

## Minutes

### Northampton County Planning Commission

September 6, 2011

This was a regular meeting of the Northampton County Planning Commission held on Tuesday, September 6, 2011, in the auditorium of the former Northampton County Middle School located at 7247 Young Street, Machipongo, Va.

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

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

The Chair called the meeting to order at 7:00 p. m. and established a quorum present.

The agenda was reviewed and motion made by Commissioner Wescoat to accept the agenda as presented. Second was made by Commissioner Carpenter and carried 8 to 0.

#### **Public Hearings:**

- A. **Special Use Permit 2011-07:** Sugar Run, LLC has filed an application to operate an "Other Retail Establishment, less than 2500 sq. ft." in an existing building, consisting of a retail waterfront business including a marine fueling facility. The property, located at 6513 Sunnyside Road in Oyster, is described as Tax Map 85A, double circle 3, parcel 5. The property contains 0.418 acres of land and is zoned Waterfront Village-Waterfront Commercial WV-WC District.

Mr. Jim McGowan, planning consultant for the applicant, gave a brief review of the project noting its compatibility with the existing neighborhood and compliance with the zoning ordinance and comprehensive plan.

The Chair called for public comments.

Ms. Sarah Morgan, a resident of 6553 Broadwater Circle in Oyster, expressed her whole-hearted support of the project to benefit a working waterfront district and provide needed services to the boating public. It was her opinion that the project would make Oyster a more vibrant place to visit and that the fuel station would support marine related activities.

Mr. John Crumb, a former resident of Oyster for many decades, expressed his support of the project noting that Oyster has no type of activity that compliments the harbor area or any business that offers services or goods to residents and visitors.

There being no other public comments the hearing was closed.

Motion was made by Commissioner Kabler to recommend approved of Special Use Permit 2011-07 to the Board of Supervisors as recommended by staff to include imposition of a condition requiring anchoring of the fuel-dispensing installation in accordance with the Virginia Marine Resources Commission's (VMRC's) requirements as well as submission of a spillage plan. Second was made by Commissioner Wescoat.

Commissioner Kellam asked for details concerning proposed fuel tanks, location of the pumps and any other pertinent information available. Mr. McGowan stated that there would be two (2) 2,000 gallon above-ground tanks to provide ethanol-free and diesel fuels to the boating public. The tanks would be placed on an existing concrete slab located approximately 50 feet from the state road and the pumps located along the waterfront.

Commissioner Ward asked if there was any plan to expand the existing building at this time. Mr. McGowan replied no.

Commissioner Miller asked for more detail concerning the site plan especially parking areas possibly being located in the resource protection area. Ms. Benson explained that the mandatory site plan review would address parking and other details related to the project.

Commissioner Miller also suggested that more detailed schematic information be provided regarding the placement of the fuel tanks and pumps. Mr. McGowan stated that the fueling station would comply with the Department of Environmental Quality's (DEQ's) standards as affirmed by Eyre Baldwin, Managing Partner of Sugar Run LLC.

Commissioners Miller and Kellam agreed that any approval of this project should be conditioned to include imposition of VMRC standards related to waterfront fuel services.

As a point of interest Commissioner Kabler stated that a company experienced in environmental spills is now located in Cape Charles. It was his opinion that this project would probably alleviate improper handling of fuel around the harbor area such as hand carrying individual fuel tanks to and from vessels.

Commissioner Kabler was asked to restate his motion at the request of Commissioner Kellam.

At this time Commissioner Miller stated that she had received a communication from a county tax payer that the applicant's corporate name appears on the Treasurer's list of past due taxpayers. Mrs. Downing verified that all taxes have been paid on this parcel in question; otherwise, the application would not have been scheduled for public hearing.

Action:

The Chair called for the vote and the motion carried unanimously 8 to 0.

The second hearing was called to order.

- B. **Zoning Text Amendment 2011-10:** The Northampton County Planning Commission intends to amend the Northampton County Code, Chapter 154 Zoning Code, by deleting “Swimming Pools, private” in **Appendix A – Use Regulations**, Category 7 – Recreational Uses. The amendment would allow private swimming pools to be considered accessory uses to primary structures on the same parcel of land.

Ms. Benson gave a brief background statement concerning this amendment as stated in her memo of June 1, 2011.

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

Commissioner Coker expressed concern about private “community” pools installed for homeowners associations such as the one in Bay Ridge Subdivision.

After brief discussion and review of several zoning ordinance definitions motion was made by commissioner Kabler to recommend approval of Zoning Text Amendment 2011-10 to the Board of Supervisors as submitted. Second was made by Commissioner Ward.

Commissioner Coker stated her support of the amendment but wanted to clarify that community pools would not be prohibited or restricted.

Commissioner Ward asked if this amendment would allow private residential swimming pools as accessory use by right in all residential zoning districts including the Conservation District. Ms. Benson stated yes, that private residential pools would be allowed by right as accessory to the primary use but would have to meet all other zoning requirements including, but not limited to, designated setbacks.

