

Minutes
Regular Meeting
Northampton County
Planning Commission
February 2, 2010

This was a regular meeting of the Northampton County Planning Commission held on Tuesday, February 2, 2010 in the former circuit courtroom located at 16404 Courthouse Road in Eastville, Va.

Those present were Chair David Fauber, David Kabler, Robert Meyers, Michael Ward, Mary Miller, Roberta Kellam, Marshall Cox, Martina Coker and John Wescoat, Jr.

Also present was Sandra Benson, Director of Planning and Zoning; Peter Stith, Long Range Planner; and Kay Downing, Administrative Assistant.

The meeting was called to order at 7:00 p.m. by the Chair and a quorum established. The Chair then introduced and welcomed the newest appointee, John Wescoat, Jr.

While reviewing the agenda it was the consensus of the Commission that Zoning Text Amendment 10-02 should be heard prior to the Zoning Map Amendment petition and the Special Use Permit petition filed by Kings Creek, LLC/Harmony Investments, since the height issue was germane to the proposal that is the subject of those petitions. The agenda was revised whereby Item C. under Public Hearings would be considered first and also that a new Item D be inserted under New Business to discuss questions raised on procedural matters as submitted by Commissioners Kellam and Meyers. Motion to accept the agenda as revised was made by Commissioner Kabler and seconded by Commissioner Cox. The motion carried unanimously.

Before the Chairman called the public hearing to order, Commissioner Miller questioned the reference to "Waterfront Commercial;" staff clarified that the full reference would be "Waterfront Village-Waterfront Commercial." The Chair noted Commissioner Miller's concern and then determined that the hearing on Zoning Text Amendment 10-02 should proceed.

Public Hearings:

Zoning Text Amendment 10-02: The Northampton County Planning Commission proposes to amend the Northampton County Zoning Ordinance, Section 154.145 Height and Bulk Regulations, to include a new paragraph known as ***(H) Modifications applicable to Town Edge-Commercial General District, Existing Business District, Waterfront Commercial District, and Commercial District.*** The maximum height for any principal structure shall be 35 feet, except that additional building height may be permitted where the building is set back from each property line (front, rear, and sides) two (2) additional feet horizontally for each one foot of additional height over 35 feet, up to a maximum of forty-five (45) feet.

The Chair called for any disclosure of ex parte communications. None were reported.

The Chair called for public comments. No public comment was offered.

None were received and the hearing was closed.

Commissioner Miller objected to including the EB Existing Business District as it would be opening the door for 45 foot high buildings on existing footprints where modifications would be allowed, noting that Existing Businesses are in locations not identified in the comprehensive plan as areas planned for commercial development. However, Commissioner Kellam noted that sometimes it is important to build upward instead of outward especially in flood zone areas, but that inclusion of the Waterfront Village – Waterfront Commercial District should be omitted as the historical character of Oyster and Willis Wharf should be maintained and buildings this height may not be appropriate.

Commissioner Meyers stated his opinion that 45 foot high buildings would be out of character in residential areas. He referenced Section 2.1.2 Community Design Goals in the comprehensive plan, specifically the fourth bullet point: *Ensure new development is appropriately located and scaled to be complementary extensions of existing settlements and structures and, where appropriate, the rural landscape.* Therefore, the additional height sought by Harmony Investments for the proposed Hampton Inn would not be consistent with the adjacent residential development in the Tower Hill subdivision or with the general vicinity.

Commissioner Kabler stated that he was in favor of the proposed language because the increased setbacks would create more yard space making buildings less intrusive and that such a regulation would allow more flexibility in the zoning ordinance.

Motion was made by Commissioner Ward to recommend approval of Zoning Text Amendment 10-02 as written. Second was made by Commissioner Kabler; however, the motion failed with a 3 to 6 vote.

Action:

Commissioner Kellam then moved to recommend adoption of the amendment with the deletion of the reference to “Waterfront Commercial District.” The motion carried on a 6-3 vote, with Commissioner Meyers reiterating his opposition based on the previously-referenced comprehensive plan goal.

Commissioner Miller pointed out that 45 foot heights exists in towns and that the comprehensive plan encourages a seamless transition between towns and other areas. It was her estimation that the Shore Stay Suites structure located near Cape Center was 35 feet tall. However, staff could not confirm the height of that particular structure.

The Chair then called for the vote and the motion carried 6 to 3. Commissioner Meyers stated that he was opposed to the motion based on Section 2.1.2 of the county’s comp plan.

