LANCASTER COUNTY PLANNING COMMISSION

Minutes

October 17, 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, Glenn Pinn and Ty Brent.

Also present were Butch Jenkins, Board of Supervisors Representative, Don Gill, Planning/Land Use Director and Charlie Costello, Audrey Thomasson, 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 September 19, 2013 regular meeting.

Mr. Jones moved to approve the September 19, 2013 minutes as submitted. **VOTE: 7-0.**

PUBLIC HEARING #1

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 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 were located at the end of Johns Neck Road (VSH 632) in Weems in District 5.

Mr. Gill stated that the issue was tabled at last month's meeting to allow the contract purchaser's agent, Lee Stephens, to go back to the owner's agent, John Hodges, to renegotiate their sales contract to make the sale contingent on the rezoning instead of the rezoning being contingent on the sale, as the owners had previously requested. He stated that this was precipitated by the County Attorney, Jim Cornwell's comments that the rezoning could not automatically revert back to M-1 if the sale does not occur. He

stated that Mr. Stephens had requested that the issue remain on the agenda, but to date had not provided any additional documentation to include in the Commission members' packages.

Mr. Gill stated that the public hearing on the rezoning was not conducted last month, so he had re-advertised and re-notified adjoining property owners as required by law. He stated that he had only heard from one neighbor, who supports the rezoning request.

Mr. Gill stated that the County Attorney has advised that the Planning Commission needs to conduct and close its public hearing and then do one of the following:

1) Forward a recommendation to the Board of Supervisors to approve the rezoning,
2) Forward a recommendation to the Board of Supervisors to deny the rezoning,
3) Forward to the Board of Supervisors with no recommendation.

Mr. Gill stated that at the applicant's request, the Planning Commission could also table its vote until the applicant requests it at a later date. He stated the Board of Supervisors has a year from the application date to render a final decision on this request.

Mr. Gill stated that these parcels, along with several others in this 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. He stated that since that time, W.F. Morgan & Sons, Inc. has ceased operations and the parcels have been abandoned and listed 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 staff has mixed feelings about the request, but views it as reasonable and appropriate. He stated that while the hope would be for a return to the 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 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 have been recent inquiries about rezoning the adjacent parcel, Tax Map #33-194, from M-1 to R-1 as well. He stated that there are many R-1 properties in close proximity to this parcel and that rezoning to R-1 would be a downzoning from the more intense M-1 District.

Mr. Gill stated that all Commission members had received a letter from Mr. Raymond Morgan, which states that the Morgan family does support the rezoning. He

stated that the contract has been renegotiated so that the contract purchaser would rezone the parcels back to M-1 if the sale does not occur.

Mr. Gill stated that staff believes an alternate solution to subsequent rezonings of these parcels, assuming the rezoning to R-1, Residential General is approved, would be for the contract purchaser to also seek the Special Exception allowed under Article 5-1-9 of the R-1, Residential General District, which states, *"Areas of basic seafood processing facilities, with a special exception."* He stated that scenario would allow a single family residence on the rezoned parcels to satisfy the contract purchaser's wish, but would also allow, assuming the special exception is approved, a seafood business on the rezoned parcels to satisfy the Morgans' desire. He stated that the Planning Commission is only involved with the rezoning and not the potential special exception, as only the Board of Supervisors can consider special exception requests.

Mr. Chupp asked who would be on the application if the property has subsequent rezonings.

Mr. Gill replied that both the owner and contract purchaser would be listed on the application.

Mr. Jenkins stated that the burden would be on the property owner.

Lee Stephens, agent for the contract purchaser, stated that Mr. Gill had been very good to work with on the issue.

Mr. Stephens stated that, in the agreement with the owners, the contract purchaser has assumed the obligation and the cost of a subsequent rezoning if necessary.

Mr. Stephens stated that what is currently on the parcels is not very attractive and they are proposing a better solution. He stated that there would be approximately a twenty-eight percent reduction in impervious area, if their plans go through. He stated that they are currently in the process of the environmental site assessment to determine the locations of good soil. He stated that in the event of a favorable recommendation from the Planning Commission, he had asked Mr. Gill if his clients could shelve the issue before it was presented to the Board of Supervisors. He stated that they want to do their due diligence before it is presented to the Board.

Mr. Smart referred to the parcel's elevation and asked if it was prone to flooding.

Mr. Stephens replied no and that it is located in Zone X.

Mr. Stephens stated that the plan was to remove all of the existing concrete on site and that should be very beneficial to the creek.

