



You may view and listen to the meeting in its entirety by going to the Board of Zoning Appeals page on the City's website: <https://amsva.wistia.com/medias/s4eil8j3ln>

The Agenda, Staff Report, Applications and Supporting Documents are also available on the Board of Zoning Appeals page. <https://www.fredericksburgva.gov/225/Board-of-Zoning-Appeals>

**MEMBERS PRESENT**

Matthew Mugeridge, Chairman  
Stephen Eubank, Vice Chairman  
Dr. Roy Gratz  
Jay Jarrell III  
Helen Ross

**STAFF**

James Newman, Zoning Administrator  
Taylor Owen, Admin Support Specialist

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**1) CALL TO ORDER**

Members of the public were invited to attend this meeting or access by public access television Cox Channel 84, Verizon Channel 42, online at [www.regionalwebtv.com/fredcc](http://www.regionalwebtv.com/fredcc), or on Facebook live at [www.facebook.com/FXBGgov](http://www.facebook.com/FXBGgov).

Chairman Mugeridge called the meeting to order at 4:02 p.m. and did a roll call.

**2) DETERMINATION OF A QUORUM**

There were 5 members present. Chairman Mugeridge determined that a quorum was met.

**3) PUBLIC NOTICE REQUIRMENTS**

Mr. Newman stated that public notice requirements had been met.

**4) DISCLOSURE OF EX PARTE COMMUNICATIONS**

Mr. Mugeridge asked if any Board member had engaged in *ex parte* communications on any item before the Board. No one indicated that they had participated in any *ex parte* communication.

**5) DISCLOSURE OF CONFLICTS OF INTEREST**

Mr. Mugeridge asked if any Board member had any conflicts of interest on any item before the Board. There were no disclosures.

**6) APPROVAL OF AGENDA**

Mr. Jarrell motioned to move the review of the minutes toward the end of the agenda, after the public hearing. Mr. Eubank seconded the motion. Mr. Jarrell motioned to approve the amended agenda, Mr. Eubank seconded the motion. The motion passed 5-0.

## 7) PUBLIC HEARING

- a) **AP2022-01: CVAS P8A, LLC and CVAS P8, LLC appeal a Determination regarding the maximum residential density within the Planned Development – Commercial Zoning District.** CVAS P8A, LLC owns GPIN 7860-50-3126, a 20.49 acre parcel of land north of the Poet’s Walk Assisted Living Facility and the Seasons apartment complex on the west side of Gordon W. Shelton Boulevard in Celebrate Virginia South. The appeal regards Unified Development Ordinance section 72-33.2(D)(4), “Residential Density Use Limitations,” which states that “residential uses shall not exceed 10% of the overall PD-C District and 24 units per acre.” The Zoning Administrator determined 10% of the land in Celebrate Virginia South now contains residential uses and no more residential development is currently permitted in Celebrate Virginia South. The appellants contend that the 10% rule should be applied to all 920 acres of land zoned PD-C throughout the City, not just the 541 acres located in Celebrate Virginia South. They argue that an additional 31.5 acres in Celebrate Virginia South are eligible for residential development, under this interpretation. The BZA has authority to affirm, modify, or reverse the Zoning Administrator’s determination.

Chairman Mugeridge opened the public hearing and Mr. Newman presented the appeal. Attachment 1 includes reference materials from the information packet that are used in presentation

Mr. Newman confirmed that there was no written public comment.

John Walk, the appellant’s representative, made a presentation to the board, stating that a plain reading of the Planned Development-Commercial (PD-C) district text was essential. [Attachment 2]

After Mr. Walk’s presentation, Mr. Larry Silver, owner of the properties of interest and the CVAS P8A LLC and CVAS P8 LLC companies, addressed the board about his and his father’s activities in the City over the past 35 years, and described the strong relationship that had been developed. He presented a letter [Attachment 3] to the board at this time.

Chairman Mugeridge asked if there were any more public comments to be made. There were not any members of the public present to give comment.

