

Minutes

Northampton County Planning Commission

April 6, 2010

This was a regular meeting of the Northampton County Planning Commission held on Tuesday, April 6, 2010 in the former circuit courtroom in Eastville, Va., for the purpose of conducting regular business.

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

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

Due to the absence of Mr. Fauber, Vice-Chair Coker assumed the Chair, called the meeting to order at 7:02 p.m. and established a quorum present.

The commission reviewed and unanimously accepted the agenda upon motion by Commissioner Wescoat and second by Commissioner Meyers.

Public Hearings:

A. Special Use Permit 10-04: Bobette Price has applied to locate an accessory living unit on property owned by Robert L. Lewis located at 5105 Plantation Drive (SR 643). The property, zoned A/RB Agriculture/Rural Business District, is described as being Tax Map 92, double circle 1, parcel 3A.

Ex parte communications

At this time the Vice-Chair stated that Special Use Permit 10-04 had been officially withdrawn and that no public hearing would be held.

Ms. Benson informed the commission that staff had researched background information on questions and communications received from various commissioners on this particular application. She also noted that she had spent time in consultation with the county attorney. A report will be provided to the commission on the status of this matter after further consultation with the applicant. When asked why Ms. Price had withdrawn, Ms. Benson noted that staff had not consulted with her, but that she wished to pursue the option of temporary emergency housing at this time.

The public hearing on Zoning Text Amendment 10-03 was called to order. No ex parte communications were reported.

B. Zoning Text Amendment 10-03: The Northampton County Planning Commission proposes to amend the Northampton County Code §154.003 (C) *Specific Definitions* by amending the definitions of **ACCESSORY LIVING UNIT, ARTISAN STUDIO, ARTIST STUDIO, DESIGN STUDIO,**

and **DWELLING UNIT**. The Planning Commission also proposes to amend Chapter 154 Appendix A-Use Regulations, Category 3-Commercial Uses in the Northampton County Code to revise the references to "Art Studio" to read "Artist Studio" and to allow **DESIGN STUDIO** with a Minor Special Use Permit in the Waterfront Village-Neighborhood Business District.

The Vice-Chair called for public comments. None were received and the public comment portion of the hearing was closed.

The Vice-Chair read from the staff report as follows, "The Board of Supervisors had directed the Planning Commission to review the definitions of **ARTISAN STUDIO** and **ARTIST STUDIO**, with particular attention being paid to the limitations on numbers of employees (see memos dated December 11, 2009, and December 31, 2009, attached). In conjunction with their review, the Commission also re-evaluated the definition of **DESIGN STUDIO** with the same objective. Accordingly, the Commission proposes to amend the zoning text as set out in the attached document, finding that the proposed amendments will: (1) allow greater employment flexibility for the studio owner and encourage small business development; (2) increase options and visibility for the artist/artisan studio venue, which is considered an important component of the local tourism industry; and (3) distinguish between an artist/artisans venue and the higher-impact design production facility. In addition to the definition revisions, the Commission also proposes to allow **DESIGN STUDIO** as a Minor Special Use in the Waterfront Village-Neighborhood Business District, where such use is not currently allowed. For consistency with the specific definitions in §154.003, it is also proposed that the term "Art Studio" in Appendix A, Use Regulations, be revised to read "Artist Studio."

Commissioner Meyers noted that the commission has discussed this matter at great length in order to improve the county zoning ordinance.

Action:

Motion to accept the changes was made by Commissioner Meyers and seconded by Commissioner Miller. The motion carried unanimously.

The next hearing was called to order. No ex parte communications were reported.

C. Zoning Text Amendment 10-04: The Northampton County Planning Commission proposes to amend Northampton County Code §154.249 **PROVISIONS FOR SPECIAL USES** by inserting the following language: *"Single-section or multi-section manufactured homes that comply with the current HUD manufactured housing code are exempt from the requirements of this Section in accordance with §154.246 (D) (2) provided that the degree of nonconformity is not increased."* Both sections referenced are under the general category of **Nonconforming Uses & Vested Rights Policy**.

