

**RICHMOND COUNTY PLANNING COMMISSION
MEETING MINUTES**

February 10, 2014

The Richmond County Planning Commission held its regularly scheduled meeting on February 10, 2014 in the Public Meeting Room, County Administrative Building, Warsaw, VA.

The following members were present:

Glenn Bowen
Jesse Clark
Darnell Clayton
Rick Cox
Cassandra Jackson
Clifton Jenkins
Joyce Pemberton
Patrick Weakland

The following members were absent:

Martha Hall
John Lewis

Also present:

R. Morgan Quicke, County Administrator
Andrew McRoberts, County Attorney, Sands Anderson
Mercedes Pierce, Planning Commission Secretary
J.C. Berger
Terrell Bowers
Tayloe Emery
Wayne Fisher
Nancy Finnegan
Bill Herbert
Jeff Howeth
Robin Huff
Kennon Morris
Dr. Tommy Neuman
Stanley Oliff
Sherry Pitts
Michael Sisson
Alice Wellford

Hill Wellford
R.C. Wellford

CALL TO ORDER, INVOCATION, AND PLEDGE OF ALLEGIANCE

R. Morgan Quicke, County Administrator, in Chairperson Hall’s absence, called the meeting to order at 7:00 p.m.

Mr. Quicke informed everyone that Darnell Clayton has yet to be officially reappointed due to a technicality, so the Planning Commission needed to appoint an Acting Chair. Joyce Pemberton nominated Rick Cox to act as the Planning Commission Chairman during this meeting. Jesse Clark seconded the motion and all were in favor.

Mr. Quicke read a letter addressed to the Planning Commission members from Chairperson Hall explaining the reason behind her absence and her suggestion to only receive comments from the public during the Public Hearing on the proposed amendment to the Zoning Ordinance and hold off on making a recommendation to the Board of Supervisors until the March Planning Commission meeting.

Jesse Clark gave the invocation and Rick Cox led everyone in the Pledge of Allegiance.

APPROVAL OF MINUTES FROM JANUARY 6, 2014 MEETING

Rick Cox requested the word, “downsize,” be replaced with “downside” in the first sentence on page five of the minutes. Cassandra Jackson made a motion to approve the minutes with the correction. Clifton Jenkins seconded the motion and they were approved unanimously.

PUBLIC HEARING – PIER LENGTH ORDINANCE AMENDMENT

R. Morgan Quicke introduced Mr. Andrew McRoberts, County Attorney, Sands Anderson, and informed the Planning Commission members of two letters received this same day from Hill Wellford and Terrell Bowers. These two letters were the only correspondences received to date. Mr. Quicke informed everyone that the notice for this Public Hearing was advertised in the Northern Neck News for two weeks.

Mr. Quicke read the following Public Hearing notice:

In accordance with §15.2-2204 of the Code of Virginia, 1950 as amended and pursuant to §15.2-2310 of the Code of Virginia, 1950 as amended, the Richmond County Planning Commission

hereby gives notice that a Public Hearing will start at 7:00 P.M., February 10, 2014, in the Public Meeting Room, County Office Building, Warsaw, Virginia for the following:

- *To receive public comment on the proposed amendment to the Richmond County Zoning Ordinance, which would repeal Section 4-14-8-D, regarding maximum pier length. The proposal would grant all pier length jurisdiction to the Virginia Marine Resource Commission (VMRC). Proposed language may be viewed in person at the Richmond County Administrator's office at 101 Court Circle, Warsaw, Virginia 22572 between 9:00 A.M. and 5:00 P.M.*

Mr. Quicke stated the Planning Commission needed to make a motion to “initiate this ordinance amendment in the health, safety, welfare, and good zoning practices of Richmond County.”

Patrick Weakland requested Mr. Quicke restate the motion. Mr. Quicke restated the motion and Mr. McRoberts chimed in to further explain the need for this motion.

Mr. Weakland moved to accept Mr. Quicke's proposed motion. Cassandra Jackson seconded the motion and all were in favor.

