

## Minutes

### Northampton County Planning Commission

June 5, 2012

This was a regular meeting of the Northampton County Planning Commission held on Tuesday, June 5, 2012, in the Board chambers located at 16404 Courthouse Road in Eastville, Va.

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

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

The Chair called the meeting to order at 7:02 p. m. and established a quorum.

The agenda was reviewed and accepted upon motion by Commissioner Wescoat and second by Commissioner Miller. The motion carried 7 to 0.

The first public hearing was called to order.

#### **Public hearings:**

- A **Special Use Permit 2012-02:** Dennis & Elizabeth Latimer have applied to operate a Bed & Breakfast at 4138 Royce's Way on property containing 1.26 acres of land located west of Lankford Highway on the Chesapeake Bay. The property is zoned ESD-A1 Existing Subdivision District-Agriculture 1 and is described as Tax Map 117, double circle 3, parcel A2.

Mr. Latimer was present and noted that the Bed & Breakfast (B&B) operation would supplement their personal income by accommodating up to two couples.

The Chair called for public comments.

Mr. Robert Richardson of Seaview stated his support of the application noting that this type of accommodation is needed in the area.

There being no other comments the public comment portion of the hearing was closed.

Commissioner Kellam questioned how this proposed use is different from a wedding venue. Mr. Benson stated that it is not atypical for a B&B to offer hosting a wedding for its patrons. Mr. Kellam expressed her concern about health, safety and welfare related to adequate parking, traffic impacts, health department approvals, etc.

Ms. Benson noted that any special use permit can be conditioned if there are concerns. She had discovered that an existing B&B has hosted weddings for guests in the past with no complaints. She stressed that the application is not for a wedding venue, but for a B&B operation.

Commissioner Miller expressed her opinion that hosting a wedding for guests of a B&B is different than renting a facility for weddings. She added that wedding venues would not be appropriate in the Existing Subdivision District in her opinion.

The Chair noted that the proposed primary use of this property is a B&B and not a wedding venue which is listed as an Agri-Tourism activity in the Use Chart and not permitted in an Existing Subdivision District.

Commissioner Leatherbury expressed his opinion that this proposal is similar to hosting a private wedding at one's own home for one's own guest.

Motion was made by Commissioner Miller to recommend approval of 2012-02 as a B&B with a condition that it not be considered a rentable wedding venue. She reiterated that its primary purpose be recognized as a B&B.

Commissioner Kellam disagreed that this type of commercial activity could be compared with hosting a private wedding on one's private property. Given the depth of discussion on a previous application for a wedding venue, she suggested that a separate application was in order if the owners wished to conduct weddings on the premises or an amendment to the current zoning ordinance would be in order.

It was noted that weddings were added to the application by staff after consulting with the applicants.

At this time Commissioner Miller withdrew her motion.

Mr. Latimer stated that if the opportunity presents itself they would like to accommodate a guest who would like to be married on the premises since there is adequate room for parking and restroom facilities. It was his understanding that many B&Bs hold wedding ceremonies on the premises and that this issue needs to be addressed.

Commissioner Miller suggested that the application be considered as a B&B only and that the commission consider an additional use to allow B&Bs to hold family weddings by amending the Use Chart.

Commissioner Kellam agreed given the amount of discussion and conditions that were discussed previously by the commission for a specific wedding venue. Traffic impacts, parking requirements, health department requirements, noise, etc., were discussed previously and she questioned if there is a different standard being applied to this application.

Action:

Motion was made by Commissioner Wescoat that Special Use Permit 2012-02 be recommended for approval as submitted. Second was made by Commissioner Leatherbury and the motion carried unanimously 7 to 0.

The second hearing was called to order.

- B. **Zoning Text Amendment 2012-07: Eastern Shore Communications, LLC** has filed to amend the Northampton County Code, Chapter 154 Zoning Code, by revising the following section: **§154.109 Wireless Communications Facilities Standards** to accommodate and support wireless broadband service.

Mr. Bill Parr, agent for the applicant, stated that he had written the proposed amendment being mindful of visual nuisances so that only self-supporting structures would be allowed by right. The proposed amendment would differentiate between larger communications towers that utilize large tracts of land versus the lower-profile towers needed to expand broadband throughout local neighborhoods to provide high-tech broadband service thus enhancing intellectual and economic opportunities. These towers would be self-supporting with no guyed wires. He stated that there is an urgent need for this service so limited by-right structures are being proposed. He added that this amendment provides more regulations than Accomack County which does not regulate tower structures that are less than 100 feet in height thereby promoting rapid expansion of this service to its citizens and businesses.

