

LANCASTER COUNTY PLANNING COMMISSION

Minutes

July 19, 2007

The regularly scheduled meeting of the Lancaster County Planning Commission was called to order at 7:00 p.m. in the District Courtroom of the Lancaster County Courthouse, Lancaster, Virginia.

Present were David Jones, Don McCann, Robert Smart, Tara Booth, Steve Sorenson and Don Gill.

Also present were Jack Larson, Lancaster County Planning Director, Ernest Plain, Board of Supervisors Representative, Joan McBride, Rappahannock Record, Wes Edwards, Lewis K. Walker, III, Brent Self, Matson C. Terry. II., Anker Madsen, Charles Costello, Raleigh Simmons, Jo Chamberlain, Fred Ajootian, Wayne Cannon, Sam Marshall, Robert Davis and Elizabeth Bunn.

Mr. Jones asked if there were any corrections or additions to the minutes of the May 17, 2007 regular meeting.

Mr. Jones moved to approve the May 17, 2007 minutes as submitted. Seconded by Mr. Smart. VOTE: 6-0.

Mr. Jones called the annual election of officers for the Planning Commission.

Mr. McCann moved to nominate Mr. Jones as chairman. Seconded by Mr. Smart. VOTE: 6-0.

Ms. Booth moved to nominate Mr. McCann as vice-chairman. Seconded by Mr. Gill. VOTE: 6-0.

Mr. Jones moved to nominate Ms. Reamer as secretary. Seconded by Ms. Booth. VOTE: 6-0.

PUBLIC HEARINGS

1. APPLICATION FOR CHANGES OF ZONING DISTRICT CLASSIFICATION –LEWIS K. WALKER III

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

Mr. Larson stated that the issue is an application for Change of Zoning District Classification from R-1, Residential, General to R-3, Residential, Medium General by Lewis K. Walker III of property described as Tax Map #15-101. This property is located on VSH 3 in Lancaster, Virginia in Voting District 2. Staff recommends favorable consideration.

Mr. Larson stated that the intent of the rezoning is to place an office complex in the residence on the property. Present zoning of R-1, Residential, General would allow only one office with a special exception. The contract buyer of the property has stated that he would not want to place more than two offices in the building but would want that flexibility. If the Board of Supervisors ultimately approves this rezoning request, a special exception would also be required to place the office complex. A limit of two offices could be placed on the special exception. While the zoning in the immediate vicinity of this property is mostly R-1, Residential, General, this request is considered reasonable since R-3 zoning is more appropriate for the location in the center of Lancaster Courthouse and the size of the parcel at .47 acres. It is also more consistent with the extensive R-3 zoning in Lively and is in reasonably close proximity to property across from Lancaster High School that was rezoned to R-3 in the last three years.

Mr. Larson stated that adjoining property owners have been notified and advertising conducted as required by law. To date there has been input from one adjoining property owner who stated that the request was not opposed provided that parking did not overflow onto his property.

Mr. Gill abstained from any discussion or consideration of the issue due to the possible perception of a family conflict.

Mr. Smart stated that he has no major concerns pertaining to this issue.

Mr. Jones opened the floor to public comment

Mr. Edwards stated that he is the senior warden for Trinity Church. He further stated that the church has spent considerable money recently to improve the conditions of their parking lot. He expressed his concern that if more than two offices were allowed, overflow parking might occur on the church's property.

Mr. Jones stated that since the zoning change would require a special exception, the Board of Supervisors could place restrictions on the number of offices allowed. A site plan should be prepared showing the current setbacks, width of the parcel, parking area showing eight spaces, and the number of offices before presentation to the Board of Supervisors.

Mr. McCann expressed his agreement with Mr. Jones. The number of offices should be stated so the neighbors know what to expect.

Mr. Kuykendall stated the contract buyer would like flexibility in the number of offices permitted but that no office would generate a high volume of traffic.

Mr. Larson stated that it was his understanding that there was only a request for two offices and that the number of parking spaces would limit the number of offices allowed.

Mr. Jones stated that when the issue comes before the Board of Supervisors a special exception could be added to limit the number of offices.

Mr. McCann stated that this request is reasonable for the vicinity.

Mr. McCann made a motion to forward the application for Change of Zoning District Classification from R-1, Residential, General to R-3, Residential, Medium General by Lewis K. Walker III of property described as Tax Map #15-101 to the Board of Supervisors recommending approval. Seconded by Ms. Booth. VOTE: 5-0, 1 Abstention.