The Vice-Chair called for public comments. There being none the public comment portion of the hearing was closed.

Commissioner Meyers requested that Ms. Benson relate the history of the proposed amendment for the benefit of all present. Ms. Benson explained that the commission reviewed §154.246 (D) (2) and

§154.249, which zoning staff had found to be in conflict in the case of a proposed replacement of a lawful nonconforming mobile home. Her memo of Jan. 28, 2010, explained that the Virginia Code provides that a lawful nonconforming mobile or manufactured homes not located in a mobile or manufactured home park may be replaced with a single-section or a multi-section manufactured home that meets the current HUD manufacturing housing code. However, §154.249 of the county code (special use provisions) stipulates that any use of a structure which exists at the time of enactment of this chapter which is permitted in the district as a special use shall not be deemed a nonconforming use or structure, but shall, without further action by the county, be considered a conforming use. However, such a use or structure shall be subject to the requirements of this chapter as “special use” when expansion, enlargement, extension, alteration or modification is proposed. In this instance, the proposed new mobile home is not larger than the existing home, but the replacement would be considered an “alteration” or a “modification”. Therefore, staff recommends exempting mobile and manufactured homes from §154.249 by reference to §154.246 (D) (2) so that the proposed amendment would address the inconsistency and contradiction.

The commission reviewed staff comments and the proposed language.

Commissioner Meyers noted that some provision should be implemented when a mobile home, if located in a resource protection area (RPA), is replaced and exceeds the existing footprint thereby causing greater impact to the RPA. It was his opinion that this type of scenario is the current situation facing the county. He explained that when a smaller single-wide unit is replaced with a larger unit it causes more impact and it should be stipulated that the unit be placed on the same exact footprint in his opinion. Ms. Benson agreed that the level of nonconformity should not be increased and the language does reflect that stipulation. Commissioner Meyers also noted that any structure placed within the RPA prior to the Bay Act would be considered as legally nonconforming with Ms. Benson agreeing.

Action:

Motion was made by Commissioner Cox to approve Zoning Text Amendment 10-04. Second was made by Commissioner Meyers and the motion carried unanimously.

Commissioner Miller mentioned her appreciation of how clear and concise staff report comments were presented.

Commissioner Meyers asked for clarification concerning the totality and inclusiveness of the earlier motion made on Zoning Text Amendment 10-03 to ensure that those amendments proposed to Accessory Living Unit and Dwelling Unit were included. He then read the beginning of the staff report as follows, “The Northampton County Planning Commission proposes to amend the Northampton County Code §154.003 (C) *Specific Definitions* by amending the definitions of **ACCESSORY LIVING UNIT**, **ARTISAN STUDIO**, **ARTIST STUDIO**, **DESIGN STUDIO**, and **DWELLING UNIT**. The Planning Commission also proposes to amend Chapter 154 Appendix A-Use Regulations, Category 3-Commercial Uses in the Northampton County Code to revise the references to “Art Studio” to read “Artist Studio” and to allow **DESIGN STUDIO** with a Minor Special Use Permit in the Waterfront Village-Neighborhood Business District.

The Vice-Chair then read from the staff report as follows, "At the request of staff, the Commission re-evaluated the definitions of **ACCESSORY LIVING UNIT** and **DWELLING UNIT** (see attached memo dated January 28, 2010 outlining concerns with these definitions). The Commission agreed that the presence of a bathroom should not constitute the basis for deeming an accessory structure an accessory living unit. The Commission also agreed that the presence of electrical power should not itself be considered to constitute cooking facilities in determining whether a unit is a dwelling unit."

Motion to amend the previous motion and to recommend Zoning Text Amendment 10-03 was made by Commissioner Miller to include the Vice-Chair's references to Accessory Living Unit and Dwelling Unit terminology. The motion to amend was seconded by Commissioner Meyers and carried unanimously.

