

POLICY COMMITTEE MEETING

February 13, 2014

3:00 p.m.

County Government Center, Building D

1.) Roll Call

Present

Ms. Robin Bledsoe

Mr. Rich Krapf

Mr. Tim O'Connor

Staff Present

Mr. Paul Holt

Mr. Adam Kinsman

Mr. Jason Purse

Mr. Scott Whyte

Ms. Jennifer VanDyke

Mr. John Rogerson

Ms. Beth Klapper

Ms. Robin Bledsoe called the meeting to order at 3:00 p.m.

2.) Minutes

a. January 16, 2014

Mr. Tim O'Conner requested that his statement on page six regarding the size and configurations of lots be amended to specifically include corner and flag lots.

Mr. Rich Krapf moved to approve the minutes as amended.

In a unanimous voice vote the minutes were approved as submitted (3-0).

3.) Old Business

Case No. Z0-0007-2013, Zoning Ordinance Amendment to Consider the Keeping of Chickens in Residentially Zoned Areas of the County

Mr. Scott Whyte, Planner, stated that to date, results from a survey of over 600 interested citizens and parties have been reviewed and tabulated and that ordinances from neighboring localities that have recently adopted chicken keeping ordinances have also been reviewed. Mr. Whyte stated that the survey was a good sampling of interested citizens who informed the County about the issues they felt were important to consider in creating a chicken keeping ordinance. The issues included HOA and neighborhood covenants and restrictions, whether the County should consider chicken keeping in all residential areas, how many chickens should be allowed, coop construction and placement, and mitigation of possible nuisances caused by chickens.

Mr. Whyte stated that the primary issue of whether or not the County should consider allowing chickens in residentially zoned areas was a split issue on the survey with 44% agreeing and 54% opposed. Mr. Whyte further stated that 86 percent of the responses favored establishing some restrictions. Citizens felt that the number of birds should be restricted, usually by lot size. Mr. Whyte noted that most localities have requirements for coops and construction standards,

usually requiring an enclosure with a roof to keep the birds contained and safe from the elements and predators. Mr. Whyte further noted that the location of the coop is often regulated, usually restricted to the back yard with setback regulations to keep the coops away from property lines and adjacent structures. Sanitation and rooster restrictions are often applied to mitigate possible nuisance complaints about noise and odor.

Mr. Whyte stated that the County Attorney's office has issued an opinion on HOA covenants and restrictions, basically stating that the more restrictive regulation would prevail.

Mr. Whyte requested that the Committee provide feedback and guidance regarding any next steps.

Mr. Krapf noted that he had compiled a document with the Statement of Intent for each of the residential districts. Mr. Krapf noted that two of the residential districts R-6 and R-8 already permit chickens. Mr. Krapf stated that because of lot size and density, there were some districts where chicken keeping would not be appropriate.

Ms. Bledsoe recommended that the Committee review each district and determine if it would be appropriate to allow chickens in that district.

The Committee and staff concurred.

Ms. Bledsoe stated that R-1, Limited Residential, is primarily low density. Ms. Bledsoe inquired whether staff could provide an example neighborhood for that zoning.

Mr. Purse stated that Berkeley's Green, Fieldcrest, First Colony and Kingspoint among many others are zoned R-1.

Mr. Krapf noted that while many of these subdivisions were in more rural areas, many were not.

Mr. O'Connor inquired what the minimum lot size is for R-1.

Mr. Purse stated that with public water and sewer, the minimum lot size is 15,000 square feet; with private well and septic system, the minimum lot size is 30,000 square feet. Mr. Purse further stated that the majority are on public water and sewer.

Ms. Bledsoe stated that R-2, General Residential, is primarily low-density where the clustering of residential developments is encouraged to maximize shared and purposeful open space.

Mr. Purse provided a list of the larger subdivisions in this zoning district which includes Brookhaven, Burlington Woods, Chickahominy Haven and Season's Trace among many others.

Ms. Bledsoe noted that many of the subdivisions listed include apartments or townhomes.

Mr. Whyte noted that other localities restricted chicken keeping in multifamily areas.

Mr. O'Connor noted that some of the subdivisions have patio homes where the structures are detached but the lots are smaller.

Ms. Bledsoe inquired what the lot sizes are for R-2.

