

**Northumberland County Planning Commission  
February 21, 2008  
Minutes**

The regular monthly meeting of the Northumberland County Planning Commission was held on February 21, 2008 at 7:00 p.m. in the Courthouse at Heathsville, VA with the following attendance:

Gertha Basey	Absent	Bill Kling	Present
Thomas Basker	Present	Garfield Parker	Present
Chris Cralle	Present	Jim Stone	Present
Alfred Fisher-Chairman	Present	Charles Williams	Present
Ed King	Absent		

Others in attendance:

Richard Haynie (Board of Supervisor Ex-Officio Member)

W.H. Shirley (Zoning Administrator)

Luttrell Tadlock (Assistant County Administrator)

**RE: INVOCATION**

Garfield Parker gave the invocation.

**RE: JANUARY 17, 2008 MINUTES**

With a motion from Chris Cralle, seconded by Jim Stone, and approved by all, the January 17, 2008 minutes were approved as written. The vote was as follows:

Gertha Basey	Absent	Bill Kling	AYE
Thomas Basker	AYE	Garfield Parker	AYE
Chris Cralle	AYE	Jim Stone	AYE
Alfred Fisher-Chairman	AYE	Charles Williams	AYE
Ed King	Absent		

**RE: BOARD OF SUPERVISORS REPORT**

Luttrell Tadlock gave the Board of Supervisors report.

**RE: REQUEST BY JAMES L. DUNN FOR A CHANGE IN ZONING DISTRICT CLASSIFICATION, TO REZONE TAX MAP PARCEL #36A-(1)-67.**

Luttrell Tadlock presented the request by James L. Dunn of Deep Water Marina, LLC, owner, for a change in zoning district classification to rezone Tax Map Parcel #36A-(1)-67 from Business (B-1) to Residential Waterfront (R-2), in order to construct twenty-eight (28) condominium units. The aforesaid tax map parcel is located on Rt. 200 at 104

Glebe Point Lane. Parcel #36A-(1)-67 is in the Fairfield Magisterial District containing 1.2 acres. The density of this project would be .043 acres per condominium unit.

Al Fisher opened the public hearing.

Anne Belenger- 188 Hidden Cove Ln: In May 2000 and December 2003 when the Board considered a request for a marina, Mr. Dunn supported his request with a promise to construct a restaurant and motel. The Board approved the marina. He is entitled by right to construct the restaurant and hotel under the current zoning regulations, with no need to hold a public hearing. The oyster house footprint was grandfathered along with additional footprint which was allowed due to the exchanging of a certain amount of impervious land to pervious land, again no public hearing needed. Mr. Dunn did not apply for a building permit for the hotel/restaurant until late December 2003, after the marina was approved. Since the permits specification were within the existing zoning rules, again no need for a public hearing. In 2005 Mr. Dunn applied for a rezoning of the property in order to construct fourteen condominium units. Mrs. Belenger stated Mr. Dunn noted at the public hearing that the business climate had changed and the hotel was no longer feasible. She continued by saying that Mr. Dunn said at the public hearing he was only doing what was asked by the public and that was to reduce the amount of traffic on land and water and that he would also remove the fuel and septic pumpout. She noted Mr. Dunn's application for a building permit has expired, and questioned why the hotel had not been constructed. Mrs. Belenger questioned whether he was having trouble getting financing, or having trouble getting contractors. She believes that Mr. Dunn was just waiting for a change in the composition of the Board of Supervisors or is this just a coincidence in timing. She commented that as a County resident she feels frustrated and deceived by Mr. Dunn's less than transparent actions.

Gerard Belenger- 188 Hidden Cove Ln: Mr. Belenger stated that Mr. Dunn commented that the condominiums would be less intrusive than the hotel/restaurant. Mr. Belenger believes that this hotel will never be built for two reasons: 1) Mr. Dunn has had permits in hand for four years and has not built the hotel. 2) Mr. Belenger noted that he had said at a previous public hearing he questioned the feasibility of a hotel. He questioned if one had a forty to fifty foot boat, why would one travel a half mile up river to park it next to a noisy bridge to live in what could be no more than a one bedroom apartment. He doesn't think the choice is between a hotel or a less intrusive condominium development but is between a condominium development and a more sensible use of this property. The County has a choice and voice because the condominium development requires a change in zoning. Allowing the rezoning, and therefore allowing the development of the condos, would be a violation of the spirit of both the Chesapeake Bay Act and the stated goal of the Comprehensive Plan.

Nancy Brand- 194 Glenside Terrace: Mrs. Brand's concern is with the traffic that this application would create. She is concerned with the fact Mr. Dunn's previous request was for fourteen units which was denied and he is now asking for twenty-eight units. There will be a lot of congestion in that area if this is approved. Mrs. Brand noted that one of the perks of the Planning Commission is to keep Northumberland people in

business in Northumberland County. The Great Wicomico is beautiful and if this is approved, we will be doing something that will not be reversible.

