

Board Agenda Item
January 26, 2009

3:30 p.m.

Public Hearing on PCA 78-S-063-06 (The Aerospace Corporation) to Amend the Proffers for RZ 78-S-063 Previously Approved for Office to Permit Modifications to Proffers and Site Design with an Overall Floor Area Ratio of 0.50, Located on Approximately 40.41 Acres Zoned I-3 and WS, Sully District

and

Public Hearing on SE 2008-SU-026 (The Aerospace Corporation) to Permit an Increase in Building Height from 75.0 feet up to a Maximum of 165.0 feet, Located on Approximately 40.41 Acres Zoned I-3 and WS, Sully District

The application property is located in the northeast quadrant of the intersection of Stonecroft Boulevard and Lee Road at 4801 Stonecroft Boulevard, Tax Map 44-1 ((4)) 35.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, January 15, 2009, the Planning Commission voted 8-3-1 (Commissioners Alcorn, Hart, and Lawrence opposed; Commissioner Harsel absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of PCA 78-S-063-06, subject to the execution of proffers consistent with those dated January 13, 2009; and
- Approval of SE 2008-SU-026, subject to the Development Conditions dated December 31, 2008 and subject also to the Board's approval of PCA 78-S-063-06.

ENCLOSED DOCUMENTS:

None. Staff Report previously furnished.

STAFF:

Regina Coyle, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
William O'Donnell, Staff Coordinator, Zoning Evaluation Division, DPZ

solutions to the problem. And the professionalism of the applicant's team is not to be ignored. That isn't our problem. Our problem as staff is to report to you and to the Board whether or not an application is in conformance with the adopted policies, rules, and regulations of Fairfax County. There are samples, and I guess I'll go ahead and refute this. Billy was going to do it. But there are examples that the applicant has proposed where there are precedents for EQC encroachment. And, you know, it's the applicant's opinion that those are precedential for this case. We beg to graciously disagree. We don't believe that the circumstances in those cases were the same or that particular encroachments are, you know, accruable into what we're looking at here. We think each of those cases stands on its own merit and we're not debating the fact that there were indeed other encroachments in other situations. What's unique about this particular project is not the encroachment so much as the trade-off. And what is happening here is – Noel Kaplan has a wonderful analogy about a gastric bypass, which I think is really very good, but I can't do it justice. But basically what is happening is there is a sacrifice of a small portion of an EQC here. And it is a sacrifice. It will be filled. It really won't be EQC under our definition any longer. But what it does is propose a restoration and a program which will benefit, we believe, all of us I think, believe it will benefit a much larger area of the EQC. I think it's a very intriguing possibility. The policy currently does not allow us to look at that and say, "Is this a good idea?" We have looked at it from the PFM. And Jerry and Mary Ann can probably express much more eloquently how this works than I can. But the issue becomes the trade-off. The EQC is a policy, and, you know, it is our comfortable opinion that what you have before you in the staff report is an adequate and thorough analysis of that policy. It's up to you to determine whether or not an exception, maybe, is a good idea here.

Commissioner Lawrence: Mr. Chairman?

Commissioner Hall: Okay. Thank you very much.

Chairman Murphy: Mr. Lawrence.

Commissioner Lawrence: Thank you, Mr. Chairman. This is very difficult. There is a great deal in this application to applaud. I wish I had the time to detail that. I don't know what my colleague's intention is. I urge that the decision be deferred. Let me say why. As I understand it, the whole thing pivots around the EQC policy. We have this policy; it's a long-standing policy. It's not entirely rigid, although you have said that it was written to be such. Your own staff report forgives intrusions into the EQC in this very application because of their nature. So it would appear that it is the nature of the intrusion. That is, the purposes for which the intrusion is made, the structures, the parking lot, the tunnel, this and that and the other, that to you are so egregious that they constitute a violation of the policy any way you look at it. And you're saying, "We can't stomach this. If we let this go, we have no policy."

Ms. Abrahamson: Yes. I guess so. I think there's a much –

Commissioner Lawrence: All right. Let me then ask you this question. And I asked this question a while ago when I was talking to the applicant. Tonight they said that the answer was no, but

Chairman Murphy: Yes, Mr. Alcorn.

Commissioner Alcorn: Just quickly, regardless of what happens with this case, I would encourage Commissioner Hart with the Environment Committee to bring this topic to the committee; and the issue of trade-offs for EQC. I think it is a very important policy issue that we should be talking about, apart from this case. Thank you.