Mr. Purse stated that Lots served by public water and public sewage disposal systems have a minimum area of 10,000 square feet; lots served by individual water and sewage disposal system shall have a minimum area of 30,000 square feet.

Ms. Bledsoe stated that it seemed that R-3, Residential Redevelopment, should be ruled out.

Mr. Krapf provided a summary of the district stating that the purpose of the residential redevelopment district is to encourage the replacement or reuse of existing buildings or previously developed sites to accommodate new residential development.

Mr. Purse stated that there are no example neighborhoods for this zoning district. Mr. Purse further stated that if the R-3 district had been in existence at the time, the Ironbound Square Redevelopment would have been considered for inclusion. Forrest Heights/Neighbors Drive is another redevelopment project that might have been considered. Mr. Purse noted that typically the redevelopment projects would be on small lots.

The Committee concurred that the R-3 zoning district would not be a good candidate for chicken keeping.

Mr. Krapf stated that R-4, Residential Planned Community, is intended to permit development, in accordance with a master plan, of large, cluster-type communities in a manner that will protect and preserve the natural resources, trees, watersheds, contours and topographic features.

Mr. Purse stated that examples of this zoning district include Kingsmill, Fords Colony, Governors Land and Powhatan Secondary.

Mr. Krapf noted that these large communities are likely to have restrictive covenants.

Mr. Purse confirmed.

Ms. Bledsoe stated that since these are cluster developments, it would not be appropriate to consider allowing chickens.

The Committee concurred.

Mr. O'Connor stated that these developments would have a range of housing types from single family to townhomes to condominiums.

Mr. Krapf stated that R-5, Multifamily Residential, is composed of moderate to high-density residential areas and other such areas where similar development is likely to occur.

Mr. Purse stated that a number of the areas zoned R-5 are located within neighborhoods previously mentioned. Other examples include Michelle Point, Pocahontas Square and the Mews. Mr. Purse noted that these are usually very small lots.

Ms. Bledsoe inquired whether small lots would preclude keeping chickens.

Mr. Whyte stated that it would depend on what restrictions the Committee might recommend.

Mr. Purse noted that the York County ordinance set a restriction for one chicken for every 2,500 square feet. Mr. Purse further noted that even with that restriction, a small parcel could have chickens.

Ms. Bledsoe inquired about lot size for the R-5 district.

Mr. Purse responded that there was no lot size specified because the district is for apartments, townhomes and condominiums.

The Committee concurred that this district would not be considered for chicken keeping.

Ms. Bledsoe noted that R-6, Low-Density Residential, and R-8, Rural Residential, already permit chickens by right.

Mr. Krapf stated that the R-6 district is composed of those portions of the county where a quiet, low density residential character has already been established and where limited agricultural operations function concurrently with low-density residential uses.

Mr. Krapf stated that the R-8 District is intended for application to rural areas of the county which remain inside the primary service area where utilities and urban services are planned but not yet fully available and where urban development may be expected in the near future. The district may also be applied to certain. Mr. Krapf further stated that intended to maintain a rural environment suitable for farming, forestry and low-density rural residence.

Ms. Bledsoe stated that the discussion had ruled out R-3, R-4 and R-5; leaving R-1 and R-2 for consideration.

Ms. Bledsoe stated that R-1 included such neighborhoods as Berkeley's green, Kingspoint and Fieldcrest. Ms. Bledsoe stated that the minimum lot size is 15,000 square feet.

Ms. Bledsoe stated that R-2 included such neighborhoods as Season's Trace, Baron Woods and Chickahominy Haven.

Mr. Krapf noted that the R-2 district encouraged clustering and that minimum lot size is smaller at 10,000 square feet.

Mr. Krapf noted that one of his concerns in crafting an ordinance is the impact on staff of enforcing the regulations and responding to complaints.

Mr. Purse stated that there are two zoning officers on staff to respond to complaints. Mr. Purse further stated that the impact would depend on the volume of complaints. Mr. Purse stated that subjective complaints such as noise and odor would need to be egregious for a notice of violation to be issued.

Ms. Bledsoe inquired how chicken complaints are handled in the districts where they are currently allowed.

Mr. Purse stated that chickens are allowed by-right and there are no regulations to enforce.

