Minutes
Northampton County Planning Commission Work Session
March 16, 2016
16404 Courthouse Road, Eastville, VA
7:00p.m., 2nd Floor Admin. Conference Room

Those present – Jacqueline Chatmon Dixon Leatherbury, Mark Freeze, Kay Downing, Michael Ward, and Sylvia Stanley

Absent - David Fauber

Also in attendance was Peter Stith, Long Range Planner

The meeting was called to order and a quorum was established.

The agenda was reviewed and accepted as presented.

The Commission discussed the motion and resolution below for their recommendation on the proposed 2016 Zoning Ordinance and map.

To: **Northampton County Board of Supervisors**
From: **Northampton County Planning Commission**
Subject: **Repeal of the Zoning Ordinance and Map Adopted December 8, 2015**
Date: **March 16, 2016**

MOTION AND RESOLUTION

This Motion is made to adopt the following Northampton County Planning Commission Resolution as follows:

RESOLUTION OF THE NORTHAMPTON COUNTY PLANNING COMMISSION REGARDING PENDING ACTION ON THE PROPOSED 2016 ZONING ORDINANCE

WHEREAS the Northampton County Board of Supervisors has applied to the County for a new Zoning Ordinance (herein after called "2016 Ordinance"); and

WHEREAS the Board of Supervisors have, by the smallest possible margin in vote, decided to "fast track" this application; and

WHEREAS a forty-three day window to review the proposed 2016 Zoning Ordinance is woefully inadequate for proper consideration by the Planning Commission; and

WHEREAS the existing 2015 Zoning Ordinance is, in form, a far superior document to the proposed 2016 Zoning Ordinance; and

WHEREAS the proposed 2016 Zoning Ordinance relies on a philosophy of allowing only uses specifically named in the use chart, and most of them only by Special Use Permit; and

WHEREAS the Planning Commission has spent thousands of man hours over the past 24 months reviewing and making suggestions to the 2015 Zoning Ordinance prior to its adoption in December, 2015; and

WHEREAS, at the Joint Public Hearing held on March 9, the Chairman of the Board of Supervisors indicated a “mood of compromise” on the part of the Board of Supervisors; and

WHEREAS the citizens of the County are understandably concerned by the complete reversal of the Board’s philosophy towards zoning; and

WHEREAS the 2015 Zoning Ordinance considered the adopted Comprehensive Plan as required by State Code; and

WHEREAS the 2015 Zoning Ordinance does further public necessity, convenience and general welfare of the County; and

WHEREAS the 2015 Zoning Ordinance is consistent with good zoning practice; and

WHEREAS the most logical path to a concise, useable, and vetted Zoning Ordinance is to modify the current 2015 Zoning Ordinance in specific areas recommended by the Planning Commission prior to its adoption, and in other areas to be identified by the Board of Supervisors

WHEREAS adoption of the 2016 Ordinance before the adoption of the Comprehensive Plan would initiate a review of the new Ordinance to determine its compatibility to the current Comprehensive Plan, which will result in proposed amendments to bring it into conformity with the Plan, triggering a need for a public hearing and notice to the population.

WHEREAS If this delays the completion of the Comprehensive Plan review, the adoption of that plan will later trigger another compatibility review, resulting in the proposal for more amendments, another notice and public hearing. By deferring action until the Comprehensive Plan review is completed and adopted, only one subsequent notice and public hearing will be required, resulting in avoiding the cost to the taxpayers.

NOW THEREFORE, BE IT RESOLVED by the Northampton County Planning Commission that the Planning Commission’s recommendation is for withdrawal of the proposed 2016 Zoning Ordinance; and

BE IT FURTHER RESOLVED that the Board of Supervisors identify specific areas of the 2015 Zoning Ordinance which require further review by the Planning Commission; and

BE IT FURTHER RESOLVED that review of such areas be undertaken by the Planning Commission as soon as the Comprehensive Plan is approved, which is complete in draft form, further consideration of which has been delayed by the Planning Commission’s immersion in its duties to the Board for review of the proposed zoning amendments; and

BE IT FURTHER RESOLVED any subsequent action by the Board of Supervisors should address the attached list of issues discovered and identified in the small window of time allowed for its review, and

that the document be reviewed by legal for items which are not in compliance with Virginia Code and Federal Statutes; and

BE IT FURTHER RESOLVED that this Resolution is adopted by the Northampton County Planning Commission on the 16th day of March, 2016.