Mr. Ron van Geijn presented a power point display. He stated that the company is a locally owned service provider and named other partners as Mark Henry, John Dunphy, Don Inhoff, Terry Carney and Bill Parr. They are currently providing service to various towns throughout the Eastern Shore including Onancock, Cape Charles and Exmore. He stated that it would cost approximately 60 million dollars to bring broadband to all households if using fiber installation only. A more economic alternative is to deliver the service by wireless means for now. Businesses and residential users need adequate bandwidth in order to conduct and expand business and usage. Their proposal would provide service for zero cost to the taxpayers. If co-location is not possible it would be necessary to erect small-scale towers tall enough to clear treetops. He added that they are seeking co-location opportunities as much as possible. Two types of towers were displayed with the larger covering 5 miles of surrounding area and the smaller type covering 2 to 3 miles of service area. Their proposal is very environmentally friendly requiring minimal land disturbance for installation. Without adequate bandwidth high tech companies will not locate to the area and neither will business individuals that require such infrastructure on a local and global level. He added that people over the age of 55 are the fastest growing segment of internet users. Having upgraded internet service would enhance access to medical care, security, staying in touch with families along with better educational opportunities for individuals, public schools and the home-schooled.

Commissioner Ward questioned the standard for proving one's inability to co-locate on existing towers and structures as described in Section A, the last paragraph. However, Ms. Benson noted that the language questioned is already part of the county ordinance and was not submitted by the applicant. In any case, Commissioner Ward noted that the county has not developed any standards to prove co-location inability in his opinion. He expressed his concern about the anti-competitive nature of the proposal and lack of standards for neighborhood support structures. Mr. Parr noted that the company would provide proof that co-location is not an option. Ms. Benson stated that it was not reasonable to hold this applicant responsible for language already adopted by the county.

Commissioner Ward also questioned why performance standards would not apply for minor support or neighborhood structures. Mr. Parr replied that there are standards including setbacks, but such standards are not the same as for larger communications towers as these devices are much less intrusive.

Mr. van Geijn stated that the tower on the Joe Black property in the Fairview area is illustrative of the tower structure that would be needed. Weighing only 260 pounds these towers are easily transported and erected.

Commissioner Kellam had questions about heights for the various structure types and asked how many would be needed. It was explained that major towers are those over 100 feet tall and would not be required if co-location sites are available. Mr. van Geijn stated that it is estimated that eight (8) 100-foot structures may be required. Some neighborhoods would not even need the 50-foot or less neighborhood support structures unless there are lots of trees and then an additional link would be required. Mr. Parr and Mr. van Geijn stated that no major types of towers like cell towers will be needed as they hope to co-locate on the larger existing towers throughout the county. Mr. Parr noted that their goal was to retain the county's current language plus add the language needed to cover the three (3) different types of towers or devices that would be needed to expand broadband coverage throughout the county.

Looking at the format in Section 2, item (l) was added after (k) and before (m).

Section (A) (4) was edited by deleting the first line and beginning the sentence with the word "Encourage."

In Section (B) Definitions, item (3), correct the typo in line 3 from "lease" to "least" as well as punctuation marks throughout entire section to include colons.

Wording in Section (B), item (5) is to be confirmed with FCC regulations.

Section (B) (8) (b) the word "Transmission" Tower should be changed to "Non-monopole" Tower.

Commissioner Kellam suggested that (6) come after Section (A) (5) and be worded to include “broadband” in the co-location language.

However, Commissioner Ward expressed concern that in (A) (2) the applicant wants to distinguish between wireless telecommunications and wireless broadband.

In answer to Commissioner Ward’s question about competitiveness and co-location, Mr. Pat Coady stated that the Federal Communications Commission (FCC) requires cell companies to minimize the number of towers and have co-location requirements as long as there is space available. However, cell tower companies do not have to allow other technologies to co-locate and also charge very high fees which can be prohibitive. According to FCC regulations localities have no authority to block cellular towers, but can direct where they are located to an extent.

The Chair called for public comments.

Mr. Robert Richardson of Seaview stated that poor phone reception still exists in his Seaview neighborhood. He then asked if this type of tower could withstand hurricane conditions and if these towers would have any impact on agriculture sprayers or bird migration.

Mr. Jeff Walker of Nassawadox was also concerned about safety issues. He suggested that any tower structure 100 feet or higher be lit both day and night, that aerial applicators be notified of tower locations and noted the increase in military air traffic as well.

