

LANCASTER COUNTY PLANNING COMMISSION

Minutes

November 14, 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, Charlie Costello, Audrey Thomasson, and others.

Mr. Jones asked if there were any corrections or additions to the minutes of the October 17, 2013 regular meeting.

Mr. Jones moved to approve the October 17, 2013 minutes as submitted. **VOTE: 7-0.**

PUBLIC HEARING #1

ZONING ORDINANCE AMENDMENT – DATA POLES/ANTENNAS

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

Mr. Gill stated that the issue is to amend the following Articles of the Zoning Ordinance:

Article 3, Agricultural Limited District A-1,
Article 4, Agricultural General District A-2,
Article 5, Residential General District R-1,
Article 6A, Residential Community District R-4,
Article 7, Residential Medium General District R-3,
Article 21, Rural Village Overlay District, RV-1,

by adding the following permitted use in each of the above 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 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 currently 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 staff believes the proposed amendments are an acceptable answer to the Board of Supervisors' direction of the Planning Commission to craft a zoning ordinance amendment to allow these poles by-right, with certain criteria. Northern Neck Wireless, the major service provider and installer of these poles, has said that 100 feet tall is adequate. Staff believes that accessory structure setbacks allowed by other counties for similar poles (5 feet from side and rear property lines) are too little, so main structure setbacks are suggested. Main structure setbacks are usually 25-feet from side property lines and 25-feet (50-feet in A-1 and A-2) from rear property lines and 75-feet from the centerline of any road. Staff believes that the special exception that is currently required should remain for all poles in the W-1 District (parcels located within 800 feet of tidal waters).

Mr. Gill stated that much of the discussion at last month's meeting centered on whether or not the proposed new language should also be added to the W-1 District. He stated that the discussion suggested that it was "discriminatory or elitist" to exclude the W-1 from the proposed amendment language and staff does not agree with that suggestion.

Part 1 of the Zoning Ordinance states:

Whereas, by act of the General Assembly of Virginia as provided in Code of Virginia, ch. 11, art. 8, §§ 15.1-486—15.1-498, and amendments thereto, the governing body of any county may by ordinance, divide the territory under its jurisdiction into districts of such number, shape and area as it may deem best suited to carry out the purposes of this article, and in each district it may regulate, restrict, permit, prohibit, and determine the following:

- (a) The use of land, buildings, structures and other premises for agricultural, commercial, industrial, residential, floodplain and other specific uses;*
- (b) The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures;*

(c)The areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures, including variation in the sizes of lots based on whether a public or community water supply or sewer system is available and used;

(d)The excavation or mining of soil or other natural resources

Therefore, be it ordained, by the governing body of Lancaster County, Virginia, for the purpose of promoting the health, safety, or general welfare of the public and of further accomplishing the objectives of Code of Virginia, § 15.1-489, that the following be adopted as the zoning ordinance of Lancaster County, Virginia, together with the accompanying map.

Mr. Gill stated that since Lancaster County enacted zoning in June 1975, land uses have been either permitted or prohibited in the various zoning districts based on the aforementioned enabling legislation. As evidence of this, currently the W-1 District has only 13 permitted uses whereas the A-1 District has 25, the A-2 District has 40, the R-1 District has 28, the R-3 and R-4 Districts have 21 each and the RV-1 District has 77 permitted uses.

Mr. Gill stated that staff has recommended that the current policy of requiring a special exception for all data poles/antennas in the W-1 District should remain, even though they would be allowed by-right (with the proposed height and setback restrictions) in the A-1, A-2, R-1, R-3, R-4 and RV-1 Districts. He stated that an identical scenario currently exists with the "Home Occupation" use. Currently, a "Home Occupation" is allowed by-right in the A-1, A-2, R-1, R-3, R-4 and RV-1 Districts, but requires a special exception in the W-1 District. He therefore stated that excluding the W-1 District from the proposed new language allowing these data poles/antennas by-right (with the proposed height and setback restrictions) is neither discriminatory based on the aforementioned enabling legislation nor precedent-setting based on the currently existing identical scenario for the "Home Occupation" use.

Mr. Gill stated that advertising had been conducted as required by law and to date, there has been no response from the public.

Mr. Gill stated that he had spoken to Tom Foulkes of Northern Neck Wireless and he had no problem with the zoning ordinance language.

