

Board Agenda Item
December 9, 2002

3:00 p.m. Item – RZ-2002-LE-005 - Susan Wise Clay
Lee District

On Wednesday, December 4, 2002, the Planning Commission voted 8-0-1 (Commissioner Byers abstaining; Commissioners Alcorn and Kelso not present for the votes; Commissioner Harsel absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of RZ-2002-LE-005, subject to execution of proffers consistent with those dated December 4, 2002, amended as follows:
 - Revise the second to the last sentence of proffer 3 to read, “Landscaping, which may include evergreens and seasonal flowers and displays, will be installed around the base of the sign while the sign is in place.”
 - Revise proffer 9 to read, “The application property will have no more than one dumpster, which will be screened and gated in the general area shown on the GDP.”
- Waiver of the lot width requirement;
- Modification of the transitional screening requirements, along the northern and western property lines and that portion of the southern property line which abuts residential uses, to permit landscaping as shown on the GDP and as further modified by the revised proffers dated December 4, 2002;
- Modification of the barrier requirements along the northern, western, and a portion of the southern property lines as shown on the GDP and reflected in the revised proffers dated December 4, 2002;
- Modification of the streetscape requirement along Richmond Highway to that shown on the GDP and as further modified by the revised proffers dated December 4, 2002;
- Waiver of the interior parking lot landscaping requirement;
- Waiver of the service drive requirement;
- Waiver of the front yard setback requirement for Phase 2 of the development when the 100-foot right-of-way is demanded by the Board of Supervisors; and
- Waiver of the frontage improvements along Richmond Highway to permit existing conditions to remain.

Planning Commission Meeting
December 4, 2002
Verbatim Excerpt

RZ-2002-LE-005 - SUSAN WISE CLAY

Decision Only During Commission Matters
(The public hearing was held on October 17, 2002.)

Commissioner Wilson: Mr. Chairman, we have a decision only on a rezoning application that is down on Route 1 in the Lee District; that is in a commercial revitalization district. This is RZ-2002-LE-005. The applicant is Susan Wise Clay and it's for the Village Turf site. This has been a long process, trying to get this site moving along for this rezoning. And just to give you a real quick history, this is a site where the applicant began a landscape contracting office on land that was partially zoned for commercial, C-8, and partially zoned for residential. And there was a zoning violation against the applicant that ended up going to court and the applicant -- as a result of that, there was a court order for the applicant to clean up the property, take away the commercial uses, until either they obtained a site plan for the commercial site or they obtained a rezoning. Let me just clarify one thing. I think I mentioned at the hearing that they were under court order to get the rezoning and I just want to clarify that they are not under court order to get the rezoning, they just have to come in to compliance with the Zoning Ordinance, either by getting their site plan approval for the commercial site or by getting the rezoning. So I just wanted to clarify that for the record. But the main, important point I want to make is that the applicant has now cleared the violation and they are no longer in violation and that is one of the reasons why we're going forward with the rezoning. They've worked very hard to clear that violation. They've worked very hard to come up with a generalized development plan and proffers that address all the concerns of the staff that were reflected in the original staff report that was dated October 2, 2002. We also had an addendum dated November 6 that addressed some of the issues that had been resolved. And we've worked ever since then to get the remaining issues resolved. Let me just let you know where we are right now. The -- I think every issue staff had with this site has now been resolved, with the exception of three items on which we've agreed to disagree because I don't think we're ever going to come to an agreement on them. One of them has to do with the service drive along Route 1. The staff has requested -- and the applicant has agreed -- to dedicate 100 feet of right-of-way along Route 1 for the future widening. That would include land for a service drive. Unfortunately, right now we don't know how or when that widening will take place. We don't know how much land VDOT is going to need and we don't know where the service drive is going to be when that widening takes place. And even though staff believes the applicant should commit to building the service drive, I do not believe that that is appropriate, given the amount of land they're already agreeing to dedicate, given the size of the lot, which is really not that big, and given the fact that they might construct the service drive and then just have VDOT come along in a few years afterwards and tear it all up again to put a new one. So, to me, I don't think it is reasonable or realistic to put in a service drive now that could just be torn up in the future. There's also some concern that if the service drive is put in now prior to the widening, it may create a new cut through area which the district supervisor and the residents in that area are not sure they want to see. So I am not going to make

