

# LANCASTER COUNTY PLANNING COMMISSION

## Minutes

September 19, 2013

The regularly scheduled meeting of the Lancaster County Planning Commission was called to order at 7:00 p.m. in the Board meeting room of the Lancaster County Administration Building, Lancaster, Virginia.

Present were David Jones, Chairman, Robert Smart, Vice Chairman, Tara Booth, Steve Sorensen, David Chupp and Glenn Pinn. Ty Brent was absent.

Also present were Butch Jenkins, Board of Supervisors Representative, Don Gill, Planning/Land Use Director and Charlie Costello, Lee Stephens, Nick Ferriter, Andy Smith, George Bott and others.

Mr. Jones asked if there were any corrections or additions to the minutes of the August 15, 2013 regular meeting.

Mr. Jones moved to approve the August 15, 2013 minutes as submitted. **VOTE: 6-0.**

### PUBLIC HEARING #1

#### **UPDATE TO THE COMPREHENSIVE PLAN – CHAPTER SEVEN**

Mr. Jones asked Mr. Gill to present the issue.

Mr. Gill stated that all requested changes had been made to Chapter Seven of the Comprehensive Plan. He stated that all advertising had been conducted as required by law and to date, other than discussion at prior Planning Commission meetings, he had had no response from the public.

Mr. Jones opened the public hearing.

There was no public comment.

Mr. Jones closed the public hearing.

Mr. Smart made a motion to forward the revised Chapter Seven of the Comprehensive Plan to the Board of Supervisors with a recommendation for approval. **VOTE: 6-0.**

Mr. Chupp stated that the Commission had reviewed Chapter Seven over an extended period of time with quite a few changes including some complicated ones. He stated that he wanted to compliment Mr. Gill and Ms. Why on doing such a good job with this review.

## **PUBLIC HEARING #2**

### **APPLICATION FOR CHANGE OF ZONING DISTRICT CLASSIFICATION – W. F. MORGAN & SONS, INC., OWNER AND CARTERS CREEK COVE, LLC, CONTRACT PURCHASER**

Mr. Jones asked Mr. Gill to present the issue.

Mr. Gill stated that the issue was an application for a change of zoning district classification from M-1, Industrial, Limited to R-1, Residential, General by W. F. Morgan & Sons, Inc., owner and Carters Creek Cove, LLC, contract purchaser for a 9.47-acre parcel described as Tax Map #33-193; a 0.372-acre parcel described as Tax Map #33-192 and a 0.550-acre parcel described as Tax Map #33-192A. He stated that the properties are located at the end of Johns Neck Road (VSH 632) in Weems in District 5.

Mr. Gill stated that the parcels, along with several others in the area, were designated as M-1, Industrial Limited, when zoning was enacted on June 1, 1975. He stated that the parcels were home to a thriving seafood business until the early 2000's and since that time, W. F. Morgan & Sons, Inc. has ceased operations and listed the parcels for sale.

Mr. Gill stated that the contract purchaser wishes to use the property for a single-family residence and not any M-1 Industrial use. He stated that a single family residence is not a permitted use in the M-1 District, so the applicants are forced to seek a rezoning to R-1, Residential General to be able to use these parcels for residential purposes.

Mr. Gill stated that while many would hope for a return to a thriving seafood business creating jobs for the community, the reality is that that scenario is very unlikely to reoccur. He stated that many of the M-1 parcels in the area already have authorized non-conforming residential uses. He also stated that a nearby parcel, Tax Map #33-194B, was rezoned from M-1, Industrial Limited to R-1, Residential General by the Board of Supervisors on February 23, 2012. He stated that there had been recent inquiries about rezoning the adjacent parcel, Tax Map #33-194, from M-1 to R-1 as well. He added that there are many R-1 properties in close proximity to this parcel and rezoning to R-1 would be a downzoning from the more intense M-1 District.

Mr. Gill stated that adjoining property owners had been notified and advertising conducted as required by law and that to date, there had been one response from a neighbor supporting the rezoning request.