Mr. Jones asked Mr. Gill if the procedure that Mr. Stephens mentioned, having the Board of Supervisors delay its decision, was good with the County.

Mr. Gill replied yes, that the Board of Supervisors has a year from the application date to render a decision.

Mr. Smart stated that he thought it would look much better if it comes to pass.

Mr. Jones opened the public hearing.

There was no public comment.

Mr. Jones closed the public hearing.

Mrs. Booth stated that she had some heartburn with the zoning change because historically, the shellfish industry has been great for the County and could be coming back. She stated that, for the record, she wanted it known that she would like the Board of Supervisors to strongly consider the special exception for basic seafood activities, if that issue is requested.

Mr. Jenkins stated that should it be presented, he had no doubt that it would be strongly considered.

Mr. Jones stated that he had asked Mr. Gill to find out about other M-1 properties in the County. He stated that if the rezoning were passed, there would still be 85 M-1 parcels remaining.

Mr. Gill reminded the Commission of Mr. Cornwell's comments that the rezoning be limited to the land above the mean low water mark.

Mr. Jenkins stated that was important on Carter's Creek because of the King's Grant phenomenon.

Mr. Smart made a motion to forward to the Board of Supervisors with the recommendation for approval the change of zoning district classification from M-1, Industrial, Limited to R-1, Residential, General for Tax Map #33-193, #33-192 and #33-192A and that the rezoning be restricted to those land areas above the mean low water mark. **VOTE: 7-0.**

DISCUSSION ITEM #1

ZONING ORDINANCE AMENDMENT – INTERNET POLES

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

Mr. Gill stated that at its November 29, 2012 meeting, the Board of Supervisors directed the Planning Commission to review and make recommendations regarding our regulation of the internet data poles/antennae that have become commonplace throughout the Northern Neck to help broaden the availability of high speed internet access. He

stated that these data poles/antennae 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 two to three mile radius around the 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 our zoning ordinance allows these poles by right in three zoning districts and requires a special exception in the other seven zoning districts. He stated that the 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 it 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. Gill stated that adjoining counties were contacted to see how they handled the poles. He stated that Northumberland had a 100 feet height limit for by-right placement, but requires a conditional use permit of $150 for the 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 permit and a $25 electrical permit and requires a conditional use permit of $200 if exceeding 120 feet. He stated that Westmoreland requires a special exception permit of $600 for all poles and has a 125 feet height limit. He stated that Richmond County does not require anything at the present time. He stated that all of these counties require accessory structure setbacks for the by-right placements.

Mr. Gill stated that the Planning Commission studied the issue for a few months and then recommended to the Board of Supervisors that the current policy of requiring a special exception for most of these poles was the most fair and thus recommended no changes. He stated that the Board was appreciative of that 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 much of the discussion at last month's meeting still questioned the need to make the poles by-right. He stated that that determination had already been made by the Board of Supervisors and that the Planning Commission's job was to craft language for a zoning ordinance amendment to allow these poles by-right, with certain criteria.

Mr. Gill stated that currently, our zoning ordinance allows these poles by right in three zoning districts: C-1 Commercial, C-2 Commercial Limited and M-1 Industrial Limited. He stated that our zoning ordinance requires a special exception for poles of any height in the W-1 Waterfront Residential Overlay district and 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 based on last month's comments and to facilitate further discussion as to appropriate heights and setbacks for by-right placement in Lancaster County, staff proposes the following revised language be added under permitted uses in the A-1, A-2, R-1, R-3, R-4 and RV-1 Districts:

> *Service provider installation of single-pole high-speed data communication 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 service provider and 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 located within 800 feet of tidal waters. He stated that the poles are already allowed by-right in the C-1 Commercial, C-2 Commercial Limited and M-1 Industrial Limited Districts.

Mr. Jones stated that he liked the revised language better.

Mr. Chupp stated that he liked the language better as well, but still did not understand the reason to get rid of the special exception since they have been averaging approximately three applications per year. He stated that his big concern was not allowing neighbors a say if a 100-foot pole goes up beside their property.

Mr. Chupp stated that a taxpayer suggested that the setbacks for the poles are not nearly enough and suggested that the setback be equal to the height of the pole. He stated that would minimize the impact on neighbors if a pole fell.

Mr. Jones stated that was a good idea, except for smaller lots. He stated that there may be lots where the center of the lot would be the setback and that would not be feasible.

Mr. Gill stated that it was up for discussion. He stated that other counties treat the poles as accessory structures and only require accessory structure setbacks and he did not feel that was enough. He stated that is why he suggested the main structure setbacks for the poles.

