



*Vance County Planning & Development
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TO: Vance County Citizens Advisory Committee (CAC)
FROM: Ken Krulik, Assistant Director/Senior Planner
SUBJECT: Minutes of the April 27, 2006 CAC meeting
DATE: May 2, 2006

In Attendance

Committee Members: Reverend J,H, Daniels-Committee Chair, Connie Kenney: Committee Vice-Chair, Helen Williams, Rusty McMahon, Thomas Shaw III, John Abbott, Alan Rowland, John Foster, and Vincent Jefferson

County Staff: Ken Krulik (meeting facilitator)

Others Present: Marc Woodlief, members of the public, and Matthew Milliken (Daily Dispatch)

Absent: Robert Farnum (County Staff)

- ◆ Chairman Daniels called the meeting to order; requesting review of the April 10, 2006 minutes. Minor grammatical corrections were identified and noted by Ken Krulik.
- ◆ John Foster raised a question as relates to the Committee's recommendations (noted in the minutes from all meetings). He asked if they would be addressed in the final version of the draft ordinance.
- ◆ Ken Krulik responded the recommendations will be summarized and the draft ordinance modified to illustrate the recommended revisions (for review/action by the Committee).
- ◆ Rusty McMahon asked how the Commissioners were going to see the recommendations.
- ◆ Ken Krulik answered that a summary list of the recommendations (and modified draft ordinance illustrating recommended revisions) would be submitted to the Commissioners. He added that this would be done after the Committee as reviewed and approved the recommendations at their final meeting, prior to submittal to the Commissioners.
- ◆ Rusty McMahon further asked as to the next step in the review process after the Commissioners receive the recommendations (does it next go to the Planning Board?).
- ◆ Ken Krulik responded that after the Commissioners receive the Committee's recommendations, they will be sent to the Planning Board for review and the back to the Commissioners for a final decision. He added that he has worked with the Planning Board to review the Committee's recommendations in an effort to aid in the final review/incorporation of the recommendations into the final draft.
- ◆ John Foster asked if a formal meeting between the Ken Krulik and the Commissioners would be conducted so they may fully understand the Committee's recommendations.
- ◆ Ken Krulik responded he would like to have such a meeting, but the Commissioners will receive the recommendations prior to the June 5, 2006 Commissioners meeting.

- ◆ Rusty McMahon asked if Ken Krulik has met with the Commissioners and gone through the ordinance in the same “section-by-section” detail that the Committee has in its work.
- ◆ Ken Krulik responded that he has periodically met with the Commissioners (at their planning retreats) and made presentations throughout the development of the draft ordinance. He also added that he has not gone through the draft document line-by-line (section-by-section) as has been done by the Advisory Committee.
- ◆ Chairman Daniels stated he has talked with several Commissioners who informed him they have read through parts of the draft ordinance, although not in entirety and not with the depth of detail the Committee has been conducting.
- ◆ John Foster added that this was also the same process in the development of the County’s manufactured home park ordinance and subdivision ordinance.
- ◆ Chairman Daniels stated that in the presentation of recommendations by the Committee, the Commissioners may more clearly see the need for an educational work session (for/by the Commissioners) devoted solely to this ordinance so as to get through the detail of work the Committee has conducted.
- ◆ With no further discussion or corrections to the minutes by the Committee, Chairman Daniels entertained a motion to approve the minutes as corrected:
 - A. **Motion** was made by Thomas Shaw to approve the minutes of the April 10, 2006 meeting with the noted corrections. **Second** was made by Helen Williams.
 - B. All members present voted to approve the April 10, 2006 minutes.
- ◆ Chairman Daniels moved the meeting to the first agenda item, review of Section III and the Table of permitted uses (reviewed by the Committee with potential revisions).
- ◆ Ken Krulik reviewed the incorporation of the recommendations by the Committee into the draft Table of Permitted Uses and Section III. He added that he will address, as appropriate, the re-numbering of the sections and table of contents of the draft ordinance.
- ◆ Rusty McMahon asked if the Committee was going to re-visit review of the revised Table of Permitted Uses. Ken Krulik respond that it’s the Committee’s choice to do so now or wait until all the work of the Committee has been completed and a final review of all recommendations is conducted (prior to submittal to the Commissioners).
- ◆ Alan Rowland stated he suggested at the last meeting once the Committee has finished everything, that the members go back and review the recommendations as there may be further suggestions for revisions identified.
- ◆ Rusty McMahon commented he is concerned with potential litigation costs associated with variances, conditional use permits, and re-zonings (based on the proposed Table of Permitted Uses). He expressed concern with how is it determined that certain uses on the proposed Table are an issue with community health, safety, and welfare.
- ◆ Rusty McMahon continued that it appeared we’re going to prohibit development based on factors that could possibly happen in the future. He added concern with added requirements for permits/fees (no fees in place yet), as well as added bureaucracy (asking permission). He concluded by asking Ken Krulik if he as a planner can list every type of home occupation and use permitted in order to provide guidelines on what can be done with one’s property, which affects it’s value
- ◆ Ken Krulik responded that some of the concerns raised by Rusty McMahon are addressed in the draft ordinance (home occupations for example) and that a zoning ordinance (and planners themselves) cannot address every single conceivable use which is why these documents are changing/living documents.

