



PLANNING COMMISSION

Regular Meeting

Cape Charles Fire Hall

June 5, 2012

At 7:10 p.m. in the Cape Charles Fire Hall, Vice Chairman Dennis McCoy, having established a quorum, called to order the Regular Meeting of the Planning Commission. In attendance were Commissioners Malcolm Hayward, Mike Strub and Joan Natali. Chairman Bruce Brinkley was not in attendance. There were currently two (2) vacancies on the Commission. Also present were Town Planner Tom Bonadeo and Town Clerk Libby Hume. There were approximately 25 members of the public in attendance.

A moment of silence was observed followed by the Pledge of Allegiance.

REGULAR MEETING PUBLIC COMMENTS

George Southern, 104 Monroe Avenue

Mr. Southern stated that he still had some comments that he was not able to say at the public hearing but he also had some specific comments for the Planning Commission. This was the first Planning Commission meeting that he had attended in Cape Charles and he informed the Commissioners that this was probably the most important meeting of the Planning Commission that the Commissioners had tenure over and normally the Commissioners probably met in a room with no one from the public in attendance but this matter had the public's attention. Mr. Southern stated that normally there were seven members of the Planning Commission, but with two resignations, that left five Commissioners. The chairman worked across the bay and was not here tonight, leaving four Commissioners at the most important meeting probably so far in this century. The Commissioners had also heard opinions from people stating that the presentation this evening did not meet the legal requirements; therefore, the Commissioners could not act under the present circumstances. The staff recommendations for this meeting stated "Review public comment and discuss the Zoning Map Amendment and Conditional Use Permit." Reviewing all public comments heard this evening would take time and Mr. Southern respectfully asked the Commissioners to actually review all the comments as a judge would review testimony. The school building had stood for 100 years and there was no need to rush to judgment tonight. Mr. Southern requested the Commissioners to please respect the evidence that their fellow townspeople have made and at least wait until the next meeting to actually vote on this issue. Mr. Southern added that he was handed the Town of Cape Charles Rezoning Application earlier this evening and had not had time to read it yet.

Dorie Southern, 104 Monroe Avenue

Ms. Southern stated that she did not get to finish her comments at the public hearing and the bottom line was that she did not think it was appropriate to decide this tonight because there was a lot that needed to be figured out. Ms. Southern pointed out the background paper that was provided by staff stated that schools and churches were not part of the Open Space definition but they were part of the R-1 Zone. That was not correct. According to the Comprehensive Plan, residential property did not include apartment buildings or community centers. Apartment buildings could be included in this zone by conditional use permit. A school or community center would come under the rule of Comprehensive Plan Section III.4.2 – Institutional which included government, civic and community facilities such as libraries, recreation centers, community centers, places of worship, utilities, and cemeteries. Although we have been told that rezoning would be necessary for either an apartment building or

community center, which was not the case. Ms. Southern stated that she had been told by staff that the property had to be rezoned for either use because it was zoned incorrectly but that is not right. It was not R-1 and as the lawyer pointed out, the school was there before the zoning ever happened; therefore, it had been grandfathered in. The time now was to think about what needed to be done with the building so it was an asset to our community.

Reverend James Davis, 533 Mason Avenue

Reverend Davis stated that he was concerned about the rezoning and the impact on the seven lots including the playground, tennis courts, basketball court and Cape Kids that the Women's Club invested over \$35K in. Reverend Davis asked what guidelines were available for the lots and expressed his concern regarding the procedures being followed for the lots adding that he felt that the Town very easily carried out what they wanted to do to suit themselves regardless of the law, the Commonwealth or anything else. Cape Charles had been that way for the last few years.

Don Bender, 300 Fulcher Street

Mr. Bender stated that he had lived in Cape Charles all his life and directed his next comment to Tom Bonadeo stating that Tom Bonadeo was unprofessional in this matter and cost the Town and asked for his resignation right now.

Byron Powell, 620 Jefferson Avenue

Mr. Powell stated that he had lived here all his life and as everyone could see with his clothes that he played basketball. Mr. Powell stated that he had arrived late and did not get to speak at the public hearing. He had heard that the Town was planning to get rid of the school and the basketball court. The Town needed to think about who used the basketball court and what it represented and the benefits of the basketball court. If the Town demolished the basketball court, they would be taking away the kids' opportunity to be something great and taking away their opportunity to escape the harsh reality they might call life and taking away their ability to gain athletic opportunities. There were no facilities in Northampton County. Growing up in Cape Charles was great for him. Looking at the kids today, they don't have the opportunities that he had growing up. He had the Boys & Girls Club and did various things. Mr. Powell stated that he was in college and was doing well for himself. If the Town did not give kids a positive outlook, you could not expect them to do well in life. Kids needed facilities and a community center. It was unfair. He was a business major but did not understand the apartment / condo idea. Who was this Town for - the outsiders or the people who actually paid the taxes here?

