Minutes

Recessed Meeting

Northampton County Planning Commission

May 18, 2011

This was a recessed meeting of the Northampton County Planning Commission held on Wednesday, May 18, 2011 at 7:00 p.m. in Conference Room #2 at the former Northampton County Middle School located at 7247 Young Street, Machipongo, Va.

Those present were Chair David Fauber, Mary Miller, David Kabler, Roberta Kellam, John Wescoat, Jr., Michael Ward and Vice-Chair Martina Coker. The member absent was Severn Carpenter.

Also in attendance were Sandra G. Benson, Director of Planning & Zoning; and Peter Stith, Long Range Planner.

The meeting was called to order and a quorum established.

The agenda was reviewed and accepted unanimously 7 to 0 as presented upon motion by Commissioner Wescoat and second by Commissioner Kellam.

Unfinished Business

The commission then continued discussion on Zoning Text Amendment 2011-04 as filed by Turner & Turner.

A. **Zoning Text Amendment 2011-04**: Turner & Turner Attorneys at Law have filed on behalf of property owners in Willis Wharf, VA to amend the Northampton County Code, **§154.003 DEFINITIONS,** by amending the definitions of "Redevelopment" and "Water-Dependent Facility" and to amend **Appendix B Densities, Lot Sizes and Dimensions** for the WV-WC Waterfront Village-Waterfront Commercial District as indicated below.

	WV-WC (Appendix B)	**Proposed**
Minimum lot width at shoreline	250'	60'
Front yard setback	P/60'	P/10'
Rear yard setbacks:		
Principal	20'	0'

Accessory	5’	0’
Side yard setbacks	20’	10’
Shoreline setback	110’	(water dependent uses only) 0’
Maximum lot coverage	60%	75%

Ms. Benson referred to her memo dated May 16, 2011, whereby based on the commission’s discussion at the May 3, 2011 meeting and subsequent guidance from the County Attorney has determined that a public hearing is not necessary to advance the commission’s recommendation to the Board of Supervisors. She noted that the following action would be in order: a motion to recommend approval to the Board of Supervisors of ZTA 2011-04 in accordance with the staff recommendations for the definitions of Water-dependent Facility and Redevelopment, except that the word “accessory” should replace the word “appurtenant”; that creation of an Intensely Developed Area is not recommended; and that the proposed changes to Appendix B be applicable only to water-dependent uses/facilities.

Commissioner Kellam asked for clarification that the proposed changes would apply to all water dependent uses throughout Appendix B. Ms. Benson stated that was correct; changes would not exclusively apply to the WV Waterfront Village District, but to all zoning districts allowing water dependent uses.

The Chair suggested that language include the words, “minimum necessary to afford relief”, as a stipulation. He explained that if a building had the potential to meet the road or prevailing setbacks or even reduced setbacks then such structure should not be allowed to encroach beyond unless there is a proven need to do so. It was his opinion that relief criteria for any project would be determined by staff. The criteria would not pertain to the size of the building but to its location.

Commissioner Ward questioned why such language was needed and asked for clarification of “needed”.

Ms. Benson stated that the commission cannot decide setbacks through the special use permit process.

Commissioner Kabler moved to recommend approval of the zoning text amendment as written in staff’s memo and to include additional language of “minimum necessary to afford relief” for water dependent uses only.

Commissioner Wescoat stated that he could not support the motion to include additional language since it would curtail the flexibility that is being sought. Commissioner Ward agreed.

Commissioner Kellam stated her concern about the absence of a legal standard but that she would support the original recommendations as proposed on May 3.

There being no second the motion failed.

Commissioner Kellam then moved to recommend approval to the Board in accordance with staff recommendations stated in the May 16 memorandum for the definitions of Water-dependent Facility and Redevelopment, except that the word "accessory" replace the word "appurtenant"; that creation of an Intensely Developed Area is not recommended; and that the proposed changes to Appendix B be applicable only to water-dependent uses/facilities. Second was made by Commissioner Wescoat and carried 7 to 0.

Ms. Benson noted that the Board will take up this matter at the May 23 meeting.

Ms. Benson informed the commission that the Board has received a serious inquiry from individuals to pursue a wind project, but not a wind farm. However, there is concern that proposed wind energy regulations could impact that proposal. Those individuals will be available at the June meeting to make a presentation to the commission.

Commissioner Kellam asked that the commission continue to review the proposed language since there has been very little feed-back on this matter; and to review background information that she e-mailed addressing impacts of wind energy projects.

At this time Supervisor Spencer Murray, representative of District 4, presented written comments as follows addressing a proposed zoning text amendment initiated by the Board.

Members of the Planning Commission:

The zoning ordinance text amendment being presented to you tonight is a revision of a previous one considered by the Board of Supervisors but withdrawn prior to submission. The single biggest change is from by-right R to M/S or S as the Board felt citizens were due the protection and opportunity to voice their opinion on certain uses as afforded by the M/S and SUP processes.

