

Minutes

Northampton County Planning Commission

January 3, 2012

This was a regular meeting of the Northampton County Planning Commission held on Tuesday, January 3, 2012, in the Board chambers located at 16404 Courthouse Road in Eastville, Virginia.

Those present were Chair Martina Coker, Vice-Chair Michael Ward, Roberta Kellam, Severn Carpenter, Mary Miller and John Wescoat, Jr. Absent from the meeting was David Fauber.

Also attending were Sandra G. Benson, Director of Planning & Zoning; Peter Stith, Long Range Planner; and Kay Downing, Administrative Assistant.

The meeting was called to order at 7:00 p. m. and a quorum established.

The agenda was reviewed and accepted upon motion by Commissioner Wescoat and second by Commissioner Carpenter. Motion carried unanimously 6 to 0.

Public Hearings:

The first public hearing was called to order and no ex parte communications were presented by the commission. It is noted that some individual commissioners had conducted a field inspection of the property.

- A. Special Use Permit 2011-10:** Timothy & Jeanine Wivell have applied for a minor special use permit to operate a small-scale oyster shucking and grading business with on-premise sales in an existing 400 square-foot structure located at 19444 Nu Lane. The property, zoned H Hamlet District, contains 6.37 acres of land located in the Cobb Station area and is described as being Tax Map 76, double circle 7, parcel L.

It was noted that the identifying Tax Map number for the parcel is 77 rather than 76 and that all adjacent property owners were notified in compliance with legal requirements.

The Chair called for public comments. There being none, the public comment portion of the hearing was closed.

In response to questions, Mr. Wivell stated that he intends to replant shells for oyster propagation purposes commencing in May. Now he is currently purchasing shells for planting since he is not yet shucking and that no complaints have been received from his neighbors about odor. He indicated that the required French drain consists of a gravel trench around the concrete pad supporting the building.

Action

Motion was made by Commissioner Kellam with second from Commissioner Wescoat to recommend approval of the application to the Board of Supervisors. The motion carried unanimously 6 to 0.

It was Commissioner Miller's opinion that this application was an excellent proposal for this zoning district and particular location meeting the objectives of the comprehensive plan.

The second hearing was called to order.

- B. Zoning Text Amendment 2012-01:** The Northampton County Board of Supervisors intends to amend the Northampton County Code, Chapter 154 Zoning Code, by revising the following sections: **§154.003 Definitions**, revisions to the definitions of ***Coastal Primary Sand Dune*** and ***Construction Footprint***; **§154.040 Zoning Clearance**, to delete (B) (1) *Zoning clearance required*; **§154.043 Amendments**, to delete (2) (c) providing for a quarterly application schedule; **§154.126 General Regulations for Residential Districts**, revision to correct conflict with height restrictions in Appendix B; **§154.141 General Modifications to Yard Regulations**, addition of structures and installations for which setbacks may be modified; **§154.142 Front Setback/Yard Regulations**, addition of language to clarify an abbreviation; **§154.145 Height and Bulk Regulations**, revision to correct conflict with height restrictions in Appendix B and to eliminate the maximum area for a widow's walk; **§154.146 Accessory Buildings and Fences**, clarification of fence placement; **§154.164 Chesapeake/Atlantic Preservation District (CAP)**, addition of language in *General performance standards for development and redevelopment* to allow for yard area; **§154.191 District Sign Regulations**, to allow business signage in the Agriculture/Rural Business District; **§154.207 Cooperative Parking**, to allow administrative approval of reduction of spaces for combined usage; **§154.209 Parking Area Design**, to refer to controlling sections of illumination and landscaping requirements; **§154.246 Nonconforming Uses, Lots or Buildings**, to reformat; **Appendix A-Use Regulations**, to eliminate references to the county Wetlands Ordinance and to eliminate in Category 4, Community Service Uses, as a county-regulated use item 13 *Mass/community subsurface drainfield, on site*; and by deleting **§154.067 Minimum Separation Distances: Subsurface Absorption Systems and Wells**.

No ex parte communications were presented.

The Chair called for public comments. Ms. Benson read written comments from Price Clarke of Eastville and Robert Meyers of Exmore for the record. Both sets of comments pertained to the proposed amendments relative to mass drainfields in Appendix A, and are attached as part of the official record. No other public comment was offered.

