

**MINUTES OF THE
PLANNING COMMISSION MEETING
TOWN OF CHINCOTEAGUE, VIRGINIA
SEPTEMBER 14, 2021 - 7:00 P.M. – Council Chambers**

Commission Members Present:

Mr. Ray Rosenberger, Chairman
Mr. William T. McComb, Jr., Councilman
Mrs. Mollie Cherrix
Mr. David Britton
Mr. Michael Dendler
Mr. Robert Shendock

Commission Members Absent:

Mr. Stavros Katsetos

Others Present:

Mr. Chris Bott, Vice Mayor
Mr. David Landsberger

Staff Present:

Mr. Michael T. Tolbert, Town Manager
Mr. Mark Bowden, Building and Zoning Administrator

Call to Order

Chairman Rosenberger called the meeting to order at 7:00 p.m.

Invocation

Chairman Rosenberger offered the invocation.

Pledge of Allegiance

Chairman Rosenberger led in the Pledge of Allegiance.

Public Participation

Chairman Rosenberger opened the public participation.

Agenda Review/Disclosures

Councilman McComb motioned, seconded by Mr. Shendock to approve the agenda as presented. Unanimously approved.

1. Approval of the August 10, 2021, Regular Meeting Minutes

Councilman McComb motioned, seconded by Mr. Shendock to approve the minutes of the August 10, 2021, regular meeting. Unanimously approved.

2. Detached Quarters

Town Manager Tolbert advised the memo in the packet was information from questions asked in the previous meeting.

Chairman Rosenberger asked the Members for discussion. He added that they address this in Zones 2, 3 and 4. He feels it's really on 1 that has to be addressed at this time.

Mr. Shendock agrees and feels there is a need to look at this. He stated that the reality is that it is possible through duplexes in R2, but also in R3 and R4 as well as C1 and C4. He stated that they are basically permitted in the vast majority of the surface of the Island. There should be an intended zone where the population density is limited. He stated that this was the intent of R1. He thinks they should review it being sensitive to this. The 2nd concern he has is what happens when the need is no longer there. He can't see an easy way out unless it is rented out and with that he doesn't want to move forward. He added that in some point in time, if they become prevalent there are some points in the Ordinance that can be adjusted making it clear. There are 3 types of needs for these things. There is a humanitarian and medical need. There is an economic sustainability and affordable housing with this. Then there's a pure economic advantage, wanting to make money. He recommends that for R1 that it does go through a Conditional Use Process.

Mr. Shendock agrees with Mr. Landsberger's comment that they should have a clear idea as to how they evaluate the proposal. They should continue to work this and prep for a revision of the Comp. Plan. He feels they should leave it as it is and use the Conditional Use Process.

Building and Zoning Administrator Bowden advised that if you look at the Comprehensive Plan the R2 follows suit. He added that at his recent training class in the DHCD on the new Code, they're changing some divisions on the attached dwelling units. They are relaxing some of the requirements where if it's a family member, you won't have to put a full separation, just smoke detectors. They're loosening some of the fire requirements to make it more feasible. He added that this is for attached units.

Town Manager Tolbert explained that Building and Zoning Administrator Bowden just got back from training on the new building code. He stated that one of the new things they're allowing accessory dwelling units is they're not requiring a fire separation between the accessory dwelling units and the main structure if you build them attached as long as the people on the other side of the wall are family members. He added that this is a huge savings in time, effort, and money to a builder.

Mr. Landsberger asked if attached was allowed.

Building and Zoning Administrator Bowden stated that attached is allowed. He added that if you're in R2 with 12,500 square feet and 5,000.

Mr. Landsberger stated that they've relaxed the codes but, in the instance, where someone wants to keep up the code and have a fire separation as in his instance is illegal because it's detached.

Building and Zoning Administrator Bowden advised it is. He added that they are trying to make it easier for people to kind of age in place and ease up on some of the restrictions because of the same family member. He added that if you take that same dwelling and its different families you would have to have the full separation with firewalls. He stated that it is documented that, but hasn't worked everything out yet, where they make sure that need is still there whether to change it to a full dwelling unit where you don't have to put a firewall. He also stated that when the need goes away, you have to go back to a dwelling.

Town Manager Tolbert stated that the whole thing hinges on the fact that if you're building an attached ADU, it is legal as long as the people on both sides are related.

