



County of Surry Virginia Planning Commission Meeting Minutes December 18, 2023

MEETING CONVENED: The meeting of the Surry County Planning Commission was called to order at 7 PM on Monday, December 18, 2023, in the Surry County General District Court, 45 School Street, Surry, VA by Mr. Eddie Brock, Chair.

ATTENDANCE: The following members responded present to Roll Call:

Mr. Eddie Brock, Chairperson
Ms. Judy S. Lyttle
Mr. Giron Wooden, Jr.
Mr. Theodore Lunsford
Mr. Earl Newby, Sr.
Mr. Thomas Hardy
Mr. David Coggin
Mr. William Seward, IV
Ms. Dianne Cheek

Absent:

Ms. Carmen D. Judkins
Mr. Stephen Berryman

Also present were Mr. Horace Wade, Director of Planning and Community Development, Ms. Regina Hilton, Administrative Assistant, Mr. Lorenzo Turner, Planner I, Ms. Lola Perkins, County Attorney.

PLEDGE OF ALLEGIANCE: All

ADOPTING OF AGENDA: Chair Brock entertained a motion to adopt the meeting's Agenda. It was moved by Mr. Newby and seconded by Mr. Wooden.

In favor: (9) Brock, Lyttle, Newby, Hardy, Lunsford, Cheek, Coggin, Seward, Wooden
Opposed: 0
Abstain: 0

APPROVAL OF CONSENT ITEMS:

Chair Brock asked the Commissioners for the disposition of the minutes for November 27, 2023. A motion to approve was made by Mr. Wooden with the noted correction by Ms. Cheek. Page four, second bullet point, “if the property meets the criteria of the ordinance, then it can proceed. Page four, second bullet point, last sentence, the definition for all the uses which are in the draft are currently non-existing and will be defined”, should be clarifying in saying the new ordinance. Page five, fifth paragraph, should be clarified as could the Commission defer the decision. It was seconded by Mr. Newby.

In favor: (10) Brock, Lyttle, Newby, Hardy, Berryman, Lunsford, Cheek, Judkins, Coggin, Seward

Opposed: 0

Abstain: 0

OLD BUSINESS: None

NEW BUSINESS:

CBPA Exception Application No. 2023-01:

A request of Andrew and Nancy Kelderhouse for an exception to the requirements of Section 3-1403(C) of the Surry County Chesapeake Bay Preservation Ordinance for a 67- foot encroachment into the 100-foot Resource Protection Area (RPA) buffer. The subject property is located at 92 Company Wharf Road and is identified as Tax Map 16A-1-21.

Mr. Wade presented to the Commission a new Chesapeake Bay Preservation exception, which is currently in the ordinance. In tonight’s packet is the plat of where the proposed dwelling is located, and the applicant is request is further inland than that of what they currently have. In 2004, the applicant applied for a special exception from the BZA to build a house after two houses that were on the lot were destroyed by Isabel.

Mr. Wade stated that one of the conditions was to combine the three lots. The lot was created in 1947. Because it is a resub division, you do not consider the resub division date. But when the lot was created, certain rules applied for when the lot was developed. If the applicant development had been 50 feet on the landward side, the Commission would not see this exception, because the ordinance only allows the Administrator to approve the 50 feet landward, but requires the Planning Commission to approve the waiver in the 50 feet seaward buffer.

Exception to the ordinance requirements is based on several factors:

- There are five findings that the Planning Commission must find before a waiver can be granted:
 - The exception will not confer upon the applicant any special privileges that are denied by these provisions to other property owners in the CDPA.
 - The exception request is not based on conditions or circumstances that are self-created or self-imposed, nor does the request arise for conditions or circumstances either permitted or non-conforming that are related to adjacent parcels.
 - The exception request is the minimum necessary to afford relief.
 - The exception request will be consistent with the purpose and intent of the provisions and not injurious to the neighborhood or otherwise detrimental to the public welfare and is not of substantial detriment to water quality.

- Reasonable and appropriate conditions are imposed, which will prevent the exception from cause and degradation of water quality.