Pursuant to the Board of Supervisors (BOS) intent to repeal Chapter 154.1 Zoning Ordinance and Map adopted December 8, 2015 as well as Chapter 158 Chesapeake/Atlantic Preservation Areas (CAP) Ordinance and Map adopted December 8, 2015 and re-adopt the 2009, 2000 and 1983 texts and maps with certain amendments further described in the Board's January 12, 2016 Resolution and action memos dated January 20, 2016 and January 26, 2016, the Board of Supervisors requested the Planning Commission (PC) review its application and provide a response in 43 days.

Since the enactment of the 2009 Zoning Ordinance, the Planning Commission has held 112 Public Hearings, and considered 11 Zoning Map Amendments, 32 zoning text amendments and 57 special use permits. It has reviewed amendments creating standards for wind energy structures and facilities, solar energy and signage provisions for businesses located within Towns, as well as a general review of the Subdivision Ordinance. It has also twice reviewed and made recommendations on the 2015 Zoning Ordinance but was unable to completely review that short document within the allotted 100 days. Of course, during this time, the membership of the Commission has changed, and so not all members may be familiar with some of the hearings and actions.

Despite having worked with the old ordinances for years, there are many provisions within those ordinances which have never come before the Commission for review or consideration, and because of the turnover in membership, some provisions have never been considered by some of the current members. Consequently, there are large sections of the old ordinances with which the Commission has no experience or familiarity, and which would require much more time than has been allotted to review and consider.

There are several factors, which make the task more complicated. The proposed 2016 ordinance is based upon the original 1983 ordinance, which was subsequently amended by the 2000 and 2009 ordinances. In making those amendments, the prior Boards of Supervisors did not follow normal legislative drafting procedures, and strike out those sections of the earlier ordinances which were being repealed or altered, but instead left them in place, and included in the subsequent enactments a general provision to the effect that, as stated in Section 154.2.004(a) of the 2009 ordinance, "when provisions of this chapter are adopted or amended, they shall supersede and repeal any conflicting provisions previously adopted," and (b), "Whenever this chapter is at variance with the requirements of any other lawfully adopted county, state, or federal statutes, rules, regulations or ordinances, the most stringent of the applicable provisions shall govern." First, subparagraph (a) leaves a great deal of discretion to those administering and interpreting this law as to what is a "conflicting provision", which should have been deleted when the subsequent ordinance was adopted. Second, subparagraph (a) was based upon the various ordinances being adopted sequentially. Under the proposed 2016 Ordinance, they are all being adopted simultaneously, so to the extent there are provisions within the various ordinances, which are in conflict, subparagraph (a) has no relevance, and the provisions of paragraph (b)

would control. As a result, if what had been a subsequent enactment that was less stringent than a provision in a previous version, the earlier and more stringent provision would apply, despite the legislative intent to relax it.

For example, the 1983 and 2000 Ordinances define "day care centers" as being limited to 6 children, but the 2009 version has no limits on the number of children, defining them merely as "facilities providing day care or nursery services for children." The intent of the 2009 version was to remove the number limitation of the previous version, but under the proposed 2016 version, the 2009 intent would be defeated by subparagraph (b), and the prior limitation on the number of children would apply because it is the more stringent. This is not an isolated example, as there are other similar conflicts where the intent of the more recent version would be subverted by the "more stringent" requirement. This is further complicated by the fact that the 2009 version contains the term "Day Care Center", with one definition, and then defines "Nursery/Day Care Centers" another, with the latter including the 6 child limit and the former not.