Mr. Landsberger stated that this is what he wants and has been saying. The only difference to what he is saying is why shouldn't it be detached as long as those in the detached quarters are in the same family. He added that the Commission is saying enforcement at a later date is a problem. He stated that enforcement on a code is no reason to deny a code. He doesn't believe that is a valid reason to deny it.

Town Manager Tolbert stated that Building and Zoning Administrator Bowden was saying, was the class he attended, the building inspectors are coming up with now a method for the building inspectors to go back and check that the need is still required, and the need is still there. He added that if not, then the inspector has the right to say they can't do this any longer, you have to vacate the property.

Mr. Landsberger stated that this is what he was saying all along and that it has to remain a single-family dwelling. He asked if he applies for a Conditional Use Permit to use the attached dwelling for his family, or does it specifically have to be for his daughter.

Chairman Rosenberger advised it would be reviewed under the circumstance.

Mr. Landsberger asked if it is person specific.

Chairman Rosenberger stated that they are saying "family" at this point in time.

Mr. Landsberger stated that he doesn't have a Conditional Use Permit for his family, he has a Conditional Use Permit for his daughter.

Mr. Britton stated that he's saying he would have to go through the process every time, and asked Mr. Landsberger is that was correct.

Mr. Landsberger stated that he heard them say that if you have a Conditional Use Permit for a family, and if there was no longer a use for a family it would no longer be a single-family dwelling and it would have to revert back.

Building and Zoning Administrator Bowden replied that the Conditional Use Permit is approved for whatever timeframe for whatever need is there. He added that when that need is gone it goes away and it has to revert back to the way it was.

Mr. Shendock stated he would like to clarify.

Mr. Landsberger interrupted (inaudible – 2 people speaking at once).

Mr. Shendock stated he would like to clarify that it didn't say specifically for family. His concern is the long-term use of the dwelling. He stated, you come up and are in R1. You apply for a Conditional Use Permit, what he expects that during that Conditional Use Permit, you

would be able to go through and explain the full lifecycle use of that dwelling. He would want to know what you are going to do with it if your mom passes away in 3 years. He feels that's fair to the neighbors and other members in R1.

Mr. Landsberger responded that if he builds a garage or an office, he doesn't have to tell the Commission what he is doing with it as long as there is no more than 1 family in an R1, he doesn't have to tell them what he is doing in any outbuilding.

Chairman Rosenberger replied that this was correct.

Mr. Landsberger then interjected that if he uses it as a detached quarter it has to be person specific, and he has to tell the Town what he is doing with it after that particular person moves out even though he will not anybody else move in there.

Chairman Rosenberger stated that this is the question that's being raised.

Mr. Landsberger stated that in R1 a single-family zoning, you can't have more than 1 family per lot. He agreed with that and gave language to enforce this. He added that the Commission is saying it has to be 1 building. He thinks it's discriminatory.

Chairman Rosenberger stated they are still in a discussion at this point in time.

Mr. Landsberger added that in R3, R4 or C1 this problem wouldn't exist.

Building and Zoning Administrator Bowden didn't agree and asked what he meant by it wouldn't exist.

Mr. Landsberger then asked if he could build a detached quarter in a C1.

Building and Zoning Administrator Bowden stated that he could not.

Mr. Landsberger stated that he could build an attached quarter.

Building and Zoning Administrator Bowden replied he was correct.

Mr. Landsberger stated that he could build a duplex, a separate family dwelling and rent it out.

Building and Zoning Administrator Bowden replied that he was correct.

Mr. Britton stated that there is no detached quarters in any of the zones.

Building and Zoning Administrator Bowden stated that he was correct.

Mr. Landsberger stated that this is except the bungalows that are grandfathered.

Mr. Britton asked what you would do if you can't add onto the house, it would mess the looks of the house up or not enough room.

Town Manager Tolbert responded that it would be difficult to imagine that you couldn't attach something unless there wasn't enough area on the lot.

Mr. Britton stated that in the case of his house, he has a swimming pool behind his house.

Town Manager Tolbert advised he could move the swimming pool, there is a remedy.

Mr. Britton stated that they would destroy all that.

Town Manager Tolbert stated that this would be a personal decision if it is more important to build the addition or have a pool.

Mr. Britton commented that the pool was there before the problem came along that he needed the addition. He asked why he should have to tear something up that he had a lot of money invested in.

