

MINUTES

Northampton County Planning Commission

Tuesday, July 6, 2010

This was a regular meeting of the Northampton County Planning Commission held on Tuesday, July 6, 2010, at 7:00 p.m. in the auditorium of the former Northampton County Middle School located at 7247 Young Street in Machipongo, Va.

Those members present were Vice-Chair Martina Coker, John Wescoat, Jr., David Kabler, Mary Miller, Roberta Kellam and Michael Ward. Absent from the meeting were Marshall Cox, Robert Meyers and Chair David Fauber.

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

Due to the absence of Commissioner Fauber, Commissioner Coker assumed the Chair, called the meeting to order and established a quorum present.

The agenda was reviewed and accepted with one minor change as suggested by Ms. Benson to include a subcommittee report on wind energy under Committee Reports.

Public Hearings

Zoning Text Amendment 10-06 NHCO: Turner-Floyd Grain, LLC has filed to amend the Northampton County Code §154.142 Front Setback/Yard Regulations by adding a new subsection (1): *In an Existing Industrial District, the front setback shall be reduced to twenty-five (25) feet when structures are situated on a private road that does not convey and is not planned to convey through traffic.*

No ex parte communications were reported.

Mr. David Charlton, acting as agent for the applicant, stated that he had been contracted to remodel and enlarge the existing business office on the granary property. It was his understanding that the business had been in operation for at least 20 years and that they propose to construct an additional 300 square feet of office space to improve their employees' work environment. Mr. Charlton stated that the business is located on a private road owned by the applicants and that the proposed addition would not increase encroachment into the road setback beyond what currently exists.

The Vice-Chair called for public comments. None were received and the public portion of the hearing was concluded.

Ms. Benson then distributed additional information received by e-mail from the applicant for commissioners to review.

Commissioner Kabler expressed his opinion that a variance may better serve the needs of the applicant. However, Ms. Benson related that since the property is being utilized it does not qualify for a variance.

Ms. Benson stated that the existing business has been operational for 25 years according to the applicant's e-mail.

Commissioner Miller noted that a prior zoning ordinance had required a 75-foot road setback and that the existing structure does not meet the former setback. Ms. Benson stated that there was no way to know what type of right-of-way existed at the time the structure was built. Ms. Benson noted that the entire existing office is located with the 100-foot setback since it is only 35 feet away from the existing private roadway.

Commissioner Wescoat stated that he was aware of the property's history and noted that over 20 years ago the existing roadway was simply an access field road and not a true road until developed later to access the granary. Ms. Benson added that some of the platting of the property was done when Onancock Building Supply had purchased part of the property for their development.

Commissioner Kellam expressed her support of Zoning Text Amendment 10-06 as submitted. It was her opinion that the amendment was a reasonable accommodation to private businesses that own and manage their own private roadways.

Commissioner Kabler disagreed and in his opinion changing the zoning ordinance to accommodate one business on a single piece of property would perhaps set a precedent for others in the future even though he was supportive of the business.

Commissioner Wescoat stated that the zoning text amendment applies to only private roadways and noted that there is a vast difference between a private shell drive and a state road used for public transportation purposes. It was his opinion that this proposed setback on a private shell drive located in an industrial district would not be problematic. Commissioner Kellam agreed and suggested that the commission encourage best use of industrial property by curbing sprawl thereby promoting preservation of green field areas whenever circumstances allow.

Commissioner Miller expressed concern that the private roadway may not remain private in the future. Ms. Benson noted that the wording of the text amendment was explicit in that it pertains to a private road that does not convey and is not planned to convey through traffic.

Commissioner Miller noted that the county's previous zoning ordinance would not have caused this problem and that the reduced setback was not warranted in this case. She suggested that the amendment propose a 75-foot setback. Ms. Benson stated that a 75-foot setback would not alleviate the applicant's problem, but that a 50-foot setback may be a better option. Ms. Miller then suggested that a 50 or 55 foot setback would make a more reasonable setback. Agreeing with Commissioner Miller, Commissioner Kabler expressed his opinion that the proposed amendment seemed innocuous but could affect other properties simply to satisfy one business owner who wished to add a little office space. Ms. Benson questioned the 100-foot setback as being reasonable when considering these circumstances.

Commissioner Miller stated that she would support a 50-foot setback recommendation, but not the setback proposed.

Action

Motion was made by Commissioner Kellam to recommend approval of Zoning Text Amendment 10-06 as submitted. Second was made by Commissioner Ward and the motion carried 4 to 2 with Commissioners Miller and Kabler opposed.

The next hearing was called to order.

Zoning Text Amendment 10-07 NHCO: The Northampton County Board of Supervisors proposes to amend the Northampton County Code by repealing §154.113 STANDARDS FOR SOLAR ENERGY FACILITIES; incorporating the definitions in §154.113 (B) into §154.003 DEFINITIONS; and deleting the reference to "Solar Energy Facility, Large Scale" in Appendix A, Use Regulations, Category 4.