Lytton Land- 125 Airstrip Ln.: Dr. Land doesn't believe anything could be constructed on this site and be safe. As he understands it this base is all oyster shell. He questioned the amount of impervious surface on the property. He also questioned what would happen to the storm water from the roof, normally it is placed in a french drain or dry well where the soils can take out phosphorous, but this is all oyster shell, you might as well take the pipe from the gutter and place it in the water. His main concern is the height of the building, the rendition shows five stories. He is concerned about the precedence this will set. He read the zoning ordinance language pertaining to height regulations, and stated that the portion of the zoning language that allows approval from the zoning administrator on any building greater in height than thirty-five feet should not be in the hands of one person, this should be a position that the County should take. He questioned whether the County would want thirty-five or forty-five ft. buildings. Buildings of this size block peoples' views which is a precious commodity. He asked the Planning Commission to review the height ordinance.

Ilona Duncan- 199 Wicomico Dr.: Spoke in opposition of Mr. Dunn's project. Ms. Duncan read from her letter submitted to the Commission. (This letter is filed with this meetings papers.)

Bill Magee- 374 Creekside Dr.: Mr. Magee complimented the previous speakers. He questioned the engineering feasibility of the project. This project would have too many people on such a small piece of property. He questioned the parking. He felt that constructing the condominiums would be a poor project. Visual pollution is an equally important element. He urged the Commission to reject the application.

Joe Madej- 24 Mila Rd.: Mr. Madej stated that he was representing the Northumberland County Economic Development Commission. He commented that the Economic Development Commission is recommending that the property not be rezoned and left as a Business parcel. This property is better suited for business. Keeping the restaurant/hotel would create jobs for the County as well as providing sales tax revenue.

Sandy Harris- 2074 Pumpkinhill Rd: Mrs. Harris stated this project goes back to 2003. Her recollection during a Planning Commission public hearing was that Mr. Dunn advised the Commission and the public that he had the money and he would get what he wanted. She has been consistent in her objection along with her husband. She is concerned with the drain on the water table, the sewer, traffic accessibility for twenty-eight residential units. She is also concerned about the impact on the river. She stated that she objects to the idea of changing this property from Business to Residential Waterfront.

With no further public comments, the public hearing was closed and the matter was before the Commission.

Chris Cralle asked that the one letter of support be read aloud as it was received just prior to the Commission meeting. The letter was read to the Commission.

Al Fisher asked the Commission if they had time to read all other correspondence and if any others needed to be read aloud. With there being none, the Commission moved forward.

Garfield Parker asked where the sewer and water was going to be located.

W.H. Shirley stated to the best of his knowledge all water and sewer is off-site.

Al Fisher asked for clarification on the fact that the Commission is strictly looking at the rezoning and not the shape, facade, and the size. We are debating the rezoning.

Luttrell Tadlock noted that the Commission is looking at whether this property should be rezoned for the purposes of condominium units. However, he noted that once the property is rezoned to Residential Waterfront, the property owner is allowed to do any of the permitted uses under that zoning district classification.

Jim Stone noted that he voted against the rezoning request when this matter was before the Commission in April 2005. He has since studied this project to see if he had made a mistake, and stated that he didn't think he did. The more he sees and hears he would not change his vote.

Al Fisher asked what has been done on site so far comes under the marina.

Luttrell Tadlock explained that is correct and any other permits that he has pulled for the sheds on the property.

Charles Williams asked that we hear from Mr. Dunn.

Jim Dunn stated that he wanted to clarify some misconceptions. The project was originally designed for 21 suites and a restaurant. The engineering on this project for the soils was done by ECS from Williamsburg. Every part of this project has been done by engineers. Over the course of this past year the installation of pilings for the building and the pilings for the marina and the bulkhead have been completed. The building will sit on 121 12x12 concrete pilings, this is not normal construction. The gentleman that had the original rendering showed five stories, since this exceeded the height limit we have now reduced it to four stories. This project meets the Chesapeake Bay Act as it was enacted at the time the site plan was approved. Parking for the hotel/restaurant and marina has been approved and the same number parking spots would be needed for the condominiums. The building, footprint, and parking is the same as submitted. The reason it has taken so long is due to the fact it takes time to plan the proper engineering, to find the contractor to produce and place the piling. Mr. Dunn noted that the bulkhead was finished before winter, along with the bulkhead tiebacks, and the concrete path. The reason the fill has not been completed is that the foundation would be different for a

condominium than it would be for a hotel/restaurant due to stacks for sewer and utilities. He noted that there was a certain amount of time that he had to wait from the last time the project was rejected before he could reapply for the condominiums. He also wanted to meet his obligation for the permits for the bulkhead and the marina, which was met. Mr. Dunn noted that the bulkhead and marina has been paid for. There is not a loan or mortgage on anything that has been done so far. The economic situation has changed, as far as a hotel, it would take longer to put the main structure up for this. The economics is not there for it right now. They prefer to put this building in condominiums. Talking to the local realtors, the market is returning to residential and there would be a market for condominiums at this time. The reason for twenty-eight units is to allow for flexibility for smaller and larger units; the square footage has not changed. Mr. Dunn explained that another utilization of this building for could be for office space. However, the market is not here for this particular need.