On May 10, the BOS passed a motion to send this proposed text change to you for public hearing and your recommendation with a response requested to the BO S by June 14, 2011.

It is my understanding that this process, namely the BOS being the applicant for a text change, is fully supported by the Code of VA. As a living document, the Zoning Ordinance can be changed by the BOS, the Planning Commission, or a citizen as applicant. When I voted to approve the zoning Ordinance I stated my desire that it be enabling through flexibility and

adaptive to changes in new technology such as wind and solar and while reflecting the intent of the Comprehensive Plan, not restrictive to achieve the agenda of a few.

Over the last year or so I and other supervisors have met with potential investors both within and outside of Northampton County regarding conceptual development and redevelopment in the waterfront community of Oyster. In addition, there have been numerous meetings with the County Administrator, the Director of Planning and Zoning, the Zoning Administrator and some supervisors and residents of the villages to discuss and update their "vision" statements as part of the Comprehensive Plan revisions later this year. It has been stated that there are few, if any, and no substantive changes anticipated.

Other meetings have been held to listen to the specific needs of the Aquaculture Community with respect to densities, lot sizes and dimensions for the Waterfront Village communities. Their specific concerns are being addressed in a separate text amendment proposal. I do not believe there is anything in this proposed text amendment that will adversely impact or conflict with their desires.

I have met with investors, including the Baldwin family, who own properties in the Waterfront Villages. The Baldwin's are constituents of mine in District #4, which I represent. We discussed conceptual development and redevelopment ideas. There are no final plans before the ZA or the Director of Planning and Zoning and I sincerely hope that no one is questioning the ethics or propriety of my meeting with my constituents or that of any other supervisor doing the same.

On behalf of the Board of Supervisors, I am requesting that you review this proposed text amendment, consult with the Director of Planning and Zoning, hold a public hearing, and submit your recommendations by the prescribed date, or sooner than June 14th, 2011.

Respectfully,

H. Spencer Murray
Supervisor, District #4

Supervisor Willie Randall, representative of District 1, thanked the commission for their diligence and work. However, he stressed that the county cannot continue with a "business as usual" attitude noting that the county is under extreme financial pressure due to the economic decline and that the county will soon be losing one of its largest employers, Riverside Shore Memorial Hospital. He stressed that many citizens are having financial difficulties due to the insufficient number of jobs that provide a living wage. The proposed text amendment is not new but a revised amendment based on the desires of the residents of Oyster to have input on development opportunities that might (and he emphasized the word "might") become available. He added that the original request was withdrawn by the Board to comply with the wishes of Oyster citizens. He then asked the commission to give this amendment favorable consideration in order to potentially create jobs.

Commissioner Kellam questioned going forward with the proposed text amendment prior to the visioning process being completed. It was her opinion that this is premature and could be inconsistent with both visions. It was her understanding that no new amendments would be submitted until the visioning process was completed.

Mr. Murray stated that he has reviewed the existing visions, meetings have been held and it was his understanding that no substantive changes are being recommended. He then quoted from the Oyster Vision promoting various commercial uses such as nature tourism, recreational fishing, seafood restaurant, bait and tackle, fish market, etc. When asked about residential uses, he noted that the plan calls for residential to be essentially the same as already adopted and noted that condos are not being requested. The assumption that the Board is operating under is that the vision plans will remain basically the same. He asked that the commission review the information and make a recommendation to the Board.

Commissioner Kellam voiced concerns about the lack of transparency in this process and asked why the Baldwin family and their contacts were not applying for a zoning text amendment instead as it was well-known that they have a preliminary project slated for Oyster. It was her opinion that the Board is doing the work for the Baldwin family by putting forth this application.

Mr. Murray stated that the Code of Virginia clearly states that the Board has the right to propose a zoning text amendment. He added that he has every right to meet with any constituent as does any Board member.

Commissioner Kellam stated that she has been called by the Baldwin family about this matter and she was uncomfortable with accepting the Board's application. It was her opinion that the Baldwin family should submit their own application.

Stressing that there was nothing to hide in the process taken by the Board, Mr. Murray stated that the amendment will protect the aquaculture business while also creating opportunities that will help generate revenue and jobs. He noted that the villages of Oyster and Willis Wharf are part of the county and not incorporated towns. He encouraged the commission to do their duty by reviewing the application thoroughly and then make a recommendation by June 14th. He stated that he would find it offensive if anyone presumed that he was personally promoting the efforts of the Baldwin family. Noting that the current level to create revenue is not sustainable, it was his opinion that flexibility is needed to create opportunity for revenue. He added that the Board has recognized the right of citizens to express their views through the public hearing process as proposed in the amendment and that this public process is not being subverted in any way.

