

**Northumberland County Planning Commission  
September 18, 2008  
Minutes**

The regular monthly meeting of the Northumberland County Planning Commission was held on September 18, 2008 at 7:00 p.m. in the Courthouse at Heathsville, VA with the following attendance:

Thomas Basker	Absent	Bill Kling	Present
Chris Cralle	Present	George Kranda	Present
Kevin Elmore	Present	Garfield Parker	Present
Alfred Fisher-Chairman	Present	Jim Stone	Absent
Ed King	Absent	Charles Williams	Present

Others in attendance:

Richard Haynie (Board of Supervisor Ex-Officio Member)

Luttrell Tadlock (Assistant County Administrator)

W.H. Shirley (Zoning Administrator)

**RE: INVOCATION**

Garfield Parker gave the invocation.

**RE: JUNE 19, 2008 MINUTES**

Upon motion from Garfield Parker, seconded by George Kranda, and approved by all, the July 17, 2008 minutes and August 21, 2008 report were approved as written. The vote was as follows:

Thomas Basker	Absent	Bill Kling	AYE
Chris Cralle	AYE	George Kranda	AYE
Kevin Elmore	AYE	Garfield Parker	AYE
Alfred Fisher-Chairman	AYE	Jim Stone	Absent
Ed King	Absent	Charles Williams	AYE

**RE: BOARD OF SUPERVISORS REPORT**

Luttrell Tadlock gave the Board of Supervisors' report.

**RE: AMENDMENT TO THE NORTHUMERLAND COUNTY ZONING ORDINANCE CHAPTER 148, ARTICLE V, SECTION 43 B; USE REGULATIONS IN RESIDENTIAL WATERFRONT (R-2): TO ADD "AUTO RECONDITIONING, TRUCK REPAIRING, RE-TREADING" AS A CONDITIONAL USE.**

Luttrell Tadlock explained to the Commission the proposed language.

Al Fisher opened the public hearing.

Ginny Estelle stated she was speaking for the White Sand Harbor Homeowners Association. She noted that White Sand Harbor is opposed to having this type of business in the Residential Waterfront. This type of business does not fit in the R-2 Zoning district and should be in a Business district.

Anne Belanger read the purpose of the Residential Waterfront (R-2) from the County's Zoning Ordinance. This request is not compatible with this zoning district. Once a conditional request is granted it is difficult for the County to monitor that those stipulating conditions are continued to be met. Since the County's zoning regulations are currently under revision, individual changes should be deferred.

Lee Allain noted that he lives in Coan Harbour Estates. Although he does not have an official sanction from the Homeowner's association, he has received calls during the past several weeks and everyone is concerned. Coan Harbour and he are against what seems to be almost a conversion of the Residential Waterfront district.

Gerard Belanger is also opposed to the proposal. Waterfront land is expensive and people who buy waterfront land also build expensive houses. From the last real estate assessment we are paying more and more of the taxes in the County. If the County approves this proposal it will "kill the goose that lays the golden egg." If he knew that there is a possibility of a truck repair shop that could be built next to him, he would go elsewhere where he could get more security for his enjoyment of the property as well as the value. He also noted that he has a personal interest, because there is someone in their neighborhood who is running a business in violation of his use permit issued many years ago. It is not pleasant to wake up in the morning with people banging pieces of metal together. There is another individual that lives next door to him who is involved in car refurbishing activities and can get away with it because it is "a hobby". If there is a possibility that he could turn that into a commercial operation, there is a high risk that he would. Listening to the grinding of metal or smelling the paint is quite unpleasant.

Mike Worsham stated that he lives down the road from the Burgess', who asked for the amendment to the Zoning Ordinance. He noted that there are several factors that need to be brought out. The Burgess' property is approximately 2,000 yds. off the road. There is probably not a dwelling within a 1,000 ft. of where he performs the automotive services. He has a double row of pear trees and crops in the fields that completely make his property invisible. There is no noise factor. There is the smell of paint, but there are no houses close by to smell the fumes. There are many properties that are unsightly. There are many properties that have crab pots and other fishing aids in front of the houses. Where the Burgess' are located, you would not know he was there if we weren't here tonight discussing the issue. The fish plant sure isn't pretty, but it provides jobs to the community. Please consider giving Mr. Burgess a conditional use permit, even if it means limiting the number of cars he can have on the property. Mr. Burgess has always conducted himself as a gentleman.

