

# TOWN OF WINDSOR

Town Elected Officials  
 Carita J. Richardson, Mayor  
 Clint Bryant-Vice Mayor  
 Durwood V. Scott  
 Greg Willis  
 N. Macon Edwards, III  
 Patty Fleming  
 Tony Ambrose



Established 1902

July 28, 2016

Town Manager  
 Michael R. Stallings

Town Clerk  
 Terry Whitehead

Town Attorney  
 Wallace W. Brittle, Jr.

Memorandum

To: Hon. Mayor Richardson and Town Council

From: Dennis W. Carney, Planning and Zoning Administrator

**Subject: Request for Chickens and Pot-Bellied Pigs in the R-1, HDR and LDR Residential Districts**

**Issue:** At the July 27, 2016 Planning Commission meeting, the Commission discussed a proposal that was brought to their attention by Mr. Walter Bernacki of Johnson Avenue. The proposal would permit chickens and pot-bellied pigs in the R-1 Residential, HDR High Density Residential and LDR Low Density Residential Districts. This request is entirely a separate issue from the previous discussion that would permit poultry in the A-1 Agricultural District

Mr. Bernacki has had for many years on his property on Johnson Avenue, several hens. Based on a recent anonymous complaint, the property was found to be in violation. Partly because of this but primarily because he feels that the liberalization on chickens is justified as well as the pot-bellied pig permission, this request for several zoning text amendments is being brought forward. Mr. Bernacki submitted the original request and Staff prepared document language that would fit into our Land Development Ordinance if the Town wishes to move in this direction. The request to the Planning Commission was to have the Planning Commission move the application forward at their volition rather than Mr. Bernacki being the applicant with commensurate fees.

The Commission had a long discussion on the topics of permitting these uses, their potential effects upon small lot neighborhoods, the problem of potentially opening the doors to more questionable exotic pets and how the proposal could be properly enforced on the sanitary issue and when the animals would not be properly confined. Because of these issues, the Commission felt it was prudent to ask Town Council whether the Commission should be addressing this proposal originating from the Planning Commission and if so, what sort of guidance Town Council would like to provide on this matter.

**Background:** As was noted in the poultry issue in the A-1 Agricultural District, the Windsor Land Development Ordinance does not permit livestock of any type, other than

horses and ponies in the LDR Low Density Residential District, in any district except A-1 Agricultural.

This present proposal from Mr. Bernacki, if approved by Town Council would allow no more than ten chickens on a residential property at any one time. Roosters are not permitted. The pens or enclosures must be kept clean. The chickens would not be permitted to roam freely and must be under the owner/caretaker's control. The actual verbage is attached.

Pot-bellied pigs are also a component of the current proposal. This type of swine is primarily used as pets. The proposal would limit pot-bellied pigs to no more than two per property. Their pens or enclosures also must be kept clean. As with the chickens, pot-bellied pigs would not be permitted to roam freely and must be under the owner/caretaker's control.

It is noted, that the specific provisions are not carved in stone and could be modified if the Commission and Town Council deem them proper. The Commission would review these aspects if Town Council feels it is appropriate.

After the Planning Commission meeting, Staff found the information regarding a similar request from a citizen in August of 2011. A copy of the notice to the applicant is provided as a historical reference. The major difference between this request and the previous declination of a proposal to permit chickens in residential districts is that the chickens on the previous request had occasionally gotten out of their enclosure (based on my memory of the case). There was no reference made regarding pot-bellied pigs.

**Recommendation:** There are three methods in which a Zoning Text amendment can originate. Town Council could request the Commission to review given provisions. Staff and the Commission could review a provision on their own initiative or on behalf of individual citizens and begin the review of a proposed Ordinance amendment. The third method by which an amendment can be brought forward is a proposed Zoning Text Amendment from a private citizen or entity. All of these require public hearings on the merits of the proposals at both Council and Commission levels.

The Planning Commission is seeking Town Council's guidance as to whether Town Council deems the matter of permitting chickens and pot-bellied pigs in residential districts is an ordinance topic that the Planning Commission should take up unilaterally and if so are there concerns that the Commission should scrutinize (the first method).