While this may be considered a minor example, it illustrates a much larger issue resulting from the introduction of these past ordinances as a single new ordinance, and finding these conflicts requires a very detailed and thorough examination of the text, which is not possible in the limited time allotted. The failure to find and eliminate these conflicts makes enforcement of the proposed ordinance much more complicated and could have serious economic and legal consequences.

The ultimate point is that the way the previous ordinances were drafted and are now being introduced as a single ordinance creates confusion and a legal minefield that can result in costly delays and potential litigation that could be avoided by providing the time needed to properly review and correct the problems. Given that the Planning Commission cannot perform the task assigned to it in the allotted time, the best that can be done is to highlight some of the major issues that need to be addressed.

A. Technical Issues

1. Definitions. The definitions in the various ordinances need to be combined into a single section so that duplicate or conflicting provisions, such as cited above, can be more easily detected and eliminated, and the substantive and procedural provisions in all the ordinances are consistent.

2. Provisions and sections that have been superseded by subsequent enactments need to be eliminated from earlier versions so that the legislative intent and the operative standards can be applied without conflict or confusion.

3. General Categories vs. Use Charts

a. The Planning Commission recommends that the use chart in the 2016 proposed Ordinance be replaced with the general uses employed in the 2015 Zoning Ordinance.

b. The proposed 2016 Ordinance would revert to use charts as the means for defining what is permitted or not permitted within each zoning district, while the 2015 Ordinance establishes general uses. The proposed 2016 use chart contains over 6,500 cells listing specific uses, and as such, is constrained to those potential uses envisioned by the authors. As such, it becomes an inflexible document unable to respond to new or omitted uses or those not previously imagined, and fails to provide the flexibility needed to respond to a changing economy and market system. For example in the Agricultural Use chart there are specific omissions including cotton, herbs, tobacco, hay, industrial hemp, blueberries, raspberries, blackberries, strawberries, field grown flowers and ornamental plants not grown in a greenhouse because they are not specifically listed. Uses that are not included within the use chart are then required to undergo the lengthy process of offering a zoning text amendment or initiate an expensive legal proceeding. Because of these impediments, uses not included in the use charts, businesses often decided not to locate within the County.

c. In the past, the Zoning Department has taken the position that unless a use is specifically listed, it is not allowed, which seems to be the intent of the language. However, this is inconsistent with the Supreme Court interpretation of the laws of Virginia and the equal protection provision of the U.S. Constitution. (Board of Supervisors of Fairfax County v. Southland Corporation, 224 Va.514 297 S.E. 2 d 718 (1982) Board of Supervisors v. Allman, 215 Va.434, 211 S.E. 2d 48 (1975). Board of Supervisors of Fairfax County v. McDonald's Corporation, 261 Va 583, 544 S.E. 2d 334 (2001)) Specifically, the Virginia Supreme Court has declared the operable standard is that "similar properties must be treated similarly", as well as section 14.1-488 of the Virginia Code, which requires the uniform application of zoning laws within zoning districts. If a proposed use complies with the performance standards for the district, and is similar to other uses allowed in the district, but not specifically listed in the use charts, under the current restrictions of the proposed use charts, it would not be permitted. To be successful in attracting new industries and commercial ventures, the Zoning Ordinance needs to be flexible, which is what would be allowed by relying on general categories rather than specific uses, and bring the ordinance into compliance with existing court rulings.

B. Substantive Issues

1. Affordable Housing

The Planning Commission finds that the proposed 2016 Zoning Ordinance fails to provide sufficient incentives to promote affordable housing, in that the density bonus is insufficient, and as such, fails to comply with Section 4 of the 2009 Comprehensive Plan. While the 2015 Zoning Ordinance fails to provide any density bonus for affordable housing, the provisions allowing for increased density in various zones better supports the Comprehensive Plan's encouragement for "inclusionary zoning". As stated on page 66 of the Comprehensive Plan, "This type of development, which could also include mixed use-mixed density neighborhoods, should be encouraged to the extent feasible, particularly in the Villages and Hamlets where infill lots exist and smaller lots may be created in areas which are not yet experiencing significant upward price pressure." The Planning Commission therefore recommends that the increased densities allowed by the 2015 Zoning Ordinance be used as the basis for addressing affordable housing options, and that a provision allowing for increased density bonuses be added.