a recommendation that the applicant construct a service drive. Another issue has to do with the transitional screening. Staff has taken the position that the transitional screening for the site is minimal. However, it is a commercial revitalization district. Under the CRD requirements for this property the applicant is entitled to request a reduction of the transitional screening, of up to two-thirds the site is required. We have tried to ensure that the screening still includes a substantial amount of landscaping in that screening area even though the screening area will be reduced in accordance with the CRD requirements. Another thing that we're requiring, the applicant has agreed to, is with respect to a couple of buildings that they're going to propose for building on site -- which I'll discuss in a minute -- but they've agreed to paint the back side of one of their buildings, an equipment shed, a color green -- we call it medium green, but it's something to blend in with the landscaping on the back side and the sides of the building, so that it won't create such a visual hardship by looking at a blank white or beige wall of a building. And that actually was a suggestion made by staff which the applicant has agreed to. With respect to the site layout, which is the third area in which we still have an agreement to disagree, the applicant as you know is a landscape contractor, they have proposed building a large equipment shed along what is the northern boundary. We have a lot of disagreements on what's north, south, east and west on this particular site, but I call it the back side of the property. And staff feels that that building ought to be oriented farther away from the residential units. However, as I mentioned, this is a very small site and the equipment shed was up previously -- that was one of the reasons there was a zoning violation -- because the shed was put up on the residential property without the appropriate and proper approvals. But when it was up, I went back myself and spent some time in the townhouses back behind there and, to me, that equipment shed, while it was standing and it's going to go back up the same way, it actually created a barrier between the townhouses and Route 1 and shielded the townhouses from a lot of the noise that comes from Route 1. And it shielded them from the noise of other existing commercial uses that are just a little further north on Route 1. For instance, on the commercial property right next to the Village Turf property, which is C-8, by right -- it's been there forever and ever -- there's an auto body shop that has created some problems for the residents in the past. This equipment shed actually acts as a barrier to shield the residents from this auto body shop. And it really -- to me, it created a little enclave back there with these townhouses that I thought was very nice. I also did not hear any complaints by the residents of those townhouses with respect to the shed itself. In fact, some of the expressed the fact that they liked it because it did shield the residents from the Route 1 noise. The only thing they were concerned about was the lighting and they wanted to make sure that any lighting that went up on the shed would not be directed toward their townhouses and create a visual problem for them. And the applicant has agreed, in the proffers, to make sure that any lighting is downward directed; any pole lighting is no higher than 20 feet. And this particular building is 20 feet, so it would be no higher than that. And that there be full cut off features for all lighting, except for security lighting, half an hour after the hours of operation. So I think that that has been addressed. One other issue was with

respect to outdoor storage. Staff wanted to have the outdoor storage area for the site further screened from what the applicant had proposed. There is a requirement in the Zoning Ordinance that outdoor storage be screened. However, given the number of fences that are already on site or on the property line, you could end of having a whole series of fences on this site. If you look at the picture Ms. Lewis is showing, there already is a fence along the side contiguous to the commercial. There's a little shopping center market there. In some cases that's a 10-foot fence. There is a fence along the back side, with the Roxbury townhouses. and there's also a six-foot, board-on-board fence all the way along the side of the Roxbury townhouses to the west. And the applicant's also going to be building a greenhouse along the line that parallels the Roxbury townhouses and while that was originally proposed as a temporary building in which case it might not always be up and the outdoor storage might be visible to the townhouses, the applicant has now made that a permanent building, and has agreed to a proffer that in the event that building is not constructed as proposed on the GDP, they have agreed to put up six-foot screening for all the outdoor storage area shown on the GDP. So that one is taken care of and I believe staff is happy with that requirement. We've addressed all the uses on the land that staff was concerned about because they wanted to make sure that any future uses would be appropriate and in conformance with the Comprehensive Plan. The one area of disagreement we had was with respect to other contractor's offices and we've now made that a requirement, that it has to be in conformance with the Comprehensive Plan as determined by the Zoning Administrator. We've also included a requirement that some of the other uses that might be allowed as permitted in C-8 would be subject to a special exception. That is for things like drive-in banks, drive-in pharmacies, which otherwise would not have to have a special exception. We thought that was appropriate for this site. We've added a requirement that any parking for future uses must be in compliance with the Zoning Ordinance. That way somebody could come in and argue that they can use the entire site for retail, but they don't have to meet the parking requirement. So the applicant has agreed to do the streetscape requirements for Richmond Highway when the widening is done. And the other issues I think have all been addressed by staff -- excuse me -- have been addressed in conformance with staff concerns other than the three items I mentioned at the beginning. So, with that, Mr. Chairman, I think we've done just about as well as we're going to do on this site. And I think it is not going to be a bad site once it is all done. So, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF RZ-2002-LE-005, SUBJECT TO THE PROFFERS NOW DATED DECEMBER 4, 2002 that were handed out to you tonight.

