

VIRGINIA: At a Joint Public Hearing with the Onley Town Council & Planning Commission for Re-zoning Property & Regular Monthly Meeting held at the Onley Fire & Rescue Building on the 3rd day of November, A.D., 2014:

Members Present: Jack Pierson, Mayor  
Ned Finney, Vice-Mayor  
John Dennis  
Dawn Dize  
Matt Hart  
Susan Rillo  
Don Strautz

Staff Present: Cela Burge, Town Attorney  
Jamy Salazar, Treasurer  
Sgt. John Spivey, OPD Officer-In-Charge

## **Regular Monthly Meeting**

### **Call to Order**

Mayor Pierson called the meeting to order at 6:30pm.

### **Invocation & Pledge of Allegiance**

The invocation was given by Don Strautz and the Pledge of Allegiance was led by Ned Finney.

### **Adoption of Agenda**

**Motion: To adopt the agenda by Don Strautz and seconded by Ned Finney.**

**Vote:** Dennis-yes; Dize-yes; Hart-yes; Finney-yes; Rillo-yes; Strautz-yes. MOTION PASSED

## **Town Council & Planning Commission Joint Public Hearing for Re-zoning Property**

### **Call to Order the Hearing & Establishment of Quorum for both bodies**

Mayor Pierson called the Public Hearing to order at 6:31pm. He established that the Town Council had a quorum. Ms. Siglin established that the Planning Commission also had a quorum.

### **Rules for Public Hearings**

Ms. Burge stated that the matter tonight is a re-zoning request under consideration by the Onley Planning Commission & Town Council. This public hearing is for the rezoning of property located at 21033 Front Street and owned by Riptide Real Estate. She proceeded to read the Rules of Public Hearings and Rules for Public Participation in general.

Ms. Siglin called the Planning Commission meeting to order and re-stated that there is a quorum.

**Statement of Facts on Re-Zoning Property**

At this time, Mr. Hart left his seat on Council and advised that Bob Turner, an attorney, would be speaking on his behalf. Mr. Turner introduced himself and stated that he does represent Matt Hart and Riptide Real Estate. He stated that the property in question was at one time a hotel and is now a single residence where Mr. Hart resides and does not operate a business on the property. He added that under the current zoning classification, Mr. Hart may live on the second floor but not the first. Mr. Hart is looking to “down zone” the property from commercial, which allows quite a few more uses of the property, to residential. Mr. Hart wants to acquire a residential loan on the property but cannot do so under the current zoning classification. The property has a septic system limiting it to six people therefore it is not really suitable for a business. Mr. Turner stated that he believes a re-zoning is consistent with the neighborhood – he thinks there is only one adjoining landowner that has commercial property. The building has been nicely restored. Mr. Hart has spent quite a lot of money making it suitable for residential use. He added that he feels it will benefit the town by limiting the potential uses for the property. He added that this is the third property in town that Mr. Hart has renovated making an improvement to the town. Mr. Turner asked if anyone had any questions for him.

Mr. Bowling expressed concern about the setbacks required for a residential structure. He does not believe that the property meets the required 35'. Mr. Hart stated that he believes the current setback is about 20'. Mr. Turner said that it is an odd property for a commercial zoning adding that there is no parking as well. Mr. Hart wants to make the first floor part of his residence. Mr. Strautz asked if there are any other requirements for acquiring the residential loan. Mr. Turner stated that he believes Mr. Hart will need to put the property in his name and out of Riptide Real Estate LLC. Mr. Dennis asked about the property line for the highway department. Mr. Turner stated that he is not certain since he does not have a physical survey of the property. Mr. Finney stated that nothing has changed since Mr. Hart purchased the property. Mr. Turner agreed. Mr. Dennis asked why the property has two electric meters. Mr. Turner responded that when Mr. Hart purchased the house it had six meters. The electrician told him that it would be cheaper to go to two meters than one. Mr. Dennis asked how many rooms are in the house. Mr. Hart stated that the second and third floors each have four rooms and each has a bathroom. The first floor has four rooms and a half bath. There is also a back section that has one room, a bathroom and a hallway. Mr. Bowling asked how many floors are in the house. Mr. Hart responded that there are three floors. Ms. Siglin stated that it concerns her that the information on the tax map is inaccurate. She stated that there are several discrepancies on the application relating to the description of the house. Mr. Turner stated that he does not know why the County has it wrong. Ms. Siglin asked why Mr. Hart has not corrected the information with the County. Mr. Turner stated that he does not know of many people who would go to the trouble to do that. Mr. Bowling asked for the overall height of the building. Mr. Hart did not know. Ms. Siglin stated that a number of people have mentioned that the drawings show parking on the drain fields and septic system. Mr. Hart stated that the driveway is on the drain fields but not the septic. He added that there are other properties in town that have the same issue. Mr. Whitaker asked if the town will take on any liability if the re-zoning is granted. Ms. Burge & Mr. Tuner agreed that there would be no additional liability to the town. Mr. Bowling commented that the regulation in R-1 requires that it be a suitable environment for family life. Mr. Finney commented that he doesn't see any reason to deny the re-zoning adding that using the property as a residence will only cut down on the traffic in and out of that location. Ms. Rillo stated that she understands that Mr. Hart's reason for wanting to re-zone is to meet a loan requirement. She asked that he go on record stating that it's not so that he can make apartments later on. Mr. Turner stated that he does not wish to make it into apartments and that the current zoning would not allow for that anyway.