Matters from the Public: None.

Consideration of Minutes

The minutes of the March 2, 2010 regular meeting were approved with the following corrections: page 3, sixth full paragraph, last line replace the word "commission" with "2008 zoning amendments;" page 5, after the fourth paragraph add the following, "Commissioner Kellam put forward consideration of potential decrease of real estate values on properties near wind farms."; third paragraph from the bottom of page 5, the words "in rural areas" should be added after the word "structure"; Commissioner Kabler noted that the wording of the next to the last paragraph was not an accurate representation of his comments; therefore, the wording was changed as follows, "Commissioners Meyers and Kabler indicated they are aware of prospects of wind-farm leasing in the county."; page 6, fourth paragraph, last sentence, replace the word "bill" with "designation"; and in the last paragraph, the first line the word "site" should be "sit". Commissioner Kabler stated his opinion that meeting minutes are too wordy and that those statements made in prior minutes must be accurately changed. At this time, Ms. Downing informed the commission that revisions were made to prior minutes as corrected and are now posted on the county's website. Motion to approve as amended was made by Commissioner Meyers and seconded by Commissioner Wescoat. The motion carried unanimously.

The minutes of the recessed meeting held on March 25, 2010 were amended as follows: page 2, fifth full paragraph, first line replace the word "yesterday" with "the previous day"; page 3, third full paragraph, second line, delete the word "the" and capitalize the word "state"; page 4, second full paragraph, next to the last sentence, change the word "commission" to "county"; page 5, fourth paragraph, the last sentence should be clarified; and on page 6, first full paragraph, fifth sentence, delete the word "plan". Motion to approve as corrected was made by Commissioner Meyers. Second was made by Commissioner Cox and carried unanimously.

Unfinished Business

The commission then held discussion on draft Solar Energy Overlay District regulations. Written comments submitted by Commissioner Fauber were distributed by Commissioner Coker for review and consideration.

During discussion Commissioner Kabler noted that some parcels may not be able to retain all stormwater on site. Commissioner Meyers mentioned that Commissioner Kellam had relayed her

concerns about possible stormwater issues being caused during construction of a solar facility. Ms. Benson noted that a stormwater management plan must be submitted prior to construction of such a project. It was decided that the use of ponds to manage stormwater should not be required as mandatory, but that alternative methods could be proposed. Unlike Commissioner Fauber's view that on site mandatory storm water retention was unnecessary, Commissioner Meyers expressed his opinion that such a view would be inconsistent with the Environmental Protection Agency objectives to address Chesapeake Bay TMDLs. Commissioner Wescoat voiced his concern that retaining all stormwater on site (both existing and that created by panels) may greatly limit locations of SEDs and possibly cause detrimental impacts to natural flowing watersheds. It was his opinion that stormwater created by solar panel runoff should be addressed in the regulations. Commissioner Miller noted that current zoning regulations would only allow 15 percent of the land to be used, but rezoning to a SED would allow 100 percent of the land to be used with these proposed requirements for mitigation. She also mentioned that due to the total topography of the county that some areas are not suitable for such development such as the Bayview area as it has drainage problems. This type of proposed mitigation may help alleviate existing runoff problems in certain community areas. Commissioner Meyers added that the proposed regulations may reduce nonpoint source pollution as well.

Commissioner Miller suggested that the minimum and maximum acreages for such facilities be re-addressed. It was her opinion that the SED be considered an industrial use noting that the largest industrial use within the county is the 220 acre landfill. Motion was made by Commissioner Meyers to amend a prior motion made on March 25, 2010 that there be a maximum of 220 acres in any SED rather than having no restrictions. Second was made by Commissioner Miller and carried 5 to 2 with Commissioners Kabler and Ward opposed. Commissioner Meyers noted that this proposed industrial size of 220 acres is justified based on the largest existing industrial use (county landfill) located in an agriculture zone.

