

# Tabled Item: Action on Proposed 2016 Zoning Code text and map

Includes:

- \* Planning Commission Recommendation
- \* Memorandum re: Specific Mapping Requests
- \* Memorandum re: Public Comments
- \* Memorandum re: Additional 2016 Proposed Zoning  
Items for Board Consideration
- \* Memorandum re: 2016 Proposed Zoning Ordinance  
Adoption Options



**DEVELOPMENT DEPARTMENT  
NORTHAMPTON COUNTY, VIRGINIA**

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Development Department  
Kris Tucker, Director  
- *Planning*  
- *Zoning*  
- *Building*  
- *Code Compliance*  
- *Economic Development*

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**Action Memo**

To: Northampton County Board of Supervisors

From: Peter Stith, AICP   
Long Range Planner

Subject: Planning Commission Recommendation – Zoning Text Amendment (ZTA) 2016-01 and  
Zoning Map Petition (ZMP) 2016-01

Date: March 17, 2016

The Northampton County Planning Commission held a work session on March 16, 2016 to provide a recommendation on ZTA 2016-01 and ZMP 2016-01. All of the commissioners were in attendance except Commissioner Fauber.

Commissioner Leatherbury made a motion to recommend the attached Resolution and documents. Commission Freeze seconded the motion and the recommendation passed unanimously 5-0 (Commissioner Stanley left the meeting at 10:00 pm before the vote).

**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 16<sup>th</sup> 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. 2d 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.



## DEVELOPMENT DEPARTMENT NORTHAMPTON COUNTY, VIRGINIA

Development Department  
Kris Tucker, Director  
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### MEMORANDUM

TO: Northampton County Board of Supervisors  
FROM: Development Department Staff  
SUBJECT: Specific Mapping requests  
DATE: March 21, 2016

This memo includes specific mapping comments received as part of the 2016 proposed zoning process. The comment letter reference number is the column below on the left. The current zoning is on the left and the proposed zoning is on the right. Staff has provided more information on each request below. The subject parcel(s) on each map is outlined in blue.

#### Comment #:

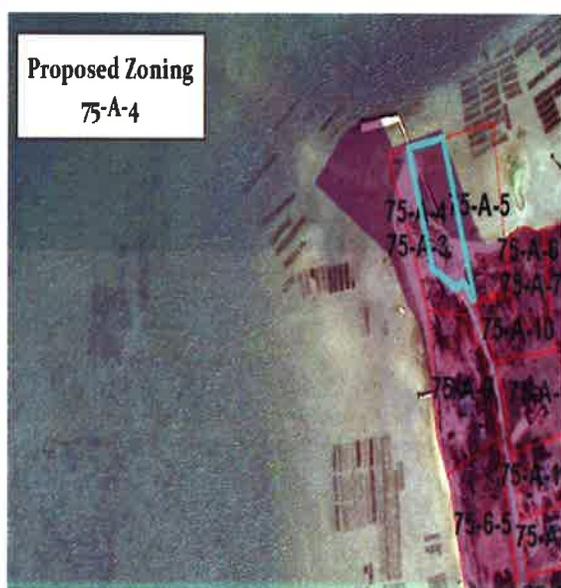
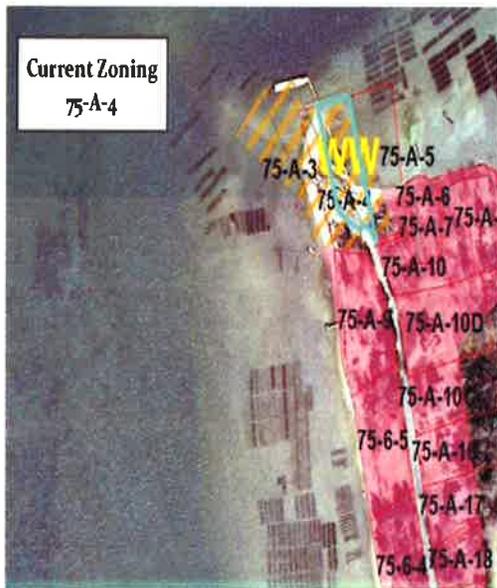
- 17 Request to be AG/RB – Tax Map 2-3-A and 2-3-B. These parcels contain 13 and 92 acres respectively, are currently zoned AG, Agriculture and proposed to be ES/R-A-1, Existing Subdivision/Residential – A-1. A boundary line adjustment was done in 2011 that increased the size of parcel 2-3-B to the west. This portion of that parcel is proposed to be zoned AG/RB, Agriculture/Rural Business, while the remainder is proposed to be ES/R-A1. The current use is agriculture and both parcels are located in the Concord AFD. Staff comment: No objection to request. If the Board wants to do this it would require readvertisement because of the lot size differences between these districts.



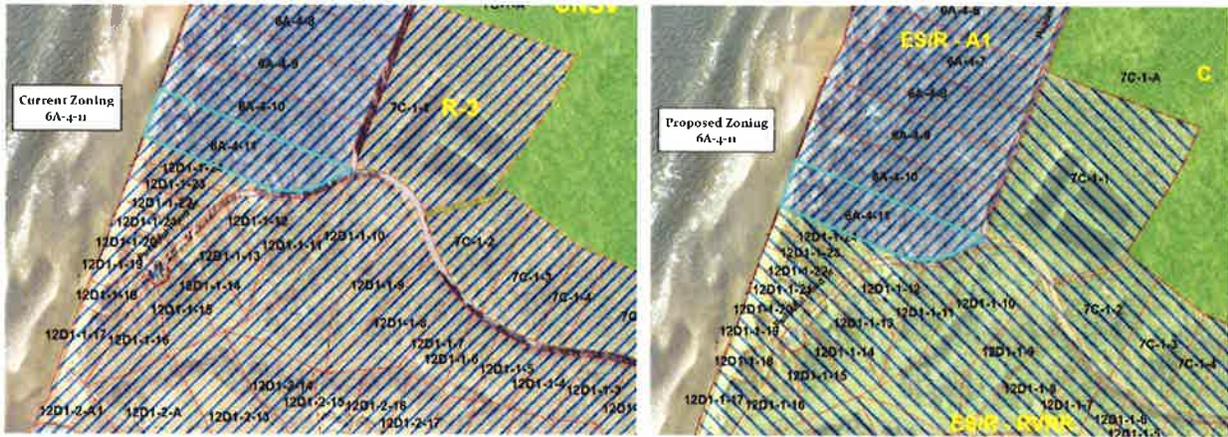
- 20 Request to remain R-5 – Tax Map 14-5-A1. This parcel contains 5 acres, is currently zoned R-5, Residential-5 and proposed to be A/RB, Agriculture/Rural Business. Currently, the parcel is vacant. Staff comment: While the property is clearly residential in nature, the R-5 district is proposed to be eliminated and this request cannot be accommodated under the proposed 2016 Ordinance.