2. REQUEST FOR MODIFICATION OF PERMITTED USES – R.L. SELF (LIVELY WOODWARD) AND LANCASTER COUNTY

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

Mr. Larson stated that the issue is an application by Ronald L. Self, Lively Woodyard, and Lancaster County to amend conditions for use of property described as Tax Map #14-122A/122B to allow collection of used tires. This property is zoned A-2, Agricultural, General with a conditional use of logging transfer business permitted. It is located on VSH 3 near Lively, Virginia in Voting District 2. Staff recommends favorable consideration.

Mr. Larson stated that Lancaster County is a joint applicant on this request because of the benefits that would accrue to all County citizens if the request were approved. In the last year Lancaster County received almost 144 tons, or approximately 14,000 used tires at a County trash collection point. The tires are generally accumulated until allocated space is filled. Loading and transport from the collection point to recycling center or other destination then becomes a difficult issue because labor must be obtained or equipment rented to load the tires and payment made for transport. If the receiving of tires were centralized at the Lively Woodyard, they would be collected in one of the approximately 15' x 30' by 3' high outdoor bays that are fenced and buffered from both VSH 3 and the site vistas of any adjoining properties. The tires would only be allowed to accumulate to the top of the bay before they would be loaded and transported off site by equipment owned and operated by Mr. Self.

Mr. Larson stated that adjoining property owners have been notified and advertising conducted as required by law. To date there has been no input from adjoining property owners or other interested members of the public.

Mr. Jones opened the floor to public comment.

Mr. Costello asked if there would be a change in pricing and who would handle the collection of the funds.

Mr. Larson stated the County would continue to handle the collection of funds and the pricing would not change for regular size tires. Mr. Larson stated that the fee for larger tires, presently the same as regular sized tires, might increase in the future.

Mr. Smart stated that he supports the request and feels this would allow for more efficiency in the disposal of the tires within Lancaster County.

Mr. Jones made a motion to forward this application to the Board of Supervisors recommending approval. Seconded by Mr. McCann. VOTE: 6-0.

3. APPLICATION FOR ZONING ORDINANCE AMENDMENT-THE GREEN ASSOCIATION

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

Mr. Larson stated that the issue is an application for Zoning Ordinance Amendment by The Green Association, agent Matson C. Terry II Esquire, to add as Article 18-1-13: *“Marina, private non-commercial, is a permitted use in the R-1, R-3, and former R-2 zoning districts.”* Staff recommends that this application not be given favorable consideration.

Mr. Larson stated that The Green Association as the applicant hopes to promote a narrow self-interest with this change to the Zoning Ordinance, reason enough to view it unfavorably. However, there are more compelling reasons. A private non-commercial marina was a permitted conditional use in the R-1, Residential, General zoning district, only, until November 22, 1993 when the Board of Supervisors repealed it. Even though private non-commercial marinas were then no longer permitted in any of the zoning districts, the definition was left in the Zoning Ordinance because of the grandfathered subdivisions. The reasons for removing this use are even more applicable today. Those reasons and others are summarized as follows:

- 1) Defeats the purpose of the Waterfront Overlay (W1) district, the only type R-1 in which a marina might be placed;
- 2) Definition of private non-commercial marina is too general as presently stated;

3) Applicant has not even suggested that if the permitted use is reinstated in not only the R-1, but also the R-2 and R-3 zoning districts, such permitted use would be by special exception, a reasonable requirement since the same is placed on commercial marinas in the M-1, Industrial zoning district;

4) Would open the door for such large developments as Corrotoman-by-the Bay, Heritage Point, Eagles Landing , Quarters Cove, Dyer Shores, and others to petition for a private marina, likely placing an unmanageable number of boats moored on tidal creeks within the County;

5) Would expand private access for those fortunate enough to live in a subdivision with waterfront access to state waters, but would do nothing to improve public access to state waters (could very well inhibit increased public access from opposition to even more launch/mooring sites);

6) Has not been an issue for fourteen years (all other off-water property owners in subdivisions with waterfront access have been satisfied with community piers);

7) Would place the Virginia Marine Resources Commission in the very difficult position of having to place limits on this use by restricting the size and configuration of piers.

Mr. Larson stated that he could further summarize the seven reasons for not approving the request set forth above into two words, unworkable and inequitable. Mr. Larson stated the request is unworkable because you could not, in his judgment, accommodate the expansion of riparian rights that would be created. As an example, the Tide Lodges at the entrance to Dead and Bones Cove currently has sixty-six slips approved in the master plan. However, if this request is ultimately approved, the Tides Lodge could extend privileges to the residents of the Golden Eagle who could then request an additional four hundred slips. Secondly, the request is inequitable because it would expand private access with no increased benefit to the general public. It could even make it more difficult to obtain increased public access within the County.

Mr. Larson stated that advertising has been conducted as required by law. To date there have been several interested members of the public who expressed strong opposition to this request.