Several commissioners suggested that this public hearing remain open after discussion tonight to allow time for more public input due to its advertising during the holiday season. It was noted that the Board has requested that a recommendation be forwarded within 60 days from tonight's date allowing ample time for more public comment after tonight.. Ms. Benson stated that the Board will still conduct their public hearing next week as advertised regardless of any action taken or not taken by the commission tonight. However, the Board will not render a decision on this matter until a recommendation is forwarded by the commission. She explained that 3 options are available: (1) that the public hearing remain open; (2) that the public hearing be concluded; and (3) recommendations can be forwarded to the Board except for any items that the commission wishes to remain open. However, Commissioner Kellam was of the opinion that a full recommendation should be sent on all items at the same time due to past experiences with the Board. Katie Nunez, County Administrator, added that if certain items of the proposed amendment are tabled tonight no re-advertising would be necessary if a date is given for those items to be taken up again.

Discussion then followed on the proposed amendment to Appendix A eliminating mass drainfields on-site in the Use Chart. Ms. Benson explained that the county does not allow mass drainfields off-site at this time. Commissioner Kellam questioned that if mass drainfields off-site are not listed in the Use Chart and not currently allowed, would not the elimination of mass drainfields on-site cause such devices to be disallowed as well. Ms. Benson stated that while she could see the reasoning behind such a query, that was not the intent of the proposed amendment to eliminate mass drainfields on-site from the Use Chart. Commissioner Kellam stated her opinion that mass drainfields off-site should be added to the chart without eliminating mass drainfields on-site. She stated her concern that by-right development projects utilizing mass drainfields would no longer come under county scrutiny to ensure the health, safety and welfare of its community once eliminated from the Use Chart. She suggested that perhaps performance standards should be considered in conjunction with building permit approval. She also voiced concern that removing the item would be contrary to proposed TMDL mitigation standards that must be addressed by the county.

It was also noted that the county definition pertaining to mass drainfield on-site should be clarified and more consistent with the state's definition. Ms. Benson noted that language from the Virginia Department of Health (VDH) was used when the county definition was originally adopted. When asked, Ms. Benson noted that mass drainfields were regulated by the county before her tenure and that she really did not know the reasoning or justification of why that was done. Commissioner Kellam cautioned about eliminating local government evaluation of such uses on a case-by-case basis.

Due to its close proximity to the tidal waters of Kings Creek, Commissioner Miller used Harmony Investment's special use permit application for its hotel project as an example to justify retaining this item in the Use Chart. She noted that the county was able to condition that project by requiring pre-treatment of hotel waste water prior to its use as irrigation effluent. She stated that the primary goal in the comprehensive plan is to protect drinking water and other natural resources including tidal waters and was of the opinion that VDH

regulations are insufficient to accomplish that objective. She also explained that additional information from VDH has been requested by her and suggested that the commission wait before proceeding with this item. Commissioner Miller also had concerns about possible impacts to Nassawadox Creek if the Public Service Authority's northern node project incorporated a mass drainfield as part of its project.

The Chair suggested that the commission wait before taking action on this matter but to move the discussion forward in order to address other items in the proposed amendment.

The Chair asked Ms. Nunez if she had any comments to offer on behalf of the Board. She replied no.

The Commission took up each proposed item amendment separately as listed in Zoning Text Amendment 2012-01, and based on their discussion and appropriate motions, the following recommendations were made to the Board.

- 1) **§154.003** – Unanimously (6 to 0) voted to recommend approval of revision to definition of *Coastal Primary Sand Dune* in accordance with the Code of Virginia upon motion by Commissioner Kellam with second from Commissioner Wescoat .
- 2) **§154.003** - Unanimously (6 to 0) voted to recommend approval of revision to definition of *Construction Footprint* to clarify yard allowance under the Chesapeake/Atlantic Preservation District regulations upon motion by Commissioner Kellam with second from Commissioner Wescoat.
- 3) **§154.040** - Unanimously (6 to 0) voted to recommend approval of the proposed deletion since the existing language appears to be unlawful. Motion was made by Commissioner Wescoat with second from Commissioner Carpenter.
- 4) **§154.043** - Unanimously (6 to 0) voted to recommend approval of the proposed deletion of the quarterly application schedule upon motion by Commissioner Kellam with second from Commissioner Carpenter.
- 5) **§154.067** – upon motion by Commissioner Kellam with second from Commissioner Miller, the commission voted 4 to 2, with Commissioners Carpenter and Ward voting “no,” to table this item for further discussion on February 7, 2012. After discussion, the Commission requested additional background information regarding the history of the regulations, as well as the Health Department's experience with administration, inspections, and enforcement of the regulations since their adoption. Commissioner Kellam stated that Richard Tankard had indicated in an e-mail that the Health Department had recommended that the county adopt this language. Commissioner Ward asked about inspections and staff noted that no installations are inspected by the county.