Town Manager Tolbert responded that this would be individual decisions and fall down to what is more important to the property owner. He stated that it would be difficult to write a code or ordinance that would cover every eventuality for every person that has this in the backyard or this configuration of house. You should write a law or code that does the most good for the most people and covers the most circumstances. Everyone else would have to be taken on a case-by-case basis. The remedy is to get a Conditional Use Permit or go before the BZA.

Chairman Rosenberger stated that they just had that. An individual wanted to make an addition to their home. In order to do this, they asked for a variance for the setback issue. He stated that when you purchase a home or have a property you should know what the rules for what your capabilities are. He stated that if it conflicts, you go before the BZA and they vote for what the zoning calls for.

Town Manager Tolbert advised the in BZA appeal the other night the applicant applied for 2 variances. One was to build a bedroom downstairs which encroached on a side yard setback. The other was to build a screened porch on the back of the house which encroached on the rear yard setback. He feels the BZA did a very adequate job of discerning what was needed. He proved a hardship because the occupants were getting older and having a hard time going upstairs where the bedroom was. This was granted based on hardship. But the BZA did not approve the variance on the porch because they thought he already had 6' that already encroaches on the setback. and they would allow him to build 6' more. They based their decision on the hardship and granted the variance but did not grant the variance on the porch.

Chairman Rosenberger stated that this underscores the ability for an individual to address an issue like this. They have a vehicle available to them.

Mr. Landsberger stated that he was told he couldn't go to the BZA.

Town Manager Tolbert advised he wasn't a party to this.

Mr. Landsberger asked if he could go to the BZA.

Building and Zoning Administrator Bowden stated it depends on whether it is for use or land. If it is a use, you have to do conditional and if it is land per area, it would be BZA. He added that if the use isn't allowed.

Chairman Rosenberger interrupted that the BZA addresses the Building Code issues more often than it does the land use. He asked if this was correct.

Town Manager Tolbert believes that is the way it is interpreted. If you want to use something that is there in a way that is not permitted by zoning, you would need a conditional use, but if you wanted to build something that violates zoning you would go and ask for a variance.

Chairman Rosenberger stated that the Code addresses the medical issue which is resolved with a temporary need. It does not address a permanent structure.

Mr. Britton stated that destroying a house design down the road because you or a member of your family has health problems shouldn't make a difference if you build a structure or make alterations. He commented further.

Town Manager Tolbert stated that with the Special Use process the neighbors would get a chance to comment in writing and at the meeting.

They discussed possibly changing the use after the need is no longer there.

Chairman Rosenberger interjected that the conditional use permit will take care of this.

There was further discussion.

Mrs. Cherrix stated that she has checked other areas and the Town isn't the only place that considers R1 residential that they don't allow it in the state of Virginia. She added that it lists things they can't have there.

Mr. Dendler stated that the way he reads it, there are solutions already built into the current Zoning. There is flexibility. He doesn't know that there is a tremendous demand, and it isn't broken, he suggested not fixing it.

Mr. McComb stated that there is a possibility that an accessory is needed and allowed provided there is enough square footage, and it can be repurposed. He doesn't see the need to make a change at this point.

Chairman Rosenberger stated that Council requested a decision. He entertained a motion to leave the zoning as it currently is and to address the need.

Councilman McComb motioned to leave the zoning as it currently is and to address the need.

Mr. Shendock asked if he could add to the motion. He stated that as the Commission, when the permit comes up, they should monitor the progress using the information to modify the Comprehensive Plan at the next update.

Councilman McComb motioned, seconded by Mr. Shendock to keep the Ordinance as it is and review it as people make Conditional Use requests, the Planning Commission monitors the progress to include in the next Comprehensive Plan update and that for medical purposes the Conditional Use Permits would be free of charge. Unanimously approved.

Chairman Rosenberger thanked Mr. Landsberger for bringing this to the Planning Commission. They would rather hear from the audience it has more value.

3. Commission Members Announcements of Comments

Mr. Shendock stated that it is time to conduct another survey for the Comprehensive Plan.

Chairman Rosenberger asked to have this put on the agenda for the next meeting. He commented that they should give some thought to some of the questions. The survey could be concise. They can get the ideas in a format first to get the perfect questions for guidance.

Mrs. Cherrix stated that in all the years she has heard of 3 places, 2 not in R1, someone needed the place, and it was removed. Mr. Landsberger's was in R1, but if he hadn't vacated the property line, it would have been legal.

There were brief comments.

4. Adjourn

Mr. McComb motioned, seconded by Mr. Shendock to adjourn. Unanimously approved.

Chairman, Mr. Ray Rosenberger