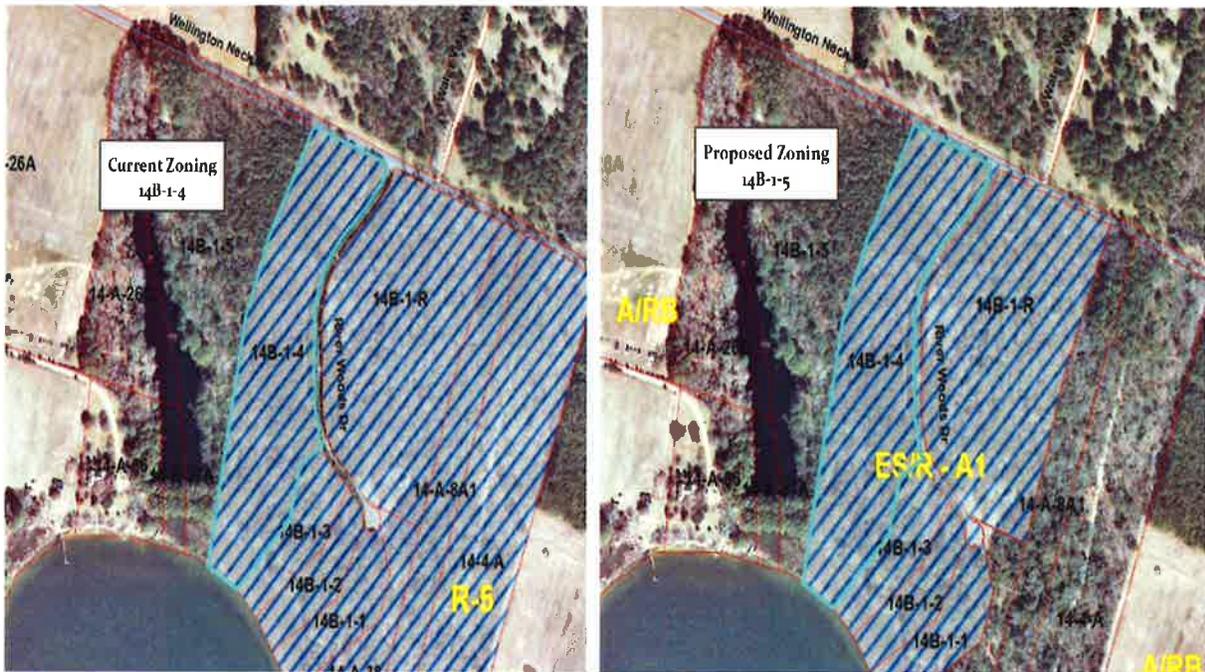
- 22 Request to remain Working Waterfront – Tax Map 75-A-4. Parcel is currently zoned WW, Working Waterfront and proposed to be WH/R, Waterfront Hamlet/Residential. Staff comment: If the Board is considering retaining the WW district from the 2015 ZO, this parcel should be considered as remaining WW. Alternatively, the property will become WH/R to which the property owner objects.



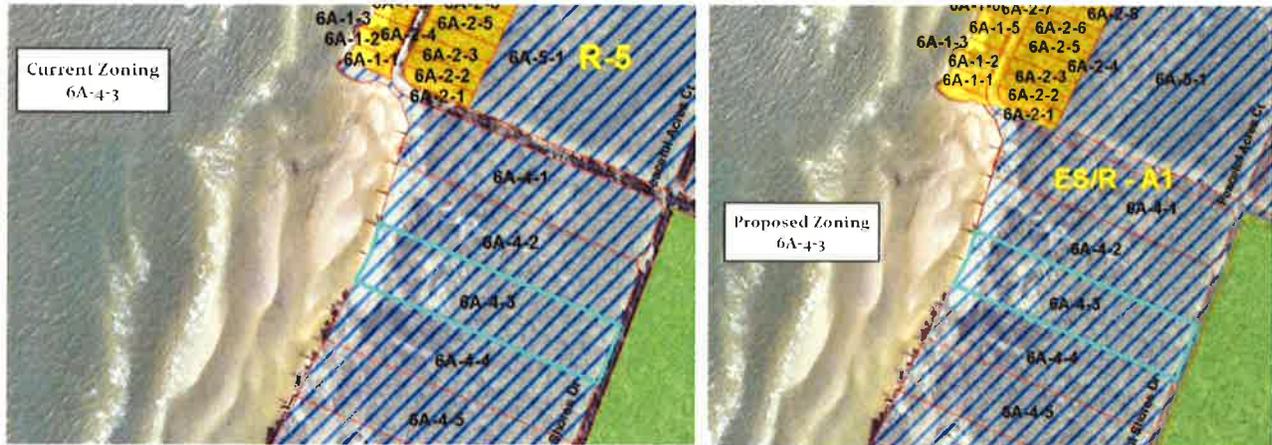
- 26 Request to remain R-5 – Tax Map 6A-4-11. Parcel currently zoned R-5, Residential-5 and proposed to be ES/R – A-1, Existing Subdivision/Residential – Agriculture-1. The property contains a dwelling and is located in the Peaceful subdivision. Staff comment: While the property is clearly residential in nature, the R-5 district is proposed to be eliminated and this request cannot be accommodated under the proposed 2016 Ordinance.



- 34 Request to be R-3 – Tax Map 14B-1-4. Parcel is currently zoned R-5, Residential-5 and is proposed to be zoned ES/R-A-1, Existing Subdivision/Residential – Agriculture-1. There is a dwelling under construction on this parcel. Staff comment: While the property is clearly residential in nature, the R-3 district is proposed to be eliminated and this request cannot be accommodated under the proposed 2016 Ordinance.