Katie Nunez, Northampton County Administrator, stated that she is the county’s representative to the Eastern Shore Broadband Authority and that the Authority is supportive of any efforts to expand deployment of wireless service facilities to serve every home on the Eastern Shore.

There being no other comments the public portion of the hearing was concluded.

Mr. Mark Henry addressed some of the concerns stated and noted that there is no indication that any frequency used by broadband would interfere with birds or migration patterns. He noted that break point technology is built into each tower and that setbacks are required as well. He agreed with the concerns about aerial sprayers and lighting requirements and then noted that the average tree height across the Shore is approximately 80 feet. The towers they propose to use would be 100 feet high or less.

Using Hungars Beach as an example, Mr. Coady explained that residents there are outside the Digital Subscriber Line (DSL) service area. However, if an antenna is located on the Eastville water tower its signal could reach Hungars Beach and then be re-broadcast through the neighborhood by attaching another antenna to an external house chimney.

Commissioner Leatherbury asked for clarification between the definitions of “monopole” and “transmission tower” as described on page 2 of the amendment language. It was explained that a “monopole” is normally a single round tapered metal pole used as a cell tower and a

“transmission tower” without guyed wires is the open lattice work type such as the one that serves the sheriff’s department next to the county building. It is still freestanding tower, but not monopole construction. They would like to have flexibility about the types of pole or tower to use. Generally, lattice type towers are used but not exclusively.

Commissioner Kellam suggested that the word “broadband” be added to Section (B) Definitions (6) after “wireless communications”.

However, Commissioner Ward voiced concern that in (A) (2) the applicant wants to distinguish between wireless telecommunications and wireless broadband. By consensus the commission agreed to change Section (A) (2) to read, “telecommunications including wireless broadband.”

Referring to Section (A) (3), Commissioner Miller suggested that towers be discouraged from locating in residential, historic, and environmentally-sensitive areas; and to delete the word “major” from the document.

The Chair cautioned that the county should not appear to discourage the expansion of broadband service by prohibiting towers in so many specific locations.

Commissioner Miller stated that her research has revealed a design weakness on the breakpoint technology. However, Mr. van Geijn stated that a tower is designed to “flop over” and break at a certain point causing minimal damage in the area where the tower is anchored.

The commission agreed to leave the definition of “transmission tower” as currently written in the ordinance.

Questions were asked concerning tower mast sizes.

Commissioner Miller stated her opinion that this proposed amendment should have first been considered in a work session between the applicant and the commission prior to scheduling a public hearing.

The applicant then agreed to attend a work session with the commission.

Action:

After conferring with the applicants, motion was made by Commissioner Ward to continue discussion of this matter at 7:00 p.m. on June 18, 2012 during the scheduled work session. Second was made by Commissioner Kellam and carried unanimously 7 to 0.

At this time a short break was called by the Chair and afterwards the third hearing was called to order.

- C. **Zoning Text Amendment 2012-08: the Northampton County Board of Supervisors** has filed to amend the Eastville Zoning Ordinance, specifically **Article II, §2-3 Specific Definitions** and **Article XV Signs**, in order to accommodate a proposed sign designating the entrance into the County Government Complex. The amendment includes a new definition for “Government Sign;” the elimination of the definition of “Public Sign;” a modification to the section dealing with sign illumination; and an explanation of the new sign types.

Ms. Katie Nunez, County Administrator, stated that the intent is to install an identification sign that can be illuminated and landscaped to help visitors easily locate the administration building, especially during evening hours. Another design incorporating a median area for the sign was carefully considered, but could not be accommodated due to the limited turning radius for tractor trailers at this intersection.

The Chair called for public comments. There being none the hearing was closed.

Action:

Motion to recommend approval to the Eastville Town Council was made by Commissioner Ward and seconded by Commissioner Wescoat.

Commissioner Miller stated that the Eastville Zoning Ordinance requires that certain question be answered and referred to Section 5.1.d, e, and h. She inferred that the application may be incomplete.

However, Ms. Nunez stated that the Zoning Administrator had directed the Board to use this process rather than the variance process.

The motion carried by majority vote of 6 to 1 with Commissioner Miller opposed.

The commission then considered the following proposed additions to existing Agricultural-Forestal Districts.

- D. **AFD 2012-01:** Addition to Dalby’s AFD filed by Edward T. Bradshaw for 44 acres located near Cape Center with frontage on the north side of Capeville Drive (S.R. 683) and the east side of Siding Drive (S.R. 683), described as Tax Map 105-A-28.