Mr. Gill stated that he had contacted the County Attorney, Jim Cornwell, in anticipation of possible questions concerning the rezoning. He stated that his first question was if the contract did not close, could the parcels remain zoned M-1, as the contract purchaser's agent had requested. He stated that Mr. Cornwell said that would not be possible because rezoning is a legislative action and an automatic revision of a legislative action would not be allowed without going through the legislative process again.

Mr. Gill stated that his second question to Mr. Cornwell was about the submerged Kings Grant land located on two of the parcels. He asked Mr. Cornwell if the County should stipulate that the rezoning apply only to the areas of land above water. He stated that after discussing some possible scenarios, Mr. Cornwell stated that he thought the rezoning should apply only to the portion of the land above water.

Mr. Gill stated that he had spoken to the contract purchaser's agent, Lee Stephens, about Mr. Cornwell's comments. He stated that Mr. Stephens was present to answer any questions that the Commission may have.

Mr. Smart asked how many M-1 parcels were in the County.

Mr. Gill replied he believed it was less than 100 parcels.

Lee Stephens stated that he was representing Carters Creek Cove, LLC. He stated that he thought Mr. Gill had done a terrific job explaining the issue.

Mr. Stephens stated that his client was negotiating a contract with W. F. Morgan and Sons Seafood to acquire the property. He stated that, for tax purposes, they are negotiating to purchase the stock in the company as well. He stated that in light of Mr. Cornwell's comments, his client would have to renegotiate because they do not want to buy a corporation if they cannot use it the way they want.

Mr. Stephens stated that for local people who grew up in the area, they would love to see the oyster business come back to the location, but that is not likely. He stated that his client is able to clean up the site. He referred to pictures and drawings included with the application. He stated that a lot of impervious surfaces would be removed. He spoke about other properties nearby and stated that the Ash property that was rezoned to R-1, approximately a year and a half ago, already set the precedent.

Mr. Smart referred to the property to the northeast, Tax Map #33-194 and asked about that potential rezoning.

Mr. Gill replied that parcel has a structure on it and a special exception from the Board of Supervisors for a seven-slip marina. He stated that the structure is associated with the marina and there have been many discussions with staff regarding a potential rezoning from M-1 to R-1.

Mr. Smart stated that the rezoning application appeals to him because there is a reduction in impervious surface that would improve the property and increase the tax base.

Mr. Chupp stated that the location looks like a beautiful residential spot and could be an asset to the area. He stated that, normally, a proposal such as this one comes to the Commission with a contingent contract. He asked Mr. Stephens if there was a firm contract in this case.

Mr. Stephens replied that, with the Commission's permission, he would like to go back to the Morgan's attorney and see if the contract can be renegotiated to be contingent on rezoning. He stated that the Morgans would like to see the property remain industrial if the deal does not close. He stated that they would not proceed any further if that cannot be worked out.

Mr. Jones stated that the Commission has been approached to decide whether or not it feels the property would be suited to be rezoned to R-1. He stated that the Commission cannot get caught up in the contract negotiations.

Mr. Chupp stated that he was not sure if the County would be better off with the proposed rezoning. He stated that if the parcel remained M-1 and the contract did not go through, there is a possibility that a seafood based business could go there again.

Mr. Jones asked if Mr. Stephens was representing the Morgans and his client.

Mr. Stephens stated that he was the representative for the clients who want to purchase from the Morgans and not the Morgans themselves.

Mr. Jenkins stated that he did not see how the application could proceed if the Morgans, who are the owners, have not asked for the rezoning themselves. He stated that in previous cases, the contract purchaser had taken the burden of the costs and efforts with the consent of the current owner and that does not seem to be the case here.

Mr. Stephens stated that they have the Morgan's consent as long as the parcels could revert back to M-1, if the deal does not go through. He stated that had been agreed to in writing.

Mr. Jenkins stated that after receiving Mr. Cornwell's comments, a guarantee cannot be made.

Mr. Jones stated that it would be difficult to make a recommendation if the owner is not supporting the rezoning.

Mr. Stephens asked if the issue could be tabled for a month to give him an opportunity to consult with John Hodges, the Morgan's attorney.

