

**MINUTES OF THE PLANNING COMMISSION MEETING**  
**Wednesday, February 6, 2019**  
**City Council Chambers**  
**2400 Washington Avenue**  
**Newport News, Virginia**

**PRESENT:** Daniel L. Simmons, Jr., Chairman; Katie Stodghill, Vice-Chairwoman; Sharyn L. Fox; Mark W. Mulvaney; Michael F. Carpenter; Elizabeth W. Willis; N. Steve Groce; (Staff: Sheila McAllister, Director of Planning; Flora Chioros, Assistant Director – Current Planning; Rhonda Russell, Assistant Director – Comprehensive Planning; Saul Gleiser, Senior Planner; Johnnie Davis, Planner; Elizabeth McRae, Landscape Planner; Lynn Spratley, Deputy City Attorney; Nyoka Hall, Zoning Administrator)

**ABSENT:** Willard G. Maxwell, Jr. and Zachary E. Wittkamp

**CALL TO ORDER**

Ms. Willis read the Planning Commission's purpose as stated in Section 15.2-2210 of the Code of Virginia. She made a motion to adopt the agenda before the Planning Commission. Mr. Mulvaney seconded the motion. The City Planning Commission voted to adopt the agenda by acclamation.

**INVOCATION**

Mr. Carpenter presented the invocation.

**MINUTES**

The minutes of the January 16, 2019 public hearing and work session were approved as presented.

**PUBLIC HEARING**

**CONDITIONAL USE PERMIT**

**CU-2018-0010, North Riverside Baptist Church.** Requests a conditional use permit to allow for the operation of a pre-school with child care center as part of a community facility on property located at 311 Selden Road. The parcel contains 5.38 acres and zoned R3 Single-Family Dwelling. The Parcel No. is 237.00.03.32.

Saul Gleiser, Senior Planner, presented the staff report (copy attached to record minutes).

Ms. Willis stated Condition No. 1 says the applicant shall obtain and maintain the required license for a child care center, but in the regulatory review it says that the

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applicant plans to apply for a religious exemption from the state licensing requirements. Mr. Gleiser stated the condition would be met by applying for the exemption.

Ms. Stodghill asked if the existing playground is the playground for the children. Mr. Gleiser stated yes.

Mr. Mulvaney stated he is confused by the statement "City Life Church plans to apply for this religious exemption. Given that, a condition that limits the KidLife Club as a ministry of the church is proposed." Mr. Gleiser stated usually the city conditions that a state license is provided for a childcare center. He stated that since the applicant is applying for the religious exemption from the state, the city wants to ensure that the only one who can operate this childcare center is KidLife Club. Mr. Mulvaney asked if the church is leasing the facility to KidLife Club or is someone else the lessor. Mr. Gleiser stated North Riverside Baptist Church is leasing to City Life Church and KidLife Club would be operated by City Life Church.

Mr. Carpenter asked what is the maximum number of children that could be allowed. He stated the staff report says 25 children will be accommodated. Mr. Gleiser stated that is correct. Mr. Carpenter asked, when you look at the size of the building and play area and the state licensing requirements, how many kids could be accommodated. Mr. Gleiser stated with the four classrooms, 25 children. He stated as long as the state requirements are met, more children could be accommodated. He stated that is why we did not limit the number of students in the proposed conditions. Mr. Carpenter asked if the use grows and all of the classrooms are used, how many children could be accommodated. Mr. Gleiser stated he does not know the combined square footage of all of the classrooms in the church, but the 35 square feet per child would have to be adhered to.

Ms. Stodghill asked if the childcare would be operating on Saturdays. Mr. Gleiser stated no, it will operate Monday through Friday from 6:00 A.M. to 6:00 P.M. He stated the staff report is incorrect.

Mr. Mulvaney stated currently, at 25 students, the childcare would violate the playground area requirement by 75 square feet. He stated the staff report states 1,875 square feet of playground area is needed per child and currently there is 1,800 square feet. Mr. Gleiser stated the property contains a playground and open space that is approximately 6,000 square feet. Mr. Mulvaney stated for the purposes of this application a maximum of 24 students can be accommodated. Ms. Fox asked if that requirement goes away if the religious exemption is granted. Mr. Gleiser stated no, that is a building code requirement.