Commissioner Miller stated her concern about legal liabilities impacting the commission if this application is accepted as it was her opinion that most of the proposed uses listed in the zoning amendment were not consistent with the intent statement for the Waterfront Village-Waterfront Commercial District. She questioned if the Board had considered this while putting

forth this amendment. Given her concerns she had requested legal advice from the county attorney.

Mr. Murray asked if the county attorney had provided any legal opinion to address her concern. Commissioner Miller replied yes, that it was his opinion that the commission could proceed and accept the application without forfeiting any immunity granted by the Code.

Commissioner Kellam stated her concern that high-end condo development would change the historic nature of the area and that the aquaculture industry would eventually be pushed out of the waterfront village areas.

Mr. Murray stated that other uses besides aquaculture activity occurs in and around the creeks and he does not believe "commercial" activity is limited to aquaculture only.

Ms. Benson noted that the public hearing on this zoning text amendment would be held on June 7.

Commissioner Ward then asked that additional information be provided to help with the review of the amendment. He specifically wanted to know the real extent of the area actually available for development in Oyster and also how many properties are under conservation easements that prohibit or limit development.

Commissioner Kellam asked that revised visions or any draft vision documents be provided to the commission as well.

Commissioner Miller asked that a map of affected districts with ownership information be provided as she was alarmed that property owners may not be adequately informed about these proposed amendments.

Commissioner Kabler stated his opinion that the public hearing process would cover any legal notification as required by law. Ms. Benson concurred and noted that only a zoning map amendment would require that each property owner be notified about a zoning district change. A zoning text amendment has no such Code requirement.

Referring to a columned chart she had developed Commissioner Miller noted that the application calls for uses to support tourism and that many tourism-oriented uses are already permitted in the WV-NB District and took exception that lodging is a water-dependent use. She expressed concerns that waste water treatment and disposal, hazard mitigation, and limits on floodplain development have not been adequately considered. It was her opinion that the proposed Working Harbor District amendment would be a better alternative than what the Board is proposing.

Commissioner Kellam asked for clarification concerning shared lot line development. Ms. Benson noted that ownership of properties would not be relevant but that structures would be allowed to straddle shared property lines.

Commissioner Miller stated that most Atlantic Coast seaside villages have a solid wall of condos along the water that separates the community from the water as a result of using shared lot lines.

Ms. Benson informed the commission that the shared lot line regulation is already in the adopted zoning ordinance in Appendix B for both the Waterfront Village Neighborhood Business and Waterfront Commercial Districts and that there is no maximum density designated in the Waterfront Commercial District. However, she added that mixed-use structures, residential/commercial up to 4 single-family dwelling units, are not currently permitted in the Waterfront Commercial District as listed in Appendix A, Item 8.

Commissioner Kellam requested that copies of Eyre Baldwin's concept plan of development and any other supporting documents be provided to the commission.

Commissioner Miller noted that she would provide a copy of the material for staff to copy that was distributed by Eyre Baldwin at a meeting conducted at the Palace Theater a few years ago.

Ms. Benson stated that it would be in error to try to attach information from an individual who has developed concepts to a specific text amendment received from the Board. Commissioner Miller disagreed since Mr. Murray specifically mentioned Eyre Baldwin and that Eyre Baldwin's name is on this proposal.

Commissioner Kellam stated that Eyre Baldwin has called everybody and that she has personally received at least 10 calls herself; therefore, it would be impossible to ignore that he is part of this proposal. That being the case, anything that Mr. Baldwin is proposing does apply in her opinion. She requested officially that the commission be provided copies of his information as being germane to this Board application.

Commissioner Ward suggested that it might be helpful if the commission could visually see an illustration of shared property line development. However, it was his opinion that it would be unfair to say that Eyre Baldwin's proposal is part of this application. This text amendment would apply to other properties and not Mr. Baldwin's only.

Commissioners Miller and Kellam asked that soils maps, floodplain designations, flood elevations, wetlands designation, sea level rise data, and the new Ground Water Survey be provided specifically for both Willis Wharf and Oyster. Ms. Benson stated that the soils survey would provide water depth information but is not parcel specific.

Commissioner Coker asked if there was any way to model traffic for commercial development in the waterfront villages. Ms. Benson noted that only a zoning map amendment would trigger such a requirement, but is not required for a zoning text amendment.

Commissioner Miller stated that she had forwarded to the commission Code requirements related to drawing and applying zoning ordinances and districts for everyone to review.

Commissioner Miller commented on the June 14th deadline imposed by the Board as being unrealistic given the current work load forwarded to the commission by the Board.

The commission did not entertain further review of the comp plan at this recessed meeting.

Adjourn

Motion to adjourn was made by Commissioner Kellam at 8:30 p.m. and was seconded by Commissioner Coker.

_____ _____

Chair Secretary