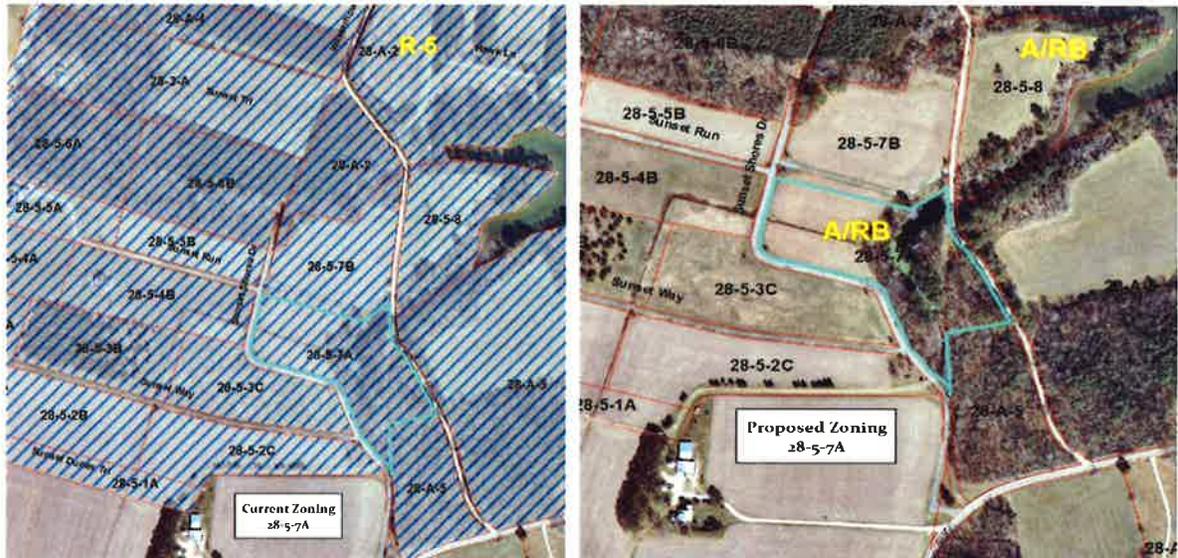
- 42 Request to remain R-5 – Tax Map 6A-4-3. Parcel currently zoned R-5, Residential-5 and proposed to be ES/R – A-1, Existing Subdivision/Residential – Agriculture-1. The property contains a dwelling and is located in the Peaceful subdivision. Staff comment: While the property is clearly residential in nature, the R-5 district is proposed to be eliminated and this request cannot be accommodated under the proposed 2016 Ordinance.



- 43,49, 80 Request to be remain R-1 or ES/R-RVR if possible – Area know as Kiptopeke Hamlet. Parcels are currently zoned R-1, Residential-1 and are proposed to be H/R, Hamlet/Residential. Some parcels may meet the Existing Subdivision criteria but many will not. Staff comment: The R-1 is proposed to be eliminated and many of the parcels in the vicinity will not meet the criteria for ES/R-RVR (for which none of the properties were advertised in any event). Therefore the property owners' request cannot be accommodated.



- 51 Request to remain R-5 – Tax Map 28-7-7A. Parcel is currently zoned R-5, Residential-5 and proposed to be A/RB, Agriculture/Rural Business. This parcel is located in the Sunset Shores area. Staff comment: While the property is clearly residential in nature, the R-5 district is proposed to be eliminated and this request cannot be accommodated under the proposed 2016 Ordinance.



- 58 Request to leave Working Waterfront (WW) district – Multiple locations throughout the County, including Willis Wharf, Oyster, Cherrystone, Bayford, Redbank, Magotha Landing, Bull’s Landing and Martin’s Landing are currently zoned WW. Staff comment: If the Board is considering retaining the WW district from the 2015 ZO, these areas should be considered as remaining WW. Alternatively, the areas will become whatever the proposed designations are in the 2016 Ordinance. No objection has been received from anybody currently zoned Working Waterfront.



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**MEMORANDUM**

TO: Northampton County Board of Supervisors  
FROM: Development Department Staff  
SUBJECT: Public Comments  
DATE: March 21, 2016

Comment #:

**1, 2, 3, 5, 7, 9, 10, 11, 14, 18, 19, 23, 24, 25, 27, 28, 29, 30, 32, 33, 35, 36, 37, 38, 39, 40, 41, 44, 45, 47, 48, 52, 53, 54, 55, 56, 57, 59, 60, 61, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 81, 82, 83, 84, 85, 86, 87, 89, 90**

This group of comments consisted of general expressions of support or opposition to the advertised proposal of the Board and included various negative comments on procedural issues. Proceeding with the adoption of any new zoning ordinance without a revised Comprehensive Plan was a common objection.

- 12** Staff considers this comment to be meritorious. Reducing the front setback would allow construction to occur closer to the front property line and further from the shoreline. Depending on what setbacks are reduced in specific districts will determine what must be readvertised.
- 13** Staff views the expense and difficulty of submittal requirements under the proposed 2016 ZO to be onerous for a Major or Minor SUP and a hinderance to reasonable land use proposals. (Such requirements may make sense at the site plan stage once a conceptual plan has been approved through an SUP)
- 15, 16, 63** The commenter's concern is addressed by the vested rights section of the proposed 2016 ZO and in the current 2015 ZO as well as the Code of Virginia and the Constutition.
- 21** Staff concurs that in the proposed 2016 ZO section 154.2.082(C)(2) & (3) appear to conflict to some degree. The sections are below for your reference:

(C) *Hamlet/Residential District (H/R)*. The intent of this District is:

(1) To recognize the county's small rural settlements of historic or cultural significance, often located at crossroads, and which have, over the years, taken on the form of primarily residential neighborhoods.

(2) To provide for a mixture of residential and low-impact commercial uses which

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are compatible in aspect, design, and form with this rural setting.

(3) To provide for primarily residential settlements in rural locales, which will support a variety of housing options.

- 50** Staff considers the shoreline setback and the maximum lot coverage issues are adequately addressed in the Chesapeake/Atlantic Preservation Areas (CAP) and would recommend the removal of those sections in the proposed 2016 ZO.
- 64** Staff recommends inclusion of the perimeter screening requirements for intensive farming.



Board of Supervisors of Northampton County  
P.O. Box 66 • Eastville, Virginia 23347

BOARD OF SUPERVISORS  
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Larry LeMond, Vice Chairman  
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County Administrator

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MEMORANDUM

**TO:** Board of Supervisors  
**FROM:** Katie H. Nunez, County Administrator *Katie H. Nunez*  
**DATE:** March 22, 2016  
**RE:** Additional 2016 Proposed Zoning Items for Board Consideration

I was asked by Chairman Murray to present five additional items to the full Board as part of the review and deliberation on the proposed 2016 Zoning Ordinance.

**Item #1 – Event Venue:**

Eyre Baldwin has expressed concern that neither the 2015 Zoning Ordinance nor the 2016 Proposed Zoning Ordinance provides him authority to use his property at Salt Grove (75-3-B2) as he envisions. The 2015 Zoning for this property is R-5 and the proposed 2016 Zoning for this property is Ag/RB. In reviewing his informal list in an e-mail dated March 10, 2016, it appears to be a more complex request than just a “simple fix” to the ordinance since the list of desired uses from Mr. Baldwin spans not only the district designation for this parcel but the types of uses allowed in each district.