Ms. Kathleen Dooley, City Attorney, requested an opportunity to speak, applying the equal time rule. She said Mr. Newman’s presentation had taken 20 minutes, while the appellant’s presentation had taken 50 minutes, thus giving up to 30 minutes of rebuttal time. Chairman Mugeridge agreed to the request, and Ms. Dooley proceeded.

Ms. Dooley clarified that plain language is important, and that Mr. Newman did a thorough history on this ordinance’s plain language. His remarks in the presentation reflected his zoning expertise. Ms. Dooley referenced the PD-C ordinance and that the word *district* used in the ordinance can be applied in more than one way, such as: a singular district text is established: the PDC district, the R4 district, and so forth, but a the district can be established on the zoning map, and applied on the ground in different geographic areas, thus creating multiple meanings.

Next, Ms. Dooley spoke to a City Comprehensive Plan amendment in 1998 that stated the 10% rule was applied to the 541 acres that was rezoned to Planned Development-Commercial in Celebrate Virginia

South. Ms. Dooley said that this amendment to the Comprehensive Plan and staff memo made the intentions material.

Ms. Dooley responded to Mr. Walk's remarks that the applications for *PrimeCore* and *DVDs on the Run* did not meet the open space requirements, reading from the staff report that 25% of open space is required and *PrimeCore* provides 31.5% of open space. *DVDs on the Run* is showing requirement of 15% and has provided 22% of open space. Ms. Dooley stated that she had not researched the history on this topic specifically, but that there was no evidence that the applicants claimed to create less open space on their sites due to excess open space in Celebrate Virginia South.

Ms. Dooley encouraged the board members to convey to the appellant that the meaning of the rule is plain and obvious, and that the Silver Companies is asking for the rules to be changed for them.

Chairman Muggerridge asked for more information about the *PrimeCore* acreage, and Mr. Newman directed him to the site plan in the appeal, exhibit E.

Mr. Walk then spoke saying that both *PrimeCore* and *DVDs on the Run* were under the required acreage of open space, and had documentation he wanted to include in the official record.

Chairman Muggerridge confirmed there were no public comments and proceeded to questions from the board members.

Mr. Eubank asked the applicant's attorney about the appeal, in which the word *districts* (plural) was used. Mr. Eubank asked under what interpretation of the ordinance would there be multiple? Mr. Walk stated that the word is used many times in the singular form throughout the ordinance, but that subsections had the plural use of the word. Mr. Eubank and Mr. Walk discussed the usage of the word *district* in the singular or plural form, and where it was utilized in the ordinance.

Mr. Eubank further asked about the land in question. Mr. Newman referred to a map used as an example from the meeting materials. Mr. Eubank asked that if the applicant developed its parcel under its interpretation, would it keep another land owner in the district from developing out their property as residential use as well. Mr. Walk stated: yes, that is how the ordinance is written.

Dr. Gratz asked where the different Planned Development-Medical Center Zoning Districts were? Mr. Chuck Johnston, Planning Director, responded and spoke to the two locations in the City. Dr. Gratz then went on to describe the different planned development district areas, PD-MU (Planned Development Mixed Use), PD-C (Planned Development Commercial), PD-R (Planned Development Residential). Dr. Gratz then spoke to the four separate applications for PD-C zoning, and that it shows there were intentions to be four districts. Mr. Johnston confirmed that is the Zoning Administrator's position.

Mr. Jarrell asked for the definition of a district. Mr. Newman read zoning ordinance definition of *District, Base*: "*An area delineated on the official zoning map of which sets forth standards and guidelines for all development within the prescribed district.*" Mr. Jarrell asked if there were any other definitions such as *site, project, or development* that would help clarify the meaning between the district(s) that might have prevented the appeal.

Mr. Jarrell asked about the four rezoning's that occurred in 1998, and how it was determined that it was all pertaining to Celebrate Virginia South as one entity. Ms. Dooley responded that Mr. Walk had previously referred to their project as Celebrate Virginia South. Mr. Jarrell asked how it became one project as a unit,

instead of four individual rezoned parcels. Ms. Dooley states that it was presented at the rezoning as one project on multiple properties. It is referenced in the Comprehensive Plan as a one unit, 541-acre Planned Development zoning.