Mr. Herman Walker, agent for the applicant, was present to answer any questions.

The Chair called for public comments.

Mr. Robert Richardson expressed his opinion that the county does not have funding to support AFDs. If approved, these additions would create an additional \$7,800 deficit in taxes. Currently, the county has approved 1.8 million dollars in lost real estate revenue to support

AFDs and other land preservation programs. He recommended that all AFD applications be tabled.

There being no other comments, the hearing was closed.

Action:

Motion to recommend approval was made by Commissioner Kellam and seconded by Commissioner Leatherbury.

The Commission received the recommendations of the AFD Advisory Committee in support of each application and also noted that a request had been submitted to remove 45 acres from the requested addition referenced as AFD 2012-05.

Commissioner Miller noted that the Commission had consistently recommended approval of properly submitted AFDs, citing compliance with Section 3.2.1 of the Comprehensive Plan.

The motion carried 5 to 2 with Commissioners Ward and Carpenter opposed.

- E. **AFD 2012-02:** Addition to Picketts Harbor AFD filed by W. T. Nottingham, Jr., for 50.7 acres located in the Cheapside area located on the west side of Arlington Drive (S.R. 645) and the northern side of Pond Drain, described as Tax Map 105-A-102.

The applicant was present and stated that the parcel was presently planted in potatoes.

No public comments were made and the hearing was closed.

Action:

Based on her prior comments of justifying approval of AFD 2012-01, Commissioner Miller moved to recommend approval. Second was made by Commissioner Kellam and carried 5 to 2 with Commissioners Carpenter and Ward opposed.

- F. **AFD 2012-03:** Addition to Jamesville AFD filed by the David B. Tankard Family LLLP for 52.182 acres located along Old Neck Road (S.R. 612), described as Tax Map 8-A-1.

Mr. David Tankard, Jr., acting as agent, stated that the property is currently planted in soybeans and will be used to grow nursery crops in the future.

Action:

Motion to recommend approval was made by Commissioner Kellam and seconded by Commissioner Wescoat. The motion carried 5 to 2 with Commissioners Ward and Carpenter opposed.

- G. **AFD 2012-04:** Addition to Weirwood AFD filed by Branden Gordon for 55.21 acres located along Red Bank Road (S.R. 617), described as Tax Map 31-A-19.

Mr. Gordon stated that he and his family wish to conserve the land and reside there in the future. The land is currently leased, planted with corn, and contiguous to 2 existing AFDs.

Action:

Motion to recommend approval was made by Commissioner Kellam and seconded by Commissioner Leatherbury. The motion carried 5 to 2 with Commissioners Carpenter and Ward opposed.

- H. **AFD 2012-05:** Addition to Jamesville AFD filed by Walkley Johnson, Jr., and Johnson Cove, LLC for 175.99 acres located along Johnson Cove Road , Concord Wharf Road and Mt. Airy Lane in the Concord Wharf area, described as Tax Map 1, double circle A, parcels 3 and 3A.

Mr. Johnson stated that this land is adjacent to the Tankard property just considered and is comprised of farmland and woods. He had requested in writing that the 45 acre parcel known as parcel 3A be withdrawn from this application.

There being no public comments, the hearing was closed.

Action:

Motion to recommend approval with the removal of the 45 acre parcel was made by Commissioner Miller and seconded by Commissioner Leatherbury. The motion carried 5 to 2 with Commissioners Carpenter and Ward opposed.

**Matters from the public:** none.

**Consideration of minutes**

The minutes of the May 1, 2012 meeting were approved with the following corrections: (1) page 2, seventh full paragraph, correct the typo in the first sentence; and page 6, paragraph 8, add a hyphen between "infrastructure" and "ready" and then replace the word "infrastructure" at the end of the paragraph with the words "business development". Motion to approve as

corrected was made by Commissioner Miller and seconded by Commissioner Carpenter. The motion carried unanimously 7 to 0.

The minutes of the May 14, 2012 recessed meeting held at the Eastville Town Plan workshop were approved unanimously 7 to 0 as submitted upon motion by Commissioner Kellam and second by Commissioner Miller.

The May 16, 2012 recessed meeting minutes were approved with the following corrections: (1) page 3, paragraph 4, correct the punctuation in the first and second sentences; paragraph 8, delete the words "personal prices" and insert "real estate values"; paragraph 9, first sentence should read, "Commissioner Miller noted, referencing material provided to the CPAC by various state agencies, that most state monies given to localities for various projects are actually loans and not grants and that matching funds are usually required and have to be returned if the project is not completed."; (2) page 4, paragraph 2, delete the word "are" in the second sentence; paragraph 5, add the words "of commercially zoned land" at the end of the first sentence; (3) page 5, delete the sixth full paragraph; and page 6, next to the last paragraph the word "date" should be "data" and the year 2012 should be 2012. Motion to approve with edits was made by Commissioner Leatherbury and seconded by Commissioner Carpenter. The motion carried unanimously 7 to 0.