This discussion does illustrate that the Board may wish to consider retaining the event venue components in the 2015 Zoning Ordinance since it is not a specific use outlined in the 2016 Proposed Zoning Ordinance:

*The 2015 ordinance contains a definition for event venue which states “The commercial use of land, structures, and buildings established at a permanent location where people assemble to take part in entertainment, educational, cultural, organizational, ceremonial and/or celebratory events, open to the public or private parties for use, and usually operated in exchange for remuneration. This issue is separate from the use “agritourism” which has separate standards established by the Va. Code.” The performance standards are contained in Section 154.1-318 and are attached to this memorandum. Event Venue is allowed by SUP in the AG, Commercial, and Industrial Districts.*

If the Board wishes to bring Event Venue into the 2016 proposed Zoning Ordinance (the definition and the performance standards), then the Board would need to identify which districts this would be allowed in. The staff recommendation is for placement in districts AG/RB, C-1 and EI Districts by Special Use Permit (need to select if major or minor SUP). This action would not require additional advertisement or public hearing.

Please note that this will not address the concerns or issues raised by Mr. Baldwin concerning his property at Salt Grove but introduces a use type into the 2016 proposed Zoning Ordinance that does not exist now.

**Item #2 - Royal Farms property located south of the Kiptopeke Inn (Parcel #112-A-14):**

Mark Baumgartner, attorney for the Royal Farms project south of the Kiptopeke Inn, spoke at the public hearing regarding the zoning designation for his client's property. It is currently zoned Commercial and it is proposed to go to AG/RB. Mr. Baumgartner indicated that they would like it to remain Commercial.

The Board could reclassify this property to the C-1 Zoning District without further re-advertisement.

**Item #3 – Agricultural Ponds:**

Farm Bureau has expressed concerns over the 2016 proposed Zoning Ordinance as it relates to standards for ponds (Section 154.2.111 (D)) – enclosed. They are requesting the Board to remove this section. In addition, Farm Bureau indicated that one component from the 2015 Zoning Ordinance should be retained for ponds – it is Section 154.1-308 (A) (6) – enclosed.

Staff recommendation regarding the first request from Farm Bureau is that the safety standards in the proposed 2016 Zoning Ordinance (Section 154.2-111(D)) for agricultural ponds should either be retained as written or the Board should take the safety standards from the 2015 Zoning Ordinance (Section 154.1-308 (A) (1 – 5) and include them in the 2016 Zoning Ordinance.

Staff recommendation regarding the second request from Farm Bureau is supportive of this request.

**Item #4 – Greenhouse Sales:**

Farm Bureau has expressed concern that the Category 1 Agricultural Uses Chart, Use #8 (Greenhouse Sales, Retail with Outdoor Storage and Accessory Goods/Services) requires a Minor Special Use Permit in the Agricultural District and feels that this should be allowed by Right. Staff concurs with this request.

**Item #5 – Minimum Separation Distances:**

Supervisor Murray forwarded a concern from a citizen regarding Section 154.2.067 – Minimum Separation Distances: Subsurface Absorption Systems and Wells (enclosed) and questioned whether this section should be deleted from the 2016 proposed Zoning Ordinance.

Staff recommends the deletion of this section from the 2016 proposed Zoning Ordinance. In addition, if the Board concurs with this recommendation, then they also need to instruct the staff to send to public hearing the deletion of Chapter 157 of the County Code (enclosed) which states the exact same thing since this was placed in both the County's Zoning Ordinance and the County's General Ordinances by the Board that adopted it in 2005.

**Item #6 – Relaxed standards for the Chesapeake Bay Preservation Area (CBPA):**

There is the ability to impose lesser standards if the CBPA is reduced in certain areas on the seaside. However, this requires greater discussion with the Board to determine what areas you would want to remove from the CBPA and then would require advertisement for public hearing along with the appropriate property owner notification. It cannot be done as part of 2016 proposed zoning text amendment or zoning map amendment since it was not advertised in the 2016 proposed Zoning Ordinance and is not the law of the 2015 Zoning Ordinance.

SALT GROVE - 3/11/16 #1  
Need list from Bert - Meet with  
Melissa

From: **Eyre Baldwin** eyre1@verizon.net  
Subject: Re: Salt Grove Uses  
Date: March 10, 2016 at 9:58 AM  
To: Bert Turner bert.turner@verizon.net, H. Spencer Murray hsmconsulting@msn.com  
Cc: Dan Brown Email danbrown.va@gmail.com

Spencer/ Bert - this is a quick list and I am sure it needs to be tightened up.

1. All forms aquaculture
2. Any form of tank culture that needs water being suctioned out of the deep water area of dock and put back in.
3. Shedding of crabs
4. Holding of minnows
5. Anything that commercial waterfront has traditionally been used for in the past 132, years.
6. All agro tourism uses, as the property has been used for many educational things since we bought it, in 1990.
7. Event space for locally grown, caught foods, including Virginias finest category.
8. Wharfage for commercial water front needs. ( being able to put lumber on a boat that was building a dock, load sand bags for aquaculture needs. Let the nonprofits have a landing, let work boats, change out there rigs for different uses. Gill netting, harvesting, dredging, pat and tong, icing!
9. Any form of nonprofit use that promotes health and well being. May it be research or crew, sailing, teaching of swimming etc.
10. Any form of equal opportunity that allows all people, to have the same opportunity to work on the water, as anyone else. (the Harvard definition). There should never be a situation that a administrator, politician, can come back, and discriminate what can be done, on their own, then try and change a use.

Bert - I don't mean to be rambling about this, and can easily talk about this with you.

Everything needs to be addressed, in this!

After the initial meeting with Spencer, the economic development person, Melissa Kellam, Granville, and Dan,: Granville went around and tried to discredit what went on around there for the past 100 years, the very next day. In fact in the meeting, Granville said we had never done weddings there, and we had to show him on face book and the web site there were damn pictures. The next day Michael Steelman, a friend of Granville, came to me, and told me what Granville was doing. It needs to be addressed head on so this type of shit ends! This is exactly what he tried to do when the Harvey Building was up for zoning. Others too have come forward and said Granville was behind the scenes. If this continues, I hope you and spencer hold him and people like this, responsible to the public eye!! It's almost like changing the speed limit on a road without asking the powers that be.

No More Zone Out!! No More Rewriting History. It's been a commercial dock for over a hundred thirty years! The state treats my sewage system as such, I'm taxed as such, my right - always are ample and meet state requirements.

I there is more that needs to be said, I am home in a couple days and have full email access! Thx eyre

3/14/16  
Called Bert 4:1

Sent from my iPhone

On Mar 10, 2016, at 9:59 AM, Daniel Brown <danbrown.va@gmail.com> wrote:

Eyre,

Think about the various uses you want permissible at Salt Grove - per Spencer's conversation. Bert will write the letter but he needs a list of the uses first. Please email him.

Thx.