Al Fisher clarified Mr. Dunn's request to change from a business to residential is based on economics.

Mr. Dunn stated that was correct.

Garfield Parker asked if this project conformed to the regulations set in the Chesapeake Bay Act.

W.H. Shirley stated the site plan submitted by Mr. Dunn's engineers complied with the Chesapeake Bay Act.

Richard Haynie asked how many units would normally be allowed in this zoning district.

W.H. Shirley noted that under normal development, only one dwelling unit would be allowed.

Charles Williams asked if there was any criteria for the number of condominiums that could be placed on a lot.

W.H. Shirley stated that the County does not have any criteria adopted for the number of condominiums one can place on a piece of property.

Al Fisher questioned if any application would need to be made to the Virginia Department of Transportation (VDOT) in order to look at traffic.

W.H. Shirley commented that VDOT would need to approve any entrance. He continued by saying that he has not received anything stating that any part of the hotel/restaurant or the condominium project had been reviewed or approved by VDOT, and to his knowledge a traffic impact study has not been completed.

Al Fisher asked if the property was rezoned, what would be allowed to be placed there.

Luttrell Tadlock read the permitted uses in the Residential Waterfront (R-2) District.

Gerard Belenger asked for a point of order. Granted by Mr. Fisher, Mr. Belenger stated that he objected to the Commission trying to separate the condominiums from the rezoning request.

Al Fisher clarified that we are looking at the rezoning. He feels that the Commission should try to enlighten the public as to what could happen to the property once it is rezoned. Once the rezoning takes place, he would be allowed to do any of the permitted uses in the Residential Waterfront (R-2) District.

Gerard Belenger stated if the rezoning was granted and then he found out later that the condominiums could not be done, if he was Mr. Dunn he would take the County to court being as he stated his purpose for the rezoning.

Luttrell Tadlock pointed out that if for whatever reason the rezoning is granted, the condominiums are not permitted by right. Condominiums would need to come back before the Board of Supervisors in another public hearing and at that time they would consider the number of units.

Al Fisher asked Mr. Shirley if the property is rezoned, and Mr. Dunn decided to do another permitted use on that property, could he do that?

W.H. Shirley stated that is correct. Once it is rezoned then he would be allowed to do any of the permitted items. This is not a conditional rezoning where it would limit what he could do with the property.

Charles Williams noted that the public made some good comments. Mr. Dunn has spent a lot of money on this property. There have been concerns about view pollution. This County is a pretty County and if you go back 100 years it would be even prettier than today. We are all here and using it and he does not think he could base his decision on what someone wants to do by considering it view pollution. If so then, he would be saying that no one else could do anything on the water. This property seems like it is in an area that would accept the application. As far as the rezoning, he does not want to deny Mr. Dunn the rezoning but at the same time he does not want to place too much density on this property.

Jim Stone questioned the height of the building. At the time this was brought up before the County, the County did not have any means of reaching the top floor in case of an emergency. He questioned Mr. Dunn if he was still planning on using the same building design. Mr. Stone also asked about the screening of the air conditioning units on top of the building.

Mr. Dunn noted that the exterior might change but the height would stay the same. Mr. Dunn stated that he is allowed to build a 45 foot building with a four foot parapet wall which would conceal the air conditioning units somewhat.

Chris Cralle asked Mr. Dunn what the minimum number of units would be to make this project viable.

Mr. Dunn answered fourteen units would be the minimum that he could do to make the project viable, roughly three units per floor.

Charles Williams wanted clarification on whether the number of units would be considered tonight.

Luttrell Tadlock explained to the Commission they need to take into consideration that the condominiums are apart of this application. The condominiums are why the re-zoning is being requested however, they may make a recommendation that the number of units be reduced, but the number of condominiums would still need to go before the Board of Supervisors in a separate public hearing.

Garfield Parker noted that we talk about a lot of “feel good statements” in the Comprehensive Plan, about employment etc. When are we going to take the Comprehensive Plan seriously? The Commission has seen a lot of empty promises come through. He continued by saying that we look at employment and we are in the same place we were four years ago, look at the Wal-Mart in Kilmarnock. We have to think about fifty years down the road and what our grandkids will say. The Bay is dying and we’re not doing anything to help it.

Jim Stone asked if there are any studies from the state showing the amount of traffic on route 200 between Kilmarnock and Burgess.