Other points of discussion included restricting access to U.S. 13 under certain circumstances; adding new language To the County section to be known as Item 8 on page 1 so that the county itself could profit if the landfill site is rezoned as a SED and leased; allowing more time for removal of solar energy equipment from a site; stipulating solar panels as the principle use in the district; and how to address abandoned or unused facilities.

The language was reviewed in its entirety, revisions made, and drafted as follows in its entirety.

Advantages of a Solar Energy District (SED) Floating Zone

To the Applicant:

- 1. Eliminates the lot coverage requirement*
- 2. Recognizes all vested rights as per VA Code §15.2-2307 et alia*
- 3. Provides greater location flexibility*
- 4. Assures consistent performance standards for every location and for every similar facility*
- 5. Eliminates fencing and other security requirements*
- 6. Allows density of use with no further county zoning review*
- 7. Establishes consistent setbacks and buffers for all similar projects*

Note: The initial applicant, Lincoln Energy, wrote in an email after reviewing the first draft of the floating district that they “could go either way – the floating district has some advantages” in addition to stating later at the Board of Supervisor’s public hearing that a floating district would satisfy the goals of their application.

To the County:

1. Demonstrates the ability of the county to accommodate “innovative and creative development projects” within its existing Zoning Ordinance (NCC §154.084)
2. Does not require changes to the Zoning Ordinance to accommodate a specific type of applicant
3. Does not require extensive changes to any other sections of the Zoning Ordinance to accommodate a new use. Offers a specific, unambiguous method of evaluating proposals for solar development
4. Allows elimination of lot coverage requirement to accommodate increased, revenue producing, economic development
5. Perimeter vegetation mitigates the high density use in otherwise rural areas and reduces degradation of the solar panels from dust
6. Recognizes all vested rights as per VA Code §15.2-2307 et alia, and consistently protects those rights in all zoning districts
7. Demonstrates local zoning initiative in response to the Commonwealth’s recently announced bid for east coast energy leadership
8. The possibility of rezoning the county-owned landfill site to an SED and leasing the site to interested energy producers

§154.084 –

(A) The intent of floating zoning districts is to allow innovative and creative development projects that conform to the goals and objectives of the Comprehensive Plan while allowing flexibility in design.

(B) Four floating zone districts are created and defined in §§ 154.175 et seq.

- (1) Mobile Home Park District (MHP)
- (2) Planned Industrial District (PID)
- (3) Existing Planned Rural Village District (EPRV).
- (4) Solar Energy District (SED)**

§ 154.175 FLOATING DISTRICTS

(A) A “floating district” is a zoning district which is currently unmapped, but which the County believes could be appropriate and warranted when developed pursuant to an overall project design and concept development plan to achieve the development goals in the adopted Comprehensive Plan,

subject to the requirements contained in the Ordinance. Approval to allow a floating district requires a Zoning Map amendment from the Board of Supervisors.

(B) Upon the adoption of the 2009 Comprehensive Amendments, the County shall have four floating zoning districts:

(1) Mobile Home Park District (MHP)

(2) Planned Industrial District (PID)

(3) Existing Planned Rural Village District (EPRV)

(4) Solar Energy District (SED) added -- insert date--

(C) The purposes and intents of the MHP, PID, EPRV, and SED districts are:

(1) Mobile Home Park (MHP): to accommodate mobile homes in a planned neighborhood. All MHP Districts shall be served by approved sewage disposal facilities, adequate access to a public road, and a public/community water supply. In mobile home parks, no space shall be rented for residential use except for a period of at least 30 days.

(2) Planned Industrial (PID): to permit the development of comprehensively planned and designed industrial uses and compatible high-intensity commercial uses on contiguous areas of land under unified control. The standards and procedures set forth in this Section are designed to achieve a harmonious and efficient layout of uses, structures, circulation, and utilities within the PID and to ensure that such development does not adversely affect adjoining properties or the County's natural resources.