DB

Hg - OLD BUILDINGS 154-127 - B = 1

#1

1. Direct sales of products, goods and services produced from a home business/ office shall be permitted on premises;
2. Parking needs generated by such home business/office shall be met on site;
3. One sign not exceeding four square feet, non-illuminated, may be placed in accordance with §§ 154.190 et seq.;
4. The home business/office may employ residents of the dwelling and one full-time employee or one full-time equivalent who is not a resident of the dwelling;
5. Documentation shall be provided as part of the zoning clearance process that any additional required approvals and/or permits from other local, state or federal agencies such as the Virginia Department of Transportation and the Virginia Department of Health that are specific to the home business/office use have been obtained;
6. All home business/office zoning clearances shall be issued to the owner or renter who occupies the dwelling and shall not run with the land. All such zoning clearances shall be null and void when the owner or renter of the dwelling ceases to operate the home business/office use permitted for the location designated on the zoning clearance; and
7. After a zoning clearance has been approved for a home business/office use, a business license shall be obtained if required by the Commissioner of the Revenue.

(b) Micro-business/office shall be a business or office use allowed by right without the issuance of a zoning clearance and shall meet the following criteria:

1. Direct sales of products, goods and services produced from a micro-business/ office shall not be permitted on premises and shall be provided or delivered off-site;
2. A micro-business/office shall have no outside storage or additional vehicle traffic beyond that generally associated with a household or a farm;
3. Signage shall not be allowed;
4. A micro-business/office may only employ residents of the dwelling;
5. It is the responsibility of the micro-business/office owner to obtain any additional required approvals and/or permits from other local, state and federal agencies such as the Virginia Department of Transportation and the Virginia Department of Health that are specific to the micro-business/office use that is proposed;
6. If the micro-business/office criteria cannot be met, the proposed use will be considered for a home business/office and a zoning clearance will be required; and
7. A micro-business/office use shall obtain a business license if required by the Commissioner of the Revenue.

(B) (1) Qualifying Rural Business shall be any one of the specifically named types of business listed in division (B)(3) below which conform to the following criteria. Generally, Qualifying Rural Businesses require a minor special use permit. However, in some districts, a special use permit is required. Some uses listed as Qualifying Rural Businesses in this section also appear elsewhere in Appendix A. In those cases, the Qualifying Rural Business criteria are

not applicable, and the least restrictive requirements shall apply. Qualifying Rural Business differs from a home occupation in that no residence is required on the site and there is no restriction on the number of employees except as indicated below.

(2) It is the intent of Northampton County by providing the Qualifying Rural Business designation to foster the rehabilitation and adaptive re-use of existing buildings in rural areas and to facilitate the development of low-impact businesses compatible with the surrounding rural areas.

(3) *Criteria.* All Qualifying Rural Businesses shall meet all of the following criteria:

(a) *Rural character.* The business shall be consistent with the surrounding community and the character of the district in which it is located.

(b) *Existing buildings used.* The Qualifying Rural Business shall make use of buildings existing at the time of adoption of the 2009 Comprehensive Amendments to this chapter as verified by the Zoning Administrator. Such building(s) may be renovated as long as the exterior appearance is not substantially changed. The existing building(s) must be the principal structure(s) used by the business; however, additions are permitted for Qualifying Rural Businesses up to 50% of the existing square footage and conditioned upon the exterior appearance of such addition being consistent with that of the existing building(s).

(c) *Impervious surfaces and open space requirements.* No new impervious surfaces, including accessory structures, building additions, or driveways, may be created that would result in a construction footprint (including the existing building) greater than 60% of the site. Open space must be maintained in accordance with requirements in this chapter.

(d) *Water usage limited.* No business which requires a Virginia Department of Environmental Quality water withdrawal permit shall qualify as a Qualifying Rural Business.

(e) *Sewage disposal.* Sanitary sewage must be able to be handled by a septic system approved for the site by the Northampton County Health Department.

(f) *Signage.* Signs on site shall be in accordance with § 154.190 and must be approved as part of the special use permit process.

(g) *Illumination.* There shall be no external illumination of a Qualifying Rural Business that is not consistent with the original use of the existing building in which it is housed. Desired illumination may be proposed and determined in conjunction with the special use permit process.

(h) *Outside storage.* Outside storage must be completely screened from off-site view by appropriate fencing or vegetation. Subsequent loss of such screening shall be cause for the issuance of an order by the Zoning Administrator requiring the termination of the Qualifying Rural Business until such time as the screening is replaced.

(4) *Qualifying Rural Businesses.* Qualifying Rural Businesses shall be limited to the following specific businesses:

(a) Adult daycare (up to six);

(b) Animal feed/hay supply;

- (c) Animal grooming;
- (d) Antique shops;
- (e) Arborist;
- (f) Artisan studio and gallery;
- (g) Auction markets, enclosed;
- (h) Barber shop;
- (i) Beauty shop;
- (j) Bed and breakfast;
- (k) Boat building and repair;
- (l) Catering, off-premise service;
- (m) Ceramics studio;
- (n) Country store, selling produce and products principally grown or made on the Eastern Shore, including agricultural produce, aquaculture products, other seafood, and accessory products as defined herein, including artwork, books on Eastern Shore history and other items;
- (o) Design studio;
- (p) Domestic animal breeding;
- (q) Domestic animal training;
- (r) Equestrian training/instruction;
- (s) Farm machinery repair;
- (t) Farrier;
- (u) Foundry – artisan;
- (v) Furniture repair/ cabinet- making/ carpentry shop;
- (w) Game/domestic livestock butchering;
- (x) Glass works – artisan;
- (y) Guide – outfitter services;
- (z) Handcraft shops producing and selling principally products made on-site;
- (aa) Inns;
- (bb) Instructional workshop/ classroom (up to ten students);
- (cc) Jewelry assembly – artisan;
- (dd) Museum;

- (ee) Nursery/daycare of preschool children (six or less);
- (ff) Office, business (maximum four employees);
- (gg) Office, professional (maximum four employees);
- (hh) Restaurant (sit-down; not fast food establishments) with 50 or fewer seats;
- (ii) Retreat center/conference accommodations (up to ten bedrooms);
- (jj) Small engine repair;
- (kk) Specialty food production;
- (ll) Tack and harness supplier;
- (mm) Veterinary services (no overnight boarding);
- (nn) Welding shop – indoor/outdoor.

(Ord. passed 10-21-2009; Am. Ord. passed 10-9-2012)

**§ 154.128 USE CATEGORIES.**

(A) The potential uses of land, buildings, structures, and tidal areas within Northampton County are arranged into the following categories to be referred to as use categories with the specific names given below. Division into these use categories is for convenience and ease of reference. A single use may appear in more than one category if such repetition facilitates easy use of Appendix A.