Deborah Bender, 300 Fulcher Street

Ms. Bender stated that the Town needed a community center, a place where kids could go after school, and a place for continuing education. We did not need any more apartments. There were plenty of apartments in Cape Charles for rent. Ms. Bender asked Planning Commission not to rezone this property and added that it was fine right now as it was. Let the new Town Council work on what could be done.

Angela Powell, 620 Jefferson Avenue

Ms. Powell stated that she was born and raised in Cape Charles and attended Cape Charles School from 1977-1987 when the school consolidated with Northampton County. Ms. Powell stated that she had sentimental reasons for wanting the school to remain there as a community center. Ms. Powell went on to state that she was a single parent who raised three kids in Town and it was disheartening to see her youngest child with nowhere to go. The Boys & Girls Club was there but it closed and her son Byron could not go all the way to Exmore to attend. Now when she walked around Town, she saw kids playing at Sea Breeze with the handicap signs and prayed that they didn't drown at the beach. The kids did not have anywhere to go except the

Library. In the center of Town, this would be closer for them. If the Town got rid of the school, the kids would be doing things they should not be doing and getting into trouble. These were at-risk kids and without a community center in this location, she did not know what was going to become of the Town and the children in Town.

Tim Krawczel, 409 Nectarine Street

Mr. Krawczel stated that before he started his comments, he wanted to know the purpose of this public hearing.

Tom Bonadeo responded that this was not a public hearing but the public comment period for the Planning Commission meeting.

Mr. Krawczel stated that he wanted to comment regarding the conditional use permit application to make the Cape Charles School apartments adding that he first wanted to comment about what a conditional use permit was. In reviewing a conditional use permit application, as Planning Commissioners, they were supposed to look at the application, hear comments from the neighbors, look at the development plan, then the Commissioners had the ability to impose conditions to make sure that they mitigated all the potential public nuisances of the proposed development. Mr. Krawczel asked the Commissioners if they had received a development plan, whether they knew what the multi-family housing would look like, and whether the Commissioners could do their job for the citizens in making a recommendation on this conditional use permit. Mr. Krawczel added that he wanted to bring up something about the Historic District Review Board and Town Code (*Incorrectly stated as Town Code. The reference should be to the Zoning Ordinance.*) Section 8.5 stated that any use permitted by special use permit must be reviewed by the Historic District Review Board. This must be done before the Planning Commission public hearing. Mr. Krawczel asked the Commissioners whether they had the review from the Historic District Review Board and if they were prepared to take the information to review it as part of the deliberations. Mr. Krawczel continued to quote Town Code 8.18 (*Incorrectly stated as Town Code. The reference should be to the Zoning Ordinance.*) stated that no building should be substantially altered or restored until a certificate of appropriateness was issued by the Historic District Review Board. Substantial alterations included any action which had a substantial effect on the character of the Historic District. Mr. Krawczel continued to state that in his opinion the multi-family housing project had a substantial impact on the character of the Historic District and he felt that it passed the common sense test and most people would agree with him. The change in use of the school would have a substantial effect on the character of the District; therefore, it needed to be reviewed by the Historic District Review Board. In order for the Planning Commission to function effectively, the Commissioners needed to review that information. With everything that had been said, Mr. Krawczel stated that he thought it was abundantly clear that the application was not right for approval or action. There was too much confusion in the community, about what was happening with the public hearings and it was just not right and not ready. It required a lot more study.

Karen Jolly Davis, 5 Randolph Avenue

Ms. Davis stated that she opposed a conditional use permit for multi-family housing in the historic 100-year old public building and felt that the conditional use permit conflicted with the Comprehensive Plan which the Commissioners were charged to uphold. The Comprehensive Plan clearly stated that we needed more, not less, space for community services. The Planning Commission's job was to uphold the Comprehensive Plan.

