

Minutes

Northampton County Planning Commission

May 3, 2011

This was a regular meeting of the Northampton County Planning Commission held on Tuesday, May 3, 2011 at 7:00 p.m. in the auditorium of the former Northampton County Middle School located at 7247 Young Street, Machipongo, Va.

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

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

The meeting was called to order and a quorum established.

The agenda was revised to add Special Use Permit 2011-05 as filed by William C. Parr to Unfinished Business making it item A. Also, Ms. Benson added that Mr. Stith may not be available tonight due to another commitment so Item 7.A. would be presented at a later time. Motion to approve the revised agenda was made by Commissioner Ward, seconded by Commissioner Carpenter, and carried 8 to 0.

The first public hearing was called to order.

Public Hearings:

- 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.

	<u>WV-WC (Appendix B)</u>	<u>Proposed</u>
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. Cela Burge, representing Willis Wharf aquaculture businesses, stressed the importance of continued growth of this decades old industry that is so vital to the local economy. She stated that no changes are proposed to the existing Use Chart and that revised definitions as proposed in the staff report are acceptable to her clients.

Mr. Chad Ballard, President of Cherrystone Aquafarms, stressed that they needed to expand in order to accommodate their oyster growing division. With adoption of the proposed revisions it was his opinion that their business would grow in an environmentally sound way as well.

Mr. Hank Bowen, also an aquaculture business owner, stated that existing setback requirements prevents any aquaculture expansion on previously developed waterfront property in Willis Wharf.

Ms. Kelly Taylor, an aquaculture investor and employee, stated her support of the proposed zoning text amendment to promote growth of the aquaculture industry.

Mr. Peter Kafigian, a resident of Willis Wharf, stated his support of the aquaculture industry and protection of local waters. However, it was his opinion that such amendments would create problems for Oyster and that variances from zoning regulations should be sought by the aquaculture business owners instead.

Mr. Steve Lawson, a general contractor, stated that the aquaculture businesses have supported his construction company and that these businesses have maintained a good standard of work throughout the years.

Email from Somers Long and Camden Whitehead were read into the record as attached. Mr. Long, a Willis Wharf property owner, expressed his support of aquaculture businesses, but stressed that no one officially speaks for him in this matter by trying to be more restrictive in government regulations over private property rights. Mr. Whitehead, a property owner in Oyster, stressed that the culture of the village and its natural resources be preserved and that

variances or special uses be used to accommodate water dependent uses in order to adhere to the Oyster Vision Statement.

When asked Mr. Bowen noted that Parting Creek is a better watershed than Red Bank for productive aquaculture, but county building setbacks are creating problems due to the narrow dimensions of previously developed parcels along the waterfront.

Commissioner Kabler asked if only water dependent uses would be allowed along the Waterfront Commercial District. The Chair replied yes and that those uses would be permitted within the Resource Protection Area (RPA) as allowed by the State. He also noted that there is some aquaculture business in Oyster. It was then explained that the RPA is described as the area 100 feet landward along any shoreline.

Commissioner Coker explained that a variance would not apply in this situation because this is a recurring issue and not an exception involving one property but many parcels.

Commissioner Miller requested that exact language proposed related to aquaculture and aquaculture facility be read into the record as submitted by the applicant. The Chair then read the definition of Water-Dependent Facility as follows, "A development of land that cannot exist outside the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to: (a) Ports; (b) The intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (c) Marinas and other boat docking structures; (d) Beaches and other public water-oriented, recreation areas; (e) Fisheries or other marine resource facilities; and (f) AQUACULTURE and AQUACULTURAL FACILITIES."

When asked, Ms. Benson stated that staff's definition would add the following language at the end of the proposed definition, "and (f) AQUACULTURE and AQUACULTURAL FACILITIES and essential accessory uses and structures when it is demonstrated through the required Water Quality Impact Analysis that such accessory uses and structures will not create water quality impairments in the adjacent water body."

Commissioner Miller voiced concern that accessory uses not be allowed that are not attached to the primary structure. She referenced the Waterfront Village meeting held on May 2, 2011 when it was discussed whether or not it was desirable to allow accessory uses along the waterfront.

Commissioner Kellam questioned the use of the word "appurtenant" uses as recommended by the staff report versus "accessory". Ms. Benson clarified that accessory uses are not necessarily physically connected to its water-dependent primary use but are necessary in daily operations such as office space, parking, storage sheds, etc.

Commissioner Kabler noted that there is no incentive to build anything that would impair one's productivity.