Commissioner Hall: Second, however, I ---

Chairman Murphy: Seconded by Ms. Hall. Discussion?

Commissioner Smyth: I have a question, too.

Chairman Murphy: All right. December 4th for the proffers, right?

Commissioner Wilson: Yes

Chairman Murphy: Okay. Ms. Hall, then Ms. Smyth.

Commissioner Hall: I did second the motion because I think this has been improved and this is one of those situations where we have a small business owner and we're trying to work in a revitalization area. However, I am concerned with the language in two of these proposed proffers that I read. The first one has to do -- page 2, it's signage. The last sentence says: "Landscaping, which may include seasonal displays, will be installed around the base of the sign while the sign is in place." I understand what's being said as far as "sign is in place." It may go away with VDOT. However, you're not saying what type of landscaping. You need some language in front of that, whether it's evergreen and it covers, or there needs to be something which says what's going to be there, so that landscaping is a dead flower in a pot. You know, that's a concern. I realize you don't have a whole bunch of time, but, you know, evergreen and covered or some such language, simple and to the point, so that you're not looking at dirt, works for me. And if you want to stick in a couple of candy canes -- I think that's the intent of the seasonal -- all right, maybe it wasn't, but that's the way I read it, that's fine. That's the first one that I think needs just to be tightened up a little bit. We did just get it this evening, otherwise I would have made you aware of this. The other one is Number 9, dumpsters. Not that anybody has any plan to go into the dumpster business, but the way this particular proffer is written, I think that's a real possibility. I quickly asked Commissioner Wilson about how many dumpsters. And she said at the current time there aren't any, however, if they ever get a dumpster, then they would want to have the ability to put the dumpster there. I would recommend that you limit that to a dumpster. And if a dumpster is required on the application property, it will be screened and gated as shown in the general area on the GDP, 'cause you do have it all the way in the back. I just think it's cleaner and it eliminates any possibility of your going into the dumpster business which you could just screen and have the whole thing covered with dumpsters. Now maybe I'm reading it too closely. That's possible, but that was just kind of my first blush. I just think those two need to be tightened. Thank you, Mr. Chairman.

Commissioner Wilson: Mr. Chairman?

Chairman Murphy: Ms. Wilson.

Commissioner Wilson: Let me address those real quick. With respect to -- let me do the dumpsters first because that one's an easier one. There are no dumpsters on site and the applicant right now does not have a plan to put one on. If they put one on, we wanted to make sure it was going to be screened and gated. Let me ask Ms. Lewis, if we make that -- instead of saying "any dumpsters" we say "a dumpster" or "any dumpster" singular.

Commissioner Hall: You're asking a question or you're stating that's the future -- if.

Commissioner Wilson: Yeah. If.

Commissioner Hall: Right. If a dumpster is required on the application property --

Commissioner Wilson: It wouldn't be required. It would only be if they decide to locate one on site, it would have to be screened --

Commissioner Hall: How about "is needed?"

Commissioner Byers: Placed.

Commissioner Hall: Is placed -- "placed" is a wonderful word.

Commissioner Wilson: "Any dumpster which is placed on the application property . . ."

Commissioner Hall: Yeah. I think that says it.

Commissioner Wilson: Let me ask Ms. Lewis. Does that seem like it does okay?

Ms. Cathy Lewis: That sounds good to me, but part of your concern was that they would be establishing more than one. They might have ten. So did you want to say --

Commissioner Hall: Well, I think if you change the word "dumpsters" to "dumpster" and get rid of that "s", you're down to one.

Ms. Lewis: Okay.

Commissioner Wilson: Okay. So let me just read it. It would be: "Any dumpster which may be placed on the application property will be screened and gated as shown in the general area on the GDP?"

Commissioner Hall: Yes.

Commissioner Wilson: Okay.

Commissioner Smyth: Mr. Chairman? I don't think that really gets at it either. I mean, "any dumpster." It does not say there will only be one dumpster. It says that any one you place there is going to be screened. So if the idea it just to get one dumpster --

Chairman Murphy: "The subject property will have no more than one dumpster, which --"

Commissioner Wilson: The application property.

Chairman Murphy: Ms. Smyth.

Commissioner Smyth: Okay. I --

Commissioner Wilson: Wait a minute. Mr. Chairman, there was one other issue that Ms. Hall addressed. The signage. There's actually an illustration that is part of the GDP which shows the landscaping. And the only reason why we put in the sentence about seasonal in there is because they do want to plant flowers and the flowers may not be the same season to season.