Prior to calling the next public hearing to order Ms. Benson stated that Zoning Map Amendment 09-03 and Special Use Permit 09-08 could be heard concurrently but that two separate motions and votes must be taken. However, it was the consensus of the commission to consider the matters under two separate public hearings.

The Chair called to order the next public hearing.

A. Zoning Map Amendment 09-03: Kings Creek Commercial, LLC, and Harmony Investments, Inc., contract purchaser, have filed to rezone 19.50 acres from the TE-1 Town Edge-One District to the TE-CG Town Edge-Commercial General District for the purpose of constructing a motel. The property is located at the northwest quadrant at the intersection of Lankford Highway and Parsons Circle near the town of Cape Charles. The property is described as being Tax Map 84, double circle A, parcel 59A.

No ex parte communications were reported.

Representing the applicants were Mr. Brooks Johnson and Mr. Clay Massey who were present to provide information and to answer questions.

Mr. Johnson gave a brief history and background involving the project. He noted that with the adoption of amendments to the county's zoning map and zoning ordinance the project was delayed and new approvals had to be sought. Mr. Johnson stated that the facility will be certified as a Leadership in Energy and Environmental Design (LEED) Green Building Rating System. The project will have an attractive Best Management Practice (BMP) water feature located in the front of the property, and that major aquifer protections have been devised using a whole system of grass swales along with excessive building setbacks to provide more open space. Roof tiles made from recycled rubber tires will be utilized and the architecture will be in character with typical plantation style buildings. Mr. Johnson also stated that a larger than normal conference or meeting room is planned as well as a smaller conference room. The hotel will provide a breakfast area for paying guests only along with an extended patio to the pool. The parking area will be predominately in the rear area to preserve the view shed in front. Mr. Johnson also stated that the project will project a park-type atmosphere and be very pedestrian friendly with foot paths and zero light levels to maintain dark sky levels. In describing the water runoff, it was noted that the BMP area will spill over to another pooling area before proceeding to VDOT drainage ditches. A drainage berm plan was shown and he noted that the proposed plan would increase BMP requirements six times above the minimum.

The Chair called for public comments.

Comments from Mr. Granville Hogg, who stated that he lives in the Cape Charles/Cheriton area, were heard. Mr. Hogg stated that he was not opposed to development but that he favored good development. He expressed his concern about additional stormwater discharge to King's Creek and potential damage to shellfish-growing waters, adding that regardless of the quality of the water being discharged, salinity is necessary to sustain shellfish which help to keep the creek clean. Mr. Hogg noted that the Department of Conservation and Recreation (DCR) and the Department of Environmental Quality (DEQ) are currently meeting to address problems experienced by Kings Creek and Plantation Creek as part of the clean-up the Chesapeake Bay initiative. He recommended that consideration be given to raising the invert in the pond proposed to function as part of the stormwater best management practice (BMP) to help alleviate any run-off discharge.

No other public comment was offered and the hearing was closed.

Commissioner Meyers stated his displeasure that the staff report had barely mentioned the goals to protect Kings Creek currently being addressed by DCR and DEQ and thanked Mr. Hogg for his diligence.

Commissioner Kellam asked if more development was planned for the 19 acre parcel. Mr. Johnson stated that nothing new was planned at this time. He stated that all stormwater runoff now drains to Kings Creek and that various storm events will discharge at some point whether a 2 year event or a 100 year event. He explained that the proposed plan far exceeds what the state requires, routing all stormwater to the BMP thereby improving water quality compared to current drainage impacts.

Commissioner Kabler stated his support for the rezoning and his opinion that the proposal complies with aspects of the comprehensive plan, noting that the parcel had been zoned commercially for some time prior to the recent zoning change, that it did not appear suitable for either agricultural or residential use, that the proposed use would benefit the county's tourism industry and provide some jobs, and that it appeared that there is the possibility of central utility service that would accommodate the property in the reasonably near future.

Commissioner Miller stated that the proposal satisfies goals stated in the comprehensive plan relating to the Town Edge, tourism, and business development. She expressed concern that the possibility of reviewing drainage and access management issues associated with future development would be precluded if the entire parcel were to be rezoned at this time.

Ms. Benson stated that a complete review, analysis and approval would be required for all future development.

Commissioner Miller asked if the applicant would agree to limit access to the entire parcel by using the access planned for the hotel. Mr. Johnson replied no since limiting access may have the potential to diminish future development.