The Chair emphasized that RPA requirements allow only water-dependent uses. Commissioner Miller noted that there are conflicting uses in the Use Charts that are not water-dependent.

Commissioner Kellam noted her support of the amendment for Willis Wharf and questioned how much aquaculture activity actually existed in Oyster.

The Chair expressed his opinion that this amendment should not be held up for the waterfront village vision process to be completed since both village visions are clear about preserving and promoting aquaculture.

Commissioner Wescoat questioned the concern if this amendment would pertain to only water-dependent uses. The Chair stressed that not all lots are in the RPA.

Commissioner Miller read the intent of the WV-WC District from the zoning ordinance. She noted again that some non-water-dependent uses are listed in the Use Charts. Since the proposed WV-WH Waterfront Village-Working Harbor District amendment attempts to eliminate inconsistencies she requested that the commission proceed to the other public hearings on tonight's agenda before voting on Zoning Text Amendment (ZTA) 2011-04.

Commissioner Kellam voiced her concern about other uses allowed in the WV-WC District.

Motion to postpone further discussion of ZTA 2011-04 was made by Commissioner Coker and seconded by Commissioner Miller. The motion carried 8 to 0.

Commissioner Miller suggested that institutional research be added to uses allowed in the working waterfront area.

Commissioner Miller took exception with the Intensely Development Areas overlay concept as put forward by Ms. Burge as it had not been studied. Ms. Benson recommended that the IDA overlay not be adopted at this time.

Definitions of "redevelopment", "water-dependent facility" and "aquaculture and aquaculture facilities" as submitted by the applicant and staff were discussed. Ms. Benson noted that stormwater management controls must be addressed in any redevelopment land plan.

Commissioner Miller stressed that all conflicting uses in the Use Chart be addressed due to concerns about the village of Oyster.

The Chair noted that parking could be included in the 75% impervious area unless located off-site then all of that area could be used for building coverage.

Commissioner Miller expressed her opinion that the visioning process and comp plan update is all related to this issue and that she would support the proposed amendment for Willis Wharf, but not for Oyster at this time.

Since both waterfront vision plans are clear about supporting the aquaculture industry and preserving the waterfront the Chair stated his opinion that there was no need to delay a recommendation on this matter.

However, Commissioner Kellam noted that Oyster does not have a great deal of land devoted to aquaculture at this time. The Chair stated that other uses allowed are a concern, but the vision process will not resolve that issue.

Commissioner Miller noted that water dependent uses and waterfront commercial uses are different. However, it was her opinion that the proposed ZTA 2011-06 and ZMA 2011-02 would resolve such issues.

Commissioner Kellam asked if the commission could approve ZTA 2011-04 for Willis Wharf only since there is much more waterfront land available in Oyster and not Willis Wharf.

Commissioner Coker suggested that the commission consider that the zoning text amendment would apply to water dependent uses only.

However, Ms. Benson stated her opinion that the matter would need to be re-advertised.

Motion was made by Commissioner Coker to move to the next public hearings on the agenda and to postpone further discussion at this time on ZTA 2011-04. Second was made by Commissioner Miller and carried 8 to 0.

The Chair called to order public hearings B, C, and D as listed below to be heard concurrently.

B. Comprehensive Plan Amendment 2011-01: The Northampton County Planning Commission proposes to amend Section 2.2.5.1.b. of the Northampton County Comprehensive Plan to revise the description of land uses considered appropriate for location in working waterfront areas.

C. Zoning Text Amendment 2011-06: The Northampton County Planning Commission proposes to amend Sections 154.003 Definitions to delete **WATER-DEPENDENT FACILITY** and replace it with **WATER-DEPENDENT USE**; 154.081 (B) (2) (d); 154.082 (F) (4); 154.191 (B); 154.210 (B) (1); 154.212 (A); 154.213 (38); Appendix A – Use Regulations, Categories 3, 4, 5, 6, and 7; and Appendix B in order to eliminate the

Waterfront Village-Waterfront Commercial District and to create a new district to be known as Waterfront Village-Working Harbor District, as well as to amend uses in Category 3 for the Waterfront Village-Neighborhood Business District.

D. Zoning Map Amendment 2011-02: The Northampton County Planning Commission proposes to amend the Northampton County Zoning Map by rezoning all those parcels in Willis Wharf, VA and in Oyster, VA that are currently zoned Waterfront Village-Waterfront Commercial to the Waterfront Village-Working Harbor District.