There were no ex parte communications reported.

The Chair called for public comments and none were received. The public portion of the hearing was then closed.

Action

Noting that the commission had discussed this matter at length during previous meetings, motion was made by Commissioner Kabler to recommend approval to the Board of Supervisors. Second was made by Commissioner Miller and the motion carried unanimously.

The final public hearing was called to order.

Special Use Permit 10-07: William & Elizabeth Smith have applied for a special use permit to allow a private in-ground pool in the Custis Farms Agricultural and Forestal District. The property, containing 65 acres of land, is described as parcel 21 of Tax Map 16, double circle A, located at 5518 Seaside Road just north of Nassawadox.

The Chair called for disclosure of any ex parte communications. Commissioner Ward noted that he had toured the property with Mrs. Smith, but their conversation was not of a nature that would influence his objectivity concerning this matter. The commission so agreed.

The Chair called for public comments. Mrs. Smith stated that she was present and available to answer any questions that the commission might have.

No other public comments were received and the public portion of the hearing was closed.

Commissioner Kellam questioned the need of a special use permit for this type of accessory use as it was her opinion that language found in Section H of the AFD ordinance seemed to be a “gray” area and warrants clarification. Some discussion was held on Section H and its requirements related to different zoning districts.

Action

Motion to recommend approval of Special Use Permit 10-07 to the Board was made by Commissioner Kabler and seconded by Commissioner Kellam. The motion carried unanimously.

The commission then continued to discuss existing AFD ordinance language.

Commissioner Ward questioned how residential yard area requirements are established in an AFD. Ms. Benson noted that the Commissioner of Revenue and the landowner delineate and agree on residential yard areas as established at the time of an AFD approval.

Ms. Benson referred to the Code of Virginia that allows for the construction of a home in certain situations by right, but does not state explicitly other compatible residential uses that may be allowed in an AFD. Ms. Benson suggested that the commission convey its concern to the Board about the need to clarify Section H. However, she expressed her opinion that such a concern did not have to be relayed in a detailed motion format. However, Commissioner Kabler disagreed and suggested that the commission should propose detailed language for the Board’s consideration.

Motion was made by Commissioner Miller that the commission request that the Board review language in Section H of the AFD ordinance to clarify intent of “prior approval”, to clarify situations where a special use permit is appropriate and to permit residential uses in designated yard areas.

Commissioner Kellam suggested that the commission ask the Board to refer this matter to the commission for consideration. Ms. Benson noted that the commission should convey concern that the language is somewhat vague.

Commissioner Miller's motion was then seconded by Commissioner Kellam. The motion carried 5 to 1 with Commissioner Kabler opposed.

Matters from the Public: none.

Consideration of Minutes

The minutes of the May 20, 2010 work session were approved with the following corrections: page 10, first full paragraph, second sentence, the word "addressing the" should be inserted before "quality of runoff"; and in the fourth paragraph, the words "base conditions" should be added to the end of the second sentence. Motion to approve as corrected was made by Commissioner Wescoat and seconded by Commissioner Kabler. The motion carried unanimously.

The minutes of the June 1, 2010 regular meeting were approved with the following corrections. Page 9, second paragraph, the word "be" should be inserted prior to "necessary". Motion to approve as corrected was made by Commissioner Miller and seconded by Commissioner Kellam. During review of the minutes specific to page 8, paragraphs 8 and 9, Commissioner Kabler noted that he still likes to have staff recommendations written into staff reports.

Unfinished Business

The commission then discussed procedural matters with Commissioner Kellam forwarding a new memo for the commission's consideration. She offered to revisit the checklists and environmental assessment form for the commission. She also expressed her concern about due process issues related to staff recommendations on public hearing matters. Commissioner Miller noted that she would like to see more emphasis on the intent of zoning and intent of districts contained within any recommendation.

Ms. Benson noted that commission recommendations relayed to the board do contain points of discussion.

Commissioner Kellam conveyed the opinion of Bruce Jones, county attorney, that staff recommendations should not give the impression that a conclusion of a public hearing matter has been predetermined when staff approval or disapproval is noted in a staff report.

Ms. Benson stated that information deemed the most helpful should be provided in any staff report. Based on her conversations Mike Chandler approximately half of Virginia localities are

provided with a staff recommendation. She noted that it is required by law that the board be provided the commission's recommendation and stressed that any commission motion should clearly state why the motion was reached regardless of what staff suggests or recommends.

Commissioner Wescoat stated his opinion that staff reports should reflect whether an application complies with adopted legislation or not.

Commissioner Kellam expressed her opinion that staff recommendations be omitted.

Commissioner Miller stated her opinion that when working on the zoning ordinance it was apparent that stated intentions were a very important part of the record and can remind the commission that its recommendations were not arbitrary writings.