Kevin Martingayle, Attorney representing Old School Cape Charles

Mr. Martingayle stated that he was here on behalf of Old School Cape Charles, LLC. There have been comments about some of the procedural problems that existed with regards to the conditional use permit, effective notice, documents that were not all available and some were made available in only a single copy during this meeting. The Historic District Review Board had not been involved and given the opportunity to do their job and the Commission did not have the benefit of their work. Mr. Martingayle stated that the Commission could not go forward as a matter of law and the Commission should not go forward as a matter of prudence and fairness. It was much more important that this be done right than fast. We knew who was coming in to talk about this development and they reserved for themselves six months to change their mind so obviously they were not in a giant hurry to move along and they clearly would not need six months to give themselves the opportunity to back out of the deal. Mr. Martingayle added that the safe thing to do was to slow down and make sure that everything was considered. He had heard case after case issued by the Supreme Court of Virginia where they had said that local government bodies and Town Councils had a lot of discretion in the substance of the decision but none when it came to following procedure. Hopefully, the Commission would not make the mistake because this could end up in court and that would be a shame. It would waste a lot of people's time and money. Mr. Martingayle concluded by asking the Commissioners to slow it down and do it right. Mr. Martingayle suggested the Commission look at the zoning map at the area under review and ask themselves what was there first, the map or the school. The school was intended to be Open Space and it was obviously a mistake not to include it in the definition. We all knew that whoever drew the map knew that the school was there, so it was always intended for the school to be part of the Open Space and part of the park. This was a major change in direction. Once the Town went in the direction of condominiums, it could never go back. Once that happened, the hands of time could not be turned back. The building which was over 100 years old would essentially be lost to the public. The public would only be able to look at the outside and never be able to make use of it.

Frank Wendell, 515 Monroe Avenue

Mr. Wendell stated that he had lived in this Town all his life except for the years when he went away to college. He grew up at 105 Randolph and was a resident of 515 Monroe Avenue for 32 years. Mr. Wendell stated that he found it sadly amusing regarding the background information that was provided for the meeting and the Planning Commission Staff Report, specifically #2 under Item Specifics which stated that the permitted use will not "Be detrimental to the public welfare or injurious to property or improvements in the neighborhood." Mr. Wendell went on to read #2a which stated that the historic restoration an adaptive reuse would be an investment of over \$2M in the neighborhood in an area which had been depressed for over 20 years. Mr. Wendell again stated that he had lived in the neighborhood for over 32 years and the most depressing thing that had happened in his 32 years was the Echelon proposal. It had been mentioned that the project cost was over \$2M but it was confusing at times regarding the tax credits. A \$2M investment was only a \$1M investment by the developer after the credits were received. Old School Cape Charles LLC would also be eligible for the tax credits. Given all the comments and information heard, Mr. Wendell did not see where the Commissioners could give a recommendation. At the time when the unsolicited proposal from Echelon was presented, it might have sounded like a good deal but it was not in the long term best interest of the community. Other communities had made community centers work and there were ways to fund it. His group was researching the issue and for the Town to take the first offer and run with it the way it had was proving to be unwise and not in the best interest of the community. Mr. Wendell asked the Commissioners to slow it down and get it right and asked the Commissioners' support for a community center in the park in Town.

There were no other comments from the public nor any written comments submitted prior to the meeting.

CONSENT AGENDA

Motion made by Joan Natali, seconded by Mike Strub, to accept the agenda as presented. The motion was approved by unanimous consent.

The Commissioners reviewed the minutes for the May 1, 2012 Regular Meeting.

Motion made by Malcolm Hayward, seconded by Mike Strub, to approve the minutes from the May 1, 2012 Regular Meeting as presented. The motion was approved by unanimous consent.

REPORTS

Tom Bonadeo reported the following: i) Boytos & Boytos had completed the Harbor Bath House project and it was open for business; ii) The restaurant building at the Harbor was nearing its final inspection and was expected to be open soon; iii) VDOT was still working on coating the asphalt streets in Town. They should be finished before the Tall Ships weekend; iv) Numerous remodeling projects were underway throughout Town; v) The Hotel Cape Charles has opened under a temporary Certificate of Occupancy. An open house was held over the weekend and was well attended. There were still some items yet to be completed on the exterior of the building; vi) VDOT was working on golf cart crossing signs for Route 642, Old Cape Charles Road, which would allow another golf cart path route connecting Bay Creek Golf Community to the Historic District; vii) The parking lot at the Harbor had been covered with shells and spaces will be laid out shortly. During the Tall Ships event, no parking would be allowed in the area and alternate parking would be provided on the railroad property; viii) Work on the beach was completed for the spring. FEMA was expected to help with the expense of sand replenishment.; and ix) The Northampton County Planning Commission was holding public hearings this evening and one of the topics was a zoning text amendment to accommodate and support wireless broadband service. Eastern Shore Communications, LLC also performed a wireless test in Cape Charles and the Town would be putting out a Request for Proposals for wireless service at a later date.