Commissioner Miller stated that the commission had developed this language in answer to concerns of the aquaculture industry and then read from the statement of justification as follows,

Justification:

- a) *that Northampton County has identified AQUACULTURE as one of its main economic activities*
- b) *that Northampton County has adopted a stated a goal to, “Preserve water access for recreational fishing and working watermen”*
- c) *that Northampton County, to implement that goal, has established and adopted a strategy to, “Protect working waterfront areas from encroachment of other uses through zoning”*
- d) *that Northampton County has adopted the land use policy that, “Rural Waterfront Villages have served, and will continue to serve as, focal points for marine-related industries and lifestyle in the county.”*
- e) *that Northampton County has adopted the land use policy that promotes “agriculture, aquaculture and sustainable tourism as the main economic industries in the county and as preferred land uses in the majority of the County.”*
- f) *that Northampton County has adopted a stated a goal to “Protect the resources that support the TOURISM industry by managing land uses in environmentally sensitive areas” and to promote the development of “nature tourism”*
- g) *that Northampton County has adopted the Vision Statements of the Waterfront Villages of Oyster and Willis Wharf—both Statements indicate residents’ resolve to maintain their Village waterfronts in support of traditional aquaculture and water-based recreational uses, including maintaining the historic architectural and physical character of the harbor areas*
- h) *that Northampton County has established and adopted a secondary district, Waterfront Village-Waterfront Commercial, with the intent “to provide for those low-impact commercial uses which must be located on the waterfront due to the intrinsic nature of the activity” and mapped this secondary district on the Zoning Map*
- i) *that Northampton County has approximately 357 square miles of land surface and that the WV-WC district contains less than 1/10th square mile of that land surface (.092 square miles)*
- j) *that Northampton County has approximately 117 straight line miles of water frontage, not counting inland creek frontage, and the WV-WC district contains approximately 2.4 miles of waterfront—less than 2% of the county’s waterfront*

1--Acknowledging these facts and recognizing the disparity between the importance of the **AQUACULTURE, SEAFOOD and TOURISM** industries and the very limited area, only in Waterfront Villages, which is particularly designated, zoned and mapped by the county in specific support of the resources needed by those industries to operate and expand on the waterfront, and,

2—acknowledging that the current WV-WC zoning districts currently contain a significant number of legally non-conforming lots, the following proposal is put forward:

1) That an amendment to the **Comprehensive Plan** be made as follows:

2.2.5.1 Rural Waterfront Village Land Uses

b. Since the working waterfront districts of Rural Waterfront Villages comprise compact, but very limited areas, those areas should continue to support only those traditional marine and water-dependent uses for which a waterfront location is intrinsic and essential. These water-dependent uses include aquaculture businesses, seafood production, off-loading and packaging of unprocessed seafood and water-dependent tourism. Any development that would be detrimental to the quality of area water utilized by aquaculture or shellfish operators should be discouraged.

She then stated that institutional research uses be added to 2.2.5.1 as well.

2) That a new secondary zoning district be created in the **Zoning Ordinance** to replace the current **WV-WC District**, and that the county **Zoning Map** be amended to reflect this change:

§154.081 (B) (2) (d) Waterfront Village—Working Harbor District (WV-WH)

§154.082 (F) (4) Waterfront Village—Working Harbor (WV-WH)

The intent of this secondary district is to provide essential, unimpeded and exclusive access to the waterfront to provide for those low-impact, water dependent* commercial and recreational uses which must be located on the waterfront due to the intrinsic** nature of the activity, while still ensuring that impacts from those uses and activities to wetlands and ground and surface waters are minimized.

Definitions:

*“Water dependent use” means an activity which can only be conducted on, in, over or adjacent to a water body, and which activity cannot physically function without direct access to the body of water along which it is proposed. The test for water dependency shall assess both the need of the proposed use for access to the water and the capacity of the adjacent water body to satisfy the requirements and absorb the impacts of the proposed use. Water dependent uses include: docks, piers, marina activities which require direct access to the water, recreational and commercial water craft launch, industries such as aquaculture, seafood production, unprocessed seafood packaging, port activities such as loading and unloading of vessels, storage and maintenance of aquaculture/seafood industry related equipment and water dependent recreation

***“Intrinsic” means belonging to the essential nature of a thing; inherent*

The Chair called for public comments.

