

**Northumberland County Planning Commission
February 16, 2023
Minutes**

The regular monthly meeting of the Northumberland County Planning Commission was held on February 19, 2023 at 7:00 p.m. in person at the Northumberland Courts Building and using Zoom (telephonic meeting) with the following attendance:

Chris Cralle	Present	Garfield Parker	Present
Vivian Diggs	Present	Roger McKinley	Present
Alfred Fisher	Present	Heidi Wilkins-Corey	Present
Ed King	Present	Charles Williams	Present
Richard Haynie	Present	Patrick O'Brien	Absent

Others in attendance:

Stuart McKenzie (County Planner)

Philip Marston (Zoning Administrator)

RE: CALL TO ORDER

The meeting was called to order by Mr. Fisher.

Mr. King gave the invocation, and Mr. Fisher led the commission in the Pledge of Allegiance.

RE: AGENDA

Mr. McKinley made a motion to accept the agenda, and Mr.Cralle seconded the motion. All voted in favor of accepting the agenda.

RE: MINUTES- January 19, 2023

Mr. Cralle made a motion to accept the January 19, 2023, and Ms. Diggs seconded the motion. All voted in favor of accepting the minutes.

RE: COMMISSIONERS' COMMENTS

Commission members did not have any comments.

RE: STAFF MEMBERS' COMMENTS

Staff did not have any comments.

RE: CITIZENS' COMMENTS

Julie Deaver of 280 Moschetti Lane, stated she would like the county to add wording to the zoning ordinance to make any use not explicitly defined in the ordinance to not be allowed. She also stated she wanted to remove the grand fathering of use. Ms. Deaver stated she would new use would have to request the new use, schedule a public hearing on that use and take public comments before any requests are granted.

RE: PUBLIC HEARINGS

At the request of the Chairman, Mr. McKenzie explained the changes made to the Travel Trailer ordinance § 148-153 stating that the first public hearing tonight was s revision to the Northumberland County Zoning Ordinance § 148-153, Travel Trailers, to delete the definition of Travel Trailers, define Recreational Vehicles, and rename the Travel Trailer ordinance to the “Recreational Vehicles” ordinance.

Chairman Fisher opened the public hearing at 7:10 pm.

Bob Pugh, of 469 Judith Sound Road, asked what defines full occupancy? Mr. McKenzie stated he would have to defer to the Zoning Administrator, Mr. Marston, to answer his question. Mr. Marston stated that the he believes that full time occupancy means six months out of a year, but that is a Building Code defined term and is not defined in the county zoning ordinance.

Julie Deaver of 280 Moschetti Lane, stated that she thinks the county should add people that might live on boats. Mr. Fisher asked Ms. Deaver if that is happening now. Ms. Deaver stated that she did not know.

Chairman Fisher asked if anyone else wanted to speak in person and/or online, and no one responded, so Mr. Fisher closed the public hearing at 7:19 pm

Mr. McKinley made a motion to recommend to the Board of Supervisors to adopt the revised Recreational Vehicle (formerly Travel Trailer) section of the zoning ordinance, as presented tonight. Mr. King seconded the motion. The vote was as follows:

Chris Cralle	Aye	Garfield Parker	Aye
Vivian Diggs	Aye	Roger McKinley	Aye
Alfred Fisher	Aye	Heidi Wilkins-Corey	Aye
Ed King	Aye	Charles Williams	Aye
Richard Haynie	n/a	Patrick O'Brien	Absent

Chairman Fisher requested staff brief the commission members on the changes to the tent camping ordinance. Mr. McKenzie reminded the commission that at the last meeting, the commission voted 4 to 3 to remove the seven day limit on non-commercial camping as well as the requirement for a VDH approved sanitation facility.

Chairman Fisher opened the public hearing at 7:21 pm.

Mr. Charles Lunsford of 373 Judith Sound Rd, Lottsburg, Virginia stated that as he understands it, the Board of Supervisors (BOS) passed the revised travel trailer ordinance with the 7 day limit on non-commercial camping and the requirement for a VDH approved sanitation device. Then the BOS passed a second motion for a memo from the Board to the Planning Commission. Mr. Lunsford stated the minutes for the January 17 meeting were not available. Mr. Lunsford stated he could not see how the Planning Commission decided to remove the seven day limit and the requirement for a VDH sanitation device. Why did that happen?

Mr. McKenzie stated that the Planning Commission added three changes to the Travel Trailer ordinance, and the Board liked the requirement for a conditional use permit for commercial camping, but was worried the other measures restricted private property rights, which was noted in the memo from the BOS to the Planning Commission.