<i>Category #</i>	<i>Category Name</i>
1	Agricultural Uses
2	Agri-Tourism Uses
3	Commercial Uses
4	Community Service Uses
5	Industrial Uses
6	Marine-Related Uses
7	Recreational Uses
8 SF	Single-Family Residential Uses
8 MF	Multi-Family Residential Uses

EVENT VENUE

will not work

**2009 Zoning Ordinance Definition**

(D) *Waterfront Hamlet District (WH)*. The intent of this District is:

- (1) To recognize the county's distinct, small, traditional waterfront hamlets situated on the seaside and bayside;
- (2) To provide for their continued existence as long-established enclaves of single-family homes and certain low-impact water-dependent activities for working watermen and recreational use;
- (3) To preserve environmentally-sensitive lands and protect water quality and viewsheds.

#1

**Proposed 2016 Zoning Ordinance Definition**

**Currently this appears to be the best fit.**

(D) *Waterfront Hamlet/Residential District (WH/R)*. The intent of this District is:

(1) To recognize the county's distinct, small, traditional **residential and working**-waterfront **h**Hamlets situated on the seaside and bayside;

(2) To provide for their continued existence as long-established **Hamlets that support enclaves of single-family homes and certain low-impact** water-dependent activities for working watermen and recreational use;

(3) To preserve environmentally-sensitive lands and protect water quality and viewsheds.

**Category 7, Recreational Uses, Use 45, Temporary recreational event (3 days or less) is permitted by right. Frequency of events unknown.**

**Category 1, Agricultural Uses, Use 23, Prep, sale, of food associated with Agricultural Operation permitted by right.**

**Category 3, Commercial Uses, Use 77, Plein Aire events permitted by right.**

**Category 6, Marine Related Uses, Use 1, Aquaculture business Office, on site, by right**

**Category 6, Marine Related Uses, Use 8, Boat Ramp for Recreational boats, Private, by right**

**Category 6, Marine Related Uses, Use 22, Landing site for finfish, shellfish, crabs, Private, by right**

**Category 6, Marine Related Uses, Use 27, Oyster Shucking House (with no processing), by right**

**Category 6, Marine Related Uses, Use 33, Wholesale outlet for clam, crab, fish, less than 2,500 sq ft, by right**

## 2015 Zoning Ordinance Definition

The Property at Salt Grove **will not be able to meet the Criteria of Event Venue.** For the moment, I do not see another classification opportunity that would provide the proposed and actual uses to be permitted by right.

### §154.1-318 EVENT VENUE

(A) All event venues shall comply with the minimum standards below:

- (1) This use shall only be permitted by special use permit in specified zoning district on parcels having a minimum lot size of five acres;
- (2) The maximum number of guests, hours of operation and Type A, B, C and/or D screening may be required as part of the special use permit approval;
- (3) No overnight accommodations shall be permitted as part of an event venue, but may be approved as a separate use on the property;
- (4) All parking needs generated by this use must be accommodated on-site except as permitted in §154.1-604 Off-street Parking;
- (5) Solid waste generated by the event venue shall be stored in a manner that prevents the propagation, harborage or attraction of insects and rodents or other nuisance conditions and shall be removed at least once every seven days by a licensed solid waste hauler;
- (6) If portable toilets are provided for temporary use, then they shall be approved by the Virginia Department of Health;
- (7) Setbacks for parking shall be one hundred feet from adjacent residential zoning districts and two hundred feet from any dwelling except dwellings on the premises;
- (8) Setbacks for any outdoor event activities shall be three hundred feet from adjacent residential zoning districts and four hundred feet from any dwelling;
- (9) All permanent structures and buildings associated with the event venue shall be constructed in compliance with the Virginia Uniform Statewide Building Code requirements for such a use and obtain a certificate of occupancy for such a use;
- (10) Temporary structures and buildings such as tents and stages are permitted and shall be constructed in compliance with the Virginia Uniform Statewide Building Code requirements for such a use;
- (11) The number of required parking spaces and other parking performance standards established in §154.1-604 Off-street Parking shall be documented on a site plan;
- (12) Traffic generated by the event venue shall not exceed conditions placed on the approval of the special use permit by the Northampton County Board of Supervisors and Virginia Department of Transportation;
- (13) Noise generated by the event venue shall comply with the standards set forth in NCC Chapter 98: Noise Ordinance;
- (14) Outdoor lighting shall comply with the standards set forth in §154.1-607 Outdoor Lighting;
- (15) Signs shall be placed in accordance with §154.1-701 Signs et seq.;
- (16) The event venue may be served by a water supply and septic system approved by the Virginia Department of Health for this specific use; and
- (17) Food service associated with the event venue shall be approved by the Virginia Department of Health.

**§154.1-318 EVENT VENUE**

- (A) All event venues shall comply with the minimum standards below:
- (1) This use shall only be permitted by special use permit in specified zoning district on parcels having a minimum lot size of five acres;
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  - (6) If portable toilets are provided for temporary use, then they shall be approved by the Virginia Department of Health;
  - (7) Setbacks for parking shall be one hundred feet from adjacent residential zoning districts and two hundred feet from any dwelling except dwellings on the premises;
  - (8) Setbacks for any outdoor event activities shall be three hundred feet from adjacent residential zoning districts and four hundred feet from any dwelling;
  - (9) All permanent structures and buildings associated with the event venue shall be constructed in compliance with the Virginia Uniform Statewide Building Code requirements for such a use and obtain a certificate of occupancy for such a use;
  - (10) Temporary structures and buildings such as tents and stages are permitted and shall be constructed in compliance with the Virginia Uniform Statewide Building Code requirements for such a use;
  - (11) The number of required parking spaces and other parking performance standards established in §154.1-604 Off-street Parking shall be documented on a site plan;
  - (12) Traffic generated by the event venue shall not exceed conditions placed on the approval of the special use permit by the Northampton County Board of Supervisors and Virginia Department of Transportation;
  - (13) Noise generated by the event venue shall comply with the standards set forth in NCC Chapter 98: Noise Ordinance;

- (14) Outdoor lighting shall comply with the standards set forth in §154.1-607 Outdoor Lighting;
- (15) Signs shall be placed in accordance with §154.1-701 Signs et seq.;
- (16) The event venue may be served by a water supply and septic system approved by the Virginia Department of Health for this specific use; and
- (17) Food service associated with the event venue shall be approved by the Virginia Department of Health.

#3

## 2009 ZONING ORDINANCE

(H) *Lagoons.* Lagoons to serve livestock compounds may be permitted with a special use permit.