Ms. Stodghill asked if the childcare could expand to use all of the classrooms. Mr. Gleiser stated yes, they could. He stated we are not limiting the amount of children.

Ms. Stodghill asked if there are 61 existing parking spaces. Mr. Gleiser stated yes.

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Mr. Carpenter asked if there is an issue, would it be from the noise when the kids are playing on the playground or being picked up and dropped off. Mr. Gleiser stated yes. Mr. Carpenter stated if there are 25 kids playing outside we can guess the noise associated with that, and if KidLife expanded to every classroom, it could be a substantially larger number. Mr. Carpenter stated that is his concern. Mr. Gleiser stated the Planning Commission can add a condition to limit the number of children allowed.

Mr. Simmons opened the public hearing.

Pastor Fred Michaux, 311 Selden Road, Lead Pastor for City Life Church, stated North Riverside Baptist Church is a unique facility with four churches presently meeting in the building. He stated we share the space and do job-sharing with staff. Pastor Michaux stated our church meets on Saturday for our worship services, and the KidLife Club will not be functioning on Saturday. He stated even though it is a 30,000 square foot facility, those other classrooms are dedicated for other purposes and would not be available for use for the KidLife Club. Pastor Michaux stated the KidLife Club is just operating within the context of the existing nursery space, which is four classrooms. He stated there is only one other classroom that would be available for an additional classroom, but there are no plans at this point to expand. Pastor Michaux stated their goal is to have 25 or 24 kids, and we do not have plans in the foreseeable future to go beyond that.

Ms. Fox stated she is curious as to how many children are at Riverside Elementary School and are going out on the playground every day. She stated it would seem that is a large number and would create more noise than 25 children. Pastor Michaux stated there are a lot of kids at the school playground. Ms. Fox stated the number of children at the childcare does not concern her because with the school there, that noise precedent has already been established. Pastor Michaux stated the playground is behind the building. Ms. Fox stated it looks like the same people that are impacted by Riverside Elementary will be impacted by the childcare.

Mr. Mulvaney stated at this point, KidLife could have 32 children based on the space within the four classrooms. He stated the application requests 25 children and there is playground space for 24 children. Mr. Mulvaney stated there are three separate numbers on the staff report and that is confusing. Pastor Michaux stated if we went up to 32 children, we would have to change the outdoor space to accommodate that. He stated any plan for expansion would always have to be in compliance with what the city code has placed upon that building in that location. Pastor Michaux stated it is his understanding that the conditional use permit is a granting of permission to abide by city code. He stated CityLife can only expand or alter the program within the context of the parameters of the city ordinance as they currently exist and if we wanted to go outside of that, we would have to come back for an additional conditional use permit.

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Mr. Simmons asked if there are any plans for expansion. Pastor Michaux stated there are no plans at this time. He stated to provide care for 25 children from ages 2.5 to 5 years old is a relatively simple process. Pastor Michaux stated it is a ministry and not technically a pre-school. He stated we have to use that language because that is the only category that is provided for churches. Pastor Michaux stated if you are really going to be a full-fledged pre-school in every sense, you are really talking about establishing a Christian school and we do not have plans to establish a Christian school at this location. He stated we are seeking an opportunity to do discipleship for young children at our church.

Mr. Carpenter stated in order to expand, there is not enough fenced in play area, but that can be expanded. Pastor Michaux stated yes. Mr. Carpenter asked if you do that, would you be granted the right to expand your offerings. Pastor Michaux stated that is correct, if there were additional classroom space that was available. He stated there are four churches sharing the space and each church has space dedicated to them. Ms. Stodghill asked if in the future could it expand. Pastor Michaux stated it could.