Mr. Jones made a motion to table the application until the October meeting.  
**VOTE: 6-0.**

### **DISCUSSION ITEM #1**

#### **ZONING ORDINANCE AMENDMENT – INTERNET POLES**

Mr. Jones asked Mr. Gill to present the issue.

Mr. Gill stated that the Planning Commission had studied this issue for a few months and recommended to the Board of Supervisors that our current policy of requiring a special exception for all of these poles was the most fair and thus recommended no changes. He stated that the Board was appreciative of the work, but strongly believes that the poles should be allowed by right, subject to certain criteria, and has directed the Planning Commission to propose an amendment to the zoning ordinance which will accomplish that.

Mr. Gill stated that he had previously contacted the adjoining counties to see how they handled the poles. He stated that Northumberland has a 100 feet height limit for by-right placement, but requires a \$150 conditional use permit for poles exceeding 100 feet or constructed with multiple supports. He stated that Mathews has a 120 feet height limit for by-right placement, but requires a \$25 zoning and a \$25 electrical permit and requires a \$200 conditional use permit if the pole exceeds 120 feet. He stated that Westmoreland requires a \$600 special exception permit for all poles and has a 125 feet height limit. He stated that Richmond County does not require anything at the current time and all of the counties require accessory structure setbacks for the by-right placements.

Mr. Gill stated that currently, our zoning ordinance allows the poles by right in three zoning districts: C-1 Commercial, C-2 Commercial Limited and M-1 Industrial Limited. He stated that the zoning ordinance requires a special exception for poles of any height in the W-1 Waterfront Residential Overlay district and for poles exceeding 35 feet in height in the other six zoning districts: A-1 Agricultural Limited, A-2 Agricultural General, R-1 Residential General, R-3 Residential Medium General, R-4 Residential Community, and RV-1 Rural Village Overlay districts.

Mr. Gill stated that to facilitate an initial discussion as to appropriate heights and setbacks for by-right placement in Lancaster County, staff proposes the following language be added under permitted uses in the A-1, A-2, R-1, R-3, R-4 and RV-1 Districts:

*Installation of single-pole high-speed internet antennas less than 100 feet in total height with main structure setbacks. Poles not meeting these criteria, with a special exception.*

Mr. Gill stated that staff believes this criteria is acceptable. He stated that Northern Neck Wireless, the major installer of these poles, has said that 100 feet tall is adequate. He stated that accessory structure setbacks are only 5 feet from side and rear property lines, which staff believes is too little, so main structure setbacks are suggested. He stated that they are usually 25 feet from side property lines and 25 or 50 feet from rear property lines, depending on which zoning district the parcel is located. He stated that staff believes that the special exception should remain for all poles in the W-1 District, which are parcels within 800 feet of tidal waters.

Mr. Gill stated that the internet data poles/antennae have become commonplace throughout the Northern Neck to help broaden the availability of high-speed internet access. He stated that the poles are usually between 80-100 feet in total height and they usually combine a 50-60 feet telephone pole with a 20-30 feet "straight stick" antennae on top. He stated that there is usually a 2-3 mile radius around these poles where adjoining residents can get higher speed internet if they choose to subscribe with the internet provider who erected the pole.

Mr. Gill stated that the current special exception process involves a public hearing and a fee. He stated that the fee was \$400 until December 2010, when the Board reduced the fee for this particular special exception to \$200, which basically covers the cost of the required advertising that must be done for the public hearing. He stated that the Board did not want the fee to be so burdensome that it discouraged the poles, but wanted to cover the expense of the required advertising. He stated that since November 2007, there have been 22 requests for these poles with 1 request being withdrawn prior to going to public hearing, while the other 21 have been approved with virtually no objection.

Mr. Jones asked Mr. Gill if any thought had been given to what would be done on smaller sized lots, if the poles were by-right. He stated that his worry was what adjoining neighbors would say.

Mr. Gill stated that a lot could be as small as 10,000 square feet under cluster/conservation subdivision, which is very small. He stated that Mr. Jones' concerns could be addressed by increasing setbacks and if those setbacks could not be met, then the citizen could apply for a special exception.