Mr. Wade said that Staff recommends that the Planning Commission approve the exception with the following conditions:

- The exception is limited disturbance for one bedroom and one bathroom as described in the application and areas outside of the proposed construction are to remain natural or undisturbed.
- Plants will be planted on-site, and post-construction stormwater will be captured through downspouts and runoff will be discharged through a vegetated area.
- In planning for stormwater, capture will be subject to the Administrator's discretion at the time of approval for their stipulated occupancy.

Ms. Cheek noted that in tonight's packet, the page starts with the exception application and additional information and is dated for November 21st. In the second paragraph, the second to the last statement says sideline setbacks and tying into existing septic system would be problematic, will it tie into the current system or not?

Mr. Kelderhouse, the applicant, said when the house was built in 2006, it was a vacation home, and the current regulation was not in place. The proposed addition, being as far back as possible, hits into the retaining wall, more than 50 feet seaward. The option would be to add to the opposite side of the home. But there was a 15-foot minimum setback for the septic. The location of the septic would be difficult to get enough fall to go to the sewer line that goes into the holding tank. It would be 75 or 80 feet as opposed to the 20 feet, which is the problematic part of the septic. When the house was reconstructed in 2006, the septic system was lost. Currently, there is a peat moss system, and the house was built for four bedrooms.

Mr. Wooden asked Mr. Kelderhouse if he had any concern with the three recommendations made by Mr. Wade. Mr. Kelderhouse answered that he did not and felt that he could meet the requirement.

Mr. Coggin asked Mr. Wade, if the project had been 17 feet shorter, would it have been approved by Administration. Mr. Wade said yes, within the office. Mr. Coggin asked if it was very little impact to the RPA. Mr. Wade said that the existing home has more encroachment than the addition into the RPA.

PUBLIC HEARING OPEN:

PUBLIC COMMENTS:

Mr. Brock said a letter was received from Daniel Miller stating that he could not attend tonight's meeting and that he did not find any problems with what the applicant is requesting. Mr. Miller is adjacent to 92 Company Wharf Road.

PUBLIC HEARING CLOSED:

Mr. Hardy made a recommendation to approve CBPA Exception Application 2023-01 with the Staff required findings, staff's five requirements, the three recommendations, and the review of the Planning Commissions finding of approval per section 3-1409C. It was seconded by Mr. Wooden.

In favor: (9) Brock, Lyttle, Newby, Hardy, Lunsford, Cheek, Coggin, Seward, Wooden

Opposed: 0

Abstain: 0

NEW BUSINESS:

Ordinance Amendment 2023-02:

The Planning Commission will consider an Ordinance to amend Article III, Zoning Districts and Boundaries by adding a new zoning district, the Emerging Technologies District, to the Surry County Zoning Ordinance intended to permit master-planned developments consisting of a combination of commercial, industrial, utility, technology-focused, and related uses in a campus-like environment that is not otherwise found in Surry County. No residential or agricultural uses are proposed in the district. The Emerging Technologies District will consist of new use types, definitions, procedural requirements, and district regulations.

Mr. Wade presented a brief overview of the district for the Commission and the public. This district is crafted for projects that have data centers and other uses that need to be addressed. Ms. Darby, Planning Department Manager for Summit Design and Engineering presented before the Commission and the public:

- The ordinance would create a new district, Section 3-101 or 3-1100, that would create a new use in 3-101. The purpose of the Emerging Technologies District, ET District is to permit master plan developments consisting of a combination of commercial, industrial, utility, technology-focused, and related uses as a campus-like environment, due to its flexible nature and the goals of the County to encourage and accommodate innovative development.
- The ET District is intended to be implemented as a conditional zoning district, and the applicant's use of conditional zoning is encouraged as the most appropriate means to provide the necessary zoning regulations to address the unique impacts of a proposed rezoning of property to the ET District.
- The district is intended to be applied only to large contiguous areas of the County that are in close proximity to strategic and necessary resources such as high-capacity electrical generation and transmission facilities, natural gas lines, and navigable waterways.
- Properties to which this district is applied should minimize potential conflicts with residential or other commercial uses. And where the use minimally impacts traffic and is adequately served by existing roadway capacity.
- The district and its usage should not cause undue environmental impacts and should be consistent with the general location, character, and extent as described in the future land-use map of the County's adopted comprehensive plan.

