TOWN COUNCIL & PLANNING COMMISSION

Joint Work Session
Cape Charles Civic Center
August 21, 2023
6:00 PM

At approximately 6:00 p.m., Chairman Bill Stramm, having established a quorum, called to order the Work Session of the Planning Commission. In addition to Chairman Stramm, present were Commissioners Bill Ashworth, Paul Grossman, Jim Holloway, Dennis McCoy, Shannon Smith, and Michael Strub.

Mayor Adam Charney, having established a quorum, called to order the Work Session of the Town Council. In addition to Mayor Charney, present were Vice-Mayor Bennett, Councilmen Buchholz and Grossman, and Councilwoman Holloway. Councilman Butta participated via conference call from Richmond, VA. Councilman Follmer was not in attendance.

Staff in attendance were Town Manager John Hozey, Planner/Zoning Administrator Katie Nunez, Planning Administrative Assistant Maureen Meditz, and Town Clerk Libby Hume. There were no members of the public in attendance.

The purpose of the joint work session was to review and discuss the proposed zoning ordinance changes.

Planning Director/Zoning Administrator Katie Nunez began by explaining the issues which caused the delay in getting out the packet and the redline version of the document. She had been working with Summit Engineering Services for about eight months on Summit's SharePoint site, but two days before the agenda packet needed to go out, their site crashed, and the document was lost. She had been working to recreate the document but had been unable to fully create a true redline version. Summit's costs had already exceeded their estimate, so they had been working for free.

Katie Nunez went on to review the Planning Commission Staff Report as follows: i) The Berkeley Group's report titled "*Overcoming Land Use Ordinance Barriers to Housing Development*," which was commissioned by Northampton County but included a review of each town's zoning ordinance from the perspective of housing regulations and development, was reviewed by the Planning Commission and incorporated into this document; ii) The state released a new model Floodplain Ordinance in 2017, so the model ordinance was tailored for our locality and incorporated into this document; iii) New Stormwater, Erosion & Sediment Control, and Chesapeake Bay Preservation Act Ordinances were expected in late 2023 or early 2024 will be updated at that time; iv) This evening's work session was devoted to reviewing the documents and all the proposed changes at a high-level view first. The second work session was scheduled for September 7 at 6:30 p.m. and would focus on going through a chapter-by-chapter review of the proposed changes. Many of the changes were minor and were to bring the ordinance in line with the State Code; v) The Sign Ordinance was still being reviewed by the Planning Commission Sign Subcommittee. Their draft model ordinance would be forwarded along with the recommendations/redlines/edits/comments, etc. as soon as possible and would be reviewed at a future work session; vi) The Short-Term Rental Committee was still working on the issue so no language about STRs was included in the document at this time. The recommendations from the STR committee would be reviewed and incorporated; vii) Following the September 7 work session, we would evaluate how far we had advanced in the review to determine the future work session calendar, as well as the informational meetings for the public in advance of the joint public hearings. (Please see attached.)

Councilman/Commissioner Grossman noted that reference was made to maps that were not shown and asked whether they would be included as an appendix. Commissioner Holloway added that appendices were easier to update than the zoning ordinance. Katie Nunez responded that they could be included as appendices.

Article II

Katie Nunez stated that the biggest change in Article II related to the penalties in § 2.4.3.

§ 2.4 – Administration and Enforcement:

- Councilman/Commissioner Grossman noted that in § 2.4.3, A.3, referenced a penalty of "two hundred and fifty dollars," but shown in parentheses as "($1,000)."
- A request to add reference to the State Code sections as done in other sections.

§ 2.5 – Non-Conforming Uses:

- Councilman/Commissioner Grossman noted that §§ 2.5.4 (Change of Use) and 2.5.5 (Occupancy of Vacant Non-Conforming Buildings or Structures) were removed. Katie Nunez stated that it was felt that these sections were no longer needed.

§ 2.6 – Appeals and Variances:

- § 2.6.7 – The Board of Zoning Appeals requested the addition of a timeframe for granted variances to be acted upon.

Article III

- The Residential Estate District R-E. This district was for low density development with a minimum lot size of 1 acre. There was currently only 1 parcel, the town-owned Keck property, zoned as R-E. The recommendation was to eliminate the R-E district and rezoning the Keck property parcel as PUD (Planned Unit Development). John Hozey expressed his agreement with the recommendation.