Mr. Weakland made a motion to accept Chairperson Hall's suggestion to listen to comments from the public, discuss them, and hold off on making a recommendation to the Board until the March Planning Commission meeting. Cassandra Jackson seconded this motion and all were in favor.

Rick Cox declared the beginning of the Public Hearing and informed everyone that there was a sign-up sheet being passed around for anyone who was interested in speaking. Mr. Cox requested each speaker stand at the podium and state his or her name and address for the record. He also informed everyone that each speaker had a limit of three minutes to speak.

Terrell Bowers stated he did not agree with Chairperson Hall's letter when she stated that the matter at hand originated from the Rappahannock Cliffs project. He believes the “genesis” began in September 2012 after the Board of Zoning Appeals (BZA) made a decision on the Creecy pier application. Mr. Bowers explained that the Creecy pier application was for the construction of a 220' pier and the BZA turned down the first application in 2011. Mr. Bowers believes Mr. Creecy's only recourse following the BZA's denial was to take the case to the Circuit Court. According to Mr. Bowers, Mr. Creecy chose not to go that route and reapplied for a variance with the BZA a year later. This time, the BZA approved the variance for the 220' pier. Mr. Bowers restated that in 2011, the BZA denied the 220' pier, but in 2012, they approved the pier. Mr. Bowers believes the plans for the pier did not change, but the BZA vote did based upon their changing views of what constituted as a hardship in this case. Mr. Bowers informed everyone that VMRC approved his application to construct a 220' private pier back in 2010 because of his need for a longer length than 150'. Mr. Bowers stated that the State law allows a riparian owner to construct a wharf out to navigable water. He believes the terms, navigable water, are very

important in this statement. He believes the BZA is making an opinion on whether or not a citizen should be able to exercise a State given right.

Stanley Oliff asked if “they” were requesting a 220’ pier or an extension of that. Mr. Cox informed Mr. Oliff that the reason behind this Public Hearing was to determine if Richmond County wants to do away with the specific section of the Zoning Ordinance that regulates pier length.

Tayloe Emery requested the Planning Commission members turn their microphones on because it was hard to hear from the back of the meeting room. Mr. Emery requested each member consider why the 1995 Planning Commission instituted the Zoning Ordinance. He believes it occurred for aesthetic reasons and for keeping the County beautiful. Mr. Emery explained that Mr. Quicke informed him this matter has come up twice since 1995. Mr. Emery feels this Ordinance has protected the County well since 1995 and suggests the County keep the section in the Ordinance. He believes if the County removes the section, more problems will be created and they will simply be passed along to VMRC.

Michael Sisson stated he is against the proposal and feels the section of the Ordinance has worked. He’s concerned of navigation hazards that may result from landowners wanting to build pier lengths of 150’ plus for no specific reason, since there could possibly be no limitation in the County Ordinance. He explained that requests for variances for longer piers should continue to be handled on a case by case basis by the BZA.

Bill Herbert stated he is for the repeal of Section 4-14-8-D. Mr. Herbert believes pier applications go to VMRC for approval regardless if there is anything in the Zoning Ordinance. Mr. Herbert understands that VMRC requires piers to extend out to 3’ depth at mean low water and doesn’t see this as giving Richmond County residents unlimited access to pier length. He believes VMRC and the Army Corp. of Engineers will limit this to get piers to where they need to be to get to navigable waters, but not exceed the necessary length. Mr. Herbert feels repealing this section would benefit the County from a tax base and would eliminate the number of cases presented before the Planning Commission. Mr. Herbert understands that Richmond County is the only county that has a pier length limit within the Zoning Ordinance.

Hill Wellford pointed out the letter he wrote and asked if it would be submitted as a part of the record. He was assured it would be. He asked the Planning Commission to consider the points he stated in the letter and also asked they consider the length of piers as they extend into the water and not just the length of the pier. Mr. Wellford feels the Planning Commission should also be concerned about appendages. Mr. Wellford pointed out that when the Planning Commission heard from Mr. Randall Arendt, plan designer for Rappahannock Cliffs, he proposed a community dock and not a community pier that would have mooring slips.