(3) Existing Planned Rural Village: to recognize and permit continued development of Planned Rural Villages and/or Planned Unit developments approved under prior zoning regulations. It is the intent of Northampton County not to create any additional Planned Rural Villages subsequent to the adoption of this Chapter. The presence of an Existing Planned Rural Village shall not serve as justification for future rezoning outside the approved boundaries of the Existing Planned Rural Village. The regulations applicable to the Planned Rural Village floating district as set forth in the Northampton County Zoning Ordinance adopted on December 28, 2000, are included in § 154.178 for reference purposes.

(4) Solar Energy District: The purpose is to permit the development and operation of comprehensively planned and designed solar energy power generation using photovoltaic cells on a parcel of land, and/or contiguous parcels under unified control. In establishing an SED, the intent is to be consistent with the Comprehensive plan §3.5.2 noting that "environmental protection and economic prosperity can be reached as cohesive rather than competing goals," and further, that new businesses "generate sufficient revenues to provide desired services." The standards and procedures set forth in this Section are designed to achieve a harmonious and efficient layout of structures, circulation, and connection to public utilities on or adjacent to the SED and to ensure that such development does not adversely affect adjoining properties or

the County's natural resources. The SED may be located only in the Ag/Rural Business and Existing Industrial Districts, within the acreage limits of 154.175 (J) below.

(D) The minimum zoning regulations applicable to the MHP, PID, and SED districts are:

	<i>MHP</i>	<i>PID</i>	<i>SED</i>
<i>Max density</i>	<i>2:1</i>	<i>None</i>	<i>None</i>
<i>Uses Allowed</i>	<i>See § 154.176</i>	<i>See § 154.177</i>	<i>See §154.177.1</i>
<i>Proffered plan</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>
<i>Max height in feet for principal use</i>	<i>22</i>	<i>40</i>	<i>Solar panels 12</i>
<i>Front yard</i>	<i>See § 154.176</i>	<i>See § 154.177</i>	<i>-----</i>
<i>Side yard See</i>	<i>§ 154.176</i>	<i>See § 154.177</i>	<i>-----</i>
<i>Rear yard</i>	<i>See § 154.176</i>	<i>See § 154.177</i>	<i>-----</i>
<i>Public central sewer req'd</i>	<i>Yes</i>	<i>Yes</i>	<i>No</i>
<i>Public central water req'd</i>	<i>Yes</i>	<i>Yes</i>	<i>No</i>
<i>Open space req'd</i>	<i>Yes</i>	<i>Yes</i>	<i>No</i>

(E) General Provisions Regarding Floating Districts:

(1) The procedures herein established are in recognition of the fact that traditional density, bulk, spacing, and use regulations, which may be useful in protecting the character of substantially developed areas, may impose inappropriate and unduly rigid restrictions upon the development of parcels or areas which lend themselves to a unified, planned approach and development. A Planned Development should be designed to ensure that the following general goals will be achieved.

(a) The proposed development shall be of such design that it is consistent with the Comprehensive Plan as well as other adopted plans and policies of the County.

(b) The development will efficiently use available land and will protect and preserve, to the extent possible, natural features of the land such as trees, wetlands, streams and topographic features.

(c) The development will be located in an area in which transportation, police and fire protection, schools and other public facilities and public utilities, including water and sewage, are or will be available and will be adequate for the uses proposed. The applicant may, where appropriate, make provisions for such facilities or utilities which are not presently available.

(2) In addition to their specific purposes and intents, floating districts are intended:

(a) To promote the efficient and well-planned use of the land as a means of achieving a superior living environment and a convenient, attractive and harmonious community;

(b) To encourage the provision and conservation of open space within such areas for leisure time uses;

(c) To encourage a variety of housing styles and types, including affordable housing opportunities as described in the County's Affordable Housing Policy;

(d) To ensure the provision of sufficient and properly located public facilities;

(e) To protect against encroachment upon agricultural, marine and other natural resources of the County;

(f) To encourage flexibility and innovation in project and community design which would result in improved relationships between various uses of land and transportation or other public facilities.