6) **§154.126** - Unanimously (6 to 0) voted to recommend approval of the proposed revision to correct the conflict with Appendix B. Motion was made by Commissioner Wescoat with second from Commissioner Carpenter.

7) **§154.141** - Unanimously (6 to 0) voted to recommend approval of the proposed revisions with the following amendments: (A) (5) – insert the word “stabilization” after shoreline structure; (A) (7) - delete “monuments” since that term is not defined and could be considered as a very large structure or a building; (A) (8) and (A) (9) – delete “front” so that the appurtenant structures are not located in front yards. Motion was made by Commissioner Wescoat with second from Commissioner Carpenter.

8) **§154.142** - Unanimously (6 to 0) voted to recommend approval of the proposed clarifying revision upon motion by Commissioner Kellam with second from Commissioner Wescoat.

9) **§154.145** - noting that an apostrophe is required for “Widows,” Unanimously (6 to 0) voted to recommend approval of the proposed revision to correct the conflict with Appendix B and to eliminate the restriction on area of Widow’s walks. Motion was made by Commissioner Carpenter with second from Commissioner Kellam.

10) **§154.146** - Unanimously (6 to 0) voted to recommend approval of the proposed clarifying revisions upon motion by Commissioner Wescoat with second from Commissioner Carpenter.

11) **§154.164** – upon motion by Commissioner Kellam with second from Commissioner Carpenter the commission Unanimously (6 to 0) voted to recommend approval of the proposed revision to clarify yard allowance under the Chesapeake/Atlantic Preservation District regulations.

12) **§154.191** - Unanimously (6 to 0) voted to recommend approval of the proposed revision to allow for business signage in the A/RB District. Motion was made by Commissioner Carpenter with second from Commissioner Wescoat.

13) **§154.207** - Unanimously (6 to 0) voted to recommend approval of the proposed revision to allow for administrative review and approval of shared parking arrangements. Commissioner Miller, who made the motion, noted prior discussions about excessive parking requirements in the county regulations. Second to the motion was from Commissioner Carpenter.

14) **§154.209** - Unanimously (6 to 0) voted to recommend approval of the proposed revisions, with the insertion of “105” to complete the reference following “See section 154.” in (D). Commissioner Kellam made the motion with second from Commissioner Ward.

15) **§154.246** - Unanimously (6 to 0) voted to recommend approval of the proposed formatting revisions to provide more clarity and ease of reading. Motion was made by Commissioner Carpenter with second from Commissioner Wescoat.

16) **Appendix A** – Upon motion by Commissioner Kellam with second from Commissioner Miller, the commission voted unanimously (6 to 0) to table discussion on this matter until February 7, 2012, to allow for consideration of additional information from the Virginia Department of Health (VDH) concerning their responsibilities with respect to monitoring and maintenance issues; clarification of definitions since the county definition is different from the VDH definition; and research to determine whether the proposed ordinance revision would be expected have any impact on the county’s Chesapeake Bay TMDL nitrogen reduction requirements, as well as research on VDH’s authority to require de-nitrification measures for mass drainfields.

The last public hearing was called to order and no ex parte communications were reported.

C. Zoning Text Amendment 2012-02: The Northampton County Planning Commission intends to amend the Northampton County Code, Chapter 154 Zoning Code, by adding to **§154.190 Signs**, in **Section (C) (2)** a new item to be known as **(q) Off-site Business Way Finding Signs** and by adding to **§154.191 (A)** a new item **(11)** and to **§154.191 (B)** a new item **(13)**, both to be known as **Off-site Town Business Directory Sign**.

There was no public comment offered on this matter.

Staff noted that the proposal is consistent with various elements of the Comprehensive Plan as outlined in the staff report.