Councilwoman Holloway noted that § 3.2 was missing in the document. Katie Nunez explained that the language shown as § 3.1 – Residential District R-1 was formerly § 3.2, but moved to 3.1 when the R-E district was deleted.

Vice Mayor Bennett stated that it was very difficult to review and identify the changes when the document was not red-lined and suggested that this meeting be cut short since no one could tell what had changed.

§ 3.1 – Residential District R-1 (formerly § 3.2, but moved to 3.1 when the R-E district was deleted):

- The Permitted Uses (sub-paragraph B) were updated.
    - "Duplex dwellings provided off-street parking is provided" was added back in since there were several duplexes in the district. Councilman/Commissioner Grossman asked that a date be added to this so people could see when the off-street parking requirement took effect.
    - Condominium dwellings and Cooperative dwellings were added to all districts as included as by-right in the State Code.
    - Manufactured home dwellings were also added per State Code. There was some discussion regarding the difference between manufactured homes and trailers/mobile homes.
        - The definition of Manufactured Homes needed to be clear.
        - Katie Nunez added that the State Code required the allowance of trailers/mobile homes in Agricultural districts, which the Town did not have, but Northampton County had to add this language to their zoning ordinance.

- Accessory Uses (new sub-paragraph C) was added. Accessory buildings and Home occupations were previously shown as permitted uses but the decision was made to list the accessory uses separately.
    - Also, 'Up to two single electric vehicle charging stations" was added. There was some discussion regarding this addition, with several attendees expressing their preference to allow electric vehicle charging station as a conditional use so each request could be evaluated individually. It was noted that if a resident were to install a charging station in their garage, no one would see it or know about it. It was suggested that staff reach out to other communities to research their requirements.
        - Mayor Charney noted that two Class 2 electric vehicle charging stations were being installed by ANEC in the gravel parking lot near the silver bullet. ANEC worked with Canonie regarding a lease.
- Conditional Uses (sub-paragraph D).
    - Katie Nunez explained that in #1, she had substituted "tourist homes" with "short-term rentals," as a placeholder. There was no other language in this document related to short-term rentals (STR) since the STR committee was still reviewing the issues in order to make their recommendations.
    - Councilwoman Holloway requested discussion regarding the requirement for the Bed and breakfast (B&B) owner to live on the property, since owners of STRs are not required to do so. Many localities in Virginia no longer required owner residency for B&Bs and this requirement was in the minority of B&Bs throughout the country. B&Bs were also required to provide 6 parking spaces for their guests but could not designate those spaces as theirs.
        - John Hozey added that B&Bs and hotels were treated differently in other codes as well and agreed that this was a disincentive for new B&Bs.
    - Outdoor recreation facilities – The current ordinance includes swimming pools, tennis courts, and basketball courts. Instead of listing each separately, they were combined.
    - Adaptive Reuse was deleted in the R-1 district. It is currently included in all districts, and she asked the consultants to go through all districts to name a property that could fall under this in the R-1 district and none were found.
        - There was discussion regarding a former store and churches, etc. in the R-1 district which could be used for residential, so it was requested that Adaptive Reuse be added back for this district.
    - Conditional uses that were removed from R-1 included museums, libraries, neighborhood community center, public utilities and services.
        - Several comments were made regarding public utilities and services which could include pump stations and public bathrooms. It was recommended that public utilities and services be added back into this section.
- Area and Height Regulations (sub-paragraph E).
    - Currently, height and area regulations were included as verbiage. This information was compiled and placed in a table.
    - There was a comment that some of the current verbiage contained formulas, and it was requested that this additional information be added.
- Other Regulations (sub-paragraph F).
    - (#1) Councilman/Commissioner Grossman noted that the current language stated that subdivision of residential units was not permitted, but this version stated that the subdivision of residential lots was permitted, which was a substantial change. Katie Nunez stated that this was an intentional change, adding that we currently had condominium units throughout the R-1 district, including the green duplex across the street from the Town Hall, and per the State Code, condo units could be subdivided. Councilman Butta interjected that his house, which was next door to the Civic Center, had been subdivided into two separate units prior to his purchase. Councilman/Commissioner Grossman asked that the minimum lot size be added.