- The district lists uses that will be permitted as permitted principal uses as by right in the district and uses permitted by conditional use permit. Of the permitted principal uses the district would permit, utility service/minor, business or trade school, educational facility, science, and technology center. Research, experimental and technology center, construction office temporary, office general, contractor's yard, data warehouse center, energy storage facility, flex industrial. Laboratory, outdoor storage, construction material temporary, renewable energy generation facility, warehousing and distribution, and water storage tank. Some of the new uses are not in the zoning ordinance currently and those are defined within this district.
- The uses that would be permitted by conditional use permit are utility service major, electrical component manufacturing facility, natural gas terminal, small-scale nuclear modular reactors, alternate discharge sewage system, surface water withdrawal, and surface water withdrawal system.
- Accessory uses would be permitted in the district as defined in the zoning ordinance. The goal of the emerging technologies district is to create a balance between flexibility for the applicant as new uses evolve and add control for the County to make sure that all negative or any potential impacts are mitigated.
- **The site development regulations:** the minimum district size would be 500 acres of contiguous land. All structures should be screened from view from any property not zoned ET. The maximum height of any structure shall be 75 feet. An exception may be granted by the Board of Supervisors for accessory uses higher than 75 feet provided that the applicant proves that the accessory use and associated structure will not create a materially adverse visual impact on neighboring properties, the James River, or historic sites in Surry or in other localities.
- There should be no minimum setback requirements, but those setback requirements shall be established during the review and approval of the master plan. Determination of the setback should be part of the application process and should be approved along with the rezoning.
- The building spaces shall provide adequate room for circulation safety and emergency access. Streets in the ET District shall be public in accordance with VDOT and County standards unless private streets are approved by the Board of Supervisors through the acceptance of conditional zoning properties.
- Exterior lighting in the ET District must be established with minimal impact on neighboring properties in the regional skyline.
- Prior to any application, the applicant must meet with County Staff to discuss the process.
- The goal of the ET District is to utilize conditional zoning and the following must be submitted with the application.
- A legal description and plat showing the site boundaries, existing street lines, lot lines, and easements. Existing zoning, land use, and ownership of each parcel. A general statement of planning objectives to be achieved by the district. A description and analysis of existing site conditions including information on topography, archeological and historical resources, natural water courses, floodplains, unique natural features, and tree cover areas.
- A land use plan designating specific uses for the district, a circulation plan for the district, a public service, and utilities overview, providing requirements for and provision for all utilities, sewers, and other facilities to serve the district.
- An open space and district screening plan including areas for passive and active recreational uses, natural and undisturbed areas, and proposed buffer areas around the perimeter of the district.
- View shed studies or visibility analyses from such sites as are requested by the County. Sufficient to demonstrate to the satisfaction of the Board of Supervisors that the proposed development

within the district will not create a materially adverse visual impact on the neighboring properties, the James River, or historic sites in Surry or in other localities.

- General statements of architectural and community design guidelines of any use visible from the public waterway or from the public right-of-way or navigable waterway, a development schedule, and a summary disclosure of all hazardous materials.
- Once this plan is approved by the Planning Commission and the Board of Supervisors, then the site plan approvals will be more specific. Preliminary and final site plans will be submitted and must include a noise study and noise reduction plan detailing the sources of any potential noise that could emanate from uses in the district, and measures to be taken to mitigate noise and ensure that equipment and processes on the properties in the district are not audible to nearby properties, uses and resources in Surry County or other jurisdictions.
- A lighting plan detailing sources of outdoor and exterior light and providing sufficient evidence to prove that lighting on the site will not visibly impact neighboring properties or the regional night skyline.
- A hazard mitigation plan must be approved by Surry County's Chief of Emergency Management in coordination with the Virginia Department of Emergency Management prior to the final site plan approval.
- Any changes, that are determined by the Administrator from the site plan submitted with the rezoning, will have to go through the entire approval process again. This is laid out in section 3-1106(B), which increases in the density of substantial change in circulation or access.
- Substantial changes in location classification or mixture of land uses, and substantial change in phasing or any major change will have to go through the process.
- New use types that are defined, and is kept in the district, and are not permitted in other districts in the County and the zoning ordinance, are data warehouse center, which is defined in this district, electrical component manufacturing facility, renewable energy generating facility, energy storage facility, flex industrial, natural gas terminal, outdoor storage, construction materials, research experimental and technology center, science, and technology center. small-scale modular nuclear reactor, surface water withdrawal, surface water withdrawal system, and water storage tank.