## Potential Zoning Ordinance Amendment

### § 160-36 Miscellaneous General Regulations

(New Section)

G. Chickens and Miniature Pot-Bellied Pigs. The following regulations apply in the R-1 Residential, HDR High Density Residential and LDR Low Density Residential Districts where residents wish to have chickens and/or pot-bellied pigs. Chickens and pot-bellied pigs are prohibited from all multi-family, duplex, condominium and townhouse residential units.

1. The following requirements apply to anyone wishing to have chickens in the aforementioned districts;
  - a. The maximum number of chickens on a given property shall be limited to no more than ten at any one time.
  - b. There shall be no roosters permitted at any time
  - c. Chickens must be kept in an enclosed pen (coop) and not be permitted to free range unless under the direct supervision of the owner or his/her designee.
  - d. The coop or enclosure must be kept clean to reduce nuisances which include aesthetic and odor concerns.
  - e. The property owner of the chickens shall obtain a permit from the Town of Windsor.
  - f. If there are any violations of the requirements, a written notice shall be sent to the permit holder and they will have thirty (30) days to correct said violations. If the violations are not corrected the permit will be revoked and the owner must reapply for a new permit when the violations are corrected.
2. The following requirements apply to anyone wishing to have pot-bellied pigs in the aforementioned districts;
  - a. The maximum number of pot-bellied pigs on a given property shall be limited to no more than two at any one time.
  - b. Pot-bellied pig(s) must be kept in an enclosed pen and not be permitted to free range unless under the direct supervision of the owner or his/her designee.

- c. The enclosure must be kept clean to reduce nuisances which include aesthetic and odor concerns.
- d. The property owner of the pot-bellied pig(s) shall obtain a permit from the Town of Windsor.
- e. If there are any violations of the requirements, a written notice shall be sent to the permit holder and they will have thirty (30) days to correct said violations. If the violations are not corrected the permit will be revoked and the owner must reapply for a new permit when the violations are corrected.

### **New Sections**

#### **Add to § 160-47B. R-1 Residential Accessory Uses**

- 13. Chickens and/or pot-bellied pigs as provided in § 160-36G.

#### **In § 160-48B. LDR Low Density Residential Accessory Uses**

- 14. Chickens and/or pot-bellied pigs as provided in § 160-36G.

#### **In § 160-48B. HDR High Density Residential Accessory Uses**

- 10. Chickens and/or pot-bellied pigs as provided in § 160-36G.

July 25, 2016

Walter Bernacki  
Sierra Bernacki  
24129 Johnson Ave.  
Windsor, VA 23487

Town of Windsor  
8 East Windsor Blvd.  
Windsor, VA 23487  
Attn: Dennis W. Carney  
Planning/Zoning Administrator

Dear Mr. Carney:

Pursuant to your verbal and subsequent written communication concerning the Notice of Zoning violation of my daughter's pet chickens on my property, we are requesting a 90 day extension of the compliance notice.

My daughter has been investigating options in regards to their relocation however this is proving difficult. Several of the individuals we have asked to house the chickens live in A-1 zoning districts in the town of Windsor but are not legally able due to do so because of the illegally restrictive zoning law in respect to the A-1 districts being in violation of the State of Virginia's Right to Farm Act.

We understand the planning commission is addressing this issue and a public hearing to change the zoning in regards to chickens in A-1 zoning districts is scheduled. As you are aware myself and my daughter have proposed a zoning change to allow chickens in R-1 zoned districts as well.

We appreciate how helpful you and the other board members have been in working with us to attempt to make changes in the zoning ordinance to keep pace with the changing times.

This letter, in consideration of the processes noted above and the time those take, is to request a 90 day extension of the compliance notification. This extension request is to commence on the 6<sup>th</sup> day of August 2016.

The extension request will allow us to see the result of the proposed A-1 zoning change is in regards to owning and housing chicken. It will also allow the zoning proposal Sierra and I have submitted to the planning commission to progress through the process and ultimately see if Sierra will be able to keep her pet chickens legally.