Mr. Mulvaney stated he thinks this is a great use, but he feels we need to pull in the number of children because they can ultimately go to 32 children. He stated he thinks if outdoor area expands by a few hundred square feet, expansion to 32 students is possible. Pastor Michaux stated it is our understanding we were coming today for a conditional use permit for just 25 children and the conditional use permit was going to be limited to that number. He stated that was our expectation and that is all that we are asking for today. Pastor Michaux stated we are not asking for an open ended conditional use permit that gives us unlimited expansion. He stated his understanding was if they wanted to go beyond 25 children that they would have to come back for a revision of the conditional use permit. Pastor Michaux stated we are certainly willing to comply with that.

Ms. Spratley stated Condition No. 3 requires the applicant to comply with the Virginia Uniform Statewide Building Code. She stated they would not be unlimited. Ms. Spratley stated if the building code limits them in terms of space versus number of children, whether it is outdoor or indoor space, Condition No. 3 does that without you stating a number of children or a limit. Ms. McAllister stated the 6,000 square foot fenced play area actually meets the requirements for the fenced area. She stated the code does not say it has to be a fenced playground area, just a fenced outdoor area. Ms. McAllister stated what could happen is you have 6,000 square feet in the open area with older kids playing in one place and younger kids playing in the playground area or vice-versa, but all of that fenced area is considered part of the outdoor area.

Ms. Stodghill asked if we can limit the number of students as part of the conditional use permit. Ms. McAllister stated yes. She stated if they are limited to 25 children, they can increase that number by coming back for an additional conditional use permit. Pastor Michaux stated we are agreeable to that. Ms. Fox stated she does not see any point in limiting the number of children. She stated for them to grow to 500 kids it would be

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different, but there is no way they can do that. Ms. Fox stated she does not see it as a concern if there were 5 or 10 more kids.

Mr. Mulvaney stated he does not object to that, but the way the application is written right now the maximum capacity is 32 children. Mr. Carpenter stated they have 6,000 square feet of outdoor area, and at 75 square feet per child, it could go to 80 children. He stated there is an awful lot of indoor space that currently is not available, but could be in the future, so it is not 25 or 32 students, but potentially 80 children. Mr. Carpenter stated if the applicant is comfortable with 25 students, then we should condition 25 children.

Mr. Carpenter asked how big is the entire building. Pastor Michaux stated 30,000 square feet of functional space, which includes a fellowship hall, sanctuary, chapel and classrooms. He stated we have access to the entire building because we have "run of the house" in our lease agreement so it is a full-on shared facility. Pastor Michaux stated we are just talking about this ministry operating within the current nursery, which is what all of the churches use that space for, within the four classrooms. Mr. Simmons asked if the building will be occupied by other ministries while City Life Church is occupying this facility. Pastor Michaux stated yes. He stated we have churches of different denominations working together.

Ms. Fox asked if the pre-school could have 30,000 square feet allotted for the facility. Pastor Michaux stated no, it cannot.

Ms. Fox asked if this facility is meeting the Virginia Statewide Building Code (VSBC), why are we worrying about 25 kids or 80 kids. Mr. Mulvaney stated there is a requirement for outdoor space per child which is defined as only 1,800 square feet and 25 children are proposed, but the VSBC allows the opportunity for 32 children within the four classrooms. Pastor Michaux stated we are agreeable to being limited to 25 children.

Mr. Mulvaney asked if the other churches use these same classrooms for nurseries. Pastor Michaux stated yes, on weekends or evenings for evening functions. He stated the KidLife Club will only operate Monday through Friday from 6:00 A.M. to 6:00 P.M.

Mr. Groce asked if the pre-school were to grow could it move to a facility dedicated exclusively to a pre-school. Pastor Michaux stated no, because it is a ministry of the church so our goal is for those ministries to be within the context of the physical space that people associate with their church home. He stated our plan is to not grow and have a pre-school, but to have a discipleship ministry for young children and we would want that to always be in the church that we call home.

