

LANCASTER COUNTY PLANNING COMMISSION

Minutes

October 18, 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, Tara Booth, Steve Sorenson, Robert Smart, and Don Gill.

Also present were Joan McBride, Rappahannock Record, Fred Ajootian, James Ward, Jr., Attorney at Law, John Easter, Attorney at Law, and Charles Costello.

Mr. Jones asked if there were any corrections or additions to the minutes of the September 20, 2007 regular meeting.

There being no corrections or additions, Mr. Jones moved to approve the September 20, 2007 minutes as submitted. Seconded by Ms. Booth. VOTE: 5-0.

PUBLIC HEARING

FLOATING HOUSES

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

Mr. Larson stated the issue is to take public comment on the following definition proposed to be added to the Zoning Ordinance, and subsequently, make a recommendation to the Board of Supervisors as appropriate:

Floating Houses. A structure or device, regardless of any registration attached, that is primarily intended for habitation and not primarily intended for recreational cruising, fishing, or navigation across water bodies. It is further identified as lacking a source of propulsion and/or navigation device such as rudder or steering mechanism that is an integral part of the structure or device. Floating structures are allowed for marine construction or repair or hauling and/or distribution of cargo or for boat repair or service and for no other purpose. Floating Houses are not a permitted use in Lancaster County.

Mr. Larson stated that he provided a copy of the definition to Mr. Cornwell, County Attorney, who thought it was a good definition. Mr. Larson also stated that he had received inquiries from Mr. Barry Miller, owner of Aqua Lodge, concerning this issue. The thrust of Mr. Miller's comments is that he is generally opposed to any action that would serve to prohibit or otherwise limit the placement of his product in Lancaster County. This request has been advertised as required by law. To date there has been no input other than that previously stated by interested members of the public.

Mr. Larson read a memorandum that he received from Mr. Ward concerning his client, Mr. Miller.

Mr. Jones opened the floor to public comment.

Mr. Ajootian expressed his concern that the definition is too wordy and could therefore be misinterpreted.

Mr. Sorenson stated that he was also concerned that the definition was too wordy.

Mr. Larson stated that the County Attorney advised him to be as specific as possible in the definition.

Mr. Ward stated that he and the law firm of Williams Mullen represent Mr. Miller, owner of Aqua Lodge. Mr. Ward stated he has been practicing law in Middlesex County for 30 years and his father was a waterman. He further stated that this same issue was addressed in Middlesex this past year and that the Department of Game and Inland Fisheries (DGIF) classified Aqua Lodges as boats. Aqua Lodges have the same regulations as any other boat in the State of Virginia. They are vessels that have to be licensed and registered with DGIF. Aqua Lodges should not be classified as a structure but rather a vessel regulated by the State. Given that Aqua Lodges are not structures, then the Board of Supervisors cannot regulate them, and the County has no zoning authority over them.

Mr. Easter stated that he is an attorney with the law firm of Williams Mullen who also represents Mr. Miller. He gave a brief summary of his legal background. He stated that he had been a member of the Planning Commission for Chesterfield County and that he specialized in land use cases. Mr. Easter gave the Planning Commission members a handout of Virginia State codes and statutes. Based on these statutes, he argued that the County does not have the authority to regulate floating houses since this activity takes place in rivers and creeks. Rivers and creeks are owned by the State and are regulated by VMRC not by the County. The Commonwealth statutes state that the Department of Game and Inland Fisheries regulates titles and registrations for boats. On January 20, 2007, DGIF determined that Aqua Lodge meets the state's definition of a vessel or watercraft. He also produced a letter dated August 31, 2007 from Middlesex County stating that Middlesex County would not regulate Aqua Lodges since they were determined to be boats. Code Section 15.2-2280 states that any locality may regulate the use of land, buildings and structures. However, since Aqua Lodges have been

determined to be boats, not structures, Lancaster County has no authority to regulate them since they are not on land, and are not buildings or structures. Mr. Easter concluded by stating that the proposed definition is too general, especially with the terms “primarily intended for”, to be defensible.

Mr. Jones stated that he understood the County could not regulate any vessel in state waters but could regulate anything that is attached to a pier that, in turn, is attached to land within the County’s jurisdiction.

Mr. Easter agreed that piers could be regulated by the County but questioned whether or not Aqua Lodges would be attached long enough to be regulated.