Action:

Commissioner Kellam moved to recommend approval of the rezoning as presented. The motion was seconded by Commissioner Ward and carried unanimously.

The next public hearing was called to order.

C. Special Use Permit 09-08: Kings Creek Commercial, LLC, and Harmony Investments, Inc., contract purchaser, have applied to construct a motel on property located at the northwest intersection of Lankford Highway and Parsons Circle near the town of Cape Charles. The property is described as being Tax Map 84, double circle A, parcel 59A.

No ex parte communication was reported.

Clay Massey, engineer for the applicants, added to the presentation related to the rezoning application by stating that drip irrigation from the stormwater BMP would be the primary source of water for any irrigation that may be necessary and that the adequacy of the BMP would require re-evaluation if future development occurs on the parcel. He stated that he did not believe that the Virginia Department of Transportation would allow another crossover on U. S. 13 for any future development on the parcel, given the short distance between the existing median crossing, which would be used for the proposed project, and the crossover at the intersection of Parson's Circle and U. S. 13. Mr. Massey also noted that credits are given under the LEED Green Building Rating System, which the applicants indicated they intend to pursue for the project, for the use of low-flush toilets.

Commissioner Meyers noted his concern about the two lines of irrigation connected to the proposed wells and wanted assurance that no water from the lower or deeper Yorktown-Eastover aquifer be used for irrigation purposes.

Discussion followed on various points with Mr. Massey explaining that the biggest impact to the BMP pond would be evaporation. It was his opinion that no stormwater runoff would occur to adjacent properties with the implementation of the swale system. When asked if the outfall pipe could be raised Mr. Massey noted that the BMP pond would be ten feet deep and that an eighteen inch freeboard would be utilized. He also noted that the location of the BMP pond was centered on the hotel facility for aesthetics. He explained that underground storm pipes run along the front edge of the small parking bay then to the rear underground system and a series of basins to wrap the perimeter of the site.

No public comment was offered and the public hearing was closed.

Commissioner Miller stated that water quality protection is an economic development tool and thanked the applicants for their attention to water quality concerns.

Action:

Motion was made by Commissioner Kabler to recommend approval of the special use permit with the following conditions:

1. the stormwater BMP be used as the primary irrigation source
2. low-flow fixtures, and other conservation measures such as a green laundry program be used inside the motel
3. the level of the outflow pipe in the BMP be raised to the highest level that is feasible
4. a shallow well in the Columbia aquifer be used for all non-potable water uses, including irrigation and outdoor washing of boats, etc.

Second was made by Commissioner Meyers.

Commissioner Miller then cited Section 5.6.B. of the comprehensive plan, which states as a strategy, "Support programs and initiatives that protect and conserve surface and ground-water resources, including wetlands."

Commissioner Meyers urged the applicants to provide documentation of their green initiatives and stewardship efforts for recognition by the Bi-county Groundwater Committee as an example to other businesses.

The motion carried unanimously.

D. Special Use Permit 10-01: Pamela Barefoot and James M. Green have applied for a minor special use permit to allow construction of an accessory living unit which will include a pool house and art studio on property located at 6235 Osprey Lane near Jamesville. The parcel is zoned Agriculture/Rural Business, consists of approximately 7.83 acres of land, and is further described as being parcel 51 of Tax Map 13, double circle A.

It was stated for the record that this matter had been withdrawn.

The next public hearing was called to order.

E. Special Use Permit 10-02: The Eastern Shore of Virginia Housing Alliance, agent for property owner Juanita Land, has applied for a minor special use permit to allow construction of an accessory living unit on property located on Cheapside Road just south of its intersection with Capeville Road. The parcel is zoned V-2 Village-2, consists of 4.571 acres of land, and is further described as being parcel 10 of Tax Map 105, double circle A.

No ex parte communication was presented.

As the applicant was not present and no public comment was offered the public hearing was closed.

It was noted that approximately half of the commission had recently visited the property.

Commissioner Meyers asked what sewage system was the existing trailer using. Ms. Benson stated that she did not know since the application does not pertain to the trailer, but to the existing house. She added that if no re-design of the sewage system was involved there was no need to show details concerning the trailer, but only details concerning the house that is to be replaced. Given the close proximity of the trailer to the existing drainfields of the house, he pressed the point and noted that more details concerning the property were warranted, and chastised staff for neglecting to provide this information.