Mr. Jenkins stated that a neighbor's tree was much more likely to fall in a storm than one of the data poles. He stated that if a neighbor's tree falls on your property, it is the neighbor's responsibility to remove it and clean it up.

Mr. Chupp stated that the pole potentially falling is not the only problem. He stated that a bigger advantage with the 100-foot setback is minimizing the impact on neighbors' views.

Mr. Jenkins stated that the property is bought, not the view.

Mr. Chupp asked if they needed to provide a definition of a service provider.

Mr. Gill replied that one could be added.

Mr. Brent referred to the poles in the W-1 district and stated that he thought it was elitist for the special exception to remain in that district.

Mr. Gill stated that the language in the W-1 district is not new and that it has always required a special exception for the data poles. He stated that if the Commission wishes, they could add the proposed new language to the W-1 district, too.

Mr. Brent stated that he thought that would be fair and the amendment should apply to all districts. He stated that the data poles do not offer any damage to tidal waterways.

Mr. Chupp stated that he thought it was not included because the waterfront owners would put up a fuss if a pole was installed in their view and rightly so. He stated that he would be the first one to raise a fuss if that happened.

Mr. Gill stated that the poles' location would still have to be out of the Resource Protection Area, which is 100 feet from mean low water.

Mr. Brent stated that he thought it was discriminatory to leave W-1 out of the amendment.

Mr. Costello stated that all zoning is discriminatory to a degree.

Mr. Gill stated that there are many things that are not allowed in W-1 that are allowed in other districts. He stated that it is up to the Commission to include it or not.

Mr. Smart asked about getting a consensus on the issue. Three members were in favor of including the proposed language in the W-1 District, three were against and one was undecided.

Mr. Brent suggested that in the A-1 and A-2 districts, the poles would be by-right and all other districts would have to continue to apply for the special exception.

Mr. Gill stated that, basically, half of the county is zoned A-2 and the other half is zoned R-1.

Mr. Jenkins stated that generally, although there are lots of exceptions, people on the waterfront have better reception. He stated that he thought they were trying to split hairs.

Mrs. Booth stated that she did not feel strongly enough about it one way or the other.

Mr. Jenkins stated that the Commission could forward to the Board of Supervisors a decision, but state that not all members agree on certain points.

Mr. Gill stated that the Board members get copies of the Planning Commission's minutes to review, so they know what has been discussed before the issues get to them.

Mr. Jones asked if they wanted to forward to the Board that the Commission agreed on the language of the ordinance amendment but were split on whether or not the poles in the W-1 district should be by-right.

Mr. Jenkins stated that it would also be helpful to get Mr. Gill to present to the Board the details of the Commission's debate.

Mr. Gill stated that this ordinance amendment has to go to public hearing at the Planning Commission level before going in front of the Board of Supervisors. He stated that if the Commission was ready to take it to public hearing in November, he would include it on next month's agenda.

Mr. Chupp asked what would be advertised for the public.

Mr. Gill replied that the required public advertisement would read: *"Service provider installation of single-pole high-speed data communication antennas less than 100 feet in total height with main structure setbacks. Poles not meeting these criteria, with a special exception."* He stated that the proposal would be to add this language under permitted uses in the A-1, A-2, R-1, R-3, R-4 and RV-1 Districts.

Mr. Jones stated that Ms. Thomasson of the Rappahannock Record would report that the Commission was split on whether or not the Waterfront Overlay District should be included, so the public would know. He stated that they would get public input at the next meeting.

Mr. Jones made a motion to forward the proposed zoning ordinance amendment language for internet poles to public hearing at next month's meeting. **VOTE: 7-0.**

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. He stated that 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 that the burden of a fee should be placed on any one property owner when it will affect so many. He stated that it has been brought 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 discussion at last month's meeting questioned the need for and the enforceability of an amendment addressing unobstructed clearance requirements on older subdivision roads. He stated that the consensus was that the current requirements for unobstructed clearance of new subdivision roads could not be accomplished on most of the county's older subdivision roads. He stated that based on those comments and to facilitate further discussion as to appropriate unobstructed clearance requirements for older subdivision roads, staff believes that our Subdivision Ordinance Section 5-11(d) could be amended (additions in bold type) to address this issue as follows:

"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. ***All existing road rights-of-way with vested rights must maintain an unobstructed width of 12 feet and an unobstructed height of 12 feet to ensure reasonable access for emergency vehicles."***

Mr. Gill stated that the ability to cite a written code would convince most people to comply. He stated that 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 measured the largest fire truck at the Upper Lancaster Volunteer Fire Department and added two extra feet on each side and the top to come up with the 12-foot recommendation that he included in the proposed language.