Chairman Fisher asked Mr. Haynie if he could help Mr. Lunsford understand the memo. Mr. Haynie stated that the BOS was worried that non-commercial camping had the same restrictions as commercial camping, and the Board did not think that was appropriate.

Mr. Lunsford stated that the county could break camping into two classes, one for undeveloped lots and one for lots with an existing residence. Mr. Lunsford pointed out in his comment letter to the Planning Commission that email communication that Mr. Johnson had with the Department of Health stated that the county “could regulate small 1-2 camping sites and require a sanitation device. Mr. McKenzie stated that the operative word in that phrase is “could”, which means the county can choose to regulate or choose not to regulate. Mr. Lunsford stated that the tent camping ordinance is now worded the way it was back in September 2022, when this process started.

Bob Pugh, 469 Judith Sound Road, asked if the existing camping site in Lewisetta would have to go back and apply for a conditional use permit? Mr. Marston replied, stating that a legal non-conforming use is allowed, unless a period of time elapses when that use is no longer occurring. Mr. Pugh asked how long, because he said the tent camping site hasn't been occupied for four months. Mr. Marston stated that the zoning ordinance defines that lapse in use as two (2) years. Chairman Fisher added that legally, the burden of proving the site has been inactive is on the county, making it more difficult for the county to prove in a court of law. The property owner could say he was operating for one day last year, and unless the county has documentation on that particular day, then the property owner could continue the use.

Julie Deaver of 280 Moschetti Lane, stated she does not think that commercial tent camping should be allowed in the R-2 Waterfront Residential zoning district, and if so, it should be excluded from existing subdivisions with lot sizes 1 acre (or ½ acre). Furthermore, Ms. Deaver stated that the existing tentrr.com site is 150 feet from her house, that when occupied, there is a campfire burning 24/7 that generates smoke that makes it difficult to enjoy the outdoors or open your windows, and that there are strangers walking around the neighborhood.

Chairman Fisher responded to Ms. Deaver stating that most subdivision in Northumberland County have a Home Owners Association (HOA) that controls these types of uses. Any change we make today will affect the whole county.

Ms. Deaver stated she would like the county to define tent size in the zoning ordinance, such as a one to six person tent, to eliminate the possibility of someone camping with a tent that can hold ten, twenty (or more) people.

Chairman Fisher closed the tent camping ordinance revision public hearing at 7:51 pm.

Chairman Fisher asked for discussion amongst commission members. Mr. McKinley stated that Mr. Lunsford brought forth a very good suggestion to break out camping on an undeveloped lot or a lot with a home with a VDH sanitary facility.

Mr. Fisher asked how you define a sanitation facility, some may say a five gallon bucket is a sanitary facility, others might say a porta potty.

Mr. McKinley stated that even though the BOS thought it was too restrictive, he feels that a sanitary facility is important to 95% of the county, and when near water, it is a matter of water quality.

Mr. McKenzie stated that the Virginia Department of Health (VDH) would come out and investigate if a citizen called in a complaint of improper waste disposal, as was the case with the tentrr.com site. Mr. McKenzie stated that that is VDH's job to license, permit, and control pollution from human waste, not Northumberland County.

Mr. Lunsford stated he did not want anyone to have to deal with the same problem he and his neighbors have had to deal with.

Mr. Fisher asked Mr. Haynie if he could elaborate. Mr. Haynie stated that one size does not fit all, not sure how the Board would react, it will take a lot of discussion. Mr. Haynie suggested the commission leave the ordinance as is and add recommendations to the Board.

Mr. McKinley wanted to make sure that everyone knew that the existing ordinance is currently in effect (the seven day limit and the requirement for a VDH approved sanitation device), as the Board passed it at their last meeting.

Mr. Haynie stated the commission should do whatever they feel they need to do.

Mrs. Wilkins-Corey stated that separating the developed and undeveloped lots might be a good idea. She suggested that undeveloped lots less than 1 acre be required to have a VDH approved sanitation facility and a time limit, and other, larger lots would not be required to do that.

Mr. McKenzie asked the zoning administrator, Mr. Marston, if he had any comments on Mrs. Wilkins-Corey's comment. Mr. Marston stated that porta potties need to be maintained, and trying to prove tent occupancy for seven days is very hard to do.