(I) *Plans Submittals required.* **No CAFOs are permitted until the developer has submitted to the county the following: a Nutrient Management Plan, a Stormwater Management Plan and an Erosion and Sediment Control Plan, approved by the appropriate agencies. The County reserves its right to ensure any such plans are consistent with County Ordinances, including this Chapter. In addition, the operator must submit for county approval, a Contingency Plan for fire response, emergency response, public health response and vector control. Livestock facilities are required to have a nutrient management plan approved by the Eastern Shore Soil and Water Conservation District and the Virginia Department of Conservation and Recreation and a development plan and an erosion and sediment control plan approved by the Northampton County Department of Planning and Zoning.**

### § 154.2.111 STANDARDS FOR PONDS.

(A) *Purpose and intent.* The purpose of this section is to provide for the continued availability of surface waters for agriculture, horticulture and viticulture crop lands, and recreation while providing for the protection of the sole source aquifer and keeping excavation spoils in place.

(B) *Requirement for any pond.* A zoning clearance pursuant to requirements of § 154.2.040 herein shall be required for any dug or impounded pond to ensure that any land disturbance associated with pond installation is set back a minimum of 100 feet from the property lines of adjacent parcels. Any pond installation must comply with all applicable zoning requirements, even if deemed exempt from the requirements of the Northampton County Erosion and Sediment Control Ordinance.

(C) *Requirement for any irrigation pond.* If approval is obtained from the U.S. Department of Agriculture, Natural Resource Conservation Service (NRCS), and the pond is constructed to NRCS standards and specifications, such pond is not otherwise regulated by this section. See <http://www.va.nrcs.usda.gov/technical/vastandards.htm#378>.

(D) *General regulations for ponds.*

(1) Maximum dug depth shall be 18 feet below the level of the water when it is first observed during excavation.

(2) Stockpiled excavated material is subject to being spread by wind. To minimize the adverse wind effect, the maximum height for material left in place for more than two weeks is limited to 15 feet. Stockpiled materials shall be maintained in accordance with the standards set forth in the latest edition of the *Virginia Erosion and Sediment Control Manual* published by the Virginia Department of Conservation and Recreation, Soil and Water Division.

(3) Impoundment ponds require submittal of a site plan, including a water quality impact assessment and an erosion and sediment control plan. If such a pond is proposed to be located in a Chesapeake Bay Preservation Area buffer, a variance submitted in accordance with § 154.2.226 et seq. and a wetlands permit from the U.S. Army Corps of Engineers are also required.

### § 154.2.112 GENERAL LIGHTING STANDARDS.

(A) *Purpose and intent.* The purpose of this section is to provide outdoor lighting standards that will improve safety, minimize glare and light trespass in order to preserve the county's rural character, maintain ease of astronomical viewing, reduce light interference with migratory birds, and conserve energy for businesses and residents of Northampton County.

(B) *Applicability.* Except as provided in division (H), all renovations requiring a building permit and all

## 2009 ZONING ORDINANCE

new commercial, industrial, and residential outdoor lighting installations and the replacement of existing outdoor lighting fixtures shall meet the requirements of this section. Replacement of a fixture shall mean a change of fixture type or change to the mounting height or location of a fixture. Routine lighting fixture maintenance, such as changing lamps or light bulbs, ballast, starter, photo control, housing, lenses and other similar components, shall not constitute replacement and shall be permitted provided such changes do not result in a higher lumen output.

(C) *Definitions.* For purposes of this section the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**CUTOFF.** A fixture that emits no more than 2.5% of its light above 90 degrees and no more than 10% above 80 degrees from horizontal. (IESNA definition)

**FULL CUTOFF.** A fixture that emits 0% of its light above 90 degrees and no more than 10% above 80 degrees from horizontal. (IESNA definition)

**GLARE.** The sensation produced by a bright source within the visual field that is sufficiently brighter than the level to which the eyes are adapted to cause annoyance, discomfort, or loss in visual performance and visibility. The magnitude of glare depends on such factors as the size, position, brightness of the source, and on the brightness level to which the eyes are adapted.

**ILLUMINANCE.** The amount of luminous flux per unit area in the Imperial system and is equal to one lumen per square foot. **ILLUMINANCE** is measured in foot candles. The metric system uses the lux. One foot candle equals approximately 0.1 (0.093) lux.

**INITIAL LUMENS.** Amount of luminous flux emitted by a lighting fixture at initial installation. **INITIAL LUMENS** are usually listed by the manufacturer. (Example: A 100-watt incandescent light bulb emits approximately 1800 lumens.)

**LIGHT TRESPASS.** Light falling across property boundaries.

**LUMEN.** Unit of luminous flux; used to measure the amount of light emitted by lamps.

**MAINTAINED ILLUMINANCE LEVEL.** A percentage of the initial illuminance level reported as part of the photometric plan.

**OUTDOOR LIGHTING FIXTURE.** The complete lighting assembly, less the support assembly. Such devices shall include, but are not limited to, lights used for:

- (a) Parking lot lighting;
- (b) Roadway lighting;
- (c) Buildings and structures;
- (d) Recreational areas;
- (e) Landscape lighting;
- (f) Billboards and other signs;
- (g) Product display area lighting;
- (h) Building overhangs and open canopies.

**SEMI-CUTOFF.** A lighting fixture that emits no more than 5% of its light above 90 degrees and no

## §154.1-308 AGRICULTURAL IRRIGATION PONDS.

(A) Agricultural irrigation ponds shall comply with the standards below:

- (1) If the construction of the agricultural irrigation pond involves wetlands, a copy of any wetlands permits or approvals must be provided. Excavated material shall not be placed within wetlands or resource protection area features.
- (2) A safety shelf at least fifteen feet wide shall surround the perimeter of the pond. A safety shelf is an unobstructed level area from the edge of the pond to any property line, structure or vertical feature such as a wooded area or stockpile of excavated material.
- (3) Pumps and mechanical equipment shall be placed in areas furthest away from adjacent non-agricultural district property lines.
- (4) A waiver or exception must be obtained when a pond is proposed to be located within any of the resource protection area features as described in NCC Chapter 158: Chesapeake/Atlantic Preservation Areas (CAP).
- (5) The edge of an agricultural irrigation pond shall be set back one hundred feet from any property line, except that the setback may be reduced in the following manner:
  - (a) If the safety shelf is increased to seventy-five feet between the pond and property line, the setback to property where the safety shelf is provided is reduced to seventy-five feet.
  - (b) If a wooded area of thirty-five feet is provided between the pond and property line with a minimum fifteen foot safety shelf, the setback to the property line in that area is reduced to fifty feet. The wooded area shall be in compliance with §154.1-606 Perimeter Screening and designed to meet the density standards of a semi-opaque Type B screening.
  - (c) If all stock piles of excavated soil shall be leveled and spread over the property in areas that are not resource protection area features or wetlands, or the excavated soil shall be properly removed in compliance with NCC Chapter 153: Erosion and Sediment Control and state mining regulations from the property, the setback is reduced to twenty-five feet with a minimum fifteen foot safety shelf.
- (6) If the agricultural irrigation pond involves two or more properties in which the owners share use and/or ownership of the pond, the setback is reduced to zero feet along the shared property line(s), provided that said shared use and/or ownership runs with the land and is reflected in a deed or deed of easement that is recorded in the Clerk's Office of the Circuit Court of Northampton County.



