

**Northumberland County Planning Commission
September 19, 2013
Minutes**

The regular monthly meeting of the Northumberland County Planning Commission was held on September 19, 2013 at 7:00 p.m. in the Courthouse at Heathsville, VA with the following attendance:

Chris Cralle	Present	Garfield Parker	Present
Kevin Elmore	Present	Albert Penley, Jr.	Present
Alfred Fisher	Present	Charles Williams	Present
Ed King	Absent		
Bill Kling	Present		

Others in attendance:

Richard Haynie (Board of Supervisor Liaison)
Luttrell Tadlock (Assistant County Administrator)
W.H. Shirley (Zoning Administrator)

RE: CALL TO ORDER

The meeting was called to order by Garfield Parker, Chairman.

Garfield Parker gave the invocation.

Garfield Parker led the Commission in the Pledge of Allegiance to the Flag.

RE: AGENDA APPROVAL

With a motion from Albert Penley, seconded by Kevin Elmore, and approved by all, the September 19, 2013 agenda was approved. The vote was as follows:

Chris Cralle	AYE	Garfield Parker	AYE
Kevin Elmore	AYE	Albert Penley, Jr.	AYE
Alfred Fisher	AYE	Charles Williams	AYE
Ed King	Absent		
Bill Kling	AYE		

RE: MINUTES- August 15, 2013

With a motion from Charles Williams, seconded by Al Fisher, and approved by all, the August 15, 2013 minutes were approved. The vote was as follows:

Chris Cralle	AYE	Garfield Parker	AYE
Kevin Elmore	AYE	Albert Penley, Jr.	AYE
Alfred Fisher	AYE	Charles Williams	AYE
Ed King	Absent		

Bill Kling

AYE

RE: COMMISSIONERS' COMMENTS

There were no Commissioners' comments.

RE: STAFF MEMBERS' COMMENTS

There were no Staff comments.

RE: CITIZENS' COMMENTS

There were no Citizens' comments.

RE: PUBLIC HEARINGS

1. An amendment to the Northumberland County Zoning Ordinance Chapter 148 to include "Tourist Home" as a Permitted Use in the A-1, C-1, R-1, R-2, R-3, and R-4 Zoning Districts. Additional requirements on Tourist Homes will also be considered if permitted by right.

Luttrell Tadlock explained the public hearing.

Garfield Parker opened the Public Hearing.

Michael McKenna stated he had several questions he would like answered. 1) How local is a property manager? 2) What is the definition of local? 3) What does the County enforce for the Home Owner's Association (HOA)? 4) Can the HOA require property owner to ID the property manager prior to rental, name and address to protect their interest? 5) Can the HOA have regulations more restrictive than the County's code? 6) Can the HOA restrict rentals and have County enforce any restrictions?

Kaz Kazenske questioned why Tourist Homes were being singularly withdrawn from the Conditional Use Permit process while other closely related usages remain as Conditional Uses such as B&B's, Boarding House, hotel/motel, or mobile homes for seasonal housing. These are all related commercial usages. He continued by asking why would the Commission deny the citizens of Northumberland County the right to express their views and position on the operation of a Tourist Home business in their community. While many of the requirements for a Tourist Home, as articulated in the proposed amendments are excellent, there are foundational criteria that need to be addressed around the issue of Tourist Homes. They need to be addressed in the Conditional Use Permit along with other issues that may be unique to the community in which the dwelling is located. The requirements should not be made a "one size fits all". He also questioned if the requirements for the operation of Tourist Home in the proposed amendment to Section 148-155 of the Zoning Ordinance intended to supersede incorporated community association bylaws and covenants currently in force throughout the County. If the answer to this question is "yes", this amendment will likely expose the

County to a series of legal actions. If the answer is “no”, then the list of requirements for a Tourist Home needs to be expanded to explicitly set forth this position and thereby, remove any uncertainty surrounding this outstanding question. Language similar to “The change to Section 148-5 to include “Tourist Home” as a Permitted Use, or the amendment to Section 148-155 setting forth the requirements for a “Tourist Home” shall not supersede an incorporated association’s bylaws or covenants as they relate to the operation of a “Tourist Home” in their community, including a prohibition of the same.” Over the past couple of years, requests of Tourist Homes have been brought to the Board of Supervisors and confronted with opposition during the public hearing. Much of this opposition came from incorporated associations located throughout the County. While there is a list of requirements, it has been questioned who will enforce these requirements. Should the Commission decide to move forward with the usage change to allow “Tourist Home” to operate as a Permitted Use, thereby closing out any public input, the Commission needs to make the effective date of the proposed change and amendments no earlier than two years from the date of enactment to allow incorporated associations time to amend their bylaws or covenants to reflect the will of their association. Just this past month, the Commission recommended and the Board of Supervisors approved that the Zoning Administrator have authority to enforce the conditions of any Conditional Use Permit with the power to issue a cease and desist order should there be a violation of any permit condition. That authority will no longer be applicable to “Tourist Homes” should this proposed amendment be enacted. For the reasons set forth above, the Board of Directors of The Tides on the Chesapeake Association believes the Planning Commission should void and withdraw the proposed amendments.