- ◆ Rusty McMahon further noted concern with not allowing non-conforming uses to expand. If they can't expand, he added, and then we're restricting entrepreneurship and limiting job growth/economic development.
- ◆ Helen Williams commented that what is being worked on in developing this document is not "etched in stone forever." She added in response to Rusty McMahon's question about property value that it can be determined with a phone call to the tax office.
- ◆ Helen Williams continued that this document (draft zoning ordinance) is going to change and this process and been on-going since 1997 (according to her information). She added "it is now 2006 and there have been many changes in the County, we can't foresee or anticipate all things in the next 10 years and cover all those things and uses in this document." She further added that this will not be a perfect document and "it will never be a time that all of us will be satisfied with this document."
- ◆ Helen Williams also stated that she hopes the Committee can get through its work in the next two weeks as there is still more work to do and corrections to make before it is finished. "We can get through this and it won't please everyone, but we can get through this in the next two weeks to bring some closure to some of this."
- ◆ Rusty McMahon asked a question based on an example of building a manufacturing plant Vance County and the owner wants to build it in a proposed A-R zone, what does that person have to do (based on the draft Table of Permitted Uses this use is not permitted).
- ◆ Chairman Daniels noted the owner would apply for a re-zoning of the property. In this process the neighbors are notified and the owner goes before the Board of Adjustments as part of the application process presenting justification the use will not have negative impacts to the community, upon completion of this the re-zoning could be approved.
- ◆ Rusty McMahon then stated this means the neighbors are weighing in on the process, and they are deciding on the future of that person's land. "I don't know if they have a say in this process," and no one needs to ask special permission if the buyer and seller are deciding what is right for that property.
- ◆ Connie Kenney asked of Rusty McMahon if he would not be concerned if someone were developing property next to his and they didn't ask him (if the use were something that may have negative impacts on the community-would he not care)
- ◆ Rusty McMahon answered he would care, but added that he didn't think his neighbors should have a say in what he does with his land. If someone were to develop something next to his property he didn't like he had choices (build a big fence or just live with it), but his concern is that if his neighbors don't like him then they can try to stop the use.
- ◆ Chairman Daniels moved the discussion to ahead, asking if the Committee were prepared to review the recommended changes to Sections III and IV.
- ◆ Alan Rowland suggested the Committee look at the revised sections once all the work is completed (as was pointed out in prior meetings).
- ◆ Chairman Daniels stated then the Committee should review the draft Table of Permitted Uses (revised) at the end of their work along with the remainder of the draft ordinance. The Committee agreed, he then moved the meeting to Section V Non-Conforming Uses.
- ◆ Vincent Jefferson asked if the term "non-conforming" is the norm for terminology used, Ken Krulik responded yes that is the case (although he stated the Committee could add a reference to this as "grandfathering").
- ◆ Vincent Jefferson noted the definition is in the definitions section of the draft ordinance and the text should match between the definitions section and that under Section V.