Ms. Lyttle asked how far the district perimeter would be to any other districts. Ms. Darby said there are buffers and noise buffers. It does not say in the purpose of the district, that the district should impact other districts. The idea of the district is to be flexible. An applicant or a property owner would determine the noise factor, hazards, and buffers, and ensure the site is not visible or impactful to uses outside the district.

Ms. Cheek said the version she has does not mention that the Planning Commission is involved in the approval process. Ms. Darby said the final approval is absolutely by the Board of Supervisors. Any rezoning to the district would have to undergo a comprehensive plan amendment, which would be in the solid purview of the Planning Commission. The Board on any rezoning would take a recommendation from the Planning Commission. It says all regulations in the zoning ordinance shall apply to the development of the ET District unless specifically modified. So that same process that is set out in the state code of the Planning Commission, making a recommendation to the Board previous or before any rezoning, still applies. It's not necessarily a part of the district.

Ms. Cheek said since 1105 is called the application process, it may be helpful to add a section D to how the process is done, how we process applications, and it is not clear to how the Planning Commission comes into play. Ms. Perkins said that her concerns in spelling out processes in this district, would be that it isn't spelled out in any district and that it is mandated by state code. "In approving that specific language in this district, opens up the door for contravention of the Virginia code requirements for other existing districts." The process is the same for all districts. It is required to go through the review of the Planning Commission which issues a recommendation, and then send it to the Board of Supervisors to determine whether to take that recommendation or to find differently when it hears the public's opinion.

Ms. Cheek said that she hasn't read all the other ordinances to know whether we have the application process and "it seemed appropriate to have a complete description of the process." Mr. Wade said that this district was mirrored with the type of format of the Planned Development District, which has the application process, which is used for commercial/residential purposes, and, has applied some of those same standards and processes needed for Planning Commissioners or Board members.

Mr. Brock said this district will create a district where we can say what is allowed and the applicant, if it is a permitted provisional use, apply and say what they would like to do. Once that is done, it will come before the Commission to decide if the land is feasible. Then the Commission will forward the recommendation to the Board of Supervisors, to decide if they agree, that the property or use is feasible. It's like creating an AR district that can do more, either larger farming or smaller farming. The distance of the setback will basically come later.

PUBLIC HEARING OPEN:

PUBLIC HEARING CLOSED:

Ms. Cheek said on the narrative addressing noise, which is number nine, "Is it possible that it might be helpful to have an analysis done on noise?" Mr. Wade said that the analysis would go across the use itself. The official analysis is in the site plan process, but if you knew the type of use, just a narrative is appropriate at the rezoning stage. Ms. Cheek asked, "Would it happen in 1106-A1?". Mr. Wade said yes, and it is under 1106, that a noise study would be done as part of the preliminary study plans. Ms. Cheek asked is a noise study the same as an analysis. Mr. Wade said yes and that the term is synonymous with each other and is covered in 1105 and 1106.

Ms. Cheek said, "On number 11, it talks about generalized statements pertaining to architectural and community design guidelines for any use visible from the public right-of-way, or navigable water." Why are we just limiting that to those two items?" Mr. Wade said that we are looking at things that are visible to the public right of way. Ms. Darby said that was the importance of buffering and the view shed. If there would be any use that would be visible from the public right of way or from the river. It's not an overly prescriptive zoning district. "The goal is not to design it to be beautiful and architecturally astounding, the goal is to make it not be visible."