### Public Comments

Dawn Dize spoke on behalf of Laurice Hohlt who could not attend the meeting tonight. Ms. Hohlt wished to go on record against the re-zoning. She fears that the property will be made into apartments. Ms. Dize reiterated that she is speaking for Ms. Hohlt and not as a Council member or as a citizen herself. Billye D. Custis of 25440 Caroline Avenue spoke against the re-zoning stating that while Mr. Hart has made an improvement to the property, all the properties on Front Street are zoned commercial and should remain so. She feels that since the town owns the adjoining property where the town water tank is there will be noise and she doesn't think Council wants that in a residential area. The set back for frontage in a residential area on a street that size is 60' from the center of the road and you need 100'+ of frontage on the street. There are no setbacks for a commercial designation. She says that she feels re-zoning a piece of property that cannot meet setback seems wrong. The application contains numerous discrepancies and since Mr. Hart lives in the building and is a realtor and a contractor, she feels that he should have given more accurate and updated information. She stated that residential properties should only have one electric meter and this property has two. She stated that as far as re-zoning for matters of lending, the property is what it is when Mr. Hart purchased it and he knew that at that time. She asked that if Council does decide to re-zone the property, they are certain there is no liability to the town. She further asked that Council put a lot of thought into this matter, adding that it is very important and will be forever.

### Adjourn Public Hearing – Both Bodies

**Motion: To adjourn the Public Hearing of the Planning Commission at 6:59pm by Don Strautz and seconded by Scott Whitaker. Vote:** Siglin-yes; Bowling-yes; Strautz-yes; Whitaker-yes. MOTION PASSED

**Motion: To adjourn the Public Hearing of the Onley Town Council at 6:59pm by Ned Finney and seconded by Susan Rillo. Vote:** Dennis-yes; Dize-yes; Hart-yes; Finney-yes; Rillo-yes; Strautz-yes. MOTION PASSED

At this time, the Planning Commission including Mr. Strautz left the room to deliberate.

## Regular Monthly Meeting (cont'd)

### Consideration of Minutes

**Motion: To approve the minutes of the October 6, 2014 Regular Monthly Council Meeting by Dawn Dize and seconded by Ned Finney. Vote:** Dennis-yes; Dize-yes; Hart-absent; Finney-yes; Rillo-yes; Strautz-absent. MOTION PASSED

**Motion: To approve the minutes of the October 21, 2014 Special Meeting by Dawn Dize and seconded by Susan Rillo. Vote:** Dennis-yes; Dize-yes; Hart-absent; Finney-yes; Rillo-yes; Strautz-absent. MOTION PASSED

### Department Reports

#### Police Report & Schedule

Mayor Pierson read a letter of resignation from Chief Walter Marks, effective October 23, 2014. A copy of this letter will be attached to the minutes.

