

**PLANNING COMMISSION
MINUTES
NOVEMBER 5, 2008
6:00 P.M.**

The Planning Commission of the Town of Rocky Mount, Virginia met at the Rocky Mount Municipal Building on Wednesday, November 5, 2008, at 6:00 p.m. with Madame Chair Janet Stockton presiding.

The following members were present: Madame Chair Janet Stockton and Vice Chair John Speidel; Planning Commission Members Derwin Hall, John Tiggle, A. Milton Arrington, and Ina Clements. Staff members present included: Town Attorney John Boitnott, Planning and Zoning Administrator (PZA) Paul D. Stockwell, and Deputy Clerk Stacey B. Sink. Let the record show that Planning Commission Member Jerry W. Greer, Sr. was not present for the meeting.

APPROVAL OF AGENDA

- Motion was made by Planning Commission Member Hall to approve the agenda as presented, with motion on the floor being seconded by Planning Commission Member Clements. There being no discussion, let the record show that the motion on the floor passed unanimously by those present.

APPROVAL OF MINUTES

Prior to the meeting, the Planning Commission members received the following draft minutes for review and consideration of approval:

- October 7, 2008 – Regular Planning Commission Meeting
- Motion was made by Planning Commission Member Arrington to approve the draft minutes as presented, with the motion on the floor being seconded by Vice Chair Speidel. There being no discussion, let the record show that the motion on the floor passed unanimously by those present

PUBLIC HEARING

Let the record show that there were no public hearings held at this meeting.

OLD/NEW BUSINESS

A) Old Business

1. Consideration of Amending Articles 10 and 19 – Floodplain Ordinance

The Town Attorney advised the Planning Commission that since the last meeting he has spent a lot of time dealing with the model draft presented by the Federal Emergency Management Agency (FEMA) and incorporating these changes into the floodplain section of the Town of Rocky Mount zoning ordinance. Incidental to this, there were a couple of changes in the definition section of the ordinance, which is Article 19, to incorporate the new definitions proposed by FEMA. The draft order amends Article 10 to incorporate all of the substantive provisions that were provided by the FEMA model ordinance. The Article 19 changes simply deal with some of the newer definitions. The ordinance has been through a thorough review process. The Town Attorney confirmed with the PZA that there were very few substantive changes as compared to the model ordinance that was presented last month. The direction from the Town staff has been brought about by changes in the FEMA floodplain regulations.

The PZA reminded the Planning Commission that the public hearing was held regarding the ordinance change last month, with Planning Commission deciding to wait for a completed draft ordinance to be presented. There have been no substantive changes between the draft that was presented at the last meeting on which the public hearing was held and the final draft presented tonight. Although it was open for public comment, there was no public comment at the last meeting. The Town Attorney added that the only changes were in the way the ordinance is worded so that it will conform to the Town's ordinance. It is available for recommendation to Town Council tonight.

There being no further discussion, Madame Chair Stockton entertained a motion:

- Motion was made by Vice Chair Speidel to recommend to Town Council approval of the revisions in Article 10 and 19, with motion on the floor being seconded by Planning Commission Member Arrington. There being no discussion, let the record show that the motion on the floor passed unanimously by those present.

2. Review of Draft Wind Energy Facility Ordinance

The PZA advised that Planning Commission has asked him to take a look at wind energy facilities and to prepare a draft ordinance. He used Planning Commission's recommendations from the last meeting, including one acre lots as the minimum, the desire for a special use permit or a special exception with the ability to make conditions, and the existing wireless communications ordinance to model the wind energy ordinance. From that, he has produced

the draft ordinance that is before Planning Commission tonight. He further stated that he would like to address any comments or recommendations that Planning Commission may have, and if there are none then Planning Commission may choose to proceed with a public hearing in December.

Vice Chair Speidel commented that he has researched this subject on the internet and a lot of what he read mentions the noise level and shadow flicker, which is caused by the blades going around, and also if there is an adverse effect to the neighborhood, or serious hazard to pedestrians and vehicles. He doesn't know if Planning Commission wants to consider any of this, but it seems that this would give more factors under 32-6 to be considered prior to approval. He is not sure if any one else shares the same thoughts. He stated that he is fascinated by the shadow flicker and other Planning Commission Members agreed that the noise should also be a concern.