Ms. Cheek stated on the miscellaneous use type, on page three, it talks about the surface water withdrawal. "Do we get any input from the surrounding counties on putting this ordinance together, or having this?" Mr. Wade said no. Ms. Darby said "A locality doesn't have to run an ordinance by neighboring localities, but anything like surface water withdrawal or super surface water withdrawal systems would go through DEQ, which absolutely is going to look at it regionally. It's going to look at an aquifer and other uses. That's a statewide and certainly a very regional permitting process."

Ms. Cheek said that she asked Mr. Wade about the future land use map on page one that talks about the district, "Uses shall not cause undue environmental impacts, and be consistent with the general location, character, and extent as described in the future land use in use now." Ms. Cheek said that Mr. Wade sent her the comp plan from 2020 and that's the version of the future land use now. Ms. Cheek asked, "We made an amendment for energy projects to the comp plan which has other maps in it, but the current future land use map is that the one from 2020?" Mr. Wade answered, "correct."

Ms. Darby said the mapping that was a part of the energy amendment, is mapping to be a used as decision-making guide. It maps historical sites, transmission lines, and distance from transmission lines. There was never an intention for the process to change the future land use map to say all places should have an energy project. They are meant to be decision-making guides.

Ms. Cheek said that it states that the district would be in close proximity to a high-capacity electric generation transmission facility, but the future land use map does not show that. Ms. Cheek wasn't sure if the comp plan and this were in step with each other. Mr. Wade said they were disconnected. Mapping transmission lines typically would not be on the future land use map.

Ms. Cheek said when reviewing, we should say how it works with our comprehensive plan. Mr. Wade said there are different ways to address the application. "What we've done recently, we have a comprehensive future land use map amendment." That is something that applicants have gone through. They mapped it for industrial purposes, in addition to the rezoning and the conditional permit for a solar facility. When applying for a rezoning, and prior to that, if the land does not meet the future land use, they would also have to request an application to amend the future land use map as well.

Mr. Wooden said that it would give the County more control over the existing projects. "If you blatantly amend the map, we'll put this new zone on the map, then any and everybody that wants a project can come in and say, "Well, I want my project here", if done the way you are talking about. They would come with the site plan and a proposal, and we decide to A, rezone, and B, amend the map, then that gives the County more control over what to do with the property."

Mr. Wooden moved that we adopt Ordinance Amendment 2023-02 in reference to section 3-1100. It was seconded by Mr. Newby. It was properly moved and seconded to adopt the Ordinance Amendment 2023-02.

In favor: (9) Brock, Lyttle, Newby, Hardy, Lunsford, Cheek, Coggin, Seward, Wooden

Opposed: 0

Abstain: 0

PUBLIC COMMENTS: None

COMMITTEE UPDATES:

Mr. Brock requested, because there is a new Board member, that a work session be done with the Board of Supervisors and the Planning Commission to get a feel of what is expect from the Planning Commissioner. Ms. Perkins said that the Board and the Planning Commission could have a joint work session. It would be noticed as a public meeting for both. Ms. Rollins is in the process of trying to schedule a retreat for the Board of Supervisors and is tentatively looking at February. It may be a good follow-up to have a work session.

Mr. Wade said that between now and then, the Commission could give him topics to be discussed and he would transfer to Mr. Elliott and Ms. Rollins. Ms. Cheek said to include the topic of how the Board of Supervisors plan to make the County better. Ms. Cheek stated also, EDA and the Economic Development have plans and the Planning Commissions should be included.

Ms. Perkins wanted to remind the Commission of the conflict-of-interest act disclosure. The statement of economic interest is dated for the period from January 1st 2023 to December 31st 2023. They will need a physical signed copy, no electronic copy, that can be mailed and received in the office by February 1st. A hard copy can be provided.

ADJOURNMENT:

Chair Brock entertained a motion to adjourn at 8:00PM until the January 22nd meeting. It was moved by Mr. Wooden and seconded by Mr. Newby. It was moved and properly seconded that the meeting be adjourned. All those in favor signify by saying Aye.

Commissioners: Aye