Mr. Smart stated that he had been thinking about possible objections to making the placement of the poles by-right. He stated that he did not think the poles were very obtrusive and really no different than a telephone pole. He stated that they broadcast only microwaves, so there is no interference with television. He stated that he did not think there would be many objections if they showed up in a neighbor's yard. He stated that the

companies are very careful in how they select the placement of the poles because they want a clear line of sight.

Mr. Jenkins stated that the only objection they had had to the poles was when a citizen misunderstood the height of the pole. He stated that he thought the pole was going to be a huge communications tower.

Mr. Jenkins suggested some thought be put into what the poles would be called. He stated that the term "internet tower" is fine now, but in ten years, there will be a different technology for communications.

Mr. Smart stated that having good high-speed internet coverage is an economic asset for the County.

Mr. Chupp stated that he thought the internet poles could be obtrusive and would not want one on the property next to him. He stated that he would want to have input on a pole installed on his neighbors' property. He stated that there have only been 22 requests in 7 years and did not think it was a burden on the Board to hear the requests.

Mr. Jenkins stated that the burden is the cost to the citizen, not the Board hearing the request.

Mr. Chupp stated that if a citizen knows they will have to go through the public hearing process, they may give more thought to where the pole would be located and also think about whether or not it is really needed at all. He stated that if the poles are allowed by-right, they may start showing up all over the County.

Mr. Jenkins stated that the service provider is the one that incurs most of the time and expense to locate the poles and they would not install more poles than would be necessary for a certain area of coverage.

Mr. Chupp stated that private citizens could put up their own poles if they can be done by-right.

Mr. Gill stated that the Board of Supervisors has already determined that they want the internet poles to be by-right with certain criteria and they have asked the Planning Commission to develop language for an ordinance amendment.

Mr. Smart stated that the internet poles would probably be an interim thing anyway because of the use of satellites in the future.

Mr. Sorensen asked if the pole installations were made by-right, could citizens use them for ham radios or television.

Mr. Gill replied that they could be used for ham radios, but other uses would be dependent on the final language.

Mr. Jones suggested that the language could include that the provider, and not an individual, install the poles.

Mr. Jenkins stated that the majority of the Board believes that the internet poles should be by-right. He stated that there is a cost burden to the citizens for the special exception. He stated that, as a courtesy, they have asked the Planning Commission for its input into the ordinance amendment.

Mr. Chupp asked if there was a possibility that the County could require a citizen to put an ad in the local paper before they installed an internet pole. He stated that after the ad is placed and there are no objections after a certain amount of time, there would be no need for a public hearing.

Mr. Gill replied that something similar is done with cell phone towers and referred to Article 25 of the County's Zoning Ordinance, which deals with the siting of wireless telecommunications facilities. He stated that in those cases an ad has to be run in the local paper and a balloon set at the height of where the tower will be for citizens to see, but a public hearing is still required regardless.

Mr. Sorensen asked if the only problem was the financial burden of the special exception. He asked if the fee could be waived and the Board still have a public hearing.

Mr. Jenkins stated that having different special exception fees is not a good idea and asked where the line should be drawn and at whose discretion would the fees be determined.

Mr. Jones stated that he would like to think about the issue for another month and not send any recommendations at the present time.

Mr. Smart suggested the following language be considered for next month's meeting: "The installation of high-speed data antennas less than 100 feet in total height shall be by-right in all zoning districts except W-1, where installation shall remain by special exception and poles exceeding 100 feet in total height shall be by special exception. Current fees for special exception applications shall apply. Setback requirements shall be 25 feet from the side property line and 25 to 50 feet from rear property lines based on zoning district as appropriate."

Mr. Gill stated that he thought the setback language should be simplified and specify main structure setbacks.

Mr. Smart stated that the last sentence could come out.

Mr. Gill stated that the poles could be called "data poles" in place of "internet poles".



Mr. Jones made a motion to table the issue until next month's meeting. **VOTE: 6-0.**

**DISCUSSION ITEM #2**

**SUBDIVISION ORDINANCE AMENDMENT-UNOBSTRUCTED CLEARANCE REQUIREMENTS FOR EXISTING SUBDIVISION ROADS WITH VESTED RIGHTS**

Mr. Jones asked Mr. Gill to present the issue.