- ◆ Rusty McMahon asked if the identification of non-conforming pertains to the draft map or the highest and best use of the property, he also noted that the draft map is based on the work of Ken Krulik’s survey work and may not be 100% accurate.
- ◆ Ken Krulik responded that the identification for non-conforming uses is based on the draft ordinance and draft map, not the highest and best use. He added that the draft map based on his work, as well as information compiled from public information meetings, comments raised by this Committee the Planning Board, one-on-one meetings with individuals to aid in better identifying current land use/potential zoning categories.
- ◆ Rusty McMahon asked if the highest and best use (for a particular piece of land) is something being worked on in this draft ordinance. Ken Krulik responded that specifically the phrase/terminology has not been addressed.
- ◆ Jon Foster raised a concern with the definition of “lot” versus “parcel” and requested a better definition of what each term means be included in the draft ordinance. He and Rusty McMahon questioned if the property were classified as being occupied by a building, several buildings or is a large open tract of land.
- ◆ The Committee had some discussion this point; Ken Krulik responded he would address improving (clarifying) the definition of a “lot” versus a “parcel.”
- ◆ Chairman Daniels moved on to Section 5.1 Continuance of Nonconforming Buildings.
- ◆ Vincent Jefferson asked about the provision (Section 5.1) that reads “discontinued for a continuous period of more than one hundred and eighty (180) days...” if this is standard.
- ◆ Ken Krulik responded this is fairly standard, but he has seen longer time periods in similar ordinances (could be changed by this Committee). He gave a brief overview of what is a non-conforming use and the time period as to whether the use can continue.
- ◆ There was general discussion by the Committee on a more appropriate length of time if a use is discontinued; several concerns were raised by Committee members including property owners “stalling” for long periods of time without doing work.
- ◆ After more discussion, it was decided to increase the length of time as noted under Section 5.1 from 180 days to one (1) year. Concerns were raised if, for example, a property owner dies it will take some time to settle an estate, before any work or permits could be obtained. It was also commented that if there is a fire or similar disaster it would take time to clean up the site and obtain permits. At the end of the discussion, Chairman Daniels entertained a motion:
 - A. **Motion** was made by Alan Rowland to increase the timeframe noted for Section 5.1 of the draft ordinance, from 180 days to one year. **Second** was made by John Foster.
 - B. On call for a vote, eight of the nine members voted to approve, one was in opposition (Rusty McMahon). The motion carried with a majority.
- ◆ It was further discussed by the Committee to make sure this timeframe was addressed and consistent in the remainder for Section V, Ken Krulik noted these recommendations would address these changes.
- ◆ Chairman Daniels recommended that it should be brought to the Commissioners attention, that even after a year in the case of a non-conforming use expiring, that the County be protected from any issues with a “taking” of a property. He offered a brief explanation of a “taking,” Ken Krulik noted he would advise the Commissioners.
- ◆ Ken Krulik commented on court cases that protect units of government in this issue and offered examples. The Committee also had discussion on this matter, including defining “highest and best use,” which should be included in the draft document