Commissioner Hall: Mr. Chairman, I would remind Commissioner Wilson that she is opposed to the popsicle signs and those evergreen bushes look like a series of popsicle signs in a row. So if you do evergreen and seasonal flowers, subject to change, I think you got it.

Commissioner Wilson: May include.

Chairman Murphy: I just -- before we -- I want to make one point here. We're talking about proffers and Ms. Clay, when we start fiddling with all this stuff, we're going to have to ask you to come down because these are your proffers. They're not our proffers. And you're going to have to agree to them.

Ms. Susan Wise Clay: Yes, sir.

Chairman Murphy: So I'm going to listen to what everyone else is saying from now until the end of the discussion and then I'm going to call you down and make sure that you agree to all the fiddling we're doing to you proffers. Okay?

Ms. Clay: Absolutely.

Chairman Murphy: Ms. Smyth.

Commissioner Smyth: Thank you, Mr. Chairman. Ms. Lewis, I know that we've had a sort of short time to look over these proffers. Have you had ample opportunity to look at them? Do you have any issues we should know about?

Ms. Lewis: I think that Mrs. Wilson described them correctly. Actually she did incorporate -- we looked them over this morning and we had some suggestions which I understand Ms. Clay agreed to just to make them better than they were. But as Mrs. Wilson correctly stated, staff

is at a denial because of those reasons that she stated. We do not believe, in light of the Comprehensive Plan language, that the width of the transitional screening is enough. We do not believe that the proposed equipment shelter is compatible with the residential context, again, as the Comprehensive Plan states. We don't think that other contractor's offices are compatible with the Comprehensive Plan language. And there is this disagreement about whether or not the applicant should construct the service drive prior to the widening. Those are the outstanding issues, primarily because of those three, we have a real Plan issue and we cannot get to an approval.

Commissioner Smyth: I understand both sides on the service drive. Was there any discussion of an escrow or putting up some sort of contribution to a future service drive should it be built?

Ms. Lewis: Let me clarify the position from Transportation. Transportation felt comfortable with the dedication of right-of-way because that would accommodate the construction of a future service drive, but they felt if the applicant proceeded with the phase 2 portion of their development prior to the widening, that they then should build the service drive. If the widening of Richmond Highway begins before they do phase 2, which is likely, we're not sure when they will begin phase 2, then they are comfortable with them not constructing the service drive because that's already incorporated into the widening. So that's the disagreement.

Commissioner Smyth: Thank you.

Commissioner Wilson: Let me just clarify too one more thing on that. The applicant has agreed to dedicate the right-of-way whether the demand is made by the Board of Supervisors during phase 1 or phase 2, whenever the demand is made for the widening of Route 1 and that land is needed. So that was another reason. We just didn't know when that was going to take place it seemed kind of ridiculous to me, especially for this small site, for the applicant to be required to build a service drive that may have to be completely redone. And to impose a service drive requirement on an applicant who doesn't need it for the site. And because of my belief that I don't think the Board would support this requirement anyway.

Chairman Murphy: Further discussion of the motion? Evidently not. Ms. Clay?

Ms. Clay: Yes, sir.

Chairman Murphy: Before we cast our votes, are you in agreement with the amendments to the proffers dated December 4th, 2002?

Ms. Clay: I am. And I want to send my compliments and thanks to Ms. Wilson and Ms. Lewis. They have put in innumerable hours of conference time back and forth. This has been a real labor for them and I appreciate every moment. They've done an excellent job. Thank you.

Chairman Murphy: Further discussion of the motion? All those in favor of the motion to recommend to the Board that it approve RZ-2002-LE-005, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioner Byers: Abstain; not present for the public hearing.

Chairman Murphy: Motion carries.

Commissioner Wilson: Mr. Chairman, that would be with the changes that we just made.

Chairman Murphy: As amended -- the proffers dated December 4, 2002 as agreed upon by Ms. Clay.

Commissioner Wilson: Yes.

Chairman Murphy: Mr. Byers abstains. Is the pot right?

Commissioner Wilson: Yeah.

Chairman Murphy: The motion carries.

Commissioner Wilson: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND A WAIVER OF THE LOT WIDTH REQUIREMENT FOR THIS APPLICATION.

Commissioner Hall: Second.

Chairman Murphy: Seconded by Ms. Hall. Is there a discussion of that motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioner Byers: Abstain.

Chairman Murphy: Motion carries. Same abstention.