Mr. Gill stated that George Bott, a District 1 citizen, recently asked if there were any ordinance requirements for unobstructed widths and heights of roadways to ensure emergency vehicle access. He stated that the subdivision ordinance Section 5-9(e) requires new subdivisions to maintain an unobstructed width of 20 feet and an obstructed height of 14 feet along road right-of-ways to ensure that emergency vehicles, particularly fire trucks and ambulances, can have adequate access, but does not address older, existing subdivision roads.

Mr. Gill stated that ordinance amendments may be initiated by resolution of the Board of Supervisors, motion of the Planning Commission or by application of any property owner and the latter requires a \$300 fee. He stated that staff feels that this is a valid point that affects many property owners in older subdivisions in the county and does not believe the burden of a fee should be placed on any one property owner when it will affect so many. He stated that, as a result, he has brought the issue to the Planning Commission to discuss and if deemed appropriate by the Commission and once appropriate language is created, to hold a subsequent public hearing and forward a recommendation to the Board of Supervisors.

Mr. Gill stated that the County's Subdivision Ordinance Section 5-11(d) states,

*“Existing road rights-of-way with vested rights, shall not be subject to this ordinance unless such rights-of-way shall be used as part of or access to the proposed subdivision or any part thereof.”*

Mr. Gill stated that staff believes that section can be amended to add the following language:

*“All existing road rights-of-way with vested rights must maintain an unobstructed width of 20 feet and an unobstructed height of 14 feet to ensure reasonable access for emergency vehicles”.*

Mr. Gill stated that the ability to cite a written code will convince most people to comply and after all, an emergency vehicle is of no use if it cannot get to a person's home. He stated that violations of the subdivision ordinance are a misdemeanor,

punishable by a fine of not less than \$100 nor more than \$500 with each day constituting a separate violation.

Mr. Gill stated that he had received an e-mail from Nick Ferriter, who had measured his personal driveway and stated that 20 feet is too much and that he would have to cut down some trees. He stated that UPS trucks travel down his road with no problem.

Mr. Gill stated that 20 feet may be too much, but he was trying to be consistent with the new subdivision roads' requirements and it was up for discussion by the Commission.

Nick Ferriter, a District 1 citizen, asked what defined a subdivision road.

Mr. Gill replied it was a road that served three or more homes.

Mr. Jones stated that, in theory, it sounds good, but who would enforce it.

Mr. Gill stated that the subdivision agent would enforce it.

Mr. Jones stated that it may infringe on personal property, like mailboxes, columns or gates. He stated that another concern is if someone does not follow the requirements, what would be the consequences.

Mr. Gill stated that he did not think it would be a problem with a homeowner's association, but may be a problem when there is no homeowner's association, as the responsibility would fall on individual homeowners.

Mr. Jones stated that it would be difficult to go back to the older subdivisions with the new requirements. He stated that he thought the subdivision citizens should police themselves.

Mr. Jenkins stated that he thought that it was worth looking at further.

Mr. Gill stated that, speaking as a fireman, there are several roads in the county that are hard to get a fire truck through. He stated that Browns Lane off of Merry Point Road is one that comes to mind. He stated that 20 feet may be too wide and maybe something less would be more appropriate. He stated that the Commission may decide to do nothing at all.

George Bott stated that they were asking for reasonable access and that it does not have to be 20 feet. He stated that it was a safety issue. He stated that they have 21 properties in his subdivision and thought that what was good for the new subdivisions, as far as safety goes, should apply to the rest.

Mr. Bott stated that his neighbor, Howard Hanchey, could not attend the meeting but read some of his comments. He stated that Mr. Hanchey said that Lowery Creek Road dated back to 1749 and therefore, was more than 250 years old and deserved an upgrade.

Mr. Jones stated that the issue would come back at the October meeting as a discussion item.

#### **OTHER BUSINESS**

There was no other business.

#### **ADJOURNMENT**

The September 16, 2013 regular meeting of the Lancaster County Planning Commission was adjourned at 8:15 p.m.