Commissioner Kellam noted that Item 24, “recreational or social uses within a subdivision for use of residents only”, listed in Category 4 of Appendix A – Use Regulations should allay any concerns of Commissioner Coker.

Action:

The Chair called for the vote and the motion carried unanimously 8 to 0.

**Matters from the Public:** none.

**Consideration of Minutes**

The minutes of the August 2, 2011 meeting were approved as submitted upon proper motion by Commissioner Coker and second by Commissioner Kellam. The motion carried with 6 “yes”

votes and 2 abstentions from Commissioners Miller and Fauber who noted their absence on August 2.

**New Business:** none.

### **Unfinished Business**

Under procedural matters, Ms. Benson distributed a memo dated September 1, 2011 from Beverly Leatherbury, Assistant County Attorney, concerning commission bylaws related to ex parte communications and recusal provisions.

Commissioner Kellam asked if all the by-laws had been reviewed and Ms. Benson stated yes and then suggested that the entire by-laws document be reviewed and amended given the findings of counsel. Ms. Benson noted that the commission cannot adopt by-laws that are more restrictive than what the Code of Virginia allows and that a majority of commissioners cannot require another commissioner to abstain from voting.

Commissioner Kellam suggested that the by-laws be posted on the county website for the benefit of the public.

Commissioner Miller suggested that the by-laws be corrected by deleting the last sentence only in Article 2-6.

Ms. Benson noted that any commissioner may recuse themselves whether the by-laws provides for it or not. She then suggested that discussion and review of the by-laws be put on the regular October meeting agenda.

The commission then discussed the general conduct of meetings in order to prevent or preclude protracted situations from occurring especially during public hearing matters.

Commissioner Kabler expressed his opinion that motions made early in the hearing seem to focus the discussion more.

Commissioner Kellam suggested that the Chair, prior to public hearing meetings, field questions or concerns from commissioners and then communicate those questions or concerns to the Director in advance of the meeting. She also suggested that a Zoning Text Subcommittee be formed to vet proposed zoning text amendments before being brought before the whole commission.

Commissioner Miller suggested that commissioners who wish to address specific topics as outlined in the comprehensive plan do their research first and then forward their findings and information to other commissioners before meeting again.

The Chair stressed that if any commissioner does have information to offer concerning the comprehensive plan update then such information should be funneled through the Director for dissemination and the record. The commission agreed.

Also under unfinished business the commission reviewed low impact commercial uses (micro-business) draft language as submitted by Commissioner Miller at the March 1, 2011 regular meeting. It was her opinion that certain revisions should be made to the original draft as follows.

#### **§154.127 LOW IMPACT COMMERCIAL USES**

(C) *Micro-business* shall be a home- or farm-based, owner operated business, with no additional employees and ~~requiring no specialized machinery or equipment~~, which utilizes the skills of the owner/operator in the provision of products or services ~~to the primary consumer~~. It is the intent of this designation to allow individuals, including those who may have few business skills and little access to start-up capital, to use their knowledge and skills to enhance their income, take the first step toward business creation and benefit from specialized economic opportunities. Expansion/enlargement of micro-businesses would require *Home Occupation* or *Qualifying Rural Business* designation.

- 1) *Micro-businesses* shall meet all of the following criteria:
  - a) *Micro-business* shall be based in/on an existing residential or farm structure (existing as of [date] \_\_\_\_\_) and which is occupied by the *Micro-business* owner/operator, and shall be a minor adjunct to the structure—there shall be no exterior change to the structures as a result of conduct of a *Micro-business*
  - b) *Micro-business* shall have no employees except the owner/operator
  - c) *Micro-business* shall have no identifying signage
  - d) *Micro-business* shall have no outside storage beyond that generally found for a household or on a farm
  - e) *Micro-business* shall have no retail sales provided on premises; all products must be delivered off-site to the primary consumer, including at Farmers Markets, fairs and festivals
  - f) *Micro-business* shall have no more commercial deliveries beyond that generally required by a household or on a farm
  - g) *Micro-business* shall ~~require no specialized machinery or equipment~~ **create no more noise** that beyond that generally found in a household or on a farm
  - h) *Micro-business* owners/operators shall be responsible for any licensing or health inspection requirements
  - i) *Micro-business* owners shall obtain a county BPOL
  - j) *Micro-businesses* shall require only a Zoning Clearance in the following Districts: A/RB, \_\_\_\_\_

---

Examples of qualifying *Micro-businesses*: loose or packaged farm produce, value-added farm products (jams, relishes, cider, etc.), baked goods, party platters, clothing alterations, tool sharpening, small musical instrument repair, lawn mowing, house cleaning, hand crafts, delivery service, computer maintenance and repair, electronic communications, etc.

During discussion Commissioner Kabler expressed his opinion that the language is too restrictive since it does not allow outside storage and no employees or signage.

Commissioner Kellam thought there was too much overlap with Qualifying Rural Business criteria.

Commissioner Miller explained that a micro-business would require a zoning clearance and the next step would be a home office/home business. It was her opinion that a county zoning clearance would be useful in obtaining a business loan as well. However, Commissioner Wescoat disagreed as it has been his own personal experience that solid tangibles offered as collateral were needed to obtain any type of business loan and not a zoning clearance paper.