General discussion continued:

- Would the noise be similar to that of the air curtain that covers the doors at McDonald's?
- The ordinance will allow for a small system of 25 kilowatts (kW) and a maximum height of 120 feet.
- Up until now, there have been no other consumers in the Town who have expressed an interest in a wind energy facility other than the Gereau Center.
- What is the height of the facility at the Gereau Center?
- The heights in the draft ordinance were modeled on the City of Suffolk's ordinance.
- Color would also be a good thing to consider as the Town wouldn't want a neon orange facility.
- All wind energy facilities would be a conditional use. In addition to any requirements specified in the ordinance, the Planning Commission would have the ability to impose additional requirements based on the location and characteristics of the request.
- The part of the ordinance regarding abandonment is good.
- Noise and shadow flicker can be added to 32-6, along with no serious hazard to pedestrians or vehicles.
- How close will the blade be to the ground? Should a fence be required like a cell phone tower or a pool.
- The information on the web mentioned a fifteen feet buffer, in that the ladder could not be any closer to the ground than fifteen feet to keep children or others from climbing up.

The PZA advised the Planning Commission that he could make the requested changes and then he could bring the draft ordinance back for another review or for a public hearing in December, noting that if it is brought for public hearing he would have the opportunity to receive additional comments from

the public, and if any other changes were needed, they could be made at the hearing.

There being no further discussion, Madame Chair Stockton entertained a motion:

- Motion was made by Vice Chair Speidel to proceed with a public hearing at the next scheduled meeting, after the noted changes have been made, with motion on the floor being seconded by Planning Commission Member Clements. There being no further discussion, let the record show that the motion on the floor passed unanimously by those present.

B) New Business

1. Review of Accessory Building, Recreational Vehicle, and Trailer Regulations

The PZA opened the floor to discussion by stating that there are several inadequacies or gaps in the current zoning ordinance dealing with accessory structures, garages, tool sheds, dog houses, etc. For example, accessory structures are not a permitted use in the Central Business District (CBD), so according to the ordinance, if a property has a single-family home located in the CBD, a property owner cannot build a garage, shed, or doghouse. Another issue with the ordinance is that a main structure is required to build an accessory structure. Therefore, the Town's ordinance does not permit garages, or sheds, or doghouses on empty lots. There must be a main building or a single-family home in a single-family residential district in order to have an accessory structure. Also, if there is an empty lot next to another lot which contains a house, and the same property owner owns both lots, and wants to build an accessory structure on the empty lot, he would have to vacate the property lines between the two lots in order to build the accessory structure. A third question about the ordinance is should the size of an accessory structure be limited to fifty percent of the main structure. For example, if there is a home of 1200 square feet, should a garage be limited to only 600 square feet? Finally, the ordinance does not address recreational vehicles, trailers (like boat trailers), or containers of any sort, and where they should be parked or placed, be it front yards, back yards, driveways, etc. These are some issues that Town Council has asked be brought before Planning Commission for ideas on how to address them.

Discussion ensued:

- This would include operational motor homes and where they can be parked on a property, such as the one that is parked on South Main Street or another that is parked on Bernard Road.

- Some zoning ordinances permit recreation vehicles to be parked in a driveway or behind the main structure but prohibit them from being parked in the front yard.
- If the view is obscured by a mobile home, then where it is parked could be a problem. Also, if the vehicle is dilapidated it could also be a problem.
- How can the Town distinguish between pop-up trailers and motor homes?
- There is already an ordinance to address inoperable vehicles.
- Town Council recommended this discussion for Planning Commission's consideration. What may be a concern to some people is having pop-up trailers, recreational vehicles, or old buses that have been turned into recreational vehicles that are parked in front yards.
- Planning Commission Member Arrington stated that in regards to old cars that have been abandoned, there are a lot of cars on South Main Street, below Old Furnace Road near Dick Shoemaker's home. He questioned why the ordinance regarding inoperable vehicles is not being enforced.
- The Town Attorney advised that the Town can take a look at the situation, advising that often local ordinances are not enforced because someone is not aware of the situation. Now that this has been brought to the Town's attention, staff will take a look at it.
- As a matter of policy, if there is a problem regarding an abandoned vehicle, staff would visit the property first and try to work with the property owner in resolving the problem. However, if the problem can not be resolved, then a summons can be issued and the Town can take the property owner to court.
- In regards to the concerns brought up by the PZA, the first concern is specific only to the CBD. The other concerns apply to any district.
- Accessory structures are not a permitted use in the CBD. The question is would Planning Commission like to make accessory structures a permitted use? An accessory structure is any building that is incidental to the use of another building, so accessory structures will apply to businesses as well as single-family homes. Should dog houses be exempt from being a structure? Does it matter whether or not there is a foundation to the structure?
- A recent example of this is that a prefabricated carport was recently put up and someone came in to complain. The PZA had to write a letter of violation stating that the prefab carport violated the ordinance and they had to take down the carport. This was in another residential district. Portable carports can be used: however, they must meet the setback requirements, and they are required to be located behind the main building. This particular structure was located in front of the main building.
- If there is a need for an accessory structure but due to the topography of the land, the structure could not be located behind the main building,