OLD BUSINESS

CUP and Rezoning of Parcel

Malcolm Hayward stated that he heard the people who spoke and added that the Planning Commission was not here to vote on the community center but the Commission's function was to ensure the zoning was correct. Several people expressed their concerns regarding whether the Commission was prepared enough and things were brought up this evening regarding conflicts with the Comprehensive Plan and the sequence of events regarding proper procedures. Malcolm Hayward went on to state that the items may or may not be in conflict with the Comprehensive Plan but he was not familiar enough with the Plan.

Motion made by Malcolm Hayward, seconded by Mike Strub, to table the decision regarding the Conditional Use Permit and Rezoning of the subject parcel to give the Commissioners time to become better informed regarding the issues and to ensure the proper procedures had been followed. The motion was unanimously approved.

Sign Ordinance Review – Additional Review of Draft Ordinance

Tom Bonadeo began with a review of the changes made at the last meeting on pages 15-17 of Zoning Ordinance Section 4.1, regarding Temporary Signs. It was clarified that real estate auction signs were also considered temporary real estate signs and could only be placed on the specific property being auctioned.

There was some discussion regarding subsection f. on page 17. Malcolm Hayward asked whether the “community center” signs displayed all over Town were legal and added that if the Town enforces real estate signs, business signs and political campaign signs, the Town also needed to enforce the other signs around Town re: sizes and the time permitted to be displayed. Tom Bonadeo stated that letters had been sent to the person responsible for the signs and since the signs had not been removed, the issue had been forwarded to legal counsel. Malcolm Hayward asked about the consequences for not following the rules and went on to ask why the Town had these rules if they could not be enforced. Tom Bonadeo explained that legal counsel was researching whether the ordinance could be enforced in relation to the first amendment right for freedom of speech.

The Commissioners went on to continue their work on the Zoning Ordinance Section 4.1 – Sign Regulations update. The following was discussed:

Section 4.1.D.1 – General Provisions: The reference to “International Building Code” was deleted.

Section 4.1.D.2 – Signs in Rights-of-Way: The reference to “zoning administrator” was changed to “Town Manager.”

Section 4.1.D.5 – The Commissioners reviewed the language in the International Building Code vs. the current Cape Charles ordinance. The Town’s current language was more restrictive and the Commissioners felt that language needed to be added to allow business owners with buildings with more than one side of road frontage the option to have up to 50 SQFT of signage, on each side of the building with road frontage. It was noted that it would not be practical to have signage on the backs of buildings.

Section 4.1.D.6 – This section was previously deleted since animated and changeable signs were not permitted in Town. Malcolm Hayward asked that this issue be revisited possibly to be permitted during the summer months. Joan Natali asked how these signs would affect the Historic District. Tom Bonadeo stated that he would contact the Town of Chincoteague to ask about their ordinance. Malcolm Hayward added that he thought the Town of Chincoteague had different signs regulations for the summer months.

Section 4.1.D.7 – There was some discussion regarding the 110 MPH wind load requirement for signs in Cape Charles. There was also some discussion regarding the Town’s right to remove damaged signs and it was suggested that the Town get legal review before finalizing the ordinance.

Section 4.3.D.8 – There was some discussion regarding various signs on former businesses. Joan Natali suggested language be added to protect signs like the one on the side of the old Wilson building which had historic significance.

Section 4.1.D.9 – Tom Bonadeo stated that the billboard coming into Town by Reliable was a non-conforming sign. It was grandfathered and was allowed to remain as long as it was

standing. There was some discussion regarding this issue and it was suggested that the Town get a legal opinion regarding handling of non-conforming signs.

Section 4.1.E – The Commissioners reviewed the list of exempt signs. Joan Natali suggested adding “historical sign” to Item 6 which would cover the sign on the side of the Wilson building. Joan Natali also suggested the possibility of a Town Kiosk or some type of structure to advertise the businesses in Town. Malcolm Hayward agreed that this would help the Town’s businesses, especially those not located on Mason Avenue. Tom Bonadeo stated that something could be placed at the corner of Strawberry Street to show the businesses on the street.

Section 4.1.F – Tom Bonadeo stated that this was similar to the Town’s current ordinance and asked the Commissioners to review the language for discussion at the next meeting.

Harbor District Zone – Review Density – Mason Avenue Area

Due to the time, the Commissioners agreed to postpone review of this issue to the next meeting.

NEW BUSINESS

There was no new business to review.

ANNOUNCEMENTS

The Tall Ships at Cape Charles event was this coming weekend. Joan Natali stated that volunteers were still needed to help with the event.

Motion made by Joan Natali, seconded by Malcolm Hayward, and unanimously approved to adjourn the Planning Commission meeting.

Vice Chairman Dennis McCoy

Town Clerk