Mr. Mulvaney asked, because the space being leased is not exclusive to the applicant and utilized by other ministries, should the conditional use permit limit the applicant to the period of time they have exclusive access to their classrooms. Ms. Spratley stated it

is a complex situation because the building is shared by various tenants, and so technically, she thinks one of the other churches could utilize the conditional use permit to do the same thing since the permit runs with the land. Ms. Chioros stated Condition No. 2 is limiting this operation to the KidLife Club, which is a ministry of City Life Church, not any of the other churches who may occupy the building. Pastor Michaux stated it was his understanding that condition was to keep City Life Church from being able to apply for a religious exemption and once received, sublet it to a bona fide for-profit entity who could come in and circumnavigate the religious exemption. Ms. Spratley stated perhaps the condition could be written such that "utilized or leased to an entity different from City Life Church's KidLife Club." She stated City Life Church would be the only entity that would be able to use the conditional use permit in this manner. Mr. Mulvaney stated you have other churches within the facility that have the ability to use the same classrooms because all of the churches have the ability to use all of the available space within the building. Pastor Michaux stated that is only if the space is available. He stated those other churches would only have access to that space outside of 6:00 A.M. to 6:00 P.M. Monday through Friday and would not be able to use the space concurrently with us. Ms. McAllister stated for daycare centers or childcare centers in a church that is a typical use of the facility.

Ms. Spratley stated she thinks the confusion is if other churches were going to use the building on other days, and if so, then Mr. Mulvaney's concern would be applicable. She stated there is a lack of understanding in terms of the building sharing principles. Mr. Mulvaney stated the applicant is recommending a period of time from 6:00 A.M. to 6:00 P.M. Monday through Friday, but we are not limiting them to those hours. He stated the fact that the classrooms sit vacant on the weekends or become nurseries, he feels we need to designate them as classrooms from 6:00 A.M. to 6:00 P.M. Monday through Friday, holidays not included, and then they could be used for other uses during other times.

Ms. Stodghill asked if we can limit a conditional use permit to classrooms on a property. Ms. Spratley stated if you add the word "utilized" to Condition No. 2 would alleviate the problem. Ms. Stodghill stated that does not limit it to 24 kids. Ms. Spratley stated that comes into play in terms of Condition No. 3 in terms of the building code requirements. She stated the building code requirements will dictate the number of children per square feet of space. Ms. Stodghill stated if there are 15 classrooms in the building, KidLife can expand into them with this conditional use permit.

Mr. Carpenter stated there are several different issues: the total number of children, to which the pastor stated KidLife is expecting to accommodate 25 children; and what the hours would be, which are 6:00 A.M. to 6:00 P.M. Monday through Friday. Mr. Mulvaney stated the hours of operation are not mandated. He stated we are providing a conditional use permit for what is defined as four classrooms: two that can handle 10 children each and two classrooms that can handle 6 children each, which is a total of 32 children. Mr. Mulvaney stated these classrooms are also utilized by other people and not exclusive by City Life Church. He stated he likes Ms. Spratley's suggestion to add

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“utilized” to Condition No. 2, but he would like to add “6:00 A.M. to 6:00 P.M. Monday through Friday” so that it allows the use as a nursery at other times. Ms. Stodghill stated the conditional use permit is not for four classrooms, it is for the property. Ms. Willis stated she thinks we need to have the specific rooms or the number of children in the conditional use permit. She stated we rewrite Conditions No. 2 and No. 3 so if the applicant wants to expand later, he needs to come back.