- (#2) The third sentence regarding front porches would be deleted since it was detailed in the historic district guidelines.

§ 3.3 – Residential Mixed Use District R-2:

- Currently, there were not parcels zoned as R-2 on the zoning map.

§ 3.4 – Residential Multi-Family District R-3:

- Permitted Uses (sub-paragraph B) included Single-family dwellings and Manufactured home dwellings, which should not be in R-3 since they were for single families, not multi-families.
  - It was requested that the State Code section be added for Group homes like in the R-1 district.
  - For Duplexes, the parking requirement needed to be added for consistency with the other districts.
  - Katie Nunez added that currently, the only R-3 parcel was a lot along Old Cape Charles Road where Angelo Manuel's apartment buildings were located.
- Accessory Uses (sub-paragraph). The item referencing electric vehicle charging stations was moved to Conditional Uses as done in the R-1 district.
- Conditional Uses (sub-paragraph D). Councilman/Commissioner Grossman questioned the inclusion of "Churches and places of worship" as a conditional use in the R-3 district, but shown as by-right in the R-1 district. He added that schools, which was a by-right use in the R-1 district, was not listed for R-3.
  - Katie Nunez stated that schools were not viable in any other district, other than R-1, from a land perspective. Churches would be added as a conditional use.

§ 3.5 – Commercial Residential CR:

- Katie Nunez explained that the CR district included the area along Mason Avenue from the former Datcha Tea House, now a residential unit, to the Kellogg Building. Four parcels at the corner of Harbor and Mason Avenues were just rezoned to CR. CR included transitional areas that could be residential, commercial or both.
- Permitted Uses (sub-paragraph B).
  - The parking requirement would be added to Duplex buildings.
  - Townhouse dwellings, Condominium dwellings, and Cooperative dwellings were new.
  - Short-term rentals was removed from item 8 Bed and breakfasts.
  - Item 11 was changed from Retail to Retail/Services.
  - Galleries and museums, and Indoor recreational facilities were new.
  - Item 16 was changed from Personal services to Professional services.
- Accessory Uses (sub-paragraph C). "Electric vehicle charging stations" was moved to conditional uses.
- Area Regulations (sub-paragraph F). There was much discussion regarding adding a maximum building size: i) If the Town wanted to grow commercial activity, including a maximum building size could deter some businesses; ii) There could possibly be a maximum size for residential, but not commercial; iii) Language could be added stating that for residential buildings, the requirement of R-1 should be followed; iv) There would still be required setbacks, so a building could not cover the entire lot; v) Common-wall buildings, like some on Mason Avenue .should not be permitted.
  - Clarification was needed stating that this was in the historic district overlay.

§ 3.6 Commercial District C-1:

- Permitted Uses (sub-paragraph B).
  - Item 4 was changed deleting "and other stores," leaving "Retail."
  - Item 7 was changed adding distilleries and breweries.
  - Professional services, and Indoor recreation were added.
- It was noted that Accessory Uses was omitted and should be added.

This evening's review stopped at the end of § 3.6 Commercial District C-1.

Katie Nunez stated that she would provide a report showing the number of lots in each zoning district for review at the next work session, which was currently scheduled for September 7th beginning at 6:30 p.m. The correct, red-lined version will be provided.

Motion made by Councilman Buchholz, seconded by Councilwoman Holloway, to adjourn the Town Council Work Session. The motion was approved by unanimous vote.

Motion made by Commissioner Grossman, seconded by Commissioner Holloway, to adjourn the Planning Commission Work Session. The motion was approved by unanimous vote.

The joint work session was adjourned at 7:54 p.m.

Mayor Adam Charney

Chairman Bill Stramm

Town Clerk

PLANNING COMMISSION
STAFF REPORT

Meeting Date: August 21, 2023
Prepared by: Katie H. Nunez, Planning & Zoning Administrator
Date: August 4, 2023
JOINT WORK SESSION: DRAFT ZONING ORDINANCE REVIEW

In 2021, the Town engaged Summit Engineering Services for two scopes of work: 1) Comprehensive Plan Update; and 2) Review and Update to the Town's Zoning Ordinance. Once we completed the Comprehensive Plan work in December 2022, we turned our attention to working on the Zoning Ordinance review and have been diligently working on this over the last 8 months.