(F) Relation to Conflicting Requirements: Once a floating district has been established by the Board of Supervisors, the regulations adopted in conjunction with such project application shall control its use and development in lieu of other requirements of this Ordinance.

(G) Land Use and Dimensional Requirements: The land use, housing types, minimum lot requirements, minimum yard requirements and accessory uses and signs approved for a specific floating district shall be determined by the requirements and procedures set forth in this section and adopted by the Board of Supervisors.

(H) Floating Districts to Have Sufficient Facilities: All PID and MHP development projects approved by the Board of Supervisors must be served by public water and sewer systems (not individual onsite wells or septic fields), and have appropriate highway access, police, fire and rescue, schools, libraries and other public services sufficient to serve the needs of such projects and its inhabitants. If central public sewer and water service is available to serve the site, the Board may require that the proposed development be connected.

(I) Overall Community Plan: Floating districts must be approved with a plan for the development of an overall community. Within such planned developments, the locations of all residential,

nonresidential, and governmental uses, including parks, playgrounds, recreation areas, and other open spaces shall be planned in an orderly relationship to one another.

(J) *Procedure for Establishment: The following provisions establish the procedures for application and approval of a floating district development:*

(1) *Minimum and maximum Acreage for initial Floating District:*

<i>Mobile Home Park (MHP):</i>	<i>Minimum five (5) acres;</i>	<i>maximum 10 acres</i>
<i>Planned Industrial District (PID):</i>	<i>Minimum five (5) acres;</i>	<i>maximum 20 acres</i>
<i>Solar Energy District (SED)</i>	<i>Minimum-No Restriction</i>	<i>maximum 220 acres</i>

(2) *Enlargement of a Floating District: Additional land area may be subsequently approved and added on to a floating district if it adjoins an existing floating district. The procedure for an addition shall be the same as for an original application, and all of the requirements of this section shall apply except the minimum acreage requirements as specified above. No additions to existing floating districts smaller or larger than the following sizes are permitted:*

<i>Mobile Home Park (MHP):</i>	<i>Minimum- 5 acres;</i>	<i>maximum-10 acres</i>
<i>Planned Industrial District (PID)</i>	<i>Minimum- 5 acres;</i>	<i>maximum- 20 acres</i>
<i>Solar Energy District (SED)</i>	<i>Minimum-No Restriction;</i>	<i>maximum-No Restriction</i>

§154.177.1 SOLAR ENERGY DISTRICT (SED)

(A) Intent of uses permitted in a SED: *It is the intent of Northampton County that the Solar Energy District be used solely for generation of solar power to be connected directly to the electrical public utility grid. It is not expected to generate heavy traffic and/or noise during operation. All such uses shall be subject to approval by the Board of Supervisors of a rezoning application with a plan of development. Any uses planned as accessory uses to the principal uses shall be subject to approval by the Board of Supervisors as part of the rezoning. If the solar power system is not built to completion within 2 years after the SED is created, becomes unused, abandoned or vacated for more than twelve (12) consecutive months, the Board of Supervisors shall initiate a rezoning process to eliminate the SED at that location*

(1) Uses permitted in SED. *The following uses shall be permitted by right in SED Floating Zones, and subject to the SED approval by the Board of Supervisors:*

(a) *Generation of solar electrical power using photovoltaic panels.*

(b) *Facilities to maintain, operate, manage and transmit that power to the local electric utility grid.*

(2) Performance Standards within SED.