- ◆ Chairman Daniels then moved the meeting forward to Section 5.4 Reconstruction of Nonconforming Buildings, noting this was an area of special concern for him. He noted that under this section if a building is destroyed over 60% then it could not be re-built.
- ◆ Ken Krulik commented that in instances where this were to occur, a Board of Adjustments can look at the business' history (such as a store that has served the community and been beneficial), then they can consider this in their determination of allowing a non-conforming use to be re-built if the damage were to exceed the noted 60% (versus where the building is blight on the community/causing harm to the community).
- ◆ Rusty McMahon noted then that this decision is then coming from a group of individuals, "motivated by who knows what," is going to decide what is best for the community. He asked where the property owner in this decision.
- ◆ Ken Krulik further added that the 60% used in the draft ordinance is based on his research into other similar ordinances in North Carolina and has seen figures of 50%, 75% and even allowing a non-conforming building to be re-built with 100% damage. In this final example, he added, work must still be conducted within a period of time specified by the draft ordinance (permits) to continue the non-conforming use and re-build.
- ◆ Rusty McMahon commented that the Board of Adjustments could still say no, and in the instance of small business that offers employment opportunities that can't re-build then this would harm many people. His concern is if the Board of Adjustments would be qualified to make these judgments for other people.
- ◆ Vincent Jefferson noted that the Board of Adjustments is charged with making the best determination for not jut the individual, but also the community at large.
- ◆ Rusty McMahon commented that if we (the Committee) are going to present the challenge of these decisions to the Board of Adjustments, "let's make this easy for them" and allow for 100% to be the benchmark for a non-conforming building to be re-built.
- ◆ Alan Rowland agreed, commenting that if someone can buy a non-conforming building and continue using it for that purpose (no change in use), then a similar purpose should be behind reconstruction of a non-conforming building if it's destroyed.
- ◆ The Committee had further discussion on making sure the provision is administered equally to a single building or several building on the same property. It was also discussed that as a community changes, in many cases non-conforming uses were already in place before the residential development occurred and the property owners of the business should not be penalized.
- ◆ Vince Jefferson noted that if a house burns down, then it can be rebuilt regardless of the extent of damage so long as the new construction stays in the current footprint of the old structure (cannot expand).
- ◆ John Foster commented that in the case of a building being destroyed by fire, it will involve time to address the insurance claims even before considering reconstruction of the building. He recommended that within a year's time, that obtaining a building permit for new construction would then have the same timeframe as a building permit.
- ◆ Chairman Daniels recommend revising the provision under Section 5.4 to read: "Nothing in this Ordinance shall be construed to prevent the restoration of a building destroyed ~~to the extent of not more than sixty (60) percent of its assessed value at the time of destruction~~ by fire, explosion, or other casualty, if such construction is begun within one hundred and eighty (180) days...." It was also recommended to change the 180 days to one year and add to insure the building permit applications are addressed (consistent with building permit timeframe). Ken Krulik agreed to address this recommendation.

- ◆ Chairman Daniels moved the meeting to Section 5.5 Normal Maintenance and Repair of a Building, the Committee had some discussion on the expansion of a non-conforming use if possible and if it would require a conditional use permit. Ken Krulik noted this and would research a way to address this question by the Committee.
- ◆ Vincent Jefferson and Alan Rowland commented that it may be a pre-requisite that to expand a non-conforming use then the property/use should still meet the requirement of the zoning category where it's located.
- ◆ Rusty McMahan asked who would have the authority to make that determination. Ken Krulik responded the Board of Adjustments and explained this Board as quasi-judicial and must base its decisions on "findings of fact," not personal preferences.
- ◆ The Committee had some discussion on the make-up and size of the proposed Board of Adjustments and its role in the review process. Ken Krulik responded he would research these points from the Committee and work on potential revisions for consideration.
- ◆ The Committee moved its discussion to Section VI Conditional Use Permits.
- ◆ John Foster commented under Section 6.2, the last sentence that 45 days was inappropriate and recommended 30 days. After some discussion, Committee members agreed and Ken Krulik noted this recommendation, as well as the suggestion to remove the last sentence of this same section.
- ◆ Rusty McMahan asked about a proposed fee schedule for the Conditional Use Permit application, if one has been developed. Ken Krulik responded that it is still being worked (as well as for variances and re-zonings).
- ◆ Committee members had discussion on what is defined as "adjacent property owners (under Section 6.3), Ken Krulik noted this pertains those property owners that are adjacent to the affected property. Chairman Daniels recommended some re-wording to better clarify this in the text.
- ◆ John Foster commented that the property owners as noted in this section should be specified as the property owners listed in the County Tax Office (name of record).
- ◆ Ken Krulik noted these recommendations and would address accordingly.
- ◆ Vincent Jefferson noted that the mailed notices stated in this section needs to be specified as mailed by "the Planning Department." Ken Krulik also noted this recommendation.
- ◆ There was some further discussion as to "interested parties" specified in this section of public hearings, it was noted that with a public hearing anyone can come and make comments as well as be heard through the right of due process.
- ◆ Alan Rowland commented that in the case of conditional use permits (or any action by the Board of Adjustments) the Board can hear the comments, but its decisions must be made based on the facts and as pertains to those property owners adjacent to the property.
- ◆ John Foster moved the discussion to Section 6.4 which generated further discussion by the Committee as to the length of time for making an appeal, to increase from 30 days to 180 days. At the end of the discussion for "written notice of appeal to the Board of Adjustments," Chairman Daniels entertained a motion:
 - A. **Motion** was made by Vincent Jefferson to increase the timeframe noted for Section 6.4 of the draft ordinance, from 30 days to 180 days. **Second** was made by Alan Rowland.
 - B. All members voted to approve.