While reviewing the site plan showing the sewage system layout, the Chair stated his opinion that it was obvious that the unidentified dashed-line rectangle behind the trailer is its septic system.

Commissioner Meyers stated his opinion that the special use permit is required because the existing home to be demolished will remain as an additional living unit until the new replacement home is occupied. Then the existing home will be demolished and the trailer would become the accessory living unit, but Ms. Benson did not necessarily agree.

Answering a question posed by Commissioner Kellam, Ms. Benson explained that the property has two structures now and that a special use permit is required because the property is not being subdivided and the replacement home is a modification of the existing home because it is being relocated and not in the same exact footprint.

Action:

Commissioner Meyers moved to recommend approval of the special use permit as submitted. Commissioner Cox seconded the motion, which carried unanimously. Commissioner Miller noted that the project supports the county's interest in providing additional living units in areas that are not under significant development pressure.

The Chair called for a five minute break.

Matters from the Public.

The commission heard comments from David and Julie Head and Rev. Debbie Lee Bryant concerning this matter.

Mrs. Head who resides at 10339 Bayside Road, stated that she and her husband are owners of several parcels of land slated for rezoning from A/RB Agriculture/Rural Business to H Hamlet the Bridgetown area. She then voiced her opposition to the rezoning of their land as being in conflict with the county's comprehensive plan. She referred to various sections of the plan noting that citizens have clearly indicated their desire to maintain the county's rural lifestyle and to preserve its natural resources and landscape; and have also indicated that they want to see new development funneled into the towns and villages, and away from agricultural and environmentally sensitive areas. Also, the county's rural lifestyle and rich natural heritage should be preserved and that citizens oppose development that would degrade or destroy it. She also noted that preservation of core natural assets include prime agricultural lands, woodlands, tidal wetlands, salt marshes, lagoons, barrier islands, and coastal waters. The County has identified agriculture, aquaculture/shellfish farming, and sustainable tourism as its key economic-development initiatives. She also referred to groundwater protection factors.

Mr. Head then continued with statements of opposition to rezone their agriculture property to Hamlet District. He noted that rezoning to Hamlet would diminish farming activities in direct conflict with the goals of the comprehensive plan.

Rev. Bryant, Pastor of Shorters Chapel, stated that Bridgetown is the oldest village (1680) on the Eastern Shore and provided documentation to that effect referencing Kirk Mariner's book entitled "Off 13". She asked that the Bridgetown Hamlet boundary be extended from Hungars Episcopal Church to parcels identified as 29-A-31 and 29-A-1CA. She submitted a map of the area as well and noted that a petition to establish Bridgetown Hamlet had been presented last year with various landowners signing.

Mrs. Head then stated that even though Mr. Bunting had signed the petition he longer wished to be part of any Hamlet District. She also noted that Mr. Dixon Leatherbury had not received a county letter notifying him of the proposed rezoning and that he, too, was opposed.

Consideration of Minutes.

The minutes of January 5, 2010 were approved with the following corrections: page 3, first full paragraph, at the end of the second sentence add, "and recommended removal of those parcels"; page 4, second paragraph, the word "under" should be "until"; page 5, fifth paragraph, add the word "unanimously" at the end; page 6, second paragraph, correct the name from Graham Reese to Arthur Amorise; page 7, second sentence, delete "but has not taken control"; and page 9, first paragraph, second sentence, delete the words "are made" and insert the words "may be" and in the third sentence, delete the word "pleasure". Motion to approve as corrected was made by Commissioner Miller and seconded by Commissioner Kabler.

The minutes of the January 26, 2010 work session were approved with one typographical correction to page 2. Motion to approve as corrected was made by Commissioner Kabler and seconded by Commissioner Coker.

Unfinished Business

The commission then took up the following matter, on which action had been postponed following the January 5, 2010, public hearing:

Zoning Map Amendment 10-02 NHCO: The Northampton County Board of Supervisors proposes to expand the area known as Bridgetown Hamlet to include Tax Map 29, double circle A, parcels 24, 28, 29, 30, 31, 36A, and 40A and that portion of parcel 37 with road frontage on the west side of Bayside Road south of parcel 29-A-39 and to a depth of 180 feet west side of Bayside Road and all of that portion of parcel 37 with road frontage on the east side of Bayside Road; Tax Map 29A1, double circle 1, parcels 3, 4, D3, E1 and E2; the road frontage only of Tax Map 29, double circle A, parcel 20 to a depth of 200 feet east of Bayside Road; and that portion of Tax Map 29, double circle 2, parcel A that abuts parcel 29-A-28 on three sides to the northwest, west-southwest, and southeast, constituting approximately 0.5 acre, with the distance from Bayside Road to the northwest corner of the proposed Hamlet boundary being 480 feet and from Bayside Road to the northeast corner of the proposed Hamlet being 570 feet. Zoning on all parcels shall be changed from the A/RB Agriculture/Rural Business District to the H Hamlet District. The parcels are located along the east and west sides of SR 622, Bayside Road.