Mr. McKinley summarized that the commission gets a directive from the Board that the ordinance revision was too restrictive, therefore the commission is coming back with restrictions that only applying to a small portion of the lots in the county (those under 1 acre). Mr. McKinley wondered about the time factor, that is, how long would it take for VDH to investigate the complaint, sometimes Mr. McKinley stated it is 30, 60 or 90 days before they get back to you. Mr. Fisher asked how long it took for VDH to investigate the tentrr.com site in Lewisetta. Mr. Marston stated that in the Lewisetta tentrr.com case, VDH were notified on a Friday and came out to investigate Monday. Ms. Deaver stated that the local VDH office investigated but took no action. Only later, after calls to DEQ, did the Richmond (Central) Office of the VDH issued the Notice of Alleged Violation regarding the tentrr.com site in Lewisetta.

Mr. McKinley made a motion to leave the tent camping language in part A, and add only those lots are undeveloped and under one acre must have a health department approved sanitation device when camping. Mr. Parker seconded the motion, the vote was as follows:

Chris Cralle	Aye	Garfield Parker	Aye
Vivian Diggs	Aye	Roger McKinley	Aye
Alfred Fisher	Aye	Heidi Wilkins-Corey	Aye
Ed King	Aye	Charles Williams	Aye
Richard Haynie	n/a	Patrick O'Brien	Absent

The motion passed unanimously.

Mr. McKenzie asked the county attorney if the county would need to re-advertise the public hearing. The county attorney stated that we would have to advertise for the BOS hearing, but not the PC hearing.

Mr. McKenzie asked Mr. Marston if the term undeveloped land is defined in the zoning ordinance, and if the term undeveloped lots is clear, or is there a gray area there. Mr. Marston stated that it was not. Mr. McKenzie asked the members if a septic system or a pier is built on a piece of land, is that still an undeveloped lot? Mr. McKenzie asked if a retaining wall or driveway was built on a property, therefore that lot was not in a natural state, thus it has been developed from vacant land. Would that property be considered undeveloped? Mr. Marston stated that Mr. McKenzie's concerns were valid, that being said, where is the dividing point of an unimproved lot and an improved lot.

Mr. McKenzie then asked Chairman Fisher if it is appropriate to ask Mr. McKinley to amend his motion, since the commission has already voted upon the motion. Mr. McKinley stated that he thinks undeveloped means it does not have a house on it, or a driveway, if it has a septic system it is developed. Mr. Marston stated that the zoning ordinance defines it as a "dwelling unit". Mr. McKenzie stated that Mr. McKinley's motion was to add the language "those lots that are undeveloped and under one acre". Mr. McKenzie stated there is no mention of a dwelling unit. Mr. Marston added that a recreational vehicle is also a use that requires connection to a Virginia Department of Health sanitation device (usually a septic system) and should be mentioned in addition to

the dwelling unit, since both fulfill the definition of a health department approved sanitation device. Mr. Marston stated he feels that recreational vehicles and dwelling units should be mentioned. Mr. Marston stated that citizens with recreational vehicles often intend to set up a tent outside and camp with their families, and that is the intent of placing the recreational vehicle on the lot. Mr. McKinley stated that is all well and good because they have a health department approved sanitation device, to which Mr. Marston agreed. Mr. McKinley stated we have already voted on it, we just need a definition for undeveloped land. Mr. McKenzie reiterated if you build a retaining wall on your property, a pier or a septic system, then has that property has been developed? Mr. Cralle offered the term "vacant land". Mr. McKenzie asked Mr. Marston if "vacant land" would work. Mr. Marston stated he feels like staff needs more time to work on the language. Mr. McKinley stated that the motion has already passed and it looks like Philip and his staff need to work on the language to send to the board of supervisors. Mr. McKenzie stated that if staff modifies the language, then staff is altering what the Planning Commission wants to do, and in my opinion, the planning commission has to agree to any changes that staff makes. Mrs. Wilkins-Corey stated she did not know how Roberts Rules of Order work but can we say that "lots that are under one acre that do not have a dwelling unit and do not have septic" (are required to have a health department approved sanitation device.) Mrs. Wilkins-Corey asked how do we do that? Mr. Haynie asked the Chairman to speak and stated that you already have one motion that was made to send to the supervisors, you are going to make another motion, you are not going to be able to correct the first motion, you are probably going to have to send it as is, just as you have done it, to the board of supervisors and let them make any corrections. The board will clarify it if they feel it is necessary, or they will send it back to the Planning Commission for clarification. Mr. Fisher stated he was hoping that the Planning Commission was done with this revision, but Mr. Haynie stated he was not sure that was the case. Mr. Haynie added he knows the commission is trying to correct it, but you have already made the motion and approved it, so it has to go the board of supervisors for approval or disapproval, or perhaps send it back to you. Mr. Fisher asked if the commission could send recommendations, and Mr. Haynie stated that you can but it won't be included with it. Mr. Fisher stated but they (the Board) will know how we feel. Mr. Haynie agreed. Chairman Fisher asked Mr. McKinley how he felt about that, and Mr. McKinley responded it sounds OK to me. Chairman Fisher asked Mr. McKenzie how he felt about that and he stated he is fine with whatever the commission wants to do.