(a) *All storm water runoff must be contained within the SED.*

- (b) *The entire SED, including the area underneath the solar panels, must be vegetated. A plan must be submitted for maintenance of that vegetation, except for access roads and accessory structures.*
- (c) *All wiring not on the solar arrays shall be underground except where necessary to connect to the public utility.*
- (d) *The gross usable area will exclude any wetland areas that are regulated by the Northampton County Wetlands Board or the US Dept of Interior (administered by the U.S. Army Corps of Engineers). All forested areas removed during construction or operation shall be mitigated by the creation of an equal number of acres of equivalent forest.*
- (e) *The developer must allocate space necessary for any public utility right-of-way.*
- (f) *The following requirements shall govern the landscaping surrounding an SED:*
1. *A vegetated buffer is required that consists of a landscaped strip at least fifty (50) feet wide measured from each boundary line of the SED around the entire perimeter of the SED. Any fencing must be installed on the interior of the buffer. A recommendation that the screening and / or buffer creation requirements be waived may be made by the Planning Commission when the applicant proposes to use existing wetlands or woodlands, as long as the wetlands or woodlands are permanently protected for use as a buffer. Storm water must still be contained within the SED even if relief is granted for buffer and/ or screening reduction.*
 2. *SED's shall be landscaped and maintained with a buffer of plant materials that are mature enough to effectively screen the view, to eight feet above ground level, of the solar panels from adjacent properties all year around. A landscape berm properly prepared to accept plants, up to four feet high, may be used to assist reaching the required screening height. The screening must be fully established within five years and effectively maintained for the life of the SED. Non-invasive plant species must be used. (See www.NPS.gov National Park Service – USFWS “Plant Invaders of the Mid Atlantic Natural Areas.”)*
 3. *Existing vegetation may be removed only as authorized during the site plan review process to permit vehicular and utility access during construction of the facility and installation of power transmission lines.*
- (g) *Noise generated by the facility shall be limited to 50 DBA above ambient levels except when a back-up generator is needed for maintenance.*
- (h) *Any installed lighting shall be in accordance with §154.112 (D) Outdoor Lighting Standards.*
- (i) *If solvents are required for cleaning of solar modules, they must be bio-degradable.*

- (j) *If a water supply is required, it must be from a source no deeper than the Columbia aquifer even if a deeper source already exists within the SED.*
- (k) *All broken or waste solar modules shall be removed from the site within 60 days of being taken out of service.*
- (l) *Solar energy facilities, including the electrical and mechanical components, shall conform to relevant and applicable local, state and national codes.*
- (m) *Required reporting:*
 1. *The solar installation operator will notify the Board of Supervisors as soon as the applicant is transmitting electricity from solar panels to the public utility.*
 2. *The solar installation operator will notify the Board of Supervisors in October of each year the total amount of kilowatts transferred to the public utility in the previous 12 months.*
 3. *Any change of ownership or management of the solar installation shall be reported to the Board of Supervisors within 60 days of the change.*

(B) Special regulations within a SED.

(1) **Setbacks.** *Basic setback requirements in an SED are shown in the table below.*

	Primary Uses	Accessory Uses
From Lankford Highway (US 13)	100 ft.	150 ft
From other public access roads,	60 ft.	60 ft
From tidal waters and Incorporated Towns	150 ft.	200 ft.
From SED exterior boundary line when not increased by the above	50 ft	50 ft.

(2) **All setback areas** *must be vegetated. The vegetation must be maintained as effective soil sediment traps. The required screening buffer described above in §154.177.1 (A) (2) (f) shall be created within and on the interior side of the setback when it exceeds 50 feet.*

(3) **SED abutting US 13** - *Access shall not be from US 13 if access is possible from a secondary road. If no secondary road is available, US 13 access is limited to one entrance per SED, constructed to current VDOT standards.*

(4) Support and maintenance buildings are accessory uses in an SED and cannot be higher than 25 feet. The roofs may be designed to accommodate additional flush mounted solar panels.

(C) Removal of Abandoned Solar Generating Equipment

A bond, whose amount shall be determined by the Director of Planning, shall be required to assure removal of an unused Solar Energy Power Generating System.

Any solar energy power generating system that has not operated for a continuous period of twelve (12) months shall be considered unused and abandoned. The owner of the unused system shall remove the entire system within 6 months of receipt of notice from Northampton County notifying the owner of the equipment removal requirement. Removal includes removing any underground structures or supports and electrical transmission wire. All materials must be legally removed from the site. The site shall be restored to its original condition after removal is complete.