Commissioner Ward noted that if this language had been adopted before then Andrew Barbour would not have needed a special use permit to operate a home bakery.

Also during discussion Ms. Benson noted that any sign two square feet or smaller does not require a county permit.

Ms. Benson suggested that a Review Committee make comparisons between this language and that of rural business and home occupation then report to the commission.

Commissioner Ward noted that it was Mike Chandler's opinion that the county ordinance has too many uses and suggested that those uses be reconfigured and put into categories.

Commissioner Kellam suggested that a Review Committee look at this language in the context of the Board's directive to review the zoning ordinance with the objective toward streamlining the entire document.

At this time Commissioners Ward and Kellam volunteered to serve on the Review Committee.

At the end of discussion Ms. Benson noted that the Board has concerns about process issues more than content issues.

Also under unfinished business, Ms. Benson noted that she and Tom Bonadeo, Cape Charles Town Planner, would need to talk about developing a process to move forward with the Town of Cape Charles Historic Town Entrance Overlay District. Attached to her Director's Report was a document received April 26, 2011 from the town related to the corridor overlay using the annexation agreement to achieve stated objectives.

Commissioner Miller suggested that inter-territorial code language be investigated before going forward with this matter since the document submitted by the Town of Cape Charles also involves the Town of Cheriton as well.

### **Communications**

It is noted that the regular August meeting agendas of the Cape Charles Planning Commission and Town Council were provided in the commission's agenda packet.

Commissioner Ward reported that the Town of Cheriton is proposing to rezone property in order to allow the operation of a fire fighting training facility on the firehouse property.

Commissioner Miller reported that the Town of Eastville is beginning their five-year review of its comprehensive plan.

Commissioner Kellam had nothing new to report for the Town of Nassawadox.

Ms. Benson reported that Artie Miles, Acting Exmore Town Manager, is not ready to proceed with the town's Town Edge Plan as there are vacancies on the town's planning commission at this time. Based on that finding, it was suggested that the commission coordinate efforts with another town at this time in order to proceed with Town Edge planning.

For general information Ms. Benson informed the commission that she and staff have been and continue to be very intricately involved with the county's Emergency Operations Center (EOC) during times of potential disasters as with Hurricane Irene. She added that her responsibilities as Deputy Coordinator during EOC operations takes precedence over regular county business and that is why the September agenda packets were delivered later than usual. She added that Commissioner Carpenter was aware of this as he was involved in emergency shelter operations as well as part of his duties with Social Services.

**Committee reports/presentations:** none.

### **Director's Report**

Ms. Benson's monthly report to the commission was submitted as follows.

1. Cape Charles update: I have not yet completed my review of the materials provided by Town Planner Tom Bonadeo several months ago pertaining to a potential Town Entrance Corridor Overlay. Attached for your information is an outline created by Tom which also explains the Town's objectives with respect to a Corridor Overlay District. I would like to have some discussion of this topic at your September 6, 2011, meeting.
2. Exmore Town Edge Planning: Interim Town Manager Artie Miles has advised that they are not yet ready to resume discussion of the Exmore Town Edge. The Exmore Planning Commission currently has some vacancies to be filled.
3. Board/Town Action on Zoning Matters: On August 18, 2011, the Board of Supervisors denied Zoning Text Amendment 2011-08 which would have created a Wind Energy Overlay District. At that time the Board reviewed the Planning Commission recommendations on Zoning Text Amendment 2011-09, pursuant to your discussion and vote on August 2, 2011. Many of the Commission recommendations were accepted; however, additional revisions are being proposed. The Board will conduct another public hearing on this matter on September 13, 2011. A copy of the revised proposed text will be provided to you for your information at your upcoming meeting.
4. Comprehensive Plan Review: The Board-appointed Comprehensive Plan Advisory Committee met on August 10 and 31, 2011. They are discussing strategies to garner the front-end public input.
5. Mill Creek TMDL Implementation Plan: A public meeting will be conducted by the Virginia Department of Environmental Quality on Monday, September 26, 2011, at 6:30 p.m. in Conference Room #2 to discuss implementation strategies to address the minor degree of impairment in Mill Creek.
6. Chesapeake Bay TMDL Implementation Plan: At this time staff is attempting to verify data provided by the Virginia Department of Conservation & Recreation pertaining to the acreage totals in various land-use classifications and various types of BMPs.

Ms. Benson noted that the Board of Supervisors will be conducting a public hearing on Item 3 on September 26<sup>th</sup> and not the 13<sup>th</sup>. The Board's revised language being proposed would be distributed to the commission for information purposes prior to the scheduled hearing.

Prior to adjourning Ms. Benson informed the commission that she and staff are constantly involved with other projects not related to planning commission business such as developing and organizing a public information seminar to be held sometime in September.

## **Adjourn**

There being no other business motion to adjourn was made by Commissioner Kellam and seconded by Commissioner Wescoat at 8:55 p.m.

---

Chair

---

Secretary