If you have any questions or need any additional information from myself or Sierra please contact myself at 757-404-2586, and I can relay any communications to Sierra as necessary.

Sincerely;

*Walter E. Bernacki*  
*Sierra Bernacki*

Walter Bernacki – Home owner  
Sierra Bernacki – Pet Chicken owner

## **MINUTES OF THE PLANNING COMMISSION – WINDSOR, VIRGINIA**

The Planning Commission met on Wednesday, August 24, 2011 at 7:00 p.m. in the Council Chamber. Chairman Bennie Brown called the meeting to order, and welcomed all who were present. Terry Whitehead, Deputy Clerk, recorded the minutes. Dennis Carney, Planning and Zoning Administrator present as well as Mayor Carita Richardson. Ms. Whitehead called the roll.

Planning Commission members present:     Bennie Brown, Chairman  
  Leonard L. Marshall, Jr. – arrived at 7:15  
  George Stubbs  
  Devon Hewitt  
  N. Macon Edwards, III

Planning Commission members absent:     Michelle Harper  
  Glyn Willis

Chairman Brown stated that the Town Attorney, Joshua Pretlow, Jr., would not be present at the meeting because he was out of town on vacation.

### **MINUTES**

Chairman Brown asked if there were any amendments to the minutes of the July 27, 2011 Planning Commission meeting. There being none, Commissioner Stubbs made a motion to approve the minutes as presented. Commissioner Edwards seconded, and the Commissioners unanimously passed the motion as recorded on the attached chart as motion #1.

### **PRESENTATIONS AND PUBLIC COMMENTS**

Denise Barrett, 12239 Hazelwood Drive, stated that she received a violation for having chickens in her backyard. She said she would like to ask for a review of the Zoning Ordinance to allow backyard chickens in the Town of Windsor. Members of the Planning Commission asked Ms. Barrett several questions regarding the number of chickens she owns, how often they get out of their pen, neighbor's complaints, and the size and type of enclosure they are kept in. Mr. Carney asked Ms. Barrett what type of revisions would she like to see made to accommodate this situation. Ms. Barrett stated that she understood that the change would need to encompass the number of chickens allowed, no roosters, lot size, and setbacks, if needed.

Alan Nogiec, 24269 Lovers Lane, stated that he supports the Barrett's request to maintain chickens on their property. He said that the lots in the Hazelwood Subdivision are sizable, and there is not an issue with lack of space for animals such as chickens. He said that he and his wife are the closest neighbors to the Barrett's, and they hardly know the chickens are there. He said that the Town of Windsor has a rural nature and character, and it is the responsibility of Planning Commission and Council to maintain that.

Chairman Brown asked Mr. Carney to brief Planning Commission on this issue. Mr. Carney said that at the August 9, 2011 Town Council Meeting, Mrs. Barrett, who received one of the three pending violations of the Zoning Ordinance dealing with

fowl in an R-1 Residential District presented her situation to Town Council. Staff, in the review of the rash of zoning violations, has reviewed the zoning portion of the Land Development Ordinance and found that the only district where chickens could be raised is in the A-1 Agricultural District and only as a Conditional Use Permit. For this reason Staff felt that it was appropriate in conjunction with our overall review of the Ordinance that some provision be made to permit poultry in the A-1 District.

Mr. Carney said that as for residential districts, whether the Town would permit this agricultural use, raising poultry even in small numbers is more problematic. The potential problems of chickens on the relatively small lots found in the residential districts (particularly R-1 and R-2) are very real. Noise, odor and the animals running loose are some of the problems that would have to be dealt with by utilizing larger setbacks for pens/coops and excluding roosters from consideration.

Mr. Carney stated that because all of the violations were found by complaints, and in two of the three cases the complaints occurred because the chickens were running loose, it is not felt that the Planning Commission should propose any liberalization for the various residential districts. He said it is his belief that if anyone wishes to amend the Zoning Ordinance they should make the proposal, pay all relevant fees, and then make their case as to why the change should be made. This should be so, unless the Planning Commission is of the opinion that the amendment is so needed because the current ordinance is so egregious that amendment is warranted.