Sergeant Spivey asked that Council approve a revised November schedule since it had to be changed to accommodate the departure of Chief Marks. He pointed out that the November and December schedules are once again eight hour schedules since that rotation works better with only four officers. He stated that Officer Long and Officer Bennett conducted training specific to clearing and searching houses with the Onancock Police Department this month. They found it to be very informative. In reference to monthly reports, Sergeant Spivey is planning to streamline them so that they are easy to

read and understand, as well as be completely accurate. He welcomed suggestions from Council on what type of information they want to see; as well as in what format. He stated that there will be an officers meeting on November 14<sup>th</sup> at 4:00. He asked that any Council members interested in attending do so. He said that while he is the Officer-In-Charge, the department will operate with complete transparency so he welcomes all inquiries from Council. He provided Council with a cost analysis for a fifth officer – comparing part-time and full-time positions. He added that he is not requesting a fifth officer at this time but wanted to make Council aware of this information. He concluded by asking that Council approve new uniforms for the department. He presented them with the cost for doing this. A copy will be attached to the minutes. Mr. Finney asked for some 6-2 shifts on Friday and Saturday nights. Ms. Dize asked why we went back to eight hour shifts. Sergeant Spivey stated that due to some vacation requests and the shortage of an officer, it is necessary to use the eight hour schedule. Ms. Dize wants to make sure that the Black Friday sale at Walmart on Thanksgiving is covered. Sergeant Spivey stated that Walmart hires off-duty officers to work, but if Council wishes, he will make that accommodation. Mr. Dennis asked if we can ask Walmart to make a donation to the town if our officers handle calls there. Sergeant Spivey stated that our current policy in reference to Walmart is that we will go there to assist ACSO but we do not take active cases.

**Motion: To accept the Police Report by John Dennis and seconded by Ned Finney. Vote:** Dennis-yes; Dize-yes; Hart-yes; Finney-yes; Rillo-yes; Strautz-absent. MOTION PASSED

**Motion: To authorize Sergeant Spivey to purchase new uniforms at a cost of \$1,310.12 by Ned Finney and seconded by Dawn Dize. Vote:** Dennis-yes; Dize-yes; Hart-yes; Finney-yes; Rillo-yes; Strautz-absent. MOTION PASSED

#### **Treasurer's Report**

Ms. Salazar asked that Council consider the additional payables when approving monthly payables. She explained that the \$100.00 to VDOT is the cost of a permit to close the road for the parade. She asked VDOT to waive the fee but that request was denied this year. In reference to a posting error on last month's report, Ms. Salazar stated that a meals tax check was incorrectly posted to court fines and that error has been corrected. She gave an overview of the budget for the current time period adding that tax payments have started coming in. Mr. Dennis asked if all of the food tax is current. She stated that it is. There was an issue with some transient occupancy tax being paid late but that has been addressed.

**Motion: To Pay the October 2014 Payables by Dawn Dize and seconded by Susan Rillo.**

**Vote:** Dennis-yes; Dize-yes; Hart-yes; Finney-yes; Rillo-yes; Strautz-absent. MOTION PASSED

#### **Attorney's Report**

Ms. Burge stated that there has been an inquiry of a Special Use Permit from Tami Serio. Ms. Burge has contacted her to discuss this matter but there is no application at this time. She has worked with Mayor Pierson in the receipt of Chief Marks' resignation. She asked that Council formally accept his resignation via motion. Lastly, she has looked at the RFP for Architectural Services and made comments and recommendations, which she passed along to Ms. Salazar. Mr. Finney asked if she was able to speak with the company about the GPS. She stated that she has not spoken with anyone as of yet but she will do so. She added that she did not find that they sold their product to the VSP and she has not found anyone familiar with that particular vendor.

**Motion: To accept Walter Marks' resignation from his position as Chief of Police for the Town of Onley by Ned Finney and seconded by John Dennis. Vote:** Dennis-yes; Dize-yes; Hart-yes; Finney-yes; Rillo-yes; Strautz-absent. MOTION PASSED

### **Public Works**

Ms. Salazar read a list of what Antwan has worked on this past month. A copy will be attached to the minutes. She added that there was one week in October that we did not have Antwan so Mr. Simpson offered to send him on Saturday morning to help with parade needs. Ms. Salazar asked for Council's thoughts on painting the storm drains so that they are more visible. She added that the Town of Exmore has painted theirs and they are very visible. Mr. Dennis suggested calling VDOT to get permission and to ask if there are certain paint colors that are acceptable. Mayor Pierson stated that this arrangement of having someone doing public works one day a week is working very well. Mr. Dennis suggested getting something to weigh down the outside trash cans. Ms. Salazar stated that they were bungee corded but the cords are missing. She will look into this matter.