Joy Norris stated she lives in the Bridge Creek subdivision. This proposed amendment is unfortunate, as a lot of unintended consequences could result of such change. She knows who our neighbors are now. She knows the neighbors even if they are seasonal. With allowing Tourist Homes as a permitted use, she and other residents have no way of knowing who their neighbors will be, and a level of insecurity will be introduced. Their subdivision recently had three young men vandalize a home, and since the neighbor knew the young men were not related to the owner, he knew something was not right. They were recently caught and arraigned. This would not have happened if this was a Tourist Home. She doesn’t see what the problem is now. She stated their community has a covenant and restriction against commercial use. She would never have purchased a home next to a hotel etc. It is not fair to turn this into a permitted use. It should remain a Conditional Use Permit.

Wayne Goff commented he had not planned on speaking; however, he has been in property management for about forty years. He noted he has been coming down here for about ten years now. He has several articles that he has clipped out related to the goals of Northumberland County which include preservation and tourism. He commented that the individuals renting these Tourist Homes spend their money here. The owners do not rent to gypsies or hobos. The charter boat captains are doing two or three things now to make a living. He noted that he was not positive, but had heard that the motel in Burgess went to foreclosure. Although he has not talked to anyone in Zoning, he does feel the County will need to hire more people to enforce the regulations. The County also has other requirements coming such as the Stormwater regulations.

Richard Andersen stated he is the President of the Bay Harbor Estates Property Owners Association. He noted their subdivision has experienced this problem and the Board of Supervisors imposed this on them. He spent thirty six years in the Navy and saved to be in a residence not next to a Tourist Home. Over residents' objections, the Board of Supervisors approved a Tourist Home in their subdivision. They had a situation where a man was running around nude and shooting off firecrackers 3:00 in the morning. This served the people for the next individual that came before the Board of Supervisors for a Tourist Home well because it was turned down. Zoning is simple. You have business areas where businesses go, and you have residential areas where houses go. If you are going to impose Tourist Homes on the residents of this area, don't do away with the Conditional Use Permit. Otherwise, you will have to "take the heat" from the residents because these are their homes. The neighborhood should have a vote on this. The conditions are fine, but they do not fit every neighborhood. These conditions will be hard to enforce. For example limiting the number of people who can stay overnight, they could say, "Well, they left before midnight". The County is not enforcing things now. There are several "Tourist Homes" out there now, if you Google this online, in the Reedville area that do not have a Conditional Use Permit. Andersen stated that his community is on a peninsula with one way in and out, and the space between the houses can be less than 50 feet. He feels the idea of two years until the law goes into effect is a good idea to allow subdivisions the opportunity to change their covenants and restrictions. He read one letter stating homes are not selling because there are no Tourist Homes for people to come to stay and see the area. The reason houses are not selling is because we are in a recession not because we do not have Tourist Homes. Mr. Andersen stated that he didn't stay in a Tourist Home when he was looking to move here. This is important to him and most people, so the Commission "better get it right".

Jim Britton noted he lives in Twin Harbor Subdivision, and they had the Tourist Home fight this year. One of their property owners applied for a Conditional Use Permit for a Tourist Home. They had total chaos in their subdivision because of the opposition of the Tourist Home. Fortunately, they had a lot of input from the property owners and the Board of Supervisors denied the permit. He appreciates that the Board of Supervisors listened to what they had to say. He continued by saying he does not understand why the Commission feels that this fast track idea is a good idea. He does not think this is a good idea. He thinks it is a bad idea to have Tourist Homes in these residential areas where the lots are only 50 – 100 feet wide. The idea of having a Tourist Home as one's neighbor and them using the subdivisions amenities they (the home owners) fund and maintain does not seem fair. Tourist Homes belong in a commercial or agricultural zoning not in a residential area. With the Conditional Use idea, Britton felt that the residents at least get advertisement and the opportunity to object to the idea of a Tourist Home going in their neighborhood. To take this away would be a terrible discredit to the permanent residence.

Bill Kling wanted to clarify this proposed amendment is something the Board of Supervisors had asked them to review. It is not something the Commission drafted. The Commission has not taken a vote on this in any way. It is here to listen to the comments. Several of the comments he has heard tonight made reference to the Commission coming up with the idea of permitting Tourist Homes. The Commission at some point will make

a recommendation; none of the members have made their minds up, that is why members are here tonight to listen to the public.