Ray Thompson stated that he is opposed to the language as it is proposed. He stated that they have a neighbor who has put in a shop and works on a private collection. The cars are not staying there and have independent dealer tags on them or no tags at all. This private garage is 50' X 80' long. Who will in five years check when neighbors complain to determine that it needs to be shut down? He doesn't think that it would be shut down; it would be allowed to continue to exist for the next 20 to 25 years. We have to preserve the integrity of the waterfront property.

Greg Haugan asked if this request is for a specific property. The way he reads the proposed language is that it includes the entire R-2 zoning district not just a specific person's property.

Luttrell Tadlock stated the proposed language is for any property within the R-2 Residential Waterfront zoning district, not for a specific property.

Dave Willis noted he is a neighbor to Mr. Burgess. He is in support of Mr. Burgess obtaining an exception to be able to continue his business.

David Schaffer noted that he has no bone to pick with Mr. Burgess, as he has always been courteous and professional. Zoning regulations have to mean something or they mean nothing. There is no way in the English language to take the words Residential Waterfront and construe them in a manner to allow a use that is considered heavy industry. He was a labor lawyer and represented employers and a couple of his clients were in the rubber industry. By virtue of that experience he got to know a lot about these industries. Tire re-treading of any sort is a dirty, polluting industry. Truck repair involves the heavy uses of metal grinding, fabrication, cutting, etc. He is not directly affected by what Mr. Burgess would like to do; however, it does not mean he could not be affected by this at some point in the future. He is asking the Board to preserve the integrity of the zoning regulations.

Al Fisher asked Mr. Shirley if what Mr. Burgess currently is doing is considered a heavy or light industry?

W.H. Shirley noted that Mr. Burgess' business is not considered either one.

Barnaby Roberts noted that he is a neighbor of Mr. Burgess. You would not know that Mr. Burgess is there. To say to allow industry in as a conditional use is as dangerous as to say not to allow any industry in at all. What he notices is that he does not see many businesses opening. As a neighbor, he approves Mr. Burgess' request.

Linda Herring stated that she feels Mr. Burgess would still be in his former business if he wished to continue his larger business. She has been to Mr. Burgess' site where it is kept clean and does not see anything leaking into the waterways. The neighbors are in favor of this request, and she asks the Board to allow Mr. Burgess have this business.

Dave Willis stated that he is confused by some of the comments. He questioned whether or not they were there to just discuss the amendment or Mr. Burgess' specific business.

Is the Commission dealing with antiquated language that is making this more difficult than it should be?

W.H. Shirley stated the Commission should be discussing the amendment for the entire County. This would provide the opportunity for anyone that owned R-2 zoned property the chance to apply for a Conditional Use permit for this specific use.

Gerard Belanger stated that obviously Mr. Burgess is a good neighbor as they are here to support him. Is there not a simpler solution rather than making this a County wide issue? The concern is not against Mr. Burgess, but those that have spoken tonight in opposition are concerned about what this proposal can open the County up to for other properties. When precedence is set for a Conditional Use permit, it is difficult to walk away from what is stated.

Al Fisher asked W.H. Shirley what type of precedence is set for a Conditional Use and are they considered on an individual basis.

W.H. Shirley noted that each application should be considered individually but, as Mr. Belanger stated, often it is true precedences are set and are hard to break. There are no means under the current zoning ordinance to allow Mr. Burgess the ability to continue his business that is there now. Re-zoning the property would be a classic example of spot re-zoning.

Gerard Belanger questioned if conditions could be placed on the request by Mr. Burgess.

W.H. Shirley noted that any conditions would need to be advertised because the language would be more stringent than what was advertised and would be a recommendation to the Board of Supervisors.

Al Fisher questioned enforcement of Conditional Use permits. Who enforces these permits, how stringent is it enforced, and how long is it enforced?

W.H. Shirley noted that right now it is a zoning issue and falls under the Zoning Office to enforce these. With the number of Conditional Use permits issued, it is impossible for one person to enforce them. How long is it enforced? Mr. Shirley noted that he could not answer that question.

David Schaffer noted that it may be helpful if Mr. Shirley could go over the types of uses that are already allowed in the Residential Waterfront. Tire re-treading is not consistent with residential or recreational uses. Laws and regulations need to fit uniformly and if they don't they need to be denied.

Linda Herring commented that the gentleman earlier stated that he feels his neighbor is breaking the rules. Such a situation gives her the right as a neighbor to go to Mr. Shirley about this type of problem.