### **Planning Commission Report**

At this time (7:27pm), the Planning Commission, including Mr. Strautz, returned and Mr. Hart excused himself from the room. Ms. Siglin stated that the Planning Commission voted against granting the re-zoning of the property in question. It is their recommendation that Council do the same. Mayor Pierson asked that they offer an explanation. Ms. Siglin stated that everything about the building goes against our current zoning ordinance. She added that the Planning Commission feels there is no point in having a zoning ordinance if it is going to be ignored.

Ms. Burge told Council that it is now their turn to deliberate on this matter. There needs to be a hearty discussion on this matter and there needs to be findings on record that would enable someone to look at the Council's record from tonight and determine that it was a debatable question that was considered fully. Ms. Burge asked to offer a couple of comments based on things that she has heard tonight. She stated that it is obvious that the County's information is not correct. The applicant made an official presentation and corrected that information although that was not his burden to do so. She added that there are a lot of properties where the lots do not conform to the current zoning ordinance because the zoning ordinances were not established until the seventies— those lots are considered legal non-conforming lots. There have been instances where someone wanted to build a new structure on a legally non-conforming lot. They had to meet all required setbacks under today's ordinances. If there is a property with a structure that does not conform to the current zoning ordinance, it's considered a legal non-conformity. That means it cannot be enlarged or made to be more non-conforming. She added that there are other agencies that weigh in on uses of property – an example would be the Health Department. Mr. Strautz asked if he is okay to return to his Council seat. Ms. Burge replied that it is since he is the Council liaison to the Planning Commission. Mr. Finney asked if changing the zoning affects the lot – does it then make it illegal. Ms. Burge replied that it does not – it only makes it a legal non-conforming lot. Mr. Strautz stated that as far as the County's information being inaccurate, information is kept on file as to how the property was on January 1<sup>st</sup> of each year. Mr. Hart's property in under renovation and is currently on file to be reviewed in 2015 but at last review it was under renovation and therefore final changes have not been made. Ms. Rillo asked why the County has the property listed as residential. Mr. Strautz explained that the change was made based on the current use of the property – the County considers it residential because that was the use at the time that assessment was made. Mr. Finney said that the only problem the Planning Commission has is that it will be a legal non-conforming property but there are many such properties already in town due to the zoning ordinance coming about in the seventies and many homes in Onley being built before that time. Ms. Burge stated that the minimum lot area for an R-1 Residential designation is 20,000 square feet. There are no area regulations for a B-G commercial property. Ms. Dize stated that in the past there was a family living on the first floor of this property. There was no accurate lot size information available. There was some concern about the setback regulations required. It was noted that the property in question does not meet these requirements. Mr. Turner asked to respond to Mr. Finney's comment

about making the property legally non-conforming. He stated that Council does have the power to do that – if they were not permitted to make that designation we wouldn't even be here discussing it tonight. Ms. Dize stated that she feels it has been non-conforming all along. It has been a residence off and on over the years as well as a hotel and a bed and breakfast for a short while. Ms. Siglin said that it was classified as a tourist home. Mr. Finney stated that it's gone on record that Mr. Hart is not going to make it into apartments and he feels that the re-zoning should be approved. Ms. Rillo agreed.

**Motion: To approve the request for re-zoning to R-1 from Riptide Real Estate LLC for property located at 21033 Front Street by Ned Finney and seconded by Susan Rillo.**

Ms. Burge asked for a list of their findings to support this motion. Mr. Finney stated that it is already legally non-conforming. Billye D. Custis and Jan Siglin disagreed. Mr. Finney stated that half of the property is already in a residential area. He feels that Mr. Hart has made a tremendous improvement to the property as well as the neighborhood. Mr. Dennis stated that he thought a residential lot needs to be 20,000 square feet. Mr. Strautz stated that he feels the lot is about 10,000 square feet. Mr. Turner added that he does not have the exact plat size but he knows it is not 20,000 square feet. Mr. Dennis estimated it to be about 18,000 square feet. Mr. Finney stated that he will not amend his motion – he is sure there are plenty of lots in town that are not 20,000 square feet. Ms. Burge listed Council findings to support the motion: the history of existing use, part of the lot is in a commercial designation while part is in residential, improvements to the property and finally the potential that other R-1 lots in town do not meet the current 20,000 square foot lot size requirement.