## 2009 ZONING ORDINANCE

property except as provided in §154.2.190.

(12) The temporary family health care structure shall be removed within 30 days once the mentally or physically impaired person is no longer receiving or is no longer in need of the assistance as described within this subsection.

(13) The Zoning Administrator may revoke the permit granted to a resident if the permit holder violates any provision of this subsection.

**§ 154.2.064 ACCESSORY USES.**

(A) *Location and height.* No accessory structures, signs, or temporary structures, shall be located in any required front yard, unless the lot is situated such that a shoreline constitutes the rear lot line. On such waterfront lot, an accessory structure may be placed in the front yard, provided that the minimum front setback is met and any such structure visible from a public road is fully screened with opaque vegetation that would be expected to grow to the height of the building. On a corner lot, no accessory structure shall be located nearer a corner lot line than the minimum side building setback required in the district. No accessory structures within 15 feet of a lot line shall be more than 15 feet in height.

(B) *Not permitted prior to principal use or structure.* No accessory use or structure shall be permitted on a lot until:

- (1) The principal use or structure has previously been established; or
- (2) Construction has begun on the principal structure and is diligently pursued.

(C) *Ingress and egress part of principal use.* The route of ingress and egress to a use is considered to be accessory to the principal use and therefore required to be in a zoning district which permits the principal use which it serves.

**§ 154.2.065 PARKING AND LOADING.**

All buildings or structures erected or enlarged shall conform to the off-street parking and loading regulation for specific uses as specified for the district in which such building or structure is located.

**§ 154.2.066 TRAFFIC VISIBILITY.**

On a corner lot in any district, nothing shall be erected, placed, planted, or allowed to grow in such a manner as to impede a motorist's vision between a height of two and one-half and ten feet above the centerline grades of the intersecting roads in the area bounded by the road rights-of-way adjoining such corner lot and a line joining points along such road rights-of-way 50 feet from this point of intersection.

**§ 154.2.067 MINIMUM SEPARATION DISTANCES: SUBSURFACE ABSORPTION SYSTEMS AND WELLS.**

(A) *Applicability.*

(1) The standards established by this section shall apply to all lawful lots recorded in the Clerk's Office of the Circuit Court of Northampton County after December 1, 2005, and to all other lots in Northampton County.

(2) If a subdivision or site plan application was made to the Northampton County Department of Planning and Zoning prior to December 1, 2005, then the application shall not be subject to this section and

2009 ZONING ORDINANCE

shall be granted a period of time, not to exceed 18 months from December 1, 2005, to be processed, reviewed, and acted upon by the Department of Planning and Zoning, including review and action by the Health Department, regarding subsurface absorption systems and wells; if, at the conclusion of this time frame, the subdivision or site plan application has failed to receive approval from the Department of Planning and Zoning and the Health Department, then the application must comply with the full terms and conditions of this section.

(3) The provisions of this section and any amendments adopted subsequent thereto shall not apply within the boundaries of the following incorporated towns:

- (a) Cape Charles;
- (b) Cheriton;
- (c) Eastville;
- (d) Exmore.

(B) *Standards.*

(1) The minimum distance from bottom to sidewall of any subsurface soil absorption system trench, gravel pad, or seepage bed to any property line shall be ten feet.

(2) The minimum distance from bottom or sidewall of any subsurface soil absorption system, trench, gravel pad, or seepage bed to the boundary of any sewage system easement area shall be 25 feet.

(3) The minimum distance from any private well to any property line shall be 25 feet.

(4) The minimum standoff for any secondary treated effluent from the bottom of any absorption trench or from the bottom of any trenchless system to the water table shall be a minimum of 12 inches.

(C) *Deviations.*

(1) For any lot recorded prior to December 1, 2005, on which the standards established by this section can not be met, the Northampton County Department of Planning and Zoning, in consultation with the State Health Department, shall permit deviations from the standards established herein to the minimum extent necessary to permit the installation of the well or subsurface absorption system for which a permit is sought.

(2) For any lot, recorded or not, which is the subject of a valid Virginia Department of Health Certification Letter dated not later than December 1, 2005, the standards of this section shall not apply for 18 months after December 1, 2005. Thereafter, the Northampton County Department of Planning and Zoning, in consultation with the State Health Department, shall permit deviations from the standards established herein to the minimum extent necessary to permit the installation of the well or subsurface absorption system for which a permit is sought.

(3) If compliance with division (B)(1) would require the installation of a secondary treatment system, and a conventional sewage system could be installed in compliance with VDH Sewage Regulations, the placement of the conventional system will be allowed.

**ZONING DISTRICTS AND MAPS**

**§ 154.2.080 ZONING ORDINANCE TEXT AND MAPS ARE UNIFIED DOCUMENT.**

(A) The purpose of this section is to establish zoning district classifications of such size and shape as the Board of Supervisors deems the best suited to carry out the purposes of VA Code Title 15.2, Chapter 22,



**Board of Supervisors of Northampton County**  
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BOARD OF SUPERVISORS  
*H. Spencer Murray, Chairman*  
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**MEMORANDUM**

**TO:** Board of Supervisors  
**FROM:** Katie H. Nunez, County Administrator   
**DATE:** March 22, 2016  
**RE:** 2016 Proposed Zoning Ordinance – Adoption Options

As requested by Chairman Murray, I am providing the following options to the Board regarding the adoption of the 2016 Proposed Zoning Ordinance:

1. The Board could vote to adopt the 2016 Zoning Ordinance and Map as advertised.
2. The Board could vote to adopt the 2016 Zoning Ordinance and Map as amended by any of the items contained in the three staff memos (Peter Stith Memo on Mapping; Peter Stith Memo on Public Comments; and Katie Nunez Memo on Additional Items) which do not require any further public hearing.

In addition, the Board could include, as part of its vote, an instruction to staff to merge the three distinct named documents of 2009/2000/and 1983 into one document to be known as the 2016 Zoning Ordinance and to eliminate the components of the 2000 and 1983 documents that are extraneous and to instruct staff to format the document consistent with the 2015 zoning ordinance in terms of the district pages which list intent, uses, and density by district as well as to retain the use chart in the 2016 zoning ordinance and to correct any other formatting issues, including numbering, grammar and spelling.

The motion to adopt such a complex document as the zoning ordinance is still being drafted by Counsel and is not included with this agenda packet.