Billy Burgess stated that he was cited for not having a Conditional Use permit in the correct zoning district, that is why he is here tonight. He lives on a farm that has been in the Burgess' family for over 100 years and has built a house on the property. There is essentially no pollution on site. He noted that he has a waste oil furnace so that anytime he changes the oil from a car, he uses that as his heat in the winter time. His concern is that he is not looking to do re-treading but only to sand some cars in a three bay building. He told the Commission that he sold his business in 2005, went home, and put up a building because the equipment was not sold. He is retired and does one car at a time and is not looking to grow. Contract with Mr. Dunn, whom he sold his previous business to, states that he cannot have another business in the area other than the one located at Fox Point Rd. which puts him in awkward position. He noted that he does not want to do re-treading and does not look to work on heavy trucks, but he feels that he is grouped with that and this is going to be a problem and hardship on his part. He noted that he does not mind conditions, but he hates to be grouped with the other types of businesses.

Al Fisher questioned where the tire recapping term comes from?

Billy Burgess noted that it came from the County.

Charles Williams asked if the word retreading could be struck from the language.

Luttrell Tadlock noted that it could be a recommendation from the Planning Commission.

Garfield Parker asked how many cars he has there at any given time?

Billy Burgess noted that he has three stalls. One is a paint booth. Of the other two, one is a flat bay and the other has a lift. He has two cars in the shop at a time. He does towing, so he may have two to three wrecks there at one time. He still has the junkyard property on Rt. 200 where he can store the cars rather than them being around the building where his home is.

Anne Belanger stated that under present Conditional Uses isn't there one term that has to deal with cars.

W.H. Shirley responded by stating that service and repair shops are listed, but this term does not deal with automobiles. W.H. Shirley read the definition of a service and repair shop.

George Kranda stated that it is unfortunate that this text amendment has gotten wrapped around a personality. What we are really talking about is an amendment to the zoning ordinance to allow a use in a residential district. It just seems that we are confusing the present with the future. It would be great to find a way for Mr. Burgess to continue this business, but changing this zoning ordinance for that purpose does away with zoning. He has a difficulty supporting this at this time.

Bill Kling noted that there are some elements in this situation that are unfortunate, and he has a document provided by Mr. Tadlock that indicates that if Mr. Burgess had his

operation in A-1 or M-1 it would be permitted. If in B-1 it would be a Conditional Use. He cannot relocate because of his contract and the term retreading is giving us trouble. He noted that small businesses are a major part of Northumberland County; however, the term retreading gives him heartburn, and he does not see how the Commission can generalize this amendment to the ordinance and expect to avoid turmoil in the future. Zoning hearings are not pleasant to begin with.

Charles Williams is troubled with this as well. He said that he has known the Burgess' for a long time. He wishes that there was a way to allow this without there being a ripple effect throughout the County. He asked the County if the definition could be changed to remove the word retreading. The fact that this goes to a public hearing is a good thing. The citizens have the right to ask the County if they can do certain things; that is why we are here. Unless we can come up with an alternative, he is in favor of allowing this amendment, but is open for suggestions as to what else we may be able to do.

Al Fisher noted that he has concerns about the tire retreading. He has always had great faith in Conditional Use, but that faith is being shaken tonight. He does not want to see tire dumps in Residential Waterfront and does not want to see pollution running off into the Bay; however, he feels that Mr. Burgess is getting short changed. What are the strengths and powers of Conditional Uses?

George Kranda also noted the more Conditional Uses we have the more we dilute the enforceability of those uses.

Chris Cralle stated that the word hobby has been raised several times, and he assumes that this would include only those instances where money is not exchanged.

W.H. Shireley stated that is correct.

George Kranda made a motion to deny the amendment to the Residential Waterfront (R-2) District. The motion failed due to the lack of a second.

With a motion from Charles Williams, seconded by Kevin Elmore, the motion is to table the request and to have County Staff draft a definition for automobile and small truck reconditioning as it pertains to the R-2 zoning district. This definition is not to include tire retreading and truck repair. The motion was approved with the following vote:

Thomas Basker	Absent	Bill Kling	AYE
Chris Cralle	AYE	George Kranda	AYE
Kevin Elmore	AYE	Garfield Parker	NAYE
Alfred Fisher-Chairman	AYE	Jim Stone	Absent
Ed King	Absent	Charles Williams	AYE

Al Fisher asked Luttrell Tadlock to have Mr. Kilduff at the Commissions' next meeting to hear the pros and cons of Conditional Use permits.