Mr. Jarrell asked if Mr. Walk happened to have a *findings of fact* for the board. Mr. Walk stated he did not prepare something of that nature, but he did request that they board would reverse or modify the zoning determination.

Mr. Walk also responded to Dr. Gratz's question regarding the other planned development districts and stated that none of the other districts have an overall district requirement like the 10% cap on residential use in PDC.

Chairman Muggeridge stated that it was time to move to discussion among the board. He referenced Mr. Eubank's earlier point of the plural use of the word *districts* and the manner in which the City has applied the 10% limitation previously and how it intends to apply it here. Mr. Eubank stated that is it unfortunate that the word *district* is used in two ways as a classification and as a geographic location, however the plural use of PD-C districts is superior in section 72.33.2 which refers to multiple PD-C districts. Mr. Jarrell expressed that it was a poorly written ordinance, and until the applicant faced the issue, it was not a relevant issue to bring forward.

Chairman Muggeridge asked if anyone would like to put forward a motion. Mr. Eubank moved to affirm the Zoning Administrator's decision as proposed in tabs three (the Draft Record of Decision) [Attachment 4]. Dr. Gratz seconded that motion. The vote on Mr. Eubank's motion was 3 in favor (Eubanks, Gratz, Ross) and 2 opposed (Muggeridge, Jarrell).

Chairman Muggeridge explained his "no" vote stating that he did not think that the part of the motion incorporating all of the findings of fact should be incorporated into the decision. Chairman Muggeridge acknowledged that Mr. Eubanks' motion carried 3-2. Chairman Muggeridge moved to amend Mr. Eubanks' motion, to adopt the draft Record of Decision, but to remove all of *The Findings of Fact* and to remove Point 2 ("it avoids an absurd result") of the *Conclusions of Law*. Mr. Jarrell seconded the motion.

Mr. Eubanks offered his comments against the motion to amend, stating that he felt that Zoning Administrator's decision does avoid an absurd result, because it would be absurd for the build out of this parcel or development to drive what the City can decide for PD-C districts elsewhere in the City, contiguous or not; and for the development potential of parcels in Central Park, which are owned by different entities [to be conveyed to Celebrate Virginia South], would be absurd. Mr. Gratz asked again for a clear statement of the exact motion. Mr. Eubanks repeated that his motion had been to affirm the Zoning Administrator's decision by adopting the Record of Decision in Tab 3 of the BZA hearing materials. The Chair's motion to amend, was to adopt the Record of Decision but striking "conclusion of law" #2, "it avoids an absurd result."

The Chair clarified that Mr. Eubanks' motion had already carried, and that the motion before the Board was his motion to amend: to not include the Findings of Fact, and to strike "it avoids an absurd result." The vote on the motion to amend was 3 votes against (Ross, Eubanks, and Gratz.) The Chair did not call for votes in favor, and the motion to amend failed.

At the request of the Chair, Mr. Eubanks restated that the decision of the Board was to affirm the Zoning Administrator's determination as expressed under Tab 3 (Record of Decision, "in toto.") The Chair announced that that was the decision of the Board.

**8) MINUTES**

The approval of three sets of minutes was postponed to the next BZA meeting to ensure all board members had time to review the minutes before voting.

**9) GENERAL PUBLIC COMMENTS**

None

**10) ELECTIONS**

Mr. Jarrell nominated Mr. Muggeridge to remain as chairman and Mr. Eubank to remain as vice chairman. Ms. Ross seconded. Motion carried 3-0-2 (Muggeridge and Eubank: abstain).

**11) STAFF / BOARD COMMENTS**

None

**12) ADJOURNMENT**

Chairman Muggeridge adjourned the meeting at 7:05 p.m.

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Matt Muggeridge, Chairman

APPROVED: \_\_\_\_\_, 2022

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