Mr. Jones asked if Mr. Foulkes had any comment about leaving the waterfront district out of the amendment.

Mr. Gill replied that Mr. Foulkes did not seem to have a problem with the language and he knew about the meeting being held tonight and was not present.

Mr. Jones opened the hearing for public comment.

Charlie Costello, a District 1 citizen, stated that he attended the Veteran's Day program at the Lancaster Middle School on Monday and it was a great program and thanked Mrs. Booth.

Mr. Costello stated that he was concerned about having too many data poles and stated that the County needed to look at acquiring broadband service. He stated that it would help the area economically so much more than the data poles.

Mr. Costello stated that he did not like the idea of his neighbor installing a data pole without him knowing about it. He stated that he liked the transparency that a special exception gives. He stated that he thought Mr. Chupp was on the right track when he stated that neighbors should be notified before the poles are installed, even if it is by-right. He stated that he did not think the poles should be in the W-1 District and that zoning is discriminatory at times.

Mr. Chupp referred to a public notification and asked Mr. Costello if he would want a public hearing on the data poles.

Mr. Costello replied no. He stated that he would like for neighbors to have an opportunity to discuss their plans concerning the poles.

Mr. Smart asked if there was any mechanism to notify neighbors for something that is considered "by-right".

Mr. Jenkins stated that a public notification could be done, though he might not favor that.

Mr. Chupp stated that he had proposed that the public be alerted to the data pole proposal and have a certain amount of time to file an objection. He stated that if there were an objection, then a public hearing would have to be held. He stated that he thought the public should have an opportunity to change the outcome. He stated that if they do not have that, he did not think a notification would mean anything.

Mr. Jones stated that under that scenario, the poles would not be by-right. He stated that they are past that part of the issue. He stated that the Planning Commission has been directed to create some language for the ordinance. He stated that he agreed with Mr. Chupp, but the Commission has their instructions.

Mr. Costello stated that the Planning Commission could make recommendations about their concerns to the Board of Supervisors.

Mr. Smart stated that the Board of Supervisors strongly believes that the data poles should be by-right and the guidance is pretty clear. He stated that he did not think that the public at large should have any input on the issue, but he did have some sympathy for a neighbor who sees a pole being installed and he had no prior knowledge

of it. He further stated that it would be no different than a tree falling and jeopardizing a neighbor's property.

Mr. Costello stated that if he wanted to build a pier, all of his neighbors would be notified.

Mr. Jones stated that you don't have to notify your neighbors if you build a house. He stated that you obtain the permits and if your neighbor doesn't like it, it's too bad.

Mr. Jenkins referred to the public notification issue and stated that sometimes there are feuds among neighbors and issues that have nothing to do with data poles could force a citizen to go through an expensive process if there is an objection, relevant or not, to the proposed pole.

Mr. Jones closed the public hearing.

Mr. Brent stated that he has not heard a good reason why the W-1 District should be excluded from the ordinance amendment. He stated that if the Board of Supervisors wants the data poles to be installed by-right, he does not see any reason not to include the W-1 District in the zoning ordinance amendment.

Mr. Jones stated that there have been reasons stated, but not everyone agrees with them.

Mr. Gill stated that there is an identical situation that exists with a home occupation.

Mr. Brent stated that no one could tell him that data poles would not work better on the water.

Mr. Gill stated that they might work better on the waterfront. He added that a home occupation might work better for that waterfront property owner as well, but they are not allowed without a special exception in the W-1 District.

Mr. Brent stated that he thought the two were different situations. He stated that he thought the W-1 was being targeted and he had some heartburn about it.

Mr. Gill stated that no changes were proposed for the W-1 District.

Mr. Brent stated that all of the other districts are being amended except the W-1 District.

Mr. Jones stated that the W-1 District was different to begin with. He stated that the County permits and denies different things in different districts all of the time. He stated that he did not necessarily agree with it, but that the history of the W-1 District has been more exclusive.

Mr. Jenkins asked when the W-1 District was adopted.

Mr. Gill replied the W-1 District was adopted on May 11, 1988.

Mr. Jenkins stated that he understood Mr. Brent and Mr. Chupp's comments and added that the Planning Commission minutes are read by the Board of Supervisors before they make their decisions on the issues.