The Commission will review the definition at a work session at the next meeting on October 23, 2008.

**RE: PROPOSED AMENDMENTS TO UPDATE ARTICLE XII, SIGN REGULATIONS, OF THE NORTHUMBERLAND COUNTY ZONING ORDINANCE.**

Luttrell Tadlock explained to the Commission that after staff further reviewed the proposed sign language there are some modifications that need to be made. Staff is requesting that the Planning Commission postpone any action until staff is able to make corrections and resubmit the corrected proposed sign language to the Commission.

Upon motion from George Kranda, seconded by Bill Kling, and approved by all, the public hearing and proposed language for the sign ordinance was postponed until staff could re-evaluate the proposed language. The vote was as follows:

Thomas Basker	Absent	Bill Kling	AYE
Chris Cralle	AYE	George Kranda	AYE
Kevin Elmore	AYE	Garfield Parker	AYE
Alfred Fisher-Chairman	AYE	Jim Stone	Absent
Ed King	Absent	Charles Williams	AYE

**RE: AMENDMENT TO THE NORTHUMBERLAND COUNTY ZONING ORDINANCE TO ADD “PRIVATE PIER AND SHORELINE STABILIZATION STRUCTURES” AS A PERMITTED USE IN THE CONSERVATION, AGRICULTURAL, RESIDENTIAL GENERAL, RESIDENTIAL WATERFRONT, BUSINESS GENERAL, AND INDUSTRIAL LIGHT DISTRICTS.**

Luttrell Tadlock explained to the Commission the proposed language and that the language was unintentionally omitted during the update of a previous version of the County Zoning Ordinance.

Al Fisher opened the public hearing.

Lee Allain spoke in favor of the changes.

With no further public comments, Al Fisher closed the public hearing.

Upon motion from George Kranda, seconded by Bill Kling, and approved by all, the Commission is recommending to the Board of Supervisors that “Private Pier and shoreline stabilization structures” be added as a permitted use in the Conservation, Agricultural, Residential General, Residential Waterfront, Business General, and Industrial Light Zoning Districts. The vote was as follows:

Thomas Basker	Absent	Bill Kling	AYE
Chris Cralle	AYE	George Kranda	AYE
Kevin Elmore	AYE	Garfield Parker	AYE

Alfred Fisher-Chairman	AYE	Jim Stone	Absent
Ed King	Absent	Charles Williams	AYE

**RE: WORK SESSION REGARDING DOG KENNELS**

Luttrell Tadlock reviewed the revised language for the dog kennel ordinance with the Commission.

George Kranda questioned private kennels which are permitted by right. Veterinarians can't even have an outdoor kennel without a Conditional Use permit. That was the big concern before. Under the proposed language, private kennels are allowed by right; where as Commercial Kennels would be allowed by a Conditional Use permit in certain districts.

The Commission wishes to have a private kennel, defined as five or more dogs, be a Conditional Use permit and staff noted that they would make all appropriate changes.

With no further comments, the Commission wishes to hold a public hearing on this proposed language on October 23, 2008.

**RE: ZONING REVIEW**

Luttrell Tadlock reviewed the proposed zoning review schedule with the Commission.

**RE: PUBLIC COMMENT PERIOD**

Greg Haugan noted that he would be giving a course on global warming. One of the things coming down the pike is a request to change the shoreline stabilization structures because that hurts the eel grass and other submerged vegetation as the Bay waters rise. They need to have the ability to creep up the shore with the rise of the water.

Richard Haynie stated he is interested in this and asked if any of this data would be available.

Dr. Haugan noted that he could give a short presentation or give the Commission a packet on the material.

Ginny Estelle commented that tonight is a perfect example that Northumberland County will need to hire more people on staff. W.H. Shirley and Luttrell Tadlock can only work but so many hours per week. The Commission and Board are doing a great job but unless someone is there to follow up on these applications, the conditions are not going to work.

**RE: ADJOURNMENT**

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

Thomas Basker	Absent	Bill Kling	AYE
Chris Cralle	AYE	George Kranda	AYE
Kevin Elmore	AYE	Garfield Parker	AYE
Alfred Fisher-Chairman	AYE	Jim Stone	Absent
Ed King	Absent	Charles Williams	AYE