then the property owner could apply for a variance, but the granting of a variance would be dependent upon it being viewed as a hardship.

- Several Planning Commission members agreed that most people who are considering building a dog house would not think to check the zoning ordinance for compliance. What would trigger this would be a complaint.
- Also, anything that requires a building permit also requires a zoning permit so people would become aware of the ordinance when applying for a zoning permit.
- Doghouses are permitted as accessory structures, they just have to meet the setback requirements of being located behind the main building and at least five feet from the property line. They are not permitted on empty lots, just as any other accessory structure is not permitted on an empty lot. Doghouses are not prohibited throughout Town, they just have certain regulations that have to be met.
- If a person bought an empty lot next to his/her home and wanted to put a doghouse on the empty lot, the property line would have to be vacated.
- If the zoning ordinance is changed to allow accessory structures then the distinction between main structures and accessory structures is essentially eliminated.
- All property has some character that is unique to the property and this is the difficulty of applying a zoning ordinance which is regulating uses of property in connection with health, safety, and welfare. It is hard to take a unique situation and apply it to the general provisions of an ordinance, but if you start trying to change an ordinance to fit a unique situation each time it comes up, then you are in a perpetual process of zoning ordinance amendments and you have to consider if the "tail is wagging the dog."
- Changing the ordinance for unique situations is undermining the ordinance. Unique situations are what the Board of Zoning Appeals is for.
- In regards to the previous comments concerning inoperable vehicles, the Town Attorney read the definition of an inoperable vehicle for the record. He further stated that the inoperable vehicle ordinance prohibits a property owner from keeping such a vehicle unless it is in a building or structure that shields it from view. There is a limit of two inoperable vehicles on any property and if there is a violation then Town officials will contact the property owner and ask that the situation be remedied within a period of thirty days. If the situation is not remedied then the property owner can be summonsed to court and charged with an offense that constitutes a Class IV Misdemeanor. This ordinance does not apply to automobile salvage.
- The first example regarding accessory buildings in the CBD could not go before the BZA because the BZA doesn't have the ability to grant a use of a property that is not a permitted use in the district. It could be

brought before Planning Commission and Town Council as a request for special exception.

- The PZA stated that he is just looking for some direction as to what Planning Commission would like him to do more research on and bring back.
- Should dog houses be excluded and if so, could someone build a decent sized structure and call it a doghouse to be exempted from the ordinance?
- Town Council has asked Planning Commission to address these topics because of several issues. Some issues come from requests that are made through the Planning office. For example, one lady wanted to build a garage on a lot in the CBD. The PZA reviewed the ordinance and discovered that accessory structures are not permitted in the CBD. A lot of these issues come from requests that are made. Others come from complaints, such as the complaint about the carport, or dog complaints from neighbors. All of this comes from particular issues that come through the planning office. Then they are taken to Town Council and Town Council thinks that they should be addressed in one form or another.
- There is a difference between a recreational vehicle and a container.
- A container is not considered an inoperable vehicle because it does not meet the definition of inoperable vehicle. A fifty-five gallon drum would be considered a container.
- Should containers only be allowed in Town if there is an active building permit?
- Some people use containers as storage.
- Currently all accessory structures have to be less in height than the main structure.
- The PZA noted that sufficient direction had been given by Planning Commission for him to begin working on these issues.

ADJOURNMENT

There being no further business to discuss, motion was made by Planning Commission Member Clements to adjourn at 7:00 p.m., seconded by Planning Commission Member Tiggle, and carried unanimously by those present.

Janet Stockton, Chair

ATTEST:

Stacey B. Sink, Deputy Clerk
/sbs

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