Ms. Burge commented that this proposal is a much more substantial change than that proposed by her clients. She reiterated that the aquaculture industry clients ask for the commission’s consideration of their zoning text amendment tonight. It was her opinion that the nutrient removal quality of the aquaculture industry was not taken into consideration. She suggested that only the codified definition be adopted and not revised as proposed by the commission’s language. Ms. Burge also stated that there are existing areas of redevelopment many of which are already impervious. While noting that the commission’s proposed dimensional relaxation is good and more flexible than her clients have requested, she noted that ZTA 2011-04 does not propose changes to the Use Chart or zoning map but simply asks for relaxation of setbacks and lot coverage allowing more flexibility for water-dependent uses especially in the RPA.

No other public comments were offered.

The Chair stated that redevelopment issues within the RPA are a concern.

The commission briefly viewed the zoning map of Oyster noting that several large tracts of commercial waterfront land was owned by the county for off-site parking at the public boat ramp and the other was owned by the research center.

Ms. Benson noted that the proposed definition in the staff report addresses redevelopment and confirmed, after being asked by Commissioner Miller, that the commission can revise a codified definition.

Referring to Category 6 Marine Related Uses as proposed by the commission, discussion was held to allow accessory goods and services in some cases such as Item 26. Non-motorized Watercraft-Instruction.

At this time Commissioner Kellam expressed her concern that the commission should thoroughly consider the aquaculture application (ZTA 2011-04) before ending tonight’s meeting. Commissioner Coker concurred. However, Commissioner Miller disagreed.

Commissioner Kellam referred to the staff report noting her opinion that the definitions proposed by staff were adequate. Ms. Benson explained that she did intend to leave out impervious surface references to allow for expansion of aquaculture businesses.

Commissioner Miller stated her concern that the Board of Supervisors has not scheduled public hearings for Items B, C and D yet. Ms. Benson noted that the Board does not have to schedule such hearings, but believed it was not the Board's intent to disregard these matters.

The Chair called for a short break at 8:37 p.m.

Motion was made by Commissioner Kellam that the commission return to discussion of Item A, under Public Hearings; to postpone further discussion on Items B, C and D; and to resume discussion on Item A at this time. The motion was seconded by Commissioner Wescoat and carried 7 to 1 with Commissioner Miller opposed.

When asked, Ms. Burge explained that the IDA concept was proposed in order to increase lot coverage along the commercial waterfront area.

Ms. Benson then read Section 154.164, (l) (6) of the county zoning ordinance as follows, "Redevelopment may be permitted only if there is no increase in the amount of impervious cover and no further encroachment within the RPA. Redevelopment shall conform to the stormwater management requirements outlined under division (M) (4) of this section and erosion and sediment control requirements outlined under division (M) (5) of this section."

The Chair announced that during the break time Commissioner Miller and Mr. Stith had viewed the map of Oyster and determined that most waterfront lots were 200 feet deep. He added that the landward 100 feet allows more uses than the seaward 100 feet.

Commissioner Miller suggested that reducing setbacks would have a significant impact on Oyster outside of the RPA since the lots are so deep.

Commissioner Coker noted that proposed setbacks are the same in both zoning text amendment applications.

Commissioner Kellam suggested that a 110-foot setback be included plus adding a setback for water-dependent uses only. However, Ms. Benson pointed out that shoreline setbacks do not apply to any lot recorded prior to December 28, 2000.

The Chair suggested that the commission re-advertise a zoning text amendment that would apply to water-dependent uses only.

Motion to recommend approval of ZTA 2011-04 for revisions to Appendix B was made by Commissioner Kellam with staff's recommended definitions for "water-dependent facility" and "redevelopment" be recommended with the exclusion of the IDA Overlay District. Second was made by Commissioner Kabler.

Commissioner Miller read a list of uses allowed in the WV-WC District. Commissioner Kellam noted that those uses were not objected to by residents of Oyster who were notified of this meeting. She stated that such uses have been in the zoning ordinance since its adoption.

Commissioner Miller stated that during the visioning meeting village residents were concerned about residential uses being allowed in the district.

Ms. Benson informed the commission that action must be taken on the application within 100 days from April 5 otherwise the commission's recommendation will automatically be for approval.

Ms. Burge stated that her clients have been working on their proposal since last September in cooperation with staff and urged the commission to act on this application tonight.

The Chair called for the vote and the motion failed 3 to 5 with Commissioners Kellam, Wescoat and Carpenter voting in favor.

Motion to advertise a zoning text amendment as previously discussed and for water-dependent uses only was made by Commissioner Coker. The motion was seconded by Commissioner Kabler and carried 8 to 0.