The 2016 proposed Ordinance needs to be amended to provide increased incentives for affordable housing in terms of increased bonus densities and by right or minor special use in more zoning districts. While the 2015 Ordinance addresses this issue by increasing allowable densities and permitting multi-family housing units in more zoning districts, it fails to include a provision allowing a density bonus for affordable housing. Neither the 2015 Ordinance nor the 2016 Ordinance provide for Planned Unit Developments, and since the bonus would be based upon the construction of multiple dwellings, a PUD is one of the best options for achieving this goal.

Section 154.2.108 of the 2016 Ordinance purports to provide an incentive for affordable housing by offering a 10% density bonus for a rezoning application that includes the provision of affordable housing units as a part of the rezoning application. As a practical matter, in order to take advantage of this bonus, the rezoning would have to include 10 units, which, if they were single family dwelling units, would be a sizable development. Where, under the proposed ordinance, would such a development be allowed? The failure of this provision is evident from the lack of any new affordable housing being built or proposed in the last few years.

The most affordable housing type is multi-family units, but nowhere under the 2016 proposed Ordinance are multi-family units allowed by right. The cost of preparing an application for a rezoning for a multi-family complex is not insignificant, and given that there is no guarantee that it would be approved, it is a major impediment, especially for a government agency or non-profit. In a meeting with Commissioners, Elaine Miel, the Executive Director of the Accomack-Northampton Planning District Commission identified the cost of preparing an application and the uncertainty of approval as a major impediment to the submission of proposals in Northampton County.

A 10% density bonus is not a significant attraction, and should be increased to at least 20% or 25%. This would not only be a greater incentive, but also allow for

developments of 4 or 5 units to take advantage of the bonus, and require a smaller investment.

Given the extent of poverty in the County, special attention should be given to creating affordable housing opportunities for those with very low incomes, being those individuals and families earning 50% or less of the current area median income. There should be an additional bonus of 5 or 10% above the standard bonus for those providing housing at affordable levels for this group.

Another consideration should be given for those low-income elderly, who are often living on social security. Again, an additional bonus of 10% should be offered for this demographic. According to the 2010 U.S. Census, there are over 1,000 residents over the age of 60 in Northampton County who live alone, and there are few housing options outside of single family homes available to them.

There is no requirement in Section 154.2.108 that the affordable housing be of the same size and include the same amenities as the other housing, or if various sizes are being offered, that the number of affordable units of different sizes be proportional to the number of different sized standard units. This is needed to insure that the affordable unit bonus not be based simply on the number of units, but that the units meet the needs of the population.

There is no requirement that the affordable units be spread throughout the development and not be separated or confined to a distinct area.

A further restriction on promoting affordable housing is contained in Section 154.2.104, Standards for Lot Coverage and Open Space Preservation. Under this provision, the maximum lot coverage ratio is established for the various zones. In the Agricultural zone, the lot coverage is limited to 15%, but increased to 25% for lots created under the Open Space Density Bonus Option created by section 154.2.108. There are no other zones that increased the allowable lot coverage ratio, but most residential areas are limited to 15 or 25%, with the exception of Existing Cottage Community, which allows for 60%. Requiring that affordable housing units be limited to just 25% of the lot coverage would often be a serious financial impediment to a developer who is only receiving a 10% density bonus, and allowing an increased lot coverage ratio would make investment more attractive.

Another alternative would be to establish an affordable housing fund, wherein a developer could receive a density bonus if a cash contribution to an affordable housing fund equivalent to the cost of providing affordable units within a proposed development were made. Creating such a fund would require drafting provisions as to the means for calculating the amount of the contribution, designating what county official or department would administer such a fund, how the funds would be segregated from other County revenues, how such funds would be preserved and invested, and

ultimately how the funds would be disbursed and to whom. Accomplishing this within the time provided is not possible.