Chairman Murphy: I probably should have disclosed this when I called for disclosures and Mr. Hart was the only one that disclosed it. But I will disclose the fact that back in 1985 there was no Sully District and the Springfield District went from Keene Mill Road out to Loudoun County. And Westfields, which was then zoned by a Board's own motion "industrial," was in the Springfield District. And I had the honor and the privilege of doing the rezoning that was referred to tonight as "a loosely constructed proffer on the EQC." My disclosure is that I had nothing to do with that proffer. I think Mr. Rolband was the one who wrote it. But quite frankly, at that particular time, and going back years before that, the reason all this land in this very valuable – what is now a very valuable part of town – was zoned industrial by a Board's Own Motion, because it was in close proximity, theoretically speaking, to Dulles Airport. And the Board zoned a lot of land in Fairfax County near railroad tracks and near the airport to be industrial, thinking industrial use will be good for the economy. And that of course did not happen in Fairfax County. The industrial use was good for the economy. What they determined later on was that other office, parks, and so forth, where we are today, was better for the economy than industrial, especially industrial traffic. So we did go and rezone this property so that we could have the uses like we have tonight in this application. And quite frankly, the staff said it was not in conformance with the Comprehensive Plan. And they're talking about that part of the Plan which deals with the environment. But when you look at the language for this particular site on the Westfields development, it is in conformance with everything that the Plan calls for. The FAR is .50. It is an office development in a highly regarded office park. And Mr. Lusk brought up the fact that we're dealing with BRAC on the other end of the County and that we're looking for contractor development near Fort Belvoir and the Engineer Proving Ground to save trips, etcetera, and so forth. What better example of that is right here in this application, which again is in conformance with the Comprehensive Plan. The precedents that we were talking about, and everybody gets nervous with the word "precedent," you know, we have had this encroachment precedent before; maybe not as Mr. Hart articulated earlier in one of his questions, one-by-one, by-one, by-one, and say, "No, we've never had one like that before." Well, no we haven't because every application is different and has to be judged on its own merits, and you probably will never see that again. But I can tell you the ones we've approved – and I believe there was one in the Hunter Mill District; there was one in the Providence District early on, it might be in the early, you know, 1990s or so – none of them were alike either. But we approved them. Where this does set a precedent is, in those other applications that we approved because there was encroachment, there was not an offsetting trade-off. None of the others, in my opinion, had a trade-off as dramatic as this that mitigates, that mitigates this invasion into the EQC. Any other questions or comments from the Commission? Closing comments from staff? Final questions, comments from the Commission?

Commissioner Hart: I'll make them now. Two kinds of comments. First of all, I will say I've skimmed through the 20-some page addendum that was handed out this evening. This has been a difficult case. It involves a site of over 40 acres. I've sat through, I think, four lengthy presentations by the applicant, did a site visit, including the balloon test, went on a trip to Reston to see the stream restoration, and I've tried to read everything that we got. I even came in Tuesday morning to see if we had gotten anything else. I didn't come back to this building until this evening when this was in the pile. But we were starting the transportation meeting in a few minutes. Usually on a case like this, we don't vote the night of big substantive new things being handed out. I'm concerned that these proffers, however well-intentioned, haven't been entirely vetted. And I would have been more comfortable if we weren't voting the same night as a 20-some page addendum that, I don't know if anyone's had the chance to go through. Having said that, I'm prepared to at least make some observations. I, like Commissioner Lawrence, have some problem with voting on this without a change to the policy. The procedural dilemma that this case creates raises, to my mind, Countywide issues. I want to say I appreciate also the applicant's efforts. And I think I've been a skeptic of this approach from the get-go. But I would acknowledge there are some very attractive proffers or ideas in here. I have no problem whatsoever with the height. We haven't spent any time talking about the height increase, which is really what the special exception was about. No one can see it; no one will be bothered. There are other big things around. It's an attractive building. It shouldn't bother anybody. It wouldn't bother me if one side or the other was a little higher even, and perhaps some of the intensity pushed to one side or the other. The stream restoration also, I think, is a positive example. And whether we're getting into the trade-off business or not, I think there are plenty of cases where this type of stream restoration – maybe not as big of an area – but it ought to be considered, it ought to be something we're talking about on these cases. This applicant also, however, asks to do several things which are in conflict with the existing policy, putting a building surface parking, stormwater management, and this underground corridor within the EQC, and also pipe two perennial streams. Those are dramatic requests. The Board, instead of going in that direction, I think, the last couple years, has been promoting policies of expansion of our protections of streams. And we've been spending a lot of time with the Environment Committee looking at what we thought were going to be regulation of not only the RPAs on the map, but also intermittent and ephemeral, but at least going upstream from these existing buffers for all kinds of reasons. And staff has alluded to that and I think they go beyond merely a mathematical calculation of the amount of site disturbance or something else. The Board, to my mind, hasn't been suggesting that we're going to rationalize development in those EQCs with trade-offs or negotiations. In my view also, it's a mistake to evaluate this site in isolation. It looks pretty good if we're looking at this one site at a time. But setting aside this height special exception, which I don't really think is driving this, a proffered condition amendment is essentially a rezoning which sets important precedents with consequences. There really isn't any viable way to wordsmith a motion on a PCA or a rezoning so that it doesn't set a precedent. The courts have repeatedly told us that a locality impermissibly discriminates when it denies to one owner what it has already granted to a similarly situated owner. There are many sites throughout this County which are problematic for development because they have EQC or streams on them, where people have been waiting for years, and sites are vacant, and maybe we had assumed those sites probably wouldn't be developed. Once we open the door, we create incentives to revisit those