Mr. John Ganty, 309 Selden Road, spoke in opposition to the application. He stated he is not opposed to the use of a childcare center, North Riverside Baptist Church already has a daycare center on the property for before and after school activities. Mr. Ganty stated they shuttle kids back and forth to the school across the street where they also have a before and after school program. He stated every morning before 6:00 A.M. people are racing up and down Selden Road. Mr. Ganty stated he has had numerous issues with City Life Church since they moved in three years ago. He stated he bought his house in April 2002 and ever since City Life Church has taken over subleasing space, it is like living next door to a bar. Mr. Ganty stated people are coming and going all hours of the night, yelling and screaming. He has seen up to 75 middle and high school kids on a Wednesday night for their youth program. Mr. Ganty stated the edge of his house is 15 to 20 feet from their property line. He stated he has spoken to Pastor Fred and asked him to have the kids quiet down and turn their music down on Saturdays. Mr. Ganty stated the building was built in 1969 and it is not soundproofed. He stated he has tried to get things resolved amicably. He stated the youth pastors who are leading these kids are getting out at 9:00 P.M. and 9:30 P.M. leaving and screaming and hollering across the parking lot. Mr. Ganty stated one night one of his neighbors witnessed a youth pastor chasing a deer with a car. He stated that kind of behavior bothers him. Mr. Ganty stated there is already a daycare there, and Grace Methodist at the corner of Shoe Lane and Country Club Road has a preschool for 3 and 4 year olds. He asked why do we need another daycare. Mr. Ganty stated he already has noise issues with the traffic on the road as it is now. He stated he cannot get the Police Department to do anything about it. Mr. Ganty stated when he spoke to the Police Department, and then the city noise ordinance changed. He stated you can have a barking dog and call the Police and a summons is issued to the owner of the barking dog without even hearing the dog. Mr. Ganty stated if you have chickens and they make too much noise it is a noise ordinance violation. He stated he thinks it is great that the property is being used, but he has asked for them to be good neighbors and basically was told to get used to it. Mr. Ganty stated when he moved to his house there was a school there and he knew what he was getting into. He stated he was at his property every day for eight months looking at it at various times of the day, and now he feels like he is stuck with a piece of property he cannot enjoy. Mr. Ganty stated now we are trying to make another change to the area, and he implored the Planning Commission to decline the conditional use permit. He stated there is a daycare there already. Mr. Ganty stated North Riverside Baptist Church has a daycare and they are very good about walking the kids back and forth to school, but there is more than one church, and more than one daycare, and he thinks they have omitted that. He stated

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the playground area would be used by not only the KidsLife Club children they are proposing, but also by the North Riverside Baptist daycare.

Ms. Fox stated Mr. Ganty sounds like he may have major concerns about the after-hour activities, which are not in our purview. She asked if he is concerned about the additional 25 kids coming in during the day, entering and leaving, and playing on the playground. Mr. Ganty stated not so much, but the traffic at 6:00 A.M. in the morning when they are coming and going. He stated it is bad enough with the school across the street when the parents drop their kids off and then go racing down the road and the school teachers come racing in. Ms. Fox asked if there are other daycare kids being dropped off at North Riverside Baptist Church. Mr. Ganty stated yes, North Riverside Baptist Church has a daycare of their own, and a before and afterschool program already in place. He stated they drop their kids off at the far end of the property, which is closest to the playground. Mr. Ganty stated he does not know what particular classrooms they are talking about. He stated he has made so many inquiries into the behavior of what is going on at the church that he now has a No Trespassing order preventing him from going over to ask them to quiet down at City Life Church's request. Mr. Ganty stated he assumes it is because they are the ones he has an issue with. He stated he came to the public hearing today because he was concerned this conditional use permit was going to be turned into a daycare that would be open until 10:00 P.M. at night and allow something else that should not be going on to start. Mr. Ganty stated he bought a piece of property he wants to be able to enjoy because his neighbor's property is subletted to someone who uses it in a way that he does not think the property was originally intended to be used. He stated we are in a residential neighborhood, not an amphitheater in the middle of a residential area. Mr. Ganty stated he is frustrated with the whole process. He stated Pastor Michaux may be a fine gentleman, but the conversations he has had with him about the things going on at the church have basically left him being told to get used to it. Mr. Ganty stated he does not feel like he should have to get used to it and he feels like his rights are being violated. He stated they are asking for 25 kids and he does not know how many kids North Riverside Baptist Church daycare has, but they only have space on the playground for so many kids. Mr. Ganty stated they come wandering onto his property because they are not supervised. Mr. Ganty stated he is directly beside the church.

Ms. Fox stated she would like to know more about the other daycare at North Riverside Baptist Church. Ms. Chioros stated it does not appear that there is a daycare, but they do list before and aftercare for elementary school students on their website. Ms. Stodghill asked if they have a preschool. Ms. Chioros stated it does not appear the North Riverside Baptist Church has a preschool. She stated they have a nursery when they are in worship, similar to many other churches. Mr. Simmons asked if the nursery is available during regular worship hours. Ms. Chioros stated yes, on Sunday and Wednesday when they are having worship they show they have a nursery on site.

