up expansive areas for parking; adds to overall quality of a development

Standard Exceptions	Location	Request	Zoning Ordinance Standards	Recommend Approval of Exception	Comment
Access Points	Sitewide	One Access Point	2 access points for over 51 residential units	No	One access given the mixed use development proposed is not acceptable due to safety and traffic congestion concerns

VIRGINIA DEPARTMENT OF TRANSPORTATION:

VDOT has accepted the Traffic Impact Analysis. VDOT must approve the location of the proposed access to Route 360 in conjunction with site plan approval.

PUBLIC UTILITIES:

Public sewer and water are required for the project. Contracts for public water and septic, with either the Town of Tappahannock or Essex County, have not been agreed upon.

ENVIRONMENTAL:

The parcel is 13.186 acres. Approximately 90% of the parcel (11.82 acres) will be cleared for the project. A Water Quality Impact Assessment (WQIA) was not submitted, but is required based on the amount of clearing

DEQ has NOT reviewed the project. DEQ review is required in conjunction with final site plan review.

CONCLUSION:

Staff recommends the Planning Commission recommend DENIAL of this request as outlined herein.

Should the Commission entertain deferral of this request, Staff recommends that the deferral be made until the Commission’s regularly scheduled August 2023 meeting to allow the applicant time to work with staff to modify their proposal.

FINAL DEVELOPMENT CONDITIONS**CASE #R-20230003****6/1/2023**

By the signature below, 7 & M Development LLC. offers the following Proffered Conditions in conjunction with Case #R-20230003 on behalf of itself or its assigns. Each proffered condition made in connection with this application for rezoning was made voluntarily and complies with applicable law. No agent of the County has suggested or demanded a proffered condition that is unreasonable under applicable law.

1. This Standard Exception and associated waivers and other approvals are granted for and run with the land indicated in this application and is not transferable to other land.
2. The development of the property will be in substantial conformance with the General Development Plan ("site plan").
3. All residential units will be rental units, owned and managed in common ownership. Multifamily residential and senior units will remain rental units and will not be for-sale units.
4. This Standard Exception is granted only for the purpose(s), structure(s) and/or uses(s) indicated on the plans approved with this application, as permitted in PUD, and as qualified by these development conditions. Notwithstanding the foregoing, overall residential Gross Floor Area (Gross Floor Area as determined by the Building Code Official) shall not exceed 200,000 square feet within the PUD.
5. Non-residential uses will be limited to those permitted in PUD and B-1 Zoning Districts.
6. The site depicts approximately 176,556 Gross Floor Area of residential uses; 64,737 Gross Floor Area of commercial/retail uses; 14,307 Gross Floor Area of community center uses; and 1,194 Gross Floor Area of retail drive-thru uses. The site must not exceed 200,000 Gross Floor Area of residential uses; 70,000 Gross Floor Area of commercial/retail uses; 20,000 square feet of community center uses and 3,000 square feet of retail drive-thru uses.
7. The capacity of the multifamily dwelling units must not exceed an aggregate total of 180 bedrooms. Of these 180 bedrooms, there shall not be greater than 13 studios, 85 one-bedroom units, and 41 two-bedroom units.
8. The senior living units must be operated in compliance with these conditions and all applicable federal, state, and local laws, including 42 U.S.C. § 3601 et seq. as amended, including the Fair Housing Amendments Act of 1988 (FHAA) and the Federal Housing for Older Persons Act of 1995 (HOPA), and as implemented by HUD regulations at 24 C.F.R part 100.300 (collectively, the FHA), and the Essex County Zoning Ordinance. In accordance with HOPA, the senior living units shall be operated for occupancy by persons 55 years of age or older. Each senior living unit shall be rented such that at least one resident in each unit is a person at least age 55 or over.
9. Services geared toward the 55+ population could include, but not be limited to, resources such as home maintenance, wellness services, educational programming, and transportation services. Housing and

general care may be provided only for persons who qualify for the age-related exemptions of the Federal Fair Housing Amendments Act of 1988 (FFHA) or for persons with disabilities.

10. Upon specific request by the County Administrator, the owner or manager of the multifamily dwelling units and/or senior living units must provide a copy of any documents used to verify the occupancy qualifications of residents.
11. At least 80% of the 91 senior living units will be income restricted at up to 50 percent, 60 percent, or 80 percent AMI. The senior living units shall be leased to households which will result in an average household income of no greater than sixty percent (60%) of AMI for all of the multifamily dwelling units. The foregoing income and tenancy restrictions shall be set forth in a declaration of covenants approved by the County Attorney benefitting the County or its designee, and also approved by or consistent with the relevant state or Federal program, and recorded among the land records in the Clerk's Office of the Circuit Court of Essex County, Virginia prior to final approval of the first site plan, and shall remain in effect for a minimum of thirty (30) years from the date such covenant is first recorded.
12. At least 80% of the multifamily dwelling units will be income restricted at up to 50 percent, 60 percent, or 80 percent AMI. This will not be committed to, nor finalized, until finance closing. The multifamily dwelling units shall be leased to households which will result in an average household income of no greater than sixty percent (60%) of AMI for all of the multifamily dwelling units. The foregoing income and tenancy restrictions shall be set forth in a declaration of covenants approved by the County Attorney benefitting the County or its designee, and also approved by or -consistent with the relevant state or Federal program, and recorded among the land records in the Clerk's Office of the Circuit Court of Essex County, Virginia prior to final approval of the first site plan, and shall remain in effect for a minimum of thirty (30) years from the date such covenant is first recorded.
13. The residential architecture shall be designed and constructed of high quality architectural and building materials and similar in design to the perspective elevations shown on the site plan. The exterior building materials shall consist of a minimum of thirty percent (30%) brick or stone. There shall be no vinyl siding on the rear elevations of the multifamily dwelling units.
 - a. Building elevations demonstrating compliance with this Proffer shall be subject to review and approval for substantial conformance by the Department of Planning and Zoning prior to the approval of the site plan or construction plans and profiles.
 - b. The residential buildings must maintain the residential character of the dwelling as shown in the application. The Applicant may change the colors and materials of the exterior finishes of the residential buildings provided the residential character of the structure is preserved.
14. The commercial architecture shall be designed and constructed of high quality architectural and building materials and similar in design to the perspective elevations shown on the plan.
 - a. Building elevations demonstrating compliance with this Proffer shall be subject to review and approval for substantial conformance by the Department of Planning and Zoning prior to the approval of the site plan or construction plans and profiles.

15. The development will provide a minimum of 395 on-street and off-street surface parking spaces for residential and non-residential uses.
16. Subject to Virginia Department of Transportation (VDOT) approval, the Applicant will install appropriate median channelization to prevent left turn movements along the main entrance at the first internal drive aisle, at the time of site plan.
17. Any private roads on the property will meet all requirements for maintenance, dimensions and other standards as a public roads.
18. The development will include a minimum of 10 percent public/recreational and open space uses.

This approval, contingent on the above noted conditions, shall not relieve the Applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The approval of this application does not interfere with, abrogate or annul any easements, covenants, or other agreements between parties, as they may apply to the property subject to this application.