Action

Upon motion by Commissioner Kellam with second from Commissioner Miller, the Commission voted unanimously (6 to 0) to recommend approval of the proposal as drafted.

The Chair called for a short break at 8:28 p.m.

Matters from the Public:

No public comment was offered.

Consideration of Minutes

The minutes of the December 6, 2011 meeting were approved with one correction on page 1, in second paragraph, to end the last sentence after the word “expired”. Motion to approve as

amended was made by Commissioner Kellam and seconded by Commissioner Carpenter. The motion carried 6 to 0.

New Business

Ms. Benson distributed the initial draft of the Annual Report to Board of Supervisors for 2011 and noted that a complete draft will be submitted to the commission in February.

Discussion was held and suggestions made as to how the commission and Board could best communicate and interact on goals and directives. Commissioner Ward expressed his opinion that the Board does not fully comprehend the complexity of restraints that the commission must address. Commissioner Wescoat expressed his opinion that the Board's main focus is the creation of jobs which can be more readily achieved when there is a growth environment for entrepreneurial efforts as past efforts to create jobs using taxpayer money have mainly failed to produce results.

Unfinished Business

Under procedural matters, Commissioner Miller stated that the commission should utilize the new checklist when considering land use applications.

Commissioner Miller stated that the Eastville Town Council is meeting tonight and will be contacting staff in the near future about proceeding with its update of the town's comprehensive plan.

Commissioner Kellam reported that the Zoning Subcommittee should be able to meet again in January in order to work on draft language involving low-impact commercial uses (micro-business).

Commissioner Kellam also reported that safety issues related to ponds should be addressed on a case-by-case basis under the site plan approval process. She noted that as soon as the Zoning Subcommittee has finished draft language on Zoning Code §154.111 it will be forwarded to staff for distribution.

Ms. Benson reported that there has been no change in the status of moving forward with the Town of Cape Charles Historic Town Entrance Overlay District.

Communications

For the record there was nothing new to report from the Towns of Cheriton, Nassawadox and Exmore.

Committee Reports/Presentations

Commissioner Kellam distributed for informational purposes a notice of intent filed by Poseidon Atlantic to initiate the large scale wind turbine project as introduced by Fugro. It was her opinion that that the county should request state funds in order to hire a technical review consultant once their application has been officially filed.

Director's Report

Ms. Benson then briefly reviewed the following items as listed in the Director's Report.

- 1. Cape Charles update: I have not made progress in scheduling a meeting with Cape Charles Town Planner Tom Bonadeo to outline a process for the development of a potential Town Entrance Corridor Overlay.*
- 2. Town Edge Planning: There is nothing new to report regarding this matter at this time.*
- 3. Board/Town Action on Zoning Matters: The Board of Supervisors approved Special Use Permit 2011-09 as filed by the Trustees of Franktown United Methodist Church in accordance with the Commission's recommendations. There were no zoning matters on the public hearing agenda of the Town of Eastville in November.*
- 4. Comprehensive Plan Review: A copy of the Board of Supervisors' most recent direction to the Comprehensive Plan Advisory Committee is attached. Another meeting of that group has not yet been scheduled. Letters are being mailed today to the stakeholder group being convened by the Commission inviting the potential participants to an organizational meeting on January 11, 2012, at 6:30 p.m.*
- 5. Chesapeake Bay TMDL Implementation Plan: The Board of Supervisors received a presentation on December 13, 2011, from Elaine Meil, Executive Director, Accomack-Northampton Planning District Commission, outlining the preliminary findings with respect to best management practices which could enable the county to achieve the target pollutant reductions. The Board must vote in January on a final submittal to the Virginia Department of Conservation & Recreation.*
- 6. Staff activities: At the January 3, 2012, meeting I will distribute reports for your information on the VHDA workshop "Revitalizing Neighborhoods Through Housing and Economic Development" as well as the Rural Planning Caucus conference that I attended in October.*

Ms. Benson added that February 1, 2012 is the TMDL reduction goals filing deadline as referenced in Item 5 above.

Prior to adjourning Commissioner Coker noted that she would not be present at the regular February meeting.

Adjourn/Recess

Motion to adjourn was made by Commissioner Kellam and seconded by Commissioner Carpenter at 9:23 p.m.

Chair

Secretary