Mr. Mulvaney asked is there currently a conditional use permit for the before and after school events that are on the property. Ms. Chioros stated no, not that she is aware of.



Ms. McAllister stated North Riverside Baptist Church was probably built prior to the zoning code. Mr. Gleiser stated it is grandfathered. He stated to remember that North Riverside Baptist Church is the applicant so if they have something else going on, they should have told us about it. Ms. McAllister stated North Riverside Baptist Church is the applicant and owns the property, but Mr. Ganty's complaint is with the lessee, which is City Life Church. Ms. Stodghill asked if anyone from North Riverside Baptist Church was present. No representative was present.

Mr. Mulvaney asked if this conditional use permit application would impact the grandfather status of the building. Ms. McAllister stated this will not have any impact on the grandfathered status. Mr. Mulvaney asked if they could have done a school without a conditional use permit because they are grandfathered. Ms. McAllister stated that would depend on when they opened the school.

Ms. Spratley stated there is a Virginia Supreme Court case that says a valid zoning consideration is not that "a similar use exists down the street, so we are not going to consider this use." She stated certainly nuisance considerations are valid in considering whether or not to grant this conditional use permit, but not that there are five other daycares in the area. Ms. Spratley stated that is not a valid zoning consideration according to the Virginia Supreme Court. Mr. Mulvaney asked if having a daycare on the same premises or property that the conditional use permit is being requested falls under the same Supreme Court ruling. Ms. Spratley stated this is a very unique situation but the Supreme Court says you cannot say there are several uses in the area so you are not going to grant this use. Ms. Spratley stated the pastor has stated they want to provide a use for their congregation and we know that is different than the North Riverside Baptist Church congregation. She stated you can consider nuisance issues in terms of whether the use is going to be good for the area or not, but not that there are similar uses in the area. Ms. Fox asked will a conditional use permit be attributed to North Riverside Baptist Church. Ms. Spratley stated yes, because they are the applicant. Ms. Fox asked why an applicant is applying for a conditional use permit for a use that they already have going on there, if they do. Ms. Spratley stated they do not have the use going on there already because if North Riverside Baptist Church has some kind of childcare or preschool, it is not City Life Church's preschool or daycare. She stated there is a difference in that they are wanting to provide it for their members, and it is not being provided for North Riverside Baptist Church members. Ms. Spratley stated it may be a similar use, but it is not the same in that it is not providing a service to the same people. Mr. Mulvaney stated it is like they are paralleling the uses because they are on top of one another. Ms. Spratley stated they could not be on top of one another because they are not utilizing the same space. Ms. Stodghill asked are they using the same playground. Ms. Spratley stated she has no idea.

Ms. Willis asked Pastor Michaux to speak on his encounter with Mr. Ganty and how he came to be issued a No Trespassing order. Pastor Michaux stated we have never been cited by the Police in the three years that we have been there for noise ordinance violations, which is pertinent because if they were in violation of the code the Police

would have a responsibility to cite them. He stated we have a security team at our church that is overseen by the former Chief of Police for the city of Hampton, so whenever we have what we feel is a security risk, we look to our security team to make recommendations to us. Pastor Michaux stated we had complaints by parents and children who felt that Mr. Ganty was aggressive with minors in his complaints. He stated Mr. Ganty did not just approach adults but children, and we had complaints of him coming into the building and violating the personal space of our volunteers. Pastor Michaux stated based on that situation, we worked with our attorney to ban him from the property, but that was not our initial response. Ms. Willis asked if Pastor Michaux had a conversation with Mr. Ganty. Pastor Michaux stated only once when he first complained about the noise. He stated he brought up the school and talked about how our noise impact with the children is very similar to the use in the community, and how Pastor Michaux is there all day every day during the week and he is affected by the noise as well, but he does not complain because he understands it is a school and they have to function. He stated we are asking neighbors to understand that we are a church and we have to function as well. Pastor Michaux stated we have made changes since Mr. Ganty complained. He stated we now use a decibel meter for all of our public services and we comply by all of the The Occupational Safety and Health Administration (OSHA) standards for safety for decibel levels, we keep the windows and interior doors closed to try to mitigate the noise. Pastor Michaux stated we have made efforts to do a better job, but in the end our communication to Mr. Ganty was we cannot change the nature of who we are because ultimately we are a church where children gather and play outside and there is noise associated with music, especially for a modern contemporary church. He stated our response to him was not "deal with it." Pastor Michaux stated our response to Mr. Ganty was "we are not able to accommodate all of your requests because we cannot change the nature of who we are as an organization, which is sacred to us as a church." He stated we worked with Mr. Ganty for more than a year to come to some type of agreement, so there were situations that crossed what we felt were security risks for us which resulted in him being banned from the property. Pastor Michaux stated his hope is one day we are going to be able to work out those differences, but he does not think complaints about our weekend worship services are pertinent to our ministry that we want to do with young children. He stated the one complaint cannot be used in retribution against the other.