The intent of our review of the zoning ordinance, as identified in the Request for Proposals document and contract with Summit Engineering, stated that the intent is to conduct a third-party review of the entire zoning ordinance, identify inconsistencies, streamline categories of zoning districts, produce a current zoning map, and ensure compliance with state law. Additionally, propose recommendations based upon the consultant's practical experience in this matter as it relates to the Town's dimensional requirements in the zoning districts and any outdated development concepts.

This review was approached from these perspectives:

1) Provided Summit Engineering the Town staff's list of issues/items that needed to be addressed to clarify and/or simplify the ordinance, where possible. As part of this review, look at each section for consistency of presentation, formatting, etc., especially within the zoning districts (Article III).

2) Review the proposed amendments based upon the Planning Commission's review of the Berkeley Group Report called "Overcoming Land Use Ordinance Barriers to Housing Development" which was a report commissioned by Northampton County but included a review of each town's zoning ordinance from the perspective of housing regulations and development.

3) Review of the ordinance for compliance with the requirements of the Code of Virginia relative to Zoning Ordinance, Floodplain Ordinance, Chesapeake Bay Preservation Act Ordinance, Stormwater Ordinance, Erosion & Sediment Control Ordinance, Wetlands and Coastal Dune Ordinance, Subdivision Ordinance and Site Plan Ordinance. The state had released an updated model Floodplain Ordinance in July 2017 so, instead of a marked-up Article VI (Floodplain Ordinance) of the Zoning Ordinance, we have taken the model ordinance and tailored it to our locality with a few items highlighted for your consideration.

PLEASE NOTE: the state is in the midst of revising the Stormwater and Erosion and Sediment Control laws which will most likely result in new model ordinances being issued by the State in late 2023 or early 2024 which we will need to take up at that time.

At this time, the bulk of the ordinance review has been completed and is ready for full Planning Commission and Town Council input to determine if the proposed changes are consistent with our intent when we started this process.

The first work session (August 21, 2023 @ 6:00 p.m.) is devoted to reviewing the documents and all the proposed changes at a high-level view first.

The second work session (September 7, 2023 @ 6:30 pm) will be focused on going through a chapter-by-chapter review of the proposed changes.

As noted above, many of the changes are minor and are to bring the ordinance in line with the State Code. I believe the majority of the discussion at the September 7, 2023 meeting will be focused on Article III (Zoning Districts), Article IV (General Regulations. Applicable to all Zoning Districts), and the new Appendix A – Definitions, which is being pulled out of Article II and will now be a stand alone for all definitions relative to the zoning ordinance, unless there were very specific definitions associated with several of the state mandated ordinances (Floodplain, Wetlands & Coastal Sand Dunes).

The Sign Ordinance section, which is contained in Article IV, Section 4.1, is still being reviewed by the Sign Subcommittee of the Planning Commission relative to a proposed model ordinance which was drafted by the Virginia Local Government Attorneys' Association (VA-LGA) in 2016/2017 after a US Supreme Court Case ruling was issued that struck down localities' sign ordinances if they were structured based upon sign content since this was deemed a violation of free speech. This committee is meeting with great frequency and will forward the draft model ordinance with its recommendations/redlines/edits/comments, etc. as soon as possible to both boards and will be added to a future work session agenda item.

Following the September 7, 2023 work session, we will evaluate how far we have advanced in our review of the proposed amendments to determine the future work session meeting calendar and eventually to determine the public hearing roll-out calendar, both with Informational Meetings in advance of the Joint Public Hearings of the Planning Commission and Town Council as well as the actual public hearings themselves.

Your agenda packet is composed of the following documents:

1) Redlined Zoning Ordinance, showing all proposed deletions, additions, and other comments
2) Proposed Model Floodplain Ordinance with revisions tailored for the Town of Cape Charles
3) Redlined new Appendix A - Definitions
4) List of changes proposed in the Zoning Ordinance
5) Cleaned-up Copy of the Zoning Ordinance DRAFT dated 8/4/2023 with all proposed amendments fully incorporated