Kennon Morris believes an application for the construction of a pier must go before the Wetlands Board. Mr. Morris stated that no one seems to know why the pier length section was included in

the Zoning Ordinance. He believes it all started with the U.S. Fish and Wildlife when they arrived to Richmond County. He explained he feels this way because his brother and he own land around Fones Cliff and they have been negotiating with people trying to control that land for five to six years, including VMRC. He believes no one wants a pier or a house at Fones Cliff. As a landowner and tax payer, Mr. Morris feels he has a riparian right to build. He feels that when a county puts a Zoning Ordinance in place dictating what the landowner can and can't do, the landowner loses value in the land. Mr. Morris also feels that he would not get a fair hearing if he were to submit an application that went to the BZA because there are three individuals on the BZA that went against Mr. Bowers. Mr. Morris believes no other neighboring county in the state has an ordinance of this nature because the waters are governed by the state and VMRC should have control. Mr. Morris stated that if he chose to build a pier, it would have to be right next to Mr. Bowers and would have to go out to 220-250' to get to 3' of water and the County tells him he can't, but VMRC tells him he can. He hopes the County does away with this section of the Zoning Ordinance and lets the state make the decision.

J.C. Berger informed everyone he is an elected Director of the Northern Neck Soil and Water Conservation District, but is not representing the organization, rather speaking as a private citizen. As a member of this specific organization, Mr. Berger has a concern over the environment and the resources which are impacted by decisions, such as the matter at hand. Mr. Berger believes removing the responsibility of local government in any decision regarding the length of piers would be a mistake. He explained that the concept of local management and local input to decisions in the area is critical and something his organization advocates and fights for everyday. Mr. Berger stated there is a valid input from VMRC, but he does not believe Richmond County should give up its responsibility in making these kinds of decisions.

Nancy Finnegan informed everyone she is a member of the Wetlands Board, but was not present in that capacity. Ms. Finnegan explained she would like to keep the Zoning Ordinance the way it is. She believes it has held the standard for why it was written up to this point. She thinks the process of approving variances works just fine. Ms. Finnegan stated she recognized the river as a natural resource for both watermen and those who use it for recreation. She believes there is a correlation between increased lengths of piers and health and safety issues, which was one of the guidelines of tonight's meeting. Ms. Finnegan believes that in order to preserve the health and safety of those who use the river, as well as the river itself, she would like to see the Zoning Ordinance remain as is.

R.C. Wellford stated that he felt Richmond County should keep the section in the Zoning Ordinance. He questioned whether or not it was appropriate for a non-resident citizen to request a zoning change before the Board. He believes the request was made based on financial reasons. Mr. Wellford feels the present system has been in place since 1995 and should remain. He doesn't think the County should give up the right it has to control piers, waterfront, water quality, etc.

Robin Hutt owns about a mile of waterfront at the end of Jones Creek and is interested in one day building a dock on her property. She doesn't believe she will be able to get out deep enough at 150' and doesn't think she should have to go through the zoning variance approval process just to have permission to build a longer pier. Ms. Hutt stated she feels the Zoning Ordinance should be changed.

Dr. Tommy Neuman stated he lives on the river, loves the river, and spends lots of time outside enjoying the river. Dr. Neuman doesn't want to see any changes that would ruin the environment and the thought of a huge pier with an appendage two and half times as long scares him. He stated he has traveled to places that have been built up and overdeveloped and has seen the effects. He thinks the Zoning Ordinance is just fine and would like to see it stay that way. He believes refraining from making any changes to the Ordinance will be healthier, safer for residents, and safer for the environment.