haven't done is have trade-offs. There have been negotiated areas in EQCs, and that's been happening for a very long time and for very minor –

Chairman Murphy: So this is better because of the trade-off.

Ms. Abrahamson: What this does is provide a mitigation, which is a trade-off for a loss of a certain area.

Chairman Murphy: Okay.

Ms. Abrahamson: That's different. And that, to my knowledge, is unprecedented.

Chairman Murphy: Okay. So we have a denial on an application that has a trade-off that makes the whole environmental situation better in this case, where the others we had approval to an encroachment where there wasn't as good a trade-off as this.

Ms. Abrahamson: Right.

Chairman Murphy: The public hearing is closed; recognize Mr. Litzenberger.

Commissioner Litzenberger: Thank you, Mr. Chairman. Thank you, Mr. Chairman. Please bear with me fellow Commissioners. This is a long one. Mr. Chairman, as I begin, I just want to say that this application is less complicated than the size of the staff report would suggest. And that is a direct result of the tremendous efforts by County staff, including Billy O'Donnell, Kris Abrahamson, Noel Kaplan, Jerry Stonefield, Pam Nee, and Mary Ann Welton. I also want to make sure that my fellow Commissioners are cognizant of the time and energy expended by the applicant's team to work cooperatively with staff and to respond quickly and comprehensively to each of the identified concerns. Given the scope and number of issues we had at our initial meeting, I am satisfied that staff and the applicant both tried diligently to get this application into approvable condition. While we all would obviously prefer no inclusion – intrusion into the EQC, I believe that this application has significant merit for the following reasons: This application proposes no increase in density over what is currently permitted. The applicant is requesting an increase in allowable building height and to permit a relatively small encroachment into the EQC. Over half the site, 21 acres, will be preserved. As part of the proposal the applicant has committed to secure LEED certification and to incorporate several LID measures. They have also agreed to contribute towards the construction of an off-site stream valley trail. The proposed landscape plan also provides for exemplary perimeter buffering where the Zoning Ordinance requires none. And the applicant has proposed to include a significant tree preservation area with a large portion further dedicated as a conservation easement. This tree preservation plan has a goal of ensuring protection to trees on the perimeter of the limits of clearing and grading. As stated by the applicant, the function of the proposed buildings and the security requirements of the federal government have dictated their design. Staff has correctly noted that a different tenant may have different needs which the site may have been able to accommodate without intrusion into the EQC. Nevertheless, the desire of Aerospace to locate this parcel in Westfields, adjacent in close proximity to the clients they serve, has other significant benefits to the County,

THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF PCA 78-S-063-06, SUBJECT TO THE EXECUTION OF THE PROFFERS CONSISTENT WITH THOSE DATED JANUARY 13TH, 2009.

Commissioners Flanagan and Lusk : Second.

Chairman Murphy: Seconded by Mr. Flanagan and Mr. Lusk. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve PCA 78-S-063-06, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioners Alcorn, Hart and Lawrence: Nay.

Chairman Murphy: Motion carries. Mr. Lawrence, Mr. Alcorn, and Mr. Sargeant (*sic*) vote no.

Commissioner Sargeant: No. I voted yes.

Commissioner Hart: I voted no.

Chairman Murphy: Vote no, Hart. Sorry.

Commissioner Hall: Yeah. It was Mr. Hart.

Chairman Murphy: Hart, Lawrence –

Commissioner Hart: Hart, Lawrence, Alcorn.

Chairman Murphy: – and Alcorn. Sorry about that.

Commissioner Litzenberger: Secondly, I move the Planning –

Chairman Murphy: Motion carries.

Commissioner Litzenberger: What was the vote, sir? Was it seven to three?

Commissioner Flanagan: Seven – three. (*sic*)

Commissioner Litzenberger: Seven – four? (*sic*) Any abstentions?

Chairman Murphy: Mr. Lawrence, Mr. Alcorn, and Mr. Hart voted no.