Phoebe Mix noted she is a holder of a Tourist Home Conditional Use Permit. She stated she started operating without a permit because she was told by the County she did not need one. A HOA does not need the County to tell them what to do. If the HOA has a rule where the trashcan shall be located, the County does not have or need a trashcan rule. She commented if a neighbor rented for one year, one cannot say or do anything about it if they do not like that individual. The proposed conditions are sensible restrictions for a Tourist Home. Tourist Homes are good for local businesses and the economy. She said she employs four people and will soon be hiring a fifth to maintain the Tourist Home she currently runs. She stated she spends money supporting local businesses on maintenance of her house. The people coming here are paying good money to come here. If you want people to come and see the County, you need a place for them to stay. There is no rush to construct a motel. It is unfair for the HOA to ask you to be their backstop for them if they can't get the numbers to restrict Tourist Homes in their covenants and restrictions.

Maurice Johnson recently obtained a Conditional Use Permit to operate a Tourist Home and there have been many lessons learned. He commented there will be a lot of underground Tourist Homes if the County does not handle this correctly. Northumberland County does know how to manage Tourist Homes as he is the owner of the incidence of the Tourist Home in which Mr. Andersen spoke. This situation was quickly addressed by Mr. Shirley, and the problem was corrected. He noted he employs two people at approximately \$40,000. He did comment that he wouldn't do an all encompassing regulation, as one shot does not cover all.

Barbara Rountrey commented she manages the property for Phoebe Mix. When individuals come down, she recommends and encourages them to use the businesses in the County. Whether you put a permit on a house, you do not always know who your neighbor is going to be. Tourist Homes encourage tourism which we need to do.

Marvin Dodson stated he stood here two months ago opposed to a Tourist Home and overwhelming majority of the subdivision opposed a proposed Tourist Home as well. If you put commercial next to a residential area, it devalues the property. He noted he would expect the County to devalue his property as such. He also commented the insurance companies will raise the premiums on the HOA's liability insurance to the point the HOA cannot pay for the insurance if there are a lot of Tourist Homes in a subdivision.

Tim Abbe noted he also objected to the Tourist Home being proposed in his subdivision. He has a problem with allowing Tourist Homes by right along with the proposed restrictions. He was under the impression that Insurance Companies would not renew a policy for a HOA if there is a certain percentage of "Tourist Homes" in the subdivision.

Randolph Neale objected to the idea of a Tourist Home by right. Neighbors should have a say in what goes on next door to them. A Tourist Home should be inspected annually. Additionally, there should be a public hearing on that Tourist Home annually. It does him no good at night or early in the morning if the property manager's name and address

is registered with the Office of Building and Zoning when they are closed. The name and address should be registered with the Sheriff's Office.

Elizabeth McAvoy stated it is only fair for those neighbors to have a say next to a Tourist Home. She feels that it would be unfair to not have an opportunity to know that a rental is next door to her.

Walter Cummings noted he is not part of a HOA. There is no driving force to change this to be by right, so why change the language. He agrees that everyone should have an opportunity to speak. One size does not fit all.

Peggy Dees stated she was not against Tourist Homes; however, she would like to maintain the right to come to the Board of Supervisors in case there is a Tourist Home that does not meet a neighbor's approval.

Wayne Corey noted he is in favor of the proposed language. He respects those in a HOA that want to restrict a Tourist Home. He does not live in a HOA and would not have any reservation if a neighbor wanted to open a Tourist Home next to him. He feels the County does not need to overlook this as a potential revenue source. The County does not currently have a lodging tax. Second, this topic is covered in numerous details in the Comprehensive Plan. Tourist Homes are looked upon favorably in the Comprehensive Plan. Please take a stand, don't kick the can down the road, do something, pass or deny.

Clementine Ruffin stated there is no reflection on the owners that applied for a Tourist Home in here subdivision; however, she has been at her house for ten years and does not like the idea of a Tourist Home next to her.

Mike McKenna noted the Commission should look at the possibility of real estate lenders not lending to those HOAs that have a certain percentage of rentals.

Rachel Pugliese stated she is not in a HOA. This is not just an issue. Homeowner's should have the opportunity to speak against commercial uses next to them.

Tabb Bass commented the Conditional Use Permit needs to stay so that the merits of each Tourist Home can be weighed. He did question if the PC can explain to him why this came about.

Richard Haynie noted the Board of Supervisors wanted to get an opinion from the public on whether this should continued to be done by Conditional Use or as by right. He noted the Board was also looking at saving people time from coming out.

Lynne Bussman stated it sounds like a lot of this is "not in my backyard" or "my home is my castle" attitude. There should be something in between to allow individuals to rent their house to friends and family for one week out of the year. There is a big difference renting as a business versus renting for one week.