Ms. Willis asked why Pastor Michaux is seeking a religious exemption for the preschool. Pastor Michaux stated because we are a church and we feel the reason why this commonwealth affords churches the ability to have a religious exemption is because they realize that it is a slippery slope when a government organization begins to restrict ministries of religious organizations. He stated religious exemption is provided by the commonwealth for that reason, and we are going to take advantage of that because in the end this is a ministry of our church. Pastor Michaux stated we are here today out of respect for Newport News and we want to follow the process that is given to us, but even being here today to seek permission from a government to give us permission to conduct a ministry, there is an awkwardness which he hopes can be appreciated. He stated they want to be good citizens and good neighbors, and so we want to submit

ourselves to this process, but we also feel like we are entitled to every exemption that the commonwealth will allow. Pastor Michaux stated we have done everything that the religious exemption requires and we are only waiting on this decision. He stated we have already gotten the inspection from the Fire Chief for safety and there was a list of things we had to do to bring that to code, and it has been done. Pastor Michaux stated the Health Inspector has already come and given us approval. He stated this is the last step in the process to qualify for the religious exemption. Pastor Michaux stated the religious exemption is not carte blanche to not have accountability. He stated we still have to abide by the ratios for certain age groups and there are still inspections that the state can conduct. Pastor Michaux stated the before and after school program functions in a different part of the building and it is only childcare for elementary aged school children who go to the elementary school across the street, and would not be sharing the playground concurrently. Pastor Michaux stated that is how the building operates by scheduling and coordinating. He stated it does not seem to him that it is pertinent to this application because this is a separate church. Pastor Michaux stated we are required to have North Riverside Baptist Church on the application because they are the owner of the property, but that is a separate group with different aged children with a separate purpose. He stated they are just there to watch kids and take them to school and then until their parents pick them up after school.

Mr. Simmons asked if the applicant is applying for the age group from 2.5 to 5 years old. Pastor Michaux stated that is correct. He stated these children are not going to be taken back and forth across the street to the school. Pastor Michaux stated the children will be dropped off at a dedicated entrance and will be inside except for the small amount of time that they would be playing on the playground when the climate affords that.

Mr. Simmons closed the public hearing.

Ms. Willis made a motion to defer conditional use permit CU-2018-0010 so the Planning Commission can get some insight from North Riverside Baptist Church since they are the applicant and are ultimately responsible for the use placed on their property. She stated she would also like to see the conditions rewritten to reflect what Mr. Carpenter had mentioned about the number of students and the classrooms. Ms. Willis stated she would like to do her own study to see if it is a nuisance at 6:00 A.M. in the morning. The motion was seconded by Mr. Mulvaney.

Ms. Fox stated she supports the deferral.

Mr. Mulvaney stated he understands there is a religious exemption out there, but there are certain codes within the city that require, no matter what your organization is, that you be given conditional use permits. He stated he does not believe a religious exemption has any bearing on a conditional use. Mr. Mulvaney stated he would have requested a deferral because he feels we need to explore this a little further.

Mr. Simmons stated we are here for land use and land use practices, which is our responsibility. He stated it is a difficult task because a lot of things get vetted. Mr. Simmons stated Mr. Ganty should share his concerns with City Council and try to work with the church to resolve his issues.