Mr. Jones stated that it will not be that the data poles won't be allowed in the W-1 District at all, it will just be that they are not allowed by-right and will require a special exception.

Mr. Brent stated that the district is still being treated differently and he did not agree with that.

Mr. Gill stated that the Board of Supervisors gets copies of all of the Planning Commission meeting minutes where issues have been discussed and are privy to whether or not there was a split vote on the Planning Commission, so the Board will be aware of all concerns.

Mr. Smart stated that he believed the number of pole installations will slow down in the future because of satellite internet. He stated that what they are doing is a stopgap measure for the present time and the issue will disappear over time.

Mrs. Booth stated that she appreciated the extra information that Mr. Gill had included in his memorandum. She stated that it was beneficial for her in making her decision.

Mr. Chupp stated that he had a motion that stated, "As directed by the Board of Supervisors, we are forwarding an amendment to the zoning code that would allow the commercial installation of single pole high speed data communication antennas of up to 100 feet in height by right in all Residential and Agricultural Districts and the Rural Village Overlay District. The Planning Commission recommends that these changes not be adopted as we consider the value of county residents' rights to provide input on the proposed installation of such commercial towers on neighboring properties far outweigh the projected savings of approximately \$600 per year."

Mr. Jenkins stated that it was an improper motion. He stated that the motion needed to state whether it was a vote up or down.

Mr. Jones asked if Mr. Chupp could make the motion to adopt it, but include comments.

Mr. Chupp stated that he wanted the Board of Supervisors to know why the Commission is not recommending it for approval.

Mr. Jenkins stated that information is included in the Planning Commission's minutes and Mr. Chupp was using his platform as a Commissioner to work his view into the motion. He stated that the motion should be clear, either up or down or amend.

Mr. Chupp stated that he did not agree with that.

Mr. Smart referred to Mr. Chupp's motion that stated "all residential districts" and asked if he was including the W-1 District.

Mr. Chupp replied no. He stated that W-1 is the Waterfront Overlay District.

Mr. Gill stated that the W-1 District is the Waterfront Residential Overlay District. He stated that the W-1 District has not been advertised for the zoning amendment, so if it is the Commission's desire to include the proposed language in the W-1 District, then it would need to be advertised as such.

Mr. Smart asked if the way the motion as made by Mr. Chupp still excludes the W-1 District.

Mr. Gill replied yes.

Mr. Jones stated that his suggestion would be to take a vote from the Commission up or down and list the concerns. He further stated that the Board of Supervisors would see from the minutes, the concerns of some of the members.

Mr. Gill stated that brief, specific language needed to go in the zoning ordinance. He stated that the proposed language needed to be voted up or down, unless the Commission wanted to amend that specific language. He once again reminded that if the Commission wanted to include the amendment language in the W-1 District, it would need to be advertised that way.

Mr. Chupp withdrew his motion.

Mr. Jones made a motion to forward to the Board of Supervisors, with no recommendation, the amendment to the following Articles of the Zoning Ordinance:

Article 3, Agricultural Limited District A-1,
Article 4, Agricultural General District A-2,
Article 5, Residential General District R-1,
Article 6A, Residential Community District R-4,
Article 7, Residential Medium General District R-3,
Article 21, Rural Village Overlay District, RV-1,

by adding the following permitted use in each of the above 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. VOTE: 5-2.

The following concerns have been listed concerning the zoning ordinance amendment.

Mr. Brent stated that his concern for the amendment would be that the W-1 District should be added in fairness to the other districts.

Mr. Jones stated that his concern would be that neighbors should be notified of impending data pole installations.

Mr. Chupp stated that he wanted to make it known that he did not feel the changes to the zoning ordinance should be adopted because he considered the value of the right of county citizens to provide input on the proposed installation of the data poles on neighboring properties far outweighs the projected annual savings of approximately \$600.

OTHER BUSINESS

Mr. Gill stated that he wanted to remind everyone there would be no December Planning Commission meeting. He stated that the Commission would be receiving a draft of Article 10 of the Zoning Ordinance, the Historic Resources Overlay District, to review in January.

Mr. Jones stated that he appreciated all of the work that the Planning Commission had done throughout the year and wished everyone a happy holiday season.

ADJOURNMENT

The November 14, 2013 regular meeting of the Lancaster County Planning Commission was adjourned at 7:45 p.m.