**At this time a vote was taken on the motion still on the floor. Voice Vote:** Dennis-no; Dize-no; Hart-absent; Finney-yes; Rillo-yes; Strautz-no. MOTION FAILED

#### **Old Business**

Mr. Finney stated that the RFP for Architectural Services has been sent to ten architectural firms with a return date of November 21, 2014.

Ms. Salazar asked that everyone come out and help with the Veterans Celebration on Saturday. There was no committee this year so most of the planning was done by her; however, she did meet with Jim White on Friday to finalize some things.

Ms. Dize said that the Beautification Committee has been unable to meet. The lighted carolers were retrieved by Antwan and the plan is to decorate the tree across from the town office. Mr. Cowan has given the town permission to do so. The committee is also considering decorating the tree by Shore Lodge. Ms. Siglin thanked the town for allowing Antwan to plant the trees on the property near her house.

Mayor Pierson asked that Council look at the three applications that were received in response to the Zoning Administrator vacancy. He pointed out that only one of the applicants is qualified to handle the job. Ms. Dize asked if the house next to the post office has obtained building permits. Mr. Finney stated that based on the work being done the town does not require it. Mr. Strautz stated that the County did require them to obtain a permit for some things.

**Motion: To allow Mayor Pierson to check John Pavlik's references and hire him on a 90 day probation period by Ned Finney.**

Ms. Dize would like to make sure that Mr. Pavlik is clear as to what is expected of him.

Mr. Strautz stated that he is the Hazard Mitigation Committee member. He has contacted Ms. Morrison but he will not be able to attend the next meeting. Ms. Morrison will email him any needed information. At this time, Mr. Finney rescinded his motion concerning Mr. Pavlik and the Zoning Administrator vacancy. Council asked that Mayor Pierson proceed with checking Mr. Pavlik's references.

#### **New Business**

The re-zoning matter was discussed earlier in the night.

Mr. Dennis asked Ms. Salazar how many people have not purchased town decals. Ms. Salazar stated that it is not possible to give an exact figure but based on the vehicles owned in the tax book; she estimates it to be about 150 vehicles that are not properly displaying the town decal. Mr. Dennis asked Ms. Burge to look into the possibility of paying for town decals on the yearly tax bill. Mr. Dennis asked how many people haven't paid town taxes. Ms. Salazar stated that she does not have the number of people but she does have the amount. Billye D. Custis suggested putting delinquent taxpayer names in the newspaper. Ms. Burge will look into the possibility of having the cost of the town decal added to tax bills next year. Ms. Salazar stated that it has been the practice of Town Council to write-off any tax bills with a combined total of \$2.00 or less. She stated that she currently has 58 bills totaling \$67.24.

**Motion: To write-off 2014 tax bills under \$2.00 by Ned Finney and seconded by Don Strautz. Vote:** Dennis-yes; Dize-yes; Hart-absent; Finney-yes; Rillo-yes; Strautz-yes. MOTION PASSED

#### **Public Comments**

Billye D. Custis stated that Sergeant Spivey did an excellent job.

#### **Council Comments**

Ms. Rillo welcomed Sergeant Spivey and the Planning Commission for their input.

Mr. Dennis thanked everyone.

Ms. Dize thanked everyone for coming.

Mr. Finney thanked Ms. Salazar for her work on the Veterans Celebration. He thanked the Council, Mr. Higgins, the Planning Commission and the residents for coming. He welcomed Sergeant Spivey and thanked him for taking on his additional duties.

Mr. Strautz stated that he recently visited Philadelphia where the Declaration of Independence was signed. He stated that really put into perspective what we do here.

#### **Adjourn/Recess**

**Motion: To adjourn at 8:44pm by Don Strautz and seconded by Ned Finney. Vote:** Dennis-yes; Dize-yes; Hart-absent; Finney-yes; Rillo-yes; Strautz-yes. MOTION PASSED

Respectfully submitted by:

Jamye Salazar, Clerk/Treasurer

Jack Pierson, Mayor