- ◆ Ken Krulik noted the recommendation and would revise the section accordingly.
- ◆ The meeting discussion moved to Section 6.6, Alan Rowland commented this section should include text that reads “certified mail notice (written) shall be mailed to the applicant, return receipt requested.” Committee members agreed and Ken Krulik noted this recommendation.”
- ◆ John Foster also commented that the timeframe noted under this section should be a minimum of one year to allow the applicant to take action to remedy any situation of failure to comply. Ken Krulik noted this recommendation for revision.
- ◆ Committee members moved to Section 6.9 noting that while the Board of Adjustments would look at each case for a conditional use permit differently (each application/case is separate), it would be helpful to modify the text of this section and add some examples/criteria. In doing so this would help to remove some of the “legalese” and add some clarity to this section (deals with supplemental requirements for conditional uses). Ken Krulik noted these recommendations from the Committee.
- ◆ Discussion moved to Section 6.10 (Conditional Use Minimum Development Requirements) and started with Item A: Adult Entertainment Establishments.
- ◆ Alan Rowland asked if there were current County ordinances addressing these types of establishments; Ken Krulik commented that there is an ordinance that deals with massage parlors and “health salons.” He added that there is no ordinance or provision that regulates where these businesses can be located.
- ◆ Committee members had general discussion on the proximity of these types of business in proximity to residential development, buildings versus property lines, as well as the proposed zoning categories where this use is allowed by Conditional Use Permit. Member agreed to note that the distance be 1,000 feet from the property line of adjacent residential use properties as identified in the draft ordinance.
- ◆ Committee members discussed what is noted Items 4 through 9 and Item 11 in the draft ordinance as to whether to not keep these provisions in the draft ordinance. It was discussed as to who would “police” these items in these establishments, and if the County would be infringing on the rights of business owners to conduct business in their establishment (if it is not illegal-in which case the police/sheriff would handle the issue).
- ◆ After continued discussion it was determined to consider removing Items 4 through 9 and Item 11, Ken Krulik noted he would work on potentially revising this section.
- ◆ Vincent Jefferson noted that (as has been noted before) this is a living document that can change in the future, these provisions are working to manage this type of use to more appropriate areas of the County (or deter establishments from coming to the County).
- ◆ As the Committee discussed the issue of adult establishments, Vincent Jefferson also noted there are state regulations that need to be considered. For example there are state General Statutes that give authority to fine up \$500 for littering, but it is not enforced in the County due to lack of resources. In a similar situation, the state is not required to come out and enforce local ordinances, but we as a County have that option.
- ◆ As discussion concluded, Alan Rowland and John Foster noted that under this same section for adult establishments, that the signage requirements noted need to be consistent with the Sign section (Section 9) of the draft ordinance. Ken Krulik noted this and also that this section is still under development.
- ◆ Committee members noted that the meeting had surpassed the two hour time limit; Chairman Daniels noted the next meeting would pickup with the remainder of Section 6 on Conditional Uses under Section B on page 39 (next meeting on May 4, 2006).

◆ With no further business the meeting was adjourned.