RE: WORK SESSION ITEMS

Mr. McKenzie stated that we are now discussing short term rentals and told commissioners that he had sent 11 comments to members via email regarding short term rentals. Mr. McKenzie stated that a majority of the comments received wanted action take in the R-3 zoning district because R-3 has small lot sizes and high density. Mr. McKenzie stated that several comments stated they wanted inspections of short term rental units, others wanted a registry, charging a fee to register, require renewal every year, require a three strike rule, if you have documented known disturbances at the property or if the owner fails to renew his registration three times, then the owner will be prohibited from renting his property short term (of course he could still rent the property long term). Mr. McKenzie stated that the commissioners read these comments, and told feel free to add anything that I might have missed. Most comments stated that making

short term rental in R-3 a conditional use would help these communities. Mr. Fisher stated he did not see any comments that were negative to that (requiring a conditional use permit in R-3). Chairman Fisher asked Mr. McKenzie if anyone commented saying that they did not want any regulation of R-3? Mr. McKenzie stated not that I am aware of. Mr. Fisher stated that short term rentals are part of our tourist industry and it helps the restaurants, the grocery store as well as charter boat captains, because these people spend money in the county. Mr. Fisher stated that the R-3 subdivisions were constructed before the county had a zoning ordinance, most of them do not have homeowner's associations and probably couldn't get one if they wanted one. Mr. Fisher asked Mr. McKenzie that what we are dealing with is not the whole county, but just the R-3 areas. Mr. McKenzie replied the majority of complaints are from R-3 communities. Mr. Fisher stated there are three of those communities? Mr. McKenzie stated yes, Pine Point on Cod Creek, Fleeton Beach and Chesapeake Beach on the Chesapeake Bay. Mr. Fisher stated that a lot of the complaints are not criminal complaints but civil complaints, but nonetheless they are complaints. Mr. McKinley asked if there are any suggestions by the people complaining about the short term rentals on how to fix them. Mr. Fisher stated their suggestion is to not allow them. Mr. McKenzie asked Mr. McKinley if he read the comments that were sent to the members, as they have detailed ideas on how to control short term rentals, and some of them want many restrictions on the short term rentals. Mr. Fisher stated others only want short term rentals to be a conditional use in R-3. Mr. McKinley asked if conditional use is required now for short term rentals, to which Mr. Fisher replied no, there is no county regulation on short term rentals. Mr. McKenzie stated he would like to add that there is also no business license required for any business in the county at this time also. Mr. McKenzie stated that to single out one type of business and require them to register seems to me to be not congruent. Mr. Fisher stated he did not feel the county was there yet (to require registration), but added that was his personal opinion. Mr. McKinley asked if Lancaster County is still working on their short term rental ordinance, and Mr. McKenzie replied he knew it was at the planning commission level, and by now it could be to the board, but he was not sure. Mr. Fisher stated that Lancaster was planning on registration, right? Mr. McKenzie stated that Lancaster already has registration, but now they are going to make the short term rental regulations more strict. Mr. McKinley asked the Chairman that a couple of meetings prior the commission made public comment periods at the beginning of the meeting and at the end of the meeting. Mr. McKinley asked the Chairman if it was possible to have a public comment period at this time. Mr. Fisher stated he was not sure about that, Mr. McKenzie stated that they way he understood the By-Laws, commission members can ask questions of the citizens in the audience. Mr. McKenzie stated the way he understands the By-Laws there should be no public comment on the public hearing items scheduled for tonight, but he thought that Mr. Fisher stated "there shall be no comments on any items on the agenda" at the beginning of the meeting instead of there shall be no comments on the public hearing items only. Mr. McKenzie stated that some of the people in the audience may have thought they could not comment on short term rentals, but he stated he did not know.