Luttrell Tadlock referenced the data from table 4.1 in the 2006 Comprehensive Plan.

Charles Williams questioned if Mr. Dunn would be allowed to do what he is allowed to do now if the property is rezoned.

Mr. Shirley stated that it would not affect the marina as that is done by special exceptions, the restaurant is allowed by right in R-2, and the motel/hotel would not be allowed in the R-2 zoning district.

Bill Kling stated he is the Vice Chairman for the Economic Development Commission and wanted to clarify that when this matter was before the Economic Development Commission he abstained from voting knowing he would be voting on the Commission level.

Jim Stone stated that in all fairness to the public and Mr. Dunn we should look closer at the traffic impact on the area between Burgess and Kilmarnock on Rt. 200. He stated that he knows the state has been working on traffic studies. He noted his concern about widening of the road if it needed to be at any point in time and what effect that will have on the single lane bridge

Charles Williams asked will we base the same criteria on the next project?

Garfield Parker and Charles Williams questioned what information the Commission has or doesn't have now that we could later.

Charles Williams continued by saying that he knows people do not want to see anything there however, the project has started. He continued by saying Mr. Dunn could do fourteen units and by reducing the number of units there should be less traffic.

Bill Kling stated he is perplexed by the way this project has meandered all over the place in the past several years. The assertion has been made that conditions have changed substantially since the project has gone from restaurant/hotel to fourteen condominiums to twenty eight condominiums. He continued by saying he does not have any market data in front of him to determine what those changes look like or what they have been. It has been his understanding that the market conditions on the Northern Neck don't necessarily follow those in Northern Virginia, Richmond, or Tidewater area. He said he feels that it may be easier to make a decision if we have that information in front of us as well.

With a motion from Jim Stone, seconded by Garfield Parker, and approved by all, the Commission tabled the request until March 20, 2008. The vote was as follows:

Gertha Basey	Absent	Bill Kling	AYE
Thomas Basker	AYE	Garfield Parker	AYE
Chris Cralle	AYE	Jim Stone	AYE
Alfred Fisher-Chairman	AYE	Charles Williams	AYE
Ed King	Absent		

In order to proceed with a decision at the March 20, 2008 meeting regarding the rezoning for parcel # 36A-(1)-67, the Commission asked for a traffic impact analysis along with a market analysis showing what type of real estate is preferred economically in today's market and finally to show what Chesapeake Bay Act requirements must be met on this property.

**RE: WATER ACCESS SITES**

Luttrell Tadlock reported that Kenny Eades and he are still working with the Northern Neck Chesapeake Bay Access Authority to make improvements at Coopers Landing.

**RE: OTHER BUSINESS**

Luttrell Tadlock presented the Commission with a resolution from the Board of Supervisors (copy can be found in this meetings file) in order for the Planning Commission to review the County Zoning Ordinance and develop a schedule for any updates needed and specifically list the areas within the ordinance that will need to be

updated. The Commission will then report back to the Board of Supervisors their findings at a joint meeting.

Luttrell Tadlock asked the Commission if they would like County Staff to present a draft schedule to the Commission at their March 20, 2008 meeting or would the Commission like to appoint two members to work with the Staff to layout a schedule.

Garfield Parker and Al Fisher volunteered to aid staff in drafting a schedule to be presented to the Commission on March 20. Jim Stone and Charles Williams stated they would volunteer as alternates in the event that Mr. Parker or Mr. Fisher might not be able to be at any of the meetings.

Next, Luttrell Tadlock noted the Board of Supervisors sent the Sexually Oriented Business Ordinance to the Commission to review. Mr. Tadlock distributed to the Commission a draft copy of the ordinance and stated that the Commission will need to discuss this further at their March 20, 2008 meeting.

Last, Luttrell Tadlock stated the Board would also like to have the Commission define "Aquaculture"/"Aquaculture Facility". The Economic Development Commission is studying, with other agencies, the feasibility of having a Mid-Bay Research Facility in the Northern Neck.

**RE: PUBLIC COMMENT PERIOD**

Lytan Land stated that Northumberland Association of Progressive Stewardship (NAPS) is working on a canoe/kayak guide for the County. He urged the Commission not to concentrate so much on the boatramps, but to concentrate on places where fishing piers could be constructed.

Greg Haugan stated that he appreciated the comments on the need to follow the 2006 Comprehensive Plan.

**RE: ADJOURNMENT**

With a motion from Garfield Parker, seconded by Charles Williams, and approved by all, the meeting was adjourned. The vote was as follows:

Gertha Basey	Absent	Bill Kling	AYE
Thomas Basker	AYE	Garfield Parker	AYE
Chris Cralle	AYE	Jim Stone	AYE
Alfred Fisher-Chairman	AYE	Charles Williams	AYE
Ed King	Absent		