Commissioner Stubbs stated that he felt that enforcement is going to become a major problem, if the Ordinance is relaxed. The Planning Commission agreed to continue discussion on the issue during the work session.

#### **PLANNING AND ZONING STAFF REPORT**

Mr. Carney stated that there were eight zoning permits issued in the month of July and eleven violation notices sent for inoperative vehicles, tall grass, and other issues

Mr. Carney said that Town Council authorized a public hearing on an amendment to the Tall Grass Ordinance, which was passed. This change permits a charge to recoup some of the costs related to these types of cases via property taxes when the Town has to cut the grass and the owners do not pay timely.

Chairman Brown said he noticed in front of the shopping center next to Food Lion that there is a tremendous amount of temporary signs. Mr. Carney said that he notified the owner of the property, and he will be sending violation letters to the individual business owners, if the property owner does not take action to have his tenants come in and get the required temporary sign permits.

#### **UNFINISHED BUSINESS**

##### **Report from Economic Development Authority**

Commissioner Stubbs said the EDA continued their discussion on topics such as local tourism districts, welcome signs and easements. He said Judy Winslow of the Town of Smithfield/Isle of Wight Tourism Bureau came and spoke with the EDA regarding incentives they could offer new businesses in the Town of Windsor, and also discussed bonds.

Chairman Brown asked Mayor Richardson if she had an update from the Isle of Wight County Board of Supervisors regarding the renovation of the gym at the current Windsor Middle School. Mayor Richardson said there is not a lot of money available for extensive renovations, but the building is in fairly good condition. She said it is very spacious and will serve the community well as a meeting place for various organizations, including youth programs; which Chief Reynolds is very interested in providing.

## **WORK-SESSION ON THE LAND DEVELOPMENT ORDINANCE**

### **Height Limitations on Gasoline Pump Awnings**

Staff and Planning Commission discussed a potential provision that would limit gasoline awning heights. Mr. Carney said that he and Commissioner Stubbs visited the awning that Mr. Pretlow, Town Attorney, had described at the July meeting. He said the photographs are included in the agenda packets for the Commissioners review. It is noted that the awning is decidedly tall and there is no signage on the awning/canopy. He said that perhaps if no signage is applied, the canopy could be taller than the (20) feet height limitation proposal made at last month's meeting. After discussion among the Commissioners, it was the consensus of Planning Commission to have Mr. Carney check with Isle of Wight County and Smithfield to see what type of guidelines they have regarding awnings/canopies and report back to the Commission.

### **General Review of Draft Land Development Ordinance**

Mr. Carney asked the Commissioners if anyone has further comments or revisions, other than the numbering of the various sections, to the Draft Land Development Ordinance. After a short discussion, Commissioner Stubbs made a motion to set a public hearing on the Draft Land Development Ordinance for the September 28, 2011 meeting for the purpose of acquiring input from the public, with the intention that the matter will then be tabled, and a joint work session be set with Town Council. Commissioner Hewitt seconded the motion which passed unanimously as recorded on the attached chart as motion #2.

### **Discussion of Public Comments**

The Planning Commission discussed several concerns including enforcement problems. Commissioner Stubbs stated that if chickens are permitted in the residential districts, then the same arguments could be used for other farm animals. Mr. Carney said the size of the lots that you will find most of the time in the Town of Windsor for R1, R2 and R3 Districts, are not really conducive to raising farm animals. After further discussion, Commissioner Marshall made a motion that the Commission would decline from any revisions to the Zoning Ordinance and recommended that if the applicant wishes to amend the Ordinance, that she make the appropriate applications and fees. Commissioner Stubbs seconded, and the Commissioners unanimously passed the motion as recorded on the attached chart as motion #3. Mr. Carney was asked to convey the motion in writing to Mrs. Barrett

Mr. Carney then reiterated that he felt that for the agricultural district, Staff recommends Planning Commission amending the language to permit the non-intensive raising of poultry by right in the A-1 Agricultural District. He said this will



rule out the large poultry farms (500 or more chickens for example) unless a conditional use permit is acquired. He said it would permit a family to have smaller numbers of chickens by right in a penned in area in an A-1 Agricultural District. He said residents of an agricultural area have an expectation that agricultural activities such as raising chickens can take place. The occasional noise and odor are part of the agricultural territory.