Matters from the Public

Mr. Hank Bowen informed the commission that he has a very short time-frame from late summer to early fall in order to expand his aquaculture business. Therefore, this delay may cause him to lose a year.

Motion was made by Commissioner Kellam that discussion on Special Use Permit 2011-05 as filed by William Parr be considered next. Second was made by Commissioner Kabler and carried 7 to 1 with Commissioner Miller opposed.

At this time the Chair announced that under advisement of legal counsel this matter would not be discussed tonight but would be re-advertised for public hearing for the next regular meeting.

Moving to procedural matters Commissioner Miller asked that the commission review how special use permit approval guidelines are used. It was decided that staff would format staff reports using those guidelines from now on.

New Business

Variance 2011 -04 as filed by Andy Booy was considered. The Chair noted that the existing front entry area appeared to be large enough as now constructed. After reviewing the

application and site plan motion was made by Commissioner Coker to recommend denial to the Board of Zoning Appeals. Second was made by Commissioner Ward and carried 8 to 0.

Consideration of Minutes

The minutes of March 30 and April 5, 2011 were not reviewed during the meeting.

Unfinished Business

Commissioner Kellam gave a brief background summary of the development process for the draft Large Scale Utility Wind Energy Ordinance. She recommended that the commission move forward with the draft ordinance and the Wind Energy Overlay District (WEOD) map.

While reviewing the WEOD map Commissioner Kellam stated that the MET tower would be located in Zone 4.

Commissioner Miller questioned how the half-mile buffer map was determined. Commissioner Kellam stated that the half-mile buffers were placed around residential areas and that the map had been previously discussed and reviewed.

It was noted that wind turbines had the potential of devaluing waterfront properties as much as 20 percent. Commissioner Miller questioned allowing utility wind turbines as special use permit guidelines stipulate that any proposed use should not conflict or impair value of neighboring property.

Commissioner Kellam differed in her opinion by noting that each project would be considered on a case-by-case basis.

Motion was made by Commissioner Kellam that the commission continue the meeting beyond 10:00 p.m. in order to finalize discussion of the matter. Second was made by Commissioner Coker and the motion failed 2 to 6.

Communications: none.

Committee Reports/Presentations: none.

Director's Report

The written Director's report was distributed but not discussed.

Prior to adjourning it was determined that the commission's zoning text amendment related to the aquaculture initiative (ZTA 2011-04) be advertised for a May 18th public hearing.

Adjourn/Recess

Motion to recess until May 18, 2011 at 7:00 p.m. was made by Commissioner Kabler and seconded by Commissioner Ward at 10:07 p.m.

Chair

Secretary

Attachments: E-mails read into the record

From: R. Somers Long [mailto:somerslong1@verizon.net]
Sent: Tuesday, May 03, 2011 8:50 AM
To: sbenson@co.northampton.va.us
Subject: Willis Wharf

Hi, Ms. Benson, My name is Somers Long of ShoreAppraisal in Willis Wharf, I am a life resident of the shore and a fourth generation " Wharf Rat " from Willis Wharf. I have been made aware that the committee of WW is attempting to represent the wharf as a town and the zoning board is taking in to consideration what these people are saying. I own 5 parcels and four homes in the wharf. I have seen what happens when Mr Swarzchild , Ms. Bonniwell and the rest of the " group " of supposed Willis Wharf residents have done to represent their own feelings, views and special interest. By the way Ms. Bonniwell owns here but lives in Accomack County. **I do not wish to have my properties or myself represented by these people.** I live in the " County " so no town minded people have control of my property or it's uses. With 26 types of zoning I think the county has enough say. I am fine with the Walker Boys, The Terry's and anyone who attempts to bring any work or money in to the area, and if they want to build it for heavens sake let 'em. BUT please do no let the few come heres and fussy people represent me, my properties or the interest or others who wish to carry on business, work, play or just live in Willis Wharf with MINIMUM contact with the county or any other type of government. I am sure there are better things to do than listen to the few who attempt represent the rest of us. I am sure that new business and growth should be the focus of the county, and would be a better place for all this unused energy and taxpayer money and time spent, rather than worrying that aquaculture nurseries are too close to each other. I have had and heard enough. Thank you for your time and I hope my message is clear. If you need to contact me feel free, Somers Long, 13118 Parting Creek Rd., Willis Wharf, VA 23486 phone 757-442-2915 / cell 757-710-1434 /Fax 757-442-3342.

ALSO SEE CAMDEN WHITEHEAD EMAIL FILE.