Mr. Jones opened the floor to public comment.

Mr. Terry, agent for The Green Association, stated that the current zoning ordinance results in “a condominium penalty”. The Green is located in Weems and consists of 8.5 acres. There are twelve buildings, each with two units per building. There is 1,700 linear feet of shoreline on Carter’s Creek. The Green currently has four community piers. The definition of a community pier according to the Lancaster County Zoning Ordinance is “a pier for the temporary (not overnight) mooring of boats owned by property owners of a specifically designated contiguous subdivision. A community pier

and/or ramp cannot be used for commercial purposes and must be constructed on a lot dedicated to common use.” The problem is that the owners at the Green cannot moor their boats overnight and that is the main reason for this request. Mr. Terry stated that every owner of a waterfront lot in Lancaster County has a statutory right to build a pier, including an owner of a quarter-acre waterfront lot. Mr. Terry stated that owners at the Green should not be penalized for being a condominium development and should be allowed to moor their boats like any other waterfront lot. Finally, he stated that there are only seven other projects with R-2 zoning; impact could be minimized by restricting the requested modification to only that type of zoning.

Mr. Terry stated that he would therefore ask the Planning Commission to forward the following amendment to Lancaster County Zoning Ordinance to add a subsection 18-1-13 to read, “*Marina, private non-commercial, is permitted use in the former R-2 zone, with a special exception permit*”, to the Board of Supervisors for favorable consideration. Mr. Terry stated that this request could then be workable through a special exception process. Mr. Terry stated that this request would also be equitable by removing the condominium penalty.

Mr. Sorenson asked if The Green was allowed to construct four piers in 1998.

Mr. Terry stated that they were.

Ms. Booth asked if the owners were aware they did not have the same rights as an owner of a single waterfront parcel when they purchased their property.

Mr. Terry stated that he thought most of the owners did not understand they would not have the same rights.

Mr. Smart asked Mr. Larson if there were indeed only seven other R-2 zoned areas this would affect.

Mr. Larson stated he believed that it was an accurate number.

Mr. Terry stated that he disagreed with Mr. Larson; it would not be possible for the Tides Lodge to have an additional 400 slips unless the Board of Supervisors granted it as part of the special exception request.

Mr. Smart asked if a vote could be taken on the issue tonight given the proposed revision in the wording.

Mr. Larson stated that this issue could be forwarded to the Board as is, recommending approval or denial, or it could be forwarded recommending approval or denial with the changes proposed by Mr. Terry.

Mr. Madsen stated that this request would affect the Waterfront Overlay district the County has been working hard to preserve. He asked the Planning Commission to forward this to the Board of Supervisors recommending denial.

Mr. Costello stated that he opposes this request because it would allow any group to put themselves together as a community and then request a private marina to enhance their property values. He further stated that the issue would not just change the R-2 zoning district but would also change the waterfront overlay district. It could open Pandora's Box" if the request were approved.

Mr. Simmons expressed his agreement with Mr. Terry's arguments, stating that the other seven grand fathered parcels that would be affected by this request could be controlled by the special exception clause. Urbanna just lost a commercial marina leaving fewer slips for boat owners to store their boats. In Lancaster County most developments do not allow homeowners to store their boats on their property. Therefore, in the future, with marinas closing and no other options, homeowners would have considerable difficulty in storing their boats.

Mrs. Jo Chamberlain stated that she opposes the request because it is contrary to the spirit and intent of the Waterfront Overlay ordinance.

Mr. Larson stated that property owners at The Green had to know when they bought their property that only a community pier was allowed and that any other claim was not logical.

Mr. Ajootian stated that in 1993 and prior to that year, several mistakes were made in land use. The decision to repeal the provision for private marina as a permitted use was one of those mistakes and that he supports this request.

Mr. Cannon stated that he opposes the request because it would set a precedent.

Mr. Marshall stated that he personally knows two homeowners at The Green who were aware that only a community pier was allowed. Mr. Marshall stated that he supports Mr. Larson's recommendation.

Mr. Davis stated that he has been a resident of The Green for over twenty years. He came to the County several years ago to inquire about piers. The County decided that a community pier would be the best option. The County granted The Green community piers without giving them the definition. As a result, he was unaware that a community pier would not allow The Green to moor their boats overnight.

Mr. Larson responded that the notion of the County foisting community piers on The Green without their knowledge of the impact could have no basis in fact.

Mr. Terry stated that he too did not know the definition of a community pier and reemphasized that the special exception requirement would not allow precedents to be set since each special exception request was to be considered on its own merits only.

Mrs. Bunn stated that she lives down river from three of the seven grandfathered R-2 parcels and she believed a precedent would be set for the others with the granting of the first special exception request.