(D) Vesting -- See Section 154.250

It was then decided that the commission would conduct a public information meeting concerning wind and solar energy on Tuesday, April 20, 2010 at 7:30 p.m. Ms. Benson cautioned that public comments made at the information meeting could not be used to make changes to the draft SED as proposed. Only comments received during the scheduled public hearing can be considered as official.

Motion was made by Commissioner Miller to accept the revised SED language as the official public hearing draft. Second was made by Commissioner Meyers and carried unanimously. Motion was then made by Commissioner Meyers to advertise the proposed SED draft for public hearing at the regular May 4th meeting. Second was made Commissioner Cox and carried unanimously.

The Chair called for a five minute recess.

Procedural Matters

The commission reconvened at 9:25 p.m. and briefly discussed procedural matters. Specifically, the proposed unanimous consent item was addressed and deemed unnecessary by consensus.

Due to time constraints to adequately review and discuss this matter, motion was made by Commissioner Miller to move this item to the regular May agenda. Second was made by Commissioner Meyers and carried unanimously.

New Business

The commission then reviewed Variance 09-07 as filed by Kathryn Barger for a variance from the required 25-foot side yard setback on property zoned A/RB Agriculture/Rural Business. The property, consisting of 3 acres located on Ellen's Lane, is described as being parcel 5 of Tax Map 66, double circle 5, with frontage on the Chesapeake Bay.

When questioned about how adjacent property owner notifications are processed, Ms. Benson explained that by law staff is required to utilize the official real estate records from the office of the Commissioner of the Revenue. Ms. Downing added that certified notices are mailed 21 days prior to the public hearing date as required by law.

Commissioner Meyers stated his opinion that preservation of mature trees may be a mitigating circumstance to allow the request if adjoining property owners are not opposed. He suggested that the house could possibly be rotated 90 degrees to meet the required setback. Commissioner Miller stated her opinion that the request is strictly a matter of personal convenience.

Motion was made by Commissioner Meyers to recommend that the Board of Zoning Appeals explore re-orienting the house footprint 90 degrees to meet setbacks. The motion was seconded by Commissioner Cox and carried 4 to 3 with Commissioners Kabler, Miller and Coker opposed.

Communications

Ms. Benson reported that the Cape Charles Planning Commission meeting scheduled this night had been cancelled. She did note that the town wants to proceed with planning once the proposed mapping of the historic corridor overlay district is available to the county commission.

Ms. Benson reported that she had communicated with Artie Miles, Exmore Town Manager, who advised that after the May election the town would be better prepared to proceed with its Town Edge Plan. He also informed her that Exmore will be updating its Comprehensive Plan in the near future.

Commissioner Ward noted that the Cheriton Town Council would be conducting a regular meeting in May.

No report was given for the Town of Nassawadox.

Commissioner Miller noted that the Town Council of Eastville voted to submit their boundary adjustment plan to the county and that work on amending the zoning ordinance will be delayed until after the town budget is adopted.

Committee Reports/Presentations: none.

Board Action on Zoning Matters.

Ms. Benson reported that the Board had approved Special Use Permit 10-03 as filed by Franktown United Methodist Church for the Montessori School expansion.

Director's Report

Ms. Benson reported that a draft stormwater management plan will be submitted to the Board in the very near future. She also noted that the county has received a Coastal Zone Grant to provide Mr. Stith with more training on community biz software focusing on priority conservation areas identified in another county coastal zone project. Also, work will be commencing on development of a Watershed Management Plan.

Ms. Benson then reminded everyone about the Eastern Shore Green Energy Symposium to be hosted by the Eastern Shore Community College on April 30 and that she will be participating in the land use segment.

Adjourn

Motion was made by Commissioner Wescoat to recess at 9:53 p.m. until April 20, 2010. Second was made by Commissioner Cox and carried.

Chairman

Secretary