After a lengthy discussion, Commissioner Edwards made a motion to make no revisions to the Zoning Ordinance in A-1 Districts stating that chickens will only be allowed in A-1 Districts with a conditional use permit. Due to lack of a second, Commissioner Edwards rescinded his motion. The Planning Commission then by general agreement decided that this is an issue for them to ponder further and discuss at future meetings in conjunction with the revised Ordinance.

**NEW BUSINESS**

None

**ADJOURNMENT**

Chairman Brown said the next meeting is scheduled for September 28, 2011.

Commissioner Stubbs made a motion to adjourn. Commissioner Marshall seconded, and the motion passed unanimously as recorded on the attached chart as motion #4. The meeting adjourned at 9:00 p.m.

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Bennie Brown, Chairman

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Terry Whitehead, Deputy Clerk

# TOWN OF WINDSOR

Town Elected Officials  
Carita J. Richardson, Mayor  
Wesley F. Garris-Vice Mayor  
J. Clinton Bryant  
Durwood V. Scott  
Greg Willis  
N. Macon Edwards, III  
Patty Fleming



Established 1902

August 30, 2011

Town Manager  
Michael R. Stallings  
Town Clerk/Treasurer  
Robin L. Hewett  
Town Attorney  
Joshua Pretlow, Jr.

Mrs. Denise Barrett  
12239 Hazelwood Drive  
Windsor, VA 23487

**RE: Decision on Request for Planning Commission Review of Allowance of Chickens and Other Fowl in the Town and NOV-11-44 Notice of Violation 12239 Hazelwood Drive**

Dear Mrs. Barrett

The purpose of this notice is to inform you that during their work-session, the Planning Commission declined to come forward with an Amendment to the Land Development Ordinance on their volition that would have permitted chickens and other fowl to be permitted in the Town of Windsor. You are reminded that the only district in which chickens are permitted is in the A-1 Agricultural District and only as a Conditional Use Permit. The Planning Commission stated that they would review an Ordinance Text Amendment from you or any citizen on this matter. This of course would follow the proper amendment procedure of public hearings before the Planning Commission and Town Council with a decision to be. If you wish to pursue that route, please contact me for the appropriate application form and I will assist you with the appropriate ordinance sections. The fee is \$800.00 that is non-refundable with the fee amount to cover advertising and administrative costs.

However, because the Planning Commission has declined to take action on this matter, the violation, NOV-11-44 needs to be addressed. An extension of thirty (30) days from the date of the day following the Planning Commission meeting of August 24, 2011 is given. An application must be properly filed or the chickens must be removed pursuant to Article VI Section 160-29(A) of the Town of Windsor Land Development Ordinance by September 24, 2011. If more time is needed to remove the chickens, please provide a letter to the Planning Department in writing giving a date when the removal can be accomplished.

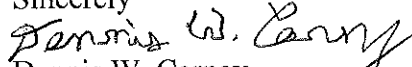
If you feel that the original decision on whether chickens are permitted on your property or this decision is incorrect, you may appeal the decision to the Board of Zoning Appeals of the Town of Windsor (Article VIII, Sections 801-808.08 of the Town of Windsor Land Development Ordinance. The appeal must be on the appropriate

application form and accompanied by a fee of \$800.00 and be filed by September 30, 2011.

Please take the appropriate steps to either, remove the chickens, bring forth an amendment as noted above, or appeal the decision that the Ordinance does not permit the keeping of chickens on your property. Legal action will follow if one of these steps is not pursued in the time frame indicated.

Please contact me at (757) 242-4288 if you have any questions on this matter.

Sincerely



Dennis W. Carney

Planning and Zoning Administrator

CC: Michael Stallings, Town Manager  
Benny Brown, Planning Commission Chairman  
Carita Richardson, Honorable Mayor