Mr. Smart stated that he empathizes with the condominium owners but, because of the negative impact that granting this request would have on the Waterfront Overlay District, he is not in favor of the request.

Mr. McCann stated that he too has empathy but also did not favor this request.

Mr. Jones stated that he too recognizes the concern of owners at The Green who live on the water but cannot leave their boats overnight. However, he was concerned with making changes to the Zoning Ordinance that would expand non-conforming use now that the R-2 zoning district has been repealed. Mr. Jones further stated that he disagreed with Mr. Terry's contention that approval of this request would not create the setting of a precedent. He believed that it would allow an avenue for the others to request private marinas. Mr. Jones stated that he recently talked to VMRC and that they do not allow private marinas on non-commercial sites. To amend the zoning ordinance to allow private marinas would simply create the unworkable situation of one jurisdiction (the County) allowing a use that another jurisdiction (VMRC) would disapprove. Mr. Jones suggested that a better approach for The Green would be to petition the Board of Zoning Appeals (BZA) for a variance.

Ms. Booth stated that she understood the main reason for this request was for The Green homeowners to be able to moor their boats overnight. This motivation for this request came from a single source and therefore did not constitute the need for a change in the Zoning Ordinance. The Green should look for other means by which they might accomplish their objective and a request for a variance from the BZA seemed more reasonable.

Mr. Gill stated that he agreed with Ms. Booth and asked Mr. Larson if a change to the master plan might be a better avenue.

Mr. Larson responded that The Green had wanted to pursue a change to the master plan to allow another pier. However, he advised them that he would strongly oppose it because the Green had opposed the request of an adjoining property owner for a community pier four years ago, citing overcrowding on the shared body of water.

Mr. Smart made a motion to forward the application for Zoning Ordinance Amendment by The Green Association to add as Article 18-1-13: "*Marina, private non-commercial, is a permitted use in the R-1, R-3, and former R-2 zoning districts*" to the

Board of Supervisors recommending disapproval. Seconded by Mr. McCann. VOTE: 6-0.

CONSIDERATION ITEMS

1. CHANGES IN PERMITTED USES- A-1 AND A-2 ZONING DISTRICTS

Mr. Larson stated that he gave each Planning Commission member a notional revision to the permitted uses in the Zoning Ordinance for A-1 and A-2 zoning districts. Planning Commission members may regard the revision as too restrictive or not restrictive enough, and that his suggestions were intended to generate discussion prior to putting any consensus determination to public hearing.

The following changes were suggested:

A-1 Zoning:

3.1.1. “Dwellings” should be changed to dwelling.

3-1-9. “Clubs” should be changed to “Hunt Clubs” as the only type of club permitted.

The following permitted uses should be deleted: 3-1-5, 6, 8, 13, 16, 17, 19, 20, 22, 26, 27, 28, 29, 30.

A-2 Zoning:

4.1.13. “Clubs” should be changed to “Hunt Clubs” as the only type of club permitted.

The following sections should be deleted 4-1-6, 9, 10, 18, 25, 28, 36, 37, 38, 49, 51, and 53.

Mr. Jones expressed concern that no permitted use be deleted unless it was permitted in another zoning district. He requested that Mr. Larson conduct a review to ensure that such was the case and bring the issue back as a consideration item next month.

2. RIGHT TO FARM ORDINANCE

Mr. Larson stated that he gave each member of the Planning Commission the section of the Code of Virginia pertaining to the right to farm ordinance. In the Farm Committee Report and prior discussions, it was suggested that these same provisions to

one degree or another, be set forth as a County ordinance. One possibility would be to put it into the Code of Ordinances as its own section. Another possibility would be to put it into the Zoning Ordinance, Article 13, General Provisions, or as a separate section.

Mr. Larson asked Mr. Gill if the Farm Committee had a draft ordinance.

Mr. Gill stated that they did not, but he strongly supported such an ordinance and would assist in placing a draft before the Planning Commission.

Mr. Larson stated that he would work with Mr. Gill and others who had an interest in this area to have a draft ordinance for consideration at the next meeting.

DISCUSSION ITEMS

OTHER ACTIONS TO BE TAKEN TO IMPLEMENT THE COMPREHENSIVE PLAN

Mr. Larson stated that Chapter 7 of the Comprehensive Plan would go before the Board of Supervisors on July 26, 2007. Approval of the Comprehensive Plan by the Board of Supervisors would allow formal consideration of new ordinances and changes to existing ones. However, he felt that the Planning Commission could begin the process in the interim and would therefore put several items on the agenda for the August 16, 2007 meeting.

ADJOURNMENT

The July 19, 2007 regular meeting of the Lancaster County Planning Commission was adjourned at 9:05 p.m.