Mr. Adam Kinsman stated that when crafting an ordinance, it is important to look at requirements that can be measured quantitatively at the property line, particularly when there is the potential for enforcement to result in legal action. Mr. Kinsman noted that it would be very difficult to do that with odors.

Mr. Kinsman further noted that it would be difficult to enforce the number of chickens because it is possible to temporarily relocate or hide chickens.

Mr. Kinsman stated that it would also be difficult to enforce regulations for adequate upkeep. Mr. Kinsman further stated that in the districts that currently permit chickens, those concerns are referred to Animal Control.

Mr. O'Connor posed a question on how a nuisance would be defined.

Mr. Kinsman stated that it was different in every case. Mr. Kinsman stated that there are also distinctions between public and private nuisances. Mr. Kinsman stated that the conditions would need to be egregious to rise to the level of a public nuisance.

Ms. Bledsoe inquired whether chicken keeping could be added to the R-1 and R-2 districts as a by-right use without restrictions.

Mr. Kinsman stated that it was an option or the Committee could recommend reasonable restrictions.

Ms. Bledsoe inquired whether it was appropriate to put restrictions on two districts when there are no restrictions on the districts where chickens are currently permitted.

Mr. Kinsman responded that it would be appropriate if it is deemed that the districts vary sufficiently in their character that restrictions are necessary to make it workable for the district.

Mr. Purse noted that "residential chicken keeping" could be added as a use in R-1 and R-2 with the restrictions being enumerated under Article 2, Special Regulations.

Mr. Krapf inquired whether there were significant hurdles associated with the SUP process.

Mr. Holt stated that it would make every application unique and each one would be subject to the public hearing process. Mr. Holt further stated that it would lead to situations where some are approved and others are not, which would make the process less consistent.

Mr. O'Connor noted that the York County ordinance includes a statement that "... or for any other reason diminishes the rights of adjacent property owners to enjoy reasonable use of their

property” and inquired if Mr. Kinsman would prefer that such a statement would not be included in the James City County ordinance.

Mr. Kinsman stated that the ordinance is working well for York County. Mr. Kinsman further stated that there have been minimal complaints and none have been prosecuted in court. Mr. Kinsman further stated that relying solely on that statement in a court case would be difficult.

Mr. O’Connor inquired what would be required for enforcement purposes to create an ordinance that is not subjective. Mr. O’Connor further stated that it was a question of how to regulate the behavior of the owners.

Ms. Bledsoe noted that Poquoson has issued 31 permits for chicken keeping and York County has issued 34. Ms. Bledsoe further noted that the Peninsula Chicken Keepers are aware of approximately 5 people in James City County who have chickens. Ms. Bledsoe inquired if the County had a better idea of the number of chicken keepers.

Mr. Holt stated that based on the survey responses, there might be 30.

Ms. Bledsoe opened the floor to comments from the public.

Mr. Eric Danuser noted that it seemed as though the County was approaching the ordinance as though everyone in the County would have chickens.

Ms. Bledsoe stated that the goal was to draft an ordinance that would serve everyone.

Mr. O’Connor noted that the ordinance would potentially allow everyone in the affected district(s) to have chickens.

Ms. Carol Bartram, Peninsula Chicken Keepers, inquired whether the Committee has done a site visit to see a small flock. Ms. Bartram noted that her neighbors were only aware of her flock because she notified them. Ms. Bartram stated that what is needed is to change the perception of backyard chickens from agriculture to pets. Ms. Bartram further stated that the waste and noise produced by chickens was far less than most domestic animals. Ms. Bartram noted that the consideration and discussion by the Policy Committee is identical to the discussions in other localities.

Ms. Michelle Fitzgerald stated that where there are chickens on small lots in Chanco’s Grant, there have been no complaints. Ms. Fitzgerald further stated that the one restriction should be on roosters because of the noise.

Ms. Bledsoe closed the public comment.

Ms. Bledsoe asked the Committee if it was feasible to have staff draft ordinance language for the two districts that have not been ruled out.

Mr. Krapf stated that he was still on the fence about the issue. Mr. Krapf further stated because chicken keeping is a use that has not been introduced in the majority of the residential districts,

it is important to look at the potential impacts thoroughly rather than rushing to put an ordinance in place and finding that there are significant issues that have not been addressed.