Jeff Howeth stated that VMRC has certain criteria that they like to site piers by. Mr. Howeth referenced Section 4VAC20-360-90 and stated that the very first item of this section speaks of water depth. He explained that according to VMRC, undesirable water depth is less than 3' at mean low water and desirable is more than 3' at mean low water. Mr. Howeth believes depth is critical because VMRC recognizes a practice of prop dredging, meaning if you put a boat into shallower water and try to moor it, it has a tendency to stir up the bottom and do a lot of things you don't want to see happen. He believes mooring one or two boats at a private pier should be the equivalent of mooring two or three boats at a community facility. He also stated that the lifts under boats need to have extra water depth to be able to get under the boat to put the boat in and lift it. Mr. Howeth stated that with restrictions on length in Richmond County, rather than looking at depth in Richmond County, a lot of the issues are problematic and sends the citizens to the Board of Zoning Appeals. He informed everyone that VMRC and the Army Corp. of Engineers, through multiple regulations, dictate the navigation issues. He believes these agencies are the experts and the reason why surrounding counties don't get into issues of pier length. He believes these agencies determine how to best apply riparian rights to individual cases.

Tayloe Emery asked to speak again and was granted the request. He stated that maybe Richmond County is "smart" for not referring pier regulation to VMRC and the fact that other counties do, should not be of concern to Richmond County. He believes the Zoning Ordinance has worked well for the County and kept it beautiful.

Rick Cox closed the Public Hearing.

STORMWATER MANAGEMENT ADOPTION – PUBLIC HEARING DATE

R. Morgan Quicke informed the Planning Commission of House Bill 1173, which would allow smaller localities (non-MS4), such as Richmond County, to not have to adopt a Stormwater Ordinance, thus giving it back to the Department of Environmental Quality. There is an emergency clause in this legislation that would allow it to be done before the July 1st

implementation deadline. Mr. Quicke stated that the Bill has been passed by the House, got out the Senate Committee the other day, and hopefully, will go to the Governor soon. Mr. Quicke suggested scheduling the Public Hearing for the March meeting just as a precautionary measure.

J.C. Berger, NNSWCD, informed everyone that this Bill is also supported by Delegate Margaret Ransone and provided further clarification of this Bill.

Rick Cox asked if this Bill was a part of Delegate Ransone's Bill to exempt single family residences from the fees.

Patrick Weakland informed everyone that HB 1173 passed the House with a vote of 93-1. Mr. Weakland stated he believes several bills, including Delegate Ransone's, were incorporated into HB 1173.

Mr. Berger stated that the year extension did not pass through the subcommittee.

Glenn Bowen stated he doesn't believe the County is opting out of the Stormwater Ordinance with the approval of the Bill, rather referring it back to the State. He also stated that the State could have a stricter plan.

Mr. Weakland read a few sentences from the first paragraph of HB 1173.

Mr. Cox encouraged the Planning Commission to read over the Bills pertaining to the Stormwater program.

Mr. Quicke encouraged proceeding with the steps of implementing the program in case the Bill is not approved.

Mr. Weakland made a motion to advertise for the Public Hearing for Stormwater Management Adoption for the March 10th Planning Commission meeting. Joyce Pemberton seconded this motion.

Jesse Clark suggested pushing the Public Hearing back to the April Planning Commission meeting in hopes of knowing whether or not HB 1173 would be passed.

T. Richard English reminded everyone that if the County were to stay on schedule with implementing the program by July 1st, the Board of Supervisors would need to hold their Public Hearing on May 8th.

Jesse Clark made a substitute motion to hold the Stormwater Management Adoption Public Hearing at the April Planning Commission meeting. Clifton Jenkins seconded this substitute motion. The motion carried with a vote of 5-2 (*Glenn Bowen – yay; Jesse Clark – yay; Darnell Clayton – abstain; Rick Cox – yay; Cassandra Jackson – nay; Clifton Jenkins – yay; Joyce Pemberton – nay; Patrick Weakland – yay*).

OTHER BUSINESS

There was no business to be discussed.

PUBLIC COMMENT

Harry Smith, Jr. stated that he is a member of the Board of Zoning Appeals and there were other reasons why the BZA turned down Creecy’s pier application the first time.

ADJOURNMENT

There being no further business, Rick Cox adjourned the meeting at 8:01p.m.

Respectfully submitted,

Mercedes Pierce
Planning Commission Secretary