Mr. Fisher asked if there was any citizen that wanted to make a comment. Mrs. Sharla Pence, asked if every member got a copy of the handout she brought to the last meeting. Chairman Fisher stated yes, they were sent via email to all members. Mrs. Pence stated that from all the comments they were hoping that the Planning Commission could pick a few of the restriction and implement them, like the Conditional Use Permit, and a

minimum distance of 250 feet to the short term rental from other residences. Mrs. Pence stated that most lots in the subdivision were 45' x 100', so this is important. Mrs. Pence thanked county staff for all their work on this, and stated she appreciates it. Mrs. Pence stated that the commission stated that these short term rental tenants go to the local restaurants, but she reads the advertisements for these rentals and they say to bring all the food you need because the nearest grocery store is 30 minutes away. Mrs. Pence stated that her neighbors, who are permanent residents, they live here year round and support the community a lot longer than the short term renters. We love this county, that is why we moved here. We only want restrictions in the R-3 communities. Mr. Fisher asked Mrs. Pence if she understands that the Board of Supervisors, under a conditional use permit, could implement all of these restrictions you are requesting on a short term rental property conditional use permit. Mrs. Pence stated yes sir, she had researched that. Mr. Fisher stated that he has great confidence in conditional use permits, that the Board takes into consideration all of the neighboring properties issues brought up and by no means is a conditional use permit guaranteed to be approved. Mrs. Pence stated that they don't think all short term rentals are bad in Northumberland, but R-3 zoned properties in the county are different from the rest of the county, and deserve special consideration.

Bob Pugh of 469 Judith Sound Rd stated that the Town of Urbanna clamped down on short term rentals with a fee and inspections, the Town of White Stone or Lancaster, he wasn't sure, was trying to limit Airbnb's in the jurisdiction. Mr. Pugh stated he has seen four to six cars parked at a two bedroom rental house which more than likely exceeds the capacity of the house. Mr. Pugh stated that other jurisdictions have strict limitations, and there is no grandfathering.

County Attorney Mr. Gregory stated that grandfathering, or nonconforming land uses could be phased out. A new ordinance does not necessarily preclude the non-conforming use. If the county doesn't have vested rights, that is, if the use is not defined in the zoning ordinance, doesn't mean that the use would not be subject to the new ordinance.

Terrie Rose of 23 Chesapeake Beach stated she agreed with Mrs. Pence. Mrs. Rose stated that all short term rentals should have regulations, especial in R-3 zoned properties. The small lot sizes magnifies issues, and the short term renters are not invested in the community. Mrs. Rose stated she would like some kind of control on short term rentals in the R-3 zoning districts. Mr. Fisher asked if she was OK with requiring a conditional use permit, and Mrs. Rose replied yes. Mr. Cralle asked what a short term rental would do to the value of the house. Mr. Fisher stated he was not sure, and Mr. McKinley agreed that there is uncertainty how the house value would be affected.

Mr. McKinley stated there needs to be more discussion on short term rentals. Mr. Haynie stated he would like more comment between commission members and encourages citizens to send letters to the Planning Commission.

Mr. McKenzie transitioned to the request by the Board of Supervisors to consider if Service Stations should be a by right use in B-1, Business General zoning district. Mr. McKinley stated he thinks conditional use is a good thing. There are many R-1 Residential zoned properties adjacent to B-1 Business properties in the county, and Mr. Fisher concurred.

Mr. McKinley made a motion to continue the discussion of Service Stations in B-1 at a later meeting, the motion was seconded by Mr. Parker and all voted unanimously to approve the motion.

RE: DISCUSSION ITEMS

Mr. McKenzie briefed the commission on the 2022 End of the Year Report, noting that the amount of new construction in 2022 was 9.4% higher than in 2021, so the county is growing. Mr. McKenzie noted that there were 53 single family dwellings, 12 modular dwellings, 5 double wide dwellings and 3 commercial structures built in 2022. More details were discussed, which can be found in the report.

RE: PUBLIC COMMENTS

Ms. Julie Deaver 28 Moschetti Lane asked if the description of legal representation regarding legal non conforming uses would apply to the tentr.com site in Lewisetta. Mr. Fisher stated that the owner was told that he was grandfathered, so we are not sure.

Mrs. Sharla Pence stated it didn't seem like much was accomplished, but asked what should her community do to further the process along. Mr. Fisher stated keep commenting, because the squeaky wheel gets the grease.

RE: ADJOURNMENT

Mr. King made a motion to adjourn, seconded by Mr. Parker The adjournment vote was as follows:

Chris Cralle	Aye	Garfield Parker	Aye
Vivian Diggs	Aye	Roger McKinley	Aye
Alfred Fisher	Aye	Heidi Wilkins	Aye
Ed King	Aye	Charles Williams	Aye
Richard Haynie	n/a	Patrick O'Brien	Absent

The meeting was adjourned at 9:13 pm.