Commissioner Ward stated his opinion that the commission is dealing with two different aspects, zoning ordinance language and specific applications. He added that staff comments are offered as part of an incomplete record until public hearings have been held.

Referring to a current staff report, Commissioner Kabler expressed his appreciation of having staff's professional opinion available in the report. He also noted that he would prefer that opinions offered by the county attorney be made directly to the commission rather than presented second-hand.

Commissioner Kellam ended the discussion by noting that most issues contained within her memo had been resolved. Commissioner Coker noted that since most commissioners seem comfortable with the current format of the staff report it should remain unchanged for now.

Commissioner Kellam asked that "procedural matters" remain on the regular agenda as future discussion may be warranted. She added that the issue of a consent agenda is irrelevant as there has been no opportunity to use or justify that type of procedural device for now.

New Business: none.

Communications

It was noted for the record that the commission had received timely agendas from the Town of Cape Charles for both council and planning commission meetings. Commissioner Miller noted her appreciation of having staff forward the detailed information related to these meetings as such matters do impact the lower county.

Commissioner Ward reported that the last Cheriton Town Council meeting had to be rescheduled due to the lack of a quorum.

Commissioner Miller reported that Eastville anticipates having its proposed zoning ordinance ready for public hearing in September.

Commissioner Kellam reported that the Town of Nassawadox now has representation on the new Public Service Authority.

Board Action on Zoning Matters

Ms. Benson reported that the Board of Supervisors had tabled action on proposed large scale solar energy language for now; had approved Special Use Permit 2010-05 for a single-wide mobile home in Treherneville; and had taken no action on pending Agricultural-Forestal District (AFD) applications.

Committee Reports/Presentations

A brief presentation was made by the Signage Subcommittee.

Commissioner Kellam suggested that the commission coordinate efforts with the Tourism Commission and its sign initiative in order to better understand marketing strategy.

Commissioner Miller stressed that local businesses need to market tourism efforts and local products along the highway and that perhaps seasonal signage is needed.

Commissioner Kabler commented that businesses or local markets need some sort of promotional signage to replace the “shoddy” signs being used that would better promote business and improve aesthetics.

Commissioner Miller commented that it was her understanding that the Tourism Commission has not yet developed details to submit as part of acquiring grant money for such signage. Therefore, there is no detailed information on proposed size, design, etc., that the Tourism Commission can provide at this time. However, she noted that the intent is to have signage that is consistent from one area to another.

Ms. Benson reported that one member of the Chamber of Commerce subcommittee asked that varying needs of different types of businesses and locations be considered thereby allowing more signage than currently permitted.

Commissioner Miller noted that existing sign regulations are in line with other localities on a state average in her opinion. However, the commission needs to decide on a general concept for now.

Commissioner Wescoat noted that accommodating off-site signage for businesses in the towns and located off U.S. 13 should be a priority. Commissioner Miller noted that the framework of allowing such signs should be provided first.

Commissioner Kabler cautioned that any new signage regulations must be in compliance with the goals of the comprehensive plan.

Discussion followed on what type of signs, sizes, design criteria, and locations should be recommended with no definitive conclusions reached.

Commissioner Miller then suggested that a survey be submitted to the Northampton County Chamber of Commerce and town mayors to distribute to local business owners for their input.

Ms. Benson suggested that the commission should first evaluate current regulations and then receive feedback from actual business owners.

Commissioner Miller proposed that the focus be on seasonal businesses mainly and not all inclusive; however, other signage leeway may be in order to promote the tourism industry.

Commissioner Kabler suggested that the county invite local business owners to come together as a visioning group to help provide the commission with more information.

Ms. Benson expressed her opinion that thoroughness is more important than speed in this case as it is imperative that any evaluation satisfies those people involved.

Commissioner Miller volunteered to draft a signage survey for distribution to local business owners. By consensus it was agreed that a review of the survey by the commission was unnecessary.

A report from the Wind Energy Subcommittee related to proposed large scale and utility scale language was presented. Commissioner Kellam suggested that staff review and provide feedback by the September meeting before the full commission discusses the language in October.

Director's Report

Ms. Benson then presented her report noting various meetings scheduled related to impaired waters discussion with DCR and with the EPA on total maximum daily loads; an update on the town edge planning process; the upcoming Board meeting related to the draft stormwater management ordinance; status on the commission's 2010 work plan. The commission was informed that no public hearings are scheduled for the August meeting to date and that staff is beginning to review the suggested checklists provided by the commission in conjunction with a review and update of various zoning application forms.

Prior to adjournment Commissioner Miller informed those present that a booklet is now available in staff's lending library entitled, "A Sustainable Chesapeake – Better Models for Conservation."

Adjourn

It was noted that Commissioners Coker, Wescoat, Miller and Kabler would be absent next month on August 3.

There being no other business motion to adjourn was made by Commissioner Miller at 9:12 p.m.

Chair

Secretary