Mr. Jones stated that he felt they would be since electrical and water would likely be attached for extended periods of time.

Mr. Costello stated he feels that if it is attached to a pier for more than two weeks it should be considered permanent.

Mr. Ajootian stated the County would still have authority because of the requirement that permitted uses on the water or at the water’s edge must be water dependent.

Mr. Smart stated that whether or not electrical, water, and wastewater connections have been made could be a determinant with respect to regulation.

Mr. Jones stated that we are not here tonight to determine if floating houses are boats or not. The Board of Supervisors asked the Planning Commission to create a definition for floating houses. The County Attorney felt comfortable with the definition, and if the Planning Commission feels comfortable, then it should be forwarded to the Board of Supervisors.

Mr. Larson stated in the definition the sentence “*Floating structures are allowed for marine construction or repair or hauling and/or distribution of cargo or for boat repair or service and for no other purpose*” could be deleted. The definition already exists in the Zoning Ordinance.

Mr. Jones stated that if that sentence were not removed, it could save time for users by eliminating the need to look up the definition of floating structures.

Mr. Ward reiterated his point that Lancaster could not enforce this regulation, and it would contribute to conflict within the State if some localities regulated his client’s product and others did not.

Mr. Smart made a motion to forward the proposed definition of floating house to the Board of Supervisors recommending approval. Seconded by Mr. Jones. VOTE: 5-0.

CONSIDERATION ITEMS

1. Changes in Permitted Uses – A-1 and A-2 Zoning Districts

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

Mr. Larson stated that each member received a copy of the proposed deletion of currently permitted uses in the A-1 and A-2 zoning districts to make them more consistent with the spirit and intent of those districts. As directed by the Planning Commission, a copy was given to Mr. Craig Geise for discussion at the Farm Bureau meeting. Mr. Larson stated that he believed Mr. Gill could report the results of that discussion tonight and that the Planning Commission could then make a determination as to whether the issue is sufficiently developed to bring to public hearing, or not.

Mr. Gill stated it was determined at the meeting that anything that could result in high density or traffic should be removed. He further stated that most members had a problem with deleting churches, antique shops, post offices and private boat ramps. He also did not see “commercial boat landings” and “travel trailer camps, with a special exception” in any other zoning districts. If these uses are not in any other zoning districts, then further consideration should be given to removing them.

Mr. Larson stated that he would check to ensure the two uses in question are in other zoning districts.

Mr. Jones asked the members of the Planning Commission for consensus with leaving private boat ramps and churches in the two zoning districts and received that consensus.

Mr. Jones also obtained a consensus of other members with removing commercial boat landings and post offices as permitted uses if they were included in other zoning districts.

Mr. Jones made a motion to forward to public hearing the revised deletion of current permitted uses in the A-1 and A-2 zoning districts. Seconded by Ms. Booth. VOTE: 5-0.

2. Right to Farm Ordinance

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

Mr. Larson stated that at the September regular meeting, the view was offered that adoption of the subject might be more harmful than beneficial and that an aggressive education campaign as to farming, forestry operations and seafood processing in

Lancaster County might be more beneficial, especially for new or prospective residents. Mr. Gill had previously stated that he would discuss this issue with the local farmers at the September meeting of the Farm Bureau.

Mr. Gill stated that it was determined at the meeting that a right to farm ordinance would be beneficial for Lancaster County. However, most members did not like the section on dispute resolution. Copies of other right to farm ordinances will be obtained to help in the development of ours.

3. Cluster/ Conservation Development Ordinance and Sliding Scale Density

Mr. Jones stated that it is his opinion that the Planning Commission should deal with one issue at a time. The Planning Commission should request guidance from the Board of Supervisors on their priorities. All other members of the Planning Commission agreed, and Mr. Larson was directed to obtain guidance from the Board of Supervisors at its next meeting.

OTHER BUSINESS

Mr. Larson shared a copy of an article from the Richmond Times Dispatch on affordable housing.

Ms. Booth stated that the Middle School will be having the yearly Veteran's Day ceremony on November 9, 2007 at 9:00 am and 11:00 am, and she would like to invite everyone.

ADJOURNMENT

The October 18, 2007 regular meeting of the Lancaster County Planning Commission was adjourned at 8:27 p.m.