Commissioner Meyers, with second from Commissioner Cox, moved to recommend including in the Hamlet parcel 29-A-40A, which had previously been omitted due to a clerical error.

Ms. Benson noted that the commission had made a recommendation to the Board in October 2009 that this Hamlet be extended further south.

Commissioner Kabler noted that in prior action on this Hamlet consideration had been given to comments from property owners who did not wish to be included in the Hamlet and offered an amendment to the Meyers motion to recommend inclusion of all the parcels as advertised for the January public hearing for inclusion in the Hamlet with the exception of parcels 29A1 (1) E1, 29A1 (1) E2, and 29A1 (1) D3, all owned by David and Julie Head. The motion to amend the original motion was seconded by Commissioner Miller.

The Chair noted that all previously established Hamlets are configured in a continuous strip. He also noted that the former Long Range Planner, Laura Atwood, had recommended that Bridgetown Hamlet be removed from the zoning map since it did not comply with Hamlet status criteria in her opinion.

Commissioner Meyers noted that both points constituting this Hamlet as a historic site and gathering place are recognized with the inclusion of both Hungars Episcopal and Shorters Chapel.

Commissioner Coker stated her concerns over the amount of wetlands to be included in the proposed expanded Hamlet area.

Commissioner Kellam stated that the majority of soil types were not conducive to development and Commissioner Kabler agreed noting that the topography would prevent any large degree of change in the area as well.

When Commissioner Kellam questioned whether landowners fully comprehend what the status of Hamlet zoning entails, Commissioner Kabler stated that mailed notices were sent and due process had been served. However, Commissioner Meyers stated that there is no way to know how the petition was presented to those landowners who signed to be included in the Hamlet.

Rev. Bryant interjected that those who signed the petition had been present at previous public hearings and meetings concerning this matter.

Commissioners Meyers and Kellam observed that the Hamlet boundaries as previously adopted preserve the historic aspect of Bridgetown and include the primary gathering places in the community, specifically Hungars Episcopal Church and Shorters Chapel, as contemplated by the comprehensive plan.

Action:

The commission then voted 5-4 to recommend approval of the Hamlet boundaries as described in the Kabler amendment to include all the parcels as advertised for the January public hearing for inclusion in the Hamlet with the exception of parcels 29A1 (1) E1, 29A1 (1) E2, and 29A1 (1) D3, all owned by David and Julie Head.

The commission then voted unanimously to include in the Hamlet parcel 29-A-40A as stated in the original Meyers motion.

Ms. Benson then reported that the Board of Supervisors had some discussion at their goal setting session concerning Highway Overlay District – S. R. 184 (Stone Road) & Old Cape Charles Road. However, it has not been clarified if this matter should be considered a short-term goal or a medium-term goal. She noted that additional information will be forwarded to the commission once available.

The 2009 Annual Report of the Planning Commission was then reviewed. Additional “bullets” were added along with other revisions. The Commission then reviewed dates to meet with the Board. Motion to submit the revised report to the Board was made by Commissioner Meyers and seconded by Commissioner Coker. The motion carried unanimously.

Ms. Benson stated that the Eastville Town Council will need to conduct a joint public hearing with the commission on the draft Town of Eastville Subdivision Ordinance. She added that the draft zoning ordinance uses the county’s ordinance as a model with some minor revisions.

At 10:00 p.m. Commissioner Meyers moved to recess the meeting.

Discussion continued on scheduling a joint public hearing with the Town Council of Eastville. Motion was made by Commissioner Miller to schedule the joint public hearing in March which was seconded by Commissioner Coker. The motion carried unanimously.

At this time Commissioner Meyers withdrew his motion to recess. He then requested that the draft subdivision ordinance be e-mailed as soon as possible or at least a week in advance of the meeting.

Recess

Motion to recess until 7:00 p.m. on Wednesday, February 17, was made by Commissioner Meyers at 10:05 p.m.

Chairman

Secretary