Mr. Krapf noted that his concerns include: whether zoning regulations should be changed to allow chicken keeping in residential districts when half of the County's land is zoned to allow chickens; the impact on adjacent property owners if there is not a requirement that chickens be kept in an enclosure that prevents escape; whether introducing a new food source such as chickens will draw predators to the area that might not typically be found that district; and the impact on staff of enforcing the ordinance.

Mr. Krapf stated that, despite his concerns, he would be willing to look at a draft ordinance to amend the zoning regulations for the R-1 district. Mr. Krapf noted that he was not in favor of amending the zoning regulations for the R-2 district.

Mr. O'Connor stated that his concerns included minimum lot sizes; the impact of placement of coops where there are flag and corner lots; and the impact on the County of enforcing the ordinance.

Ms. Bledsoe suggested moving forward with a draft ordinance only for the R-1 district.

Ms. Bledsoe noted for the public, that the role of the Policy Committee is to vet the information and to make recommendations to the full Planning Commission. Ms. Bledsoe further noted that the Planning Commission would then forward a recommendation to the Board of Supervisors where the change would ultimately be ratified.

Mr. Holt confirmed that staff would bring back to the Committee draft ordinance language with options to be considered for the R-1 district.

Ms. Bledsoe stated that the Committee would like to make a recommendation at its March meeting.

Mr. O'Connor stated that if there were an application process, he would recommend that the applicant be required to provide proof that there are no deed restrictions or restrictive covenants prohibiting chickens affecting their property.

Mr. Holt noted that staff would work with the County Attorney's office to consider options that a reasonable and enforceable.

4.) **New Business**

Case No. ZO-0008-2013, Accessory Apartments

Ms. Jennifer VanDyke, Planner, stated that at its January 8, 2014, meeting the Planning Commission approved an initiating resolution to consider revisions to the Zoning Ordinance pertaining to the definition, provisions and procedures relating to accessory apartments.

Ms. VanDyke stated that current ordinance provisions require accessory apartments be: substantially contained within the single family dwelling; may not occupy more than 35% of the floor area of the dwelling; new entrances must be located on the side or rear of the building; and all setback, yard and height regulations applicable to main structures in the zoning district must be met.

Ms. VanDyke stated that currently, accessory apartments are allowed by-right on property that is zoned A-1, R-2, R-3, R-4, R-8, MU and PUD and are allowed as a specially permitted use on land that is zoned R-1 and R-6.

Ms. VanDyke stated that staff requests that the Committee provide input on the possibility of allowing accessory apartments as a matter of right or maintain that they be specially permitted in R-1 and R-6.

Mr. O'Connor stated that he might be willing to consider expanding where accessory apartments are allowed by-right.

Mr. Krapf noted that he would like to see the restrictions on accessory apartments reduced; such as the requirements for sharing a common wall. Mr. Krapf noted that he did not have concerns with accessory apartments located above a detached garage.

Mr. John Rogerson, Zoning Officer, stated that currently accessory structures such as garages could not be used for housekeeping purposes.

Ms. Bledsoe inquired why accessory structures could not be used for an accessory apartment.

Ms. VanDyke by allowing accessory apartments in a separate structure the character of the neighborhood could be impacted.

Ms. Bledsoe inquired if there were ways to allow the accessory apartments in a separate structure without affecting the look of the community.

Ms. VanDyke noted that certain localities require architectural elevations to be submitted; however, that increases the cost to the homeowner.

Mr. O'Connor noted that he would support requirements that the accessory apartment in a separate structure be harmonious with the main structure. Mr. O'Connor also suggested that a sunset clause should be included to avoid the potential for rental use.

Mr. Krapf inquired whether it could be stipulated that the occupant is a family member.

Mr. Holt noted that the Fair Housing Act would prohibit that type of stipulation.

Mr. Krapf noted that restrictions could be included for the location of the entrance and adequate parking.

Ms. VanDyke noted that a stipulation could be added to require the property owner reside in either the main structure or the accessory apartment.

Mr. Holt suggested that staff bring back ordinance options to the March Policy Committee meeting for consideration.

The Committee members confirmed that they would like to review a draft ordinance at the next meeting.

5.) Adjournment

The meeting was adjourned at 4:09 p.m.

Robin Bledsoe, Chair of the Policy Committee