Mr. Mulvaney asked that a representative from North Riverside Baptist Church attend the next public hearing. Ms. McAllister stated a representative will be present.

**Vote on Roll Call**

**For:** Fox, Mulvaney, Carpenter, Stodghill, Willis, Simmons

**Against:** Groce

**Abstention:** None

The Planning Commission voted 6:1 to defer conditional use permit CU-2018-0010 to the March 6, 2019 public hearing.

**ZONING TEXT AMENDMENT**

**ZT-2018-0008, City of Newport News.** Requests an amendment to the Zoning Ordinance to define communication towers fifty feet in height or greater, communication towers less than fifty feet in height, small cell facility and wireless facility; the districts where they would be allowed; and the regulations pertaining to communication facilities. (Article II., Section 45-201; Article IV., Section 45-402; and Article V., Section 45-523)

Flora Chioros, Assistant Director – Current Planning, presented the staff report (copy attached to record minutes).

Mr. Simmons opened and closed the public hearing.

Mr. Carpenter, Regulations Committee Chairman, stated we are making modifications to our code to meet the changes made by the General Assembly. Mr. Carpenter stated he continues to have concerns that this new 5G technology will be great with more coverage and data, but the drawback is that we could end up with small cells every 25 feet, which will not be attractive. He stated he hopes the city has contacted and had conversations with our representatives in Richmond.

Mr. Mulvaney made a motion to recommend adoption of zoning text amendment ZT-2018-0008 to City Council. The motion was seconded by Mr. Groce.

**Vote on Roll Call**

**For:** Mulvaney, Carpenter, Stodghill, Willis, Groce, Fox, Simmons

**Against:** None

**Abstention:** None

The Planning Commission voted unanimously (7:0) to recommend adoption of zoning text amendment ZT-2018-0008 to City Council.

### **EXECUTIVE SECRETARY REPORT**

Ms. McAllister stated on January 22, 2019, City Council approved the subdivision ordinance amendment which repealed the Subdivision Review Board.

Ms. McAllister stated there are no cases for the February 20, 2019 public meeting; however, we will have a work session on the master plan for the Tech Center Research and Development Park.

Ms. McAllister stated we have two cases scheduled for the March 6, 2019 meeting: a conditional rezoning for 14307 Old Courthouse Way from C1 Retail Commercial to R5 Low Density Multiple-Family and a conditional use permit for the installation of a communication tower at 100 Museum Drive.

Ms. McAllister stated we have two new hires we would like to introduce: Assistant Director of Planning - Comprehensive Planning, Rhonda Russell and Landscape Planner, Elizabeth McRae. She stated Ms. Russell has over 20 years of municipal experience in the Planning field with an undergraduate degree from Virginia Tech, a Masters of Public Administration from ODU. Ms. McAllister stated Ms. McRae has recently moved to Newport News from El Paso with her husband. She stated Ms. McRae has a degree in Horticulture from Auburn University and has 15 years of experience in the municipal landscape industry.

Ms. McAllister stated we were notified on Friday, February 1, 2019, that we have been short-listed for the second time for the Choice Neighborhoods Initiative Implementation Grant. She stated we are excited and preparing for the site visit next month. Ms. Fox asked when is the site visit. Ms. McAllister stated March 6, 2019. She stated we have a Planning Commission meeting that day, and two Planning Commissioners can attend the site visit; however, they would miss the meeting. Mr. Mulvaney asked if it would be possible to move the Planning Commission meeting to 4:00 P.M. that day. Ms. McAllister stated we have three cases to hear, including the daycare deferral, and only two Planning Commissioners can attend the site visit. Mr. Simmons stated we should be able to carry on business as planned. He stated the city has done an outstanding job along with the Housing Authority on this application.

### **COMMITTEE REPORTS**

Mr. Carpenter stated the Regulations Committee has had continuing discussions regarding short-term rentals and food truck regulations. He stated they are rather detailed and important discussions. Mr. Carpenter stated they should be coming to Planning Commission in March or April.

There being no further business, the meeting adjourned at 3:25 P.M.

  
Recording Secretary

  
Executive Secretary