**New business:** none.

### **Unfinished business**

- A. Continuance of Zoning Text Amendment 2012-06:** The Northampton County Planning Commission intends to amend the Northampton County Code, Chapter 154 Zoning Code, **§154.127 Low Impact Commercial Uses Section (A) Home occupation** to read: An occupation in a **an owner-or-renter-occupied** dwelling unit (or dwelling accessory structure) provided that...; amend **(A) (6)** to read: The business owner shall have no more than one full-time employee or ~~two equivalent part-time employees~~ **or one full-time equivalent.**; amend **(A) (7)** to read: Home occupations shall be divided into ~~two~~ **three** categories:(a) Home Office, (b) Home Business **and (c) Micro-Business.**; and to add **(c) A Micro-business shall be an owner- or renter-occupied home or farm based business requiring a Zoning Clearance and meet the following criteria:**

**1. A Micro-business shall have no employees, other than the owner/operator;**

**2. A Micro-business shall have no identifying signage;**

**3. A Micro-business shall have no outside storage or additional vehicle traffic beyond that generally found for a household or on a farm;**

**4. There shall be no retail sales on the premises, and any products must be delivered off-site;**

**5. The micro-business shall utilize no specialized machinery or equipment beyond that generally found in a household or on a farm.**

Discussion continued on this matter. Commissioner Ward stated that Supervisor Willie Randall was only concerned about family members not being able to work in this sort of business. He then expressed his own opinion that family members are not actual employees. However, there is concern over traffic and other disruptions that could occur in an established neighborhood.

Commissioner Miller stated that there was no intent to exclude family members in the draft language.

Commissioner Wescoat was of the opinion that the Board was concerned about creating obstructions for business activity and limitations.

Commissioner Kellam expressed her opinion that the Board may be prohibiting business activity by not approving this amendment since small scale businesses would still be required to obtain special use permit approval. The proposed amendment would make the process easier.

Commissioner Ward agreed that the whole section should be re-written later, but the draft is intended to boost business activity. He noted that if this type of business goes over 1 employee it would be considered a home-business.

Commissioner Miller noted that business activities such as home telemarketers, delivery persons, researchers, etc., would find this an easier process. There is a pattern of self-employment already existing in the county that should be encouraged and promoted.

Speaking logically, Ms. Benson asked that if, according to the census, there are now 1,006 home business establishments operating with no problems, why would the county need to approve an amendment to regulate?

Commissioner Ward noted that efforts made by the Commissioner of the Revenue to issue and collect business license fees are creating problems for these types of small business owners.

Commissioner Miller noted that the text amendment is silent on the issue of “contract workers”; which micro-business owners sometimes use on an as-needed basis.

Action:

Following discussion, Commissioner Miller moved to recommend approval of Zoning Text Amendment 2012-06 as presented, except that the words “owner” and “renter” should be made plural in order to accommodate family operations. She pointed out that according to the 2010 Census there are 1,006 non-employer establishments operating in the county, that the Commissioner of the Revenue is identifying them due to the business license requirement, and that regulating such businesses in a limited way with respect to zoning should assist business owners in becoming compliant with other county regulations. Commissioner Kellam seconded the motion, pointing out that anyone receiving zoning clearance for a micro-business will be supported by the county in the event that a neighbor complains about commercial activity occurring at the property. The motion passed on a 5-2 vote with Commissioners Carpenter and Wescoat opposed.

Due to the time no other agenda items were discussed.

Prior to recessing Ms. Benson distributed additional materials related to a subdivision ordinance amendment matter and a summary of public comments offered on May 30<sup>th</sup> related to the updated draft of the comp plan vision. She noted that those May 30<sup>th</sup> comments have been submitted to both the CPAC and PRSG for review and comment. If any comments are received from those 2 groups about the May 30<sup>th</sup> information staff will forward those to the commission at the June 18<sup>th</sup> work session.

**Adjourn/Recess**

Motion to recess until June 18, 2012 at 7:00 p.m. was made at 10:05 p.m. by Commissioner Kellam and second by Commissioner Carpenter. The motion carried unanimously 7 to 0.

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Chair

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Secretary