Mr. Smart stated that the 12-foot requirement would be easier to trim and maintain as opposed to 20 feet.

Mr. Jenkins asked who would be responsible for the upkeep.

Mrs. Booth stated that that was her question as well.

Mr. Jones referred to the ordinance language, which 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"* and asked if that meant if the subdivision was being expanded.

Mr. Gill replied yes and stated that if there is an existing road right-of-way with vested rights and a large parcel at the end gets subdivided, then that access must meet the new requirements.

Mr. Jones stated that he thought it was a good idea, but did not know how it could be enforced. He stated that there are a lot of older subdivisions, where there is not necessarily a subdivision hierarchy and the residents may not agree with each other about what should be done.

Mr. Gill stated that in the absence of a Homeowners Association, the responsibility would be on the property owner, in that, they would be responsible for the part of the road that passes through their property.

Mr. Jones stated that he was not arguing about the validity of the idea, but that he was not a fan of enacting legislation that no one can enforce.

Mr. Sorensen asked if the County does not have something on the books and an ambulance or fire truck cannot get to a residence and a tragedy occurs, could the County be held liable.

Mr. Jones stated that would be a question for the county attorney.

Mr. Smart suggested having a disclaimer to the effect that if a fire department or ambulance worker deems the road to be impassable, they are under no obligation to continue.

Mr. Jenkins stated that he believed that was covered under the Code of Virginia, in that the volunteer and professional squads are excused if they deem a road impassable or if there is a hazard to their equipment and personnel.

Mr. Jones stated that he definitely agreed with the language for the new subdivisions and the ones that expand. He stated that he did not know how they would enforce the issue with all of the older ones.

Mrs. Booth asked why it was important for the roads with three or more homes, as in a subdivision, to be passable for emergency vehicles, but not important for those driveways that serve just one home.

Mr. Jones stated that was a valid point.

Mrs. Booth stated that the bottom line is that property owners should keep their property in good condition so emergency vehicles can access their homes as needed.

Mr. Chupp suggested that the county put out some information on the issue to all homeowners in the county.

Mr. Jones suggested a public service announcement about the recommended clearances.

George Bott, a District 1 citizen, stated that he was talking about safety with this issue. He stated that new subdivisions by county ordinance must keep clear access for emergency vehicles, however older subdivisions are not covered. He stated that his subdivision, which has 18 homes, falls into the latter category. He stated that essentially some areas are safe, while others are not. He stated that staff's proposal would bring new and old subdivisions in line, but there are concerns, like expenses for moving mailboxes and fencing. He stated that there is also the issue of government intervention in people's lives.

Mr. Bott stated that one approach might be to amend the ordinance and allow time to implement it. He stated that it could give people time to adjust to it and referred to the Chesapeake Bay Act's septic pump out requirements. He also suggested that if there was a majority of property owners in a subdivision who wanted to implement the access requirements sooner than later, they could do so right away. He stated that his last point was that community safety is a function of government.

Mr. Jones stated that Mr. Bott had valid points, but he did not think the county should be involving itself in homeowner association issues. He stated that another concern is the money.

Mr. Jenkins stated that there are at least three or more subdivisions in the Mollusk area, in which there would be no money to update the access requirements on the roads.

Mr. Jones stated that the more affluent communities could possibly afford to do it, but the small ones could not.

Mr. Costello asked who would enforce the amendment and what would the penalties be. He stated that he had been told in the past that it was practically impossible to have no wake zones because they are not enforceable. He asked if the Commission really wanted to go down that road.

Mr. Jenkins stated that Mr. Bott is in a situation that he is trying to make right. He stated that, however, if a citizen chooses to live down an impassable lane, they probably know it and may want to keep their privacy. He advised keeping the issue on a side burner and see what other counties are doing concerning the issue.

Mr. Jones stated that he agreed with Mr. Jenkins.

Mr. Gill stated that he liked the public service announcement idea.

Mr. Jones stated that he thought that was a good place to start.

The consensus was to keep looking at the issue, but no action was taken at the present time.

OTHER BUSINESS

Mr. Gill stated that he wanted to remind the Commission that they will be meeting on Thursday, November 14 and not November 21.

Mr. Jones stated that he also wanted to remind everyone that there would be no December meeting.

ADJOURNMENT

The October 17, 2013 regular meeting of the Lancaster County Planning Commission was adjourned at 8:00 p.m.