Commissioner Wilson: Mr. Chairman, I further MOVE THAT THE PLANNING COMMISSION RECOMMEND A MODIFICATION OF THE TRANSITIONAL SCREENING ALONG THE NORTHERN AND WESTERN PROPERTY LINES AND THAT PORTION OF THE SOUTHERN PROPERTY LINE WHICH ABUTS RESIDENTIAL USES TO PERMIT LANDSCAPING AS SHOWN ON THE GDP AND AS FURTHER MODIFIED BY THE REVISED PROFFERS DATED DECEMBER 4, 2002.

Commissioner Hall: Second.

Chairman Murphy: Seconded by Ms. Hall. Discussion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioner Byers: Abstain.

Chairman Murphy: Motion carries. Same abstention.

Commissioner Wilson: Mr. Chairman, I further MOVE THAT THE PLANNING COMMISSION RECOMMEND MODIFICATION OF THE BARRIER REQUIREMENT ALONG THE NORTHERN, WESTERN AND A PORTION OF THE SOUTHERN PROPERTY LINES AS SHOWN ON THE GDP AND DISCUSSED IN THE REVISED PROFFERS DATED DECEMBER 4, 2002.

Commissioner Hall: Second.

Chairman Murphy: Seconded by Ms. Hall. Discussion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioner Byers: Abstain.

Chairman Murphy: Motion carries. Same abstention.

Commissioner Wilson: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND A MODIFICATION OF THE STREETScape REQUIREMENT ALONG

RICHMOND HIGHWAY TO THAT SHOWN ON THE GDP AND AS FURTHER
MODIFIED BY THE REVISED PROFFERS DATED DECEMBER 4, 2002.

Commissioner Hall: Second.

Chairman Murphy: As amended. Seconded by Ms. Hall. Discussion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioner Byers: Abstain.

Chairman Murphy: Motion carries. Same abstention.

Commissioner Wilson: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION
RECOMMEND A WAIVER OF THE INTERIOR PARKING LOT LANDSCAPING
REQUIREMENT.

Commissioner Hall: Second.

Chairman Murphy: Seconded by Ms. Hall. Discussion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioner Byers: Abstain.

Chairman Murphy: Motion carries. Same abstention.

Commissioner Wilson: Just a few more. Mr. Chairman, I RECOMMEND THAT THE
PLANNING COMMISSION RECOMMEND A WAIVER OF THE SERVICE DRIVE
REQUIREMENT.

Commissioner Hall: Second.

Chairman Murphy: Seconded by Ms. Hall. Discussion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioner Byers: Abstain.

Chairman Murphy: Motion carries. Same abstention.

Commissioner Wilson: Mr. Chairman, I RECOMMEND THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF A WAIVER OF THE FRONT YARD SETBACK FOR PHASE 2 OF THE DEVELOPMENT WHEN THE 100-FOOT RIGHT-OF-WAY IS DEMANDED BY THE BOARD OF SUPERVISORS.

Commissioner Hall: Second.

Chairman Murphy: Seconded by Ms. Hall. Discussion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioner Byers: Abstain.

Chairman Murphy: Motion carries. Same abstention.

Commissioner Wilson: Last one. Mr. Chairman, I RECOMMEND THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF THE WAIVER OF FRONTAGE IMPROVEMENTS ALONG RICHMOND HIGHWAY TO PERMIT EXISTING CONDITIONS TO REMAIN.

Commissioner Hall: Second.

Chairman Murphy: Seconded by Ms. Hall. Discussion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioner Byers: Abstain.

December 4, 2002

RZ-2002-LE-005

Chairman Murphy: Motion carries. Same abstention.

Commissioner Wilson: Mr. Chairman, I just wanted to check one thing with Ms. Lewis. We did the modification of the barrier requirement, but we also had a waiver of in on the northern property line. Do we no longer need that motion?

Ms. Lewis: No, because I think what -- the changes in the proffers state that they may have to put up a barrier, so I think as you described it, modifying it is the correct motion.

Commissioner Wilson: Okay. With that said, we have all of our motions and waivers and modifications done, Mr. Chairman. And I want to thank Cathy Lewis especially. She's been very patient and she's worked very hard. And I want to thank the applicant for agreeing to a lot of this. They've really come a long way and bent over backwards to get all of these things reconciled, at least as much as we can. And I'm looking forward to seeing the Board approve this on Monday. So, thank you, Barbara Byron and Leslie Johnson.

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(Each motion carried by a vote of 8-0-1 with Commissioner Byers abstaining; Commissioners Alcorn and Kelso not present for the vote; Commissioner Harsel absent from the meeting.)

GLW