Bill Kling commented that he can think of five different attitudes that have been brought up tonight. 1) Keep as a Conditional Use Permit, 2) Make it a by-right use 3) Rentals to a friend 4) Permitted Use with conditions, and 5) No Tourist Homes at all.

Ellen Hollows asked the Commission to consider one more condition. If a HOA has no commercial in their covenants and restrictions that the County cannot override a HOA.

Randolph Neale noted a Tourist Home use to mean accommodating tourist while the owner is there. The Commission might want to consider whether Tourist Homes should be occupied by an owner.

Phoebe Mix asked if the County has taken into account the existing Tourist Homes, most of which do not have a permit. Even if you meet all the items in the proposed conditions under the current Conditional Use Permit, one may still not be allowed to have a Tourist Home because of objections. She would not advise anyone to “come out of the closet” to get their permit. She received a Cease and Desist order from the County. She had a client booked at her house a year in advance and had to turn her away because her application was denied. She questioned if the County was going to go looking for those Tourist Homes without a permit and put them out of business.

Terry Dutcher commented she does not have the protection of a HOA. Her neighbors built a garage, and they seem to be renting. She would not feel protected if Tourist Homes were to be permitted by right.

Garfield Parker thanked everyone for coming out to speak. He closed the public hearing and stated that the matter is now before the Commission.

Charles Williams noted the nice turn-out to speak. There are a lot of opinions here tonight. This Commission will need to make a decision; however, our decision will not suit everyone. He stated he is not ready to make a decision tonight. He would like to have more time to review the information he has received tonight.

Albert Penley stated he is also not in a position to make a decision tonight. There seems to be a lot of questions and grey areas that need to be clarified. He also appreciated the people coming out.

Richard Haynie commented the Commission has a lot of work ahead of them to get something worked out on this matter.

Bill Kling appreciated everyone coming out. He commented the public decorum was exceptional. This Planning Commission knows exactly what people are up against on both sides of the Tourist Home issue. He suggested the Commission not take action tonight as he had legal questions that need to be answered. Furthermore, the Commission has a current lawsuit which seems to be at a standstill on this Tourist Home issue.

Kevin Elmore thanked everyone for coming out. He too lives in a HOA. He agrees with the others on the Commission that he needs more time to review all of the material.

Chris Cralle noted he had questions coming to the meeting; however, he seems to have more questions now. He would like to know how the adjoining counties handle this situation.

Al Fisher knows the decision made by the Commission will not please all, but he would like to try and help the majority. The Commission needs to make sure they are on the right road.

With a motion from Al Fisher, seconded by Albert Penley, and approved by all, the Commission is tabled taking any action on this item until their October 17, 2013 monthly meeting.

The vote was as follows:

Chris Cralle	AYE	Garfield Parker	AYE
Kevin Elmore	AYE	Albert Penley, Jr.	AYE
Alfred Fisher	AYE	Charles Williams	AYE
Ed King	Absent		
Bill Kling	AYE		

RE: WORK SESSION ITEMS

There were no items to be discussed during the working session.

RE: DISCUSSION ITEMS

Board of Supervisors Report

Luttrell Tadlock gave the Board of Supervisors' report.

Other Items

None

RE: PUBLIC COMMENTS

Janice Walton questioned if she should submit her application for a Tourist Home. She had received a letter from Mr. Shirley stating she needed to have a permit to run a Tourist Home. She did not realize she needed to have a permit when she started this process two years ago. A neighbor complained about her Tourist Home and that is when Mr. Shirley wrote the letter. With the current atmosphere, she is wondering about the best thing to do.

Wellington Shirley stated he had asked her to get the application in to be heard at the next Board of Supervisors meeting, which is tomorrow (Friday September 20, 2013). To date he had not received her application. He asked her to submit the application.

Phoebe Mix called the County about operating a Tourist Home. She was told she did not need anything. In 2010, an opinion from the County Attorney stated short term rentals are considered Tourist Homes.

Wellington Shirley noted Tourist Homes have always been a Conditional Use. It was in 2010 the County Attorney made the opinion that short term rentals are to be included in Tourist Homes.

Al Fisher asked if the County can supersede a HOA's covenants and restrictions.

Wellington Shirley stated the individual must look at which regulation is more restrictive. The County cannot override the covenants and restrictions of a HOA if their regulation is more restrictive than that of the County.

RE: ADJOURNMENT

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

Chris Cralle	AYE	Garfield Parker	AYE
Kevin Elmore	AYE	Albert Penley, Jr.	AYE
Alfred Fisher	AYE	Charles Williams	AYE
Ed King	Absent		
Bill Kling	AYE		