2. Planned Unit Development

The Planning Commission recommends that Planned Unit Developments be made a part of the zoning Ordinance in order to accommodate and encourage more concentrated mixed-use mixed-residential development, consuming less land, and achieving the goals set forth by the Board of Supervisors' adoption of the Healthy Communities program objective of encouraging a "Livable Community".

Northampton County has an aging population, supplemented in recent years by an influx of retirees. Much of the housing stock in the County is single family residences located on 1 acre or larger lots, which may not appeal to the newly retired who are increasingly confronted by more limited financial resources than in the past. Moreover, many of these migrants are seeking to downsize the responsibilities and their residencies, while at the same time, have easy access to necessities and conveniences. Continuing care facilities that provide various housing options, from independent living to assisted living to hospice care are attractive options for retirees, especially when they are combined with access to shopping and attractions. Declining economic conditions also make low cost housing options more attractive, such as mobile home parks. Communities, which offer such attractions as walking, hiking and bike trails are desirable. Without an option for a Planned Unit Development, the ability of the County to attract this growing segment of the population is limited, and provision should be made to meet this demand.

As technology increasingly is combining living and working environments, there is a need to provide a regulatory framework to accommodate changing conditions, especially those that cannot be met by a formula based upon an industrialized society that segregates such uses. How this interplay will work out in the future is unknown, but without flexibility to accommodate these changes, the County will forego the option of being able to attract businesses and residents seeking the benefits and advantages of this lifestyle.

The Zoning Ordinance needs to provide a flexible framework that can meet changing market demands and lifestyles in ways that cannot easily have been anticipated or foreseen in the present, and incorporating a Planned Unit Development option is the simplest solution.

3. Route 13 - Additional commercial development should be allowed along Rt. 13 in concentrated strategic areas in order to capture local and tourist traffic.

4. Town Edge – Section 154.2.081(H) states "The intent of this primary district is to provide potential development areas adjacent to incorporated towns which may, in the future, be served by extensions of public water and sewer services from the towns. Growth and increased development are intended to occur simultaneously with the provision of public infrastructure, including, but not limited to, public sewer and water, to support such growth and development." Only two of the towns have both sewer and water, which

would provide them with an unfair advantage. Consideration of the Town Edge District should be deferred until a consistent policy is uniformly beneficial to all of the towns in Northampton County.

5 Residential Zoning - The loss of population has social and economic consequences as seen by the relocation of the hospital. To attract new residents, the housing and residential real estate supply should match the market demand but because of past practices there is a disconnect between the existing land use patterns established under prior zoning and current buyer expectations. The County should do a study of existing paper subdivisions with the intent to identify those which have never been improved and develop criteria for determining which plats or subdivisions should be vacated. The study should include consideration of whether the lots are buildable and meet applicable regulations (VDH, VDOT). In the event that any particular subdivision is recommended to be vacated, the owner should be given an opportunity to either bring the property into compliance with applicable regulations or reconfigure the subdivision to current standards. In order to allow the reconfiguration, Residential zoning class(es) should be retained.

Motion was made by Commissioner Downing to go past 10 pm and with a second from Commissioner Leatherbury, the Commission agreed to continue working past 10 pm.

Commissioner Stanley left at 10:05 pm

Motion was made by Commissioner Leatherbury to send the resolution and attachment to the Board of Supervisors and with a second from Commissioner Freeze, the motion carried with all in favor (5-0)

The Commission came to a consensus to look in to legal options regarding an email from Mr. Dufty regarding the Comprehensive Plan.

With no further business the Chairman asked for a motion to adjourn at 10:13 pm. A motion to adjourn until April 5, 2016 was made by Commissioner Downing and seconded by Commissioner Leatherbury. The motion carried with all in favor (5-0).

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Chairman Secretary