BOARD OF SUPERVISORS
COUNTY OF NEW KENT
VIRGINIA

O-05-08 (R2)

At the work session of the Board of Supervisors of the County of New Kent in the Boardroom of the County Administration Building in New Kent, Virginia, on the 17th day of July, 2008:

Present:	Vote:
W. R. Davis, Jr.	Aye
Thomas W. Evelyn	Aye
David M. Sparks	Aye
Stran L. Trout	Nay
James H. Burrell	Aye

Motion was made by Mr. Evelyn, which carried 4:0, to adopt the following resolution:

AN ORDINANCE AMENDING CHAPTER 98, OF THE NEW KENT COUNTY CODE TO INCLUDE PERFORMANCE STANDARDS FOR TRANSPORTATION, UTILITIES, AND TEMPORARY USES AND FACILITIES

WHEREAS, the New Kent County Board of Supervisors ("the Board") has forwarded a comprehensive rewrite of Chapter 98, Zoning Ordinance, to the Zoning Ordinance Review Committee to review and make recommendations to the Board and Planning Commission ("the Commission"); and

WHEREAS, the Zoning Ordinance Re-write Committee has completed a thorough review of the proposed performance standards included in the comprehensive zoning ordinance re-write and has forwarded its recommendation to the Planning Commission and Board of Supervisors for consideration; and

WHEREAS, the Planning Commission scheduled and conducted a formal and duly advertised public hearing in accordance with the applicable requirements of the Code of Virginia, carefully considering the public comment received; and

WHEREAS, the Commission has voted to forward a favorable recommendation to the New Kent County Board of Supervisors to amend Chapter 98 of the New Kent County Code to implement performance standards for transportation and utilities uses and facilities; and

WHEREAS, the Commission has voted to forward no recommendation to the New Kent County Board of Supervisors to amend Chapter 98 of the New Kent County Code to implement performance standards for temporary uses and facilities; and

WHEREAS this ordinance amendment has been advertised for public hearing before the Board of Supervisors in full accord with applicable provisions of the Code of Virginia; and

WHEREAS, in order to assure compliance with the Code of Virginia, it is stated by the Board that the public purpose for this Ordinance is to further the public necessity, convenience, general welfare and good zoning practice in the County of New Kent and that approval will further these public purposes; and

NOW THEREFORE BE IT ORDAINED this, the 17th day of July 2008, by the New Kent County Board of Supervisors that Chapter 98 of the New Kent County Zoning Ordinance be amended by adding the following sections:

Sec. 98-874. Specific conditions applicable to transportation uses and facilities.

(a) *Standards for all transportation uses.*

(1) All parking lots and areas where motor vehicles utilizing petroleum-based fuels are parked or stored or maintained shall be designed with oil-water separators or other devices that will prevent the infiltration of fuels that may leak or be spilled onto the lot. The devices used shall be designed by a registered professional engineer who shall certify that it is of sufficient capacity to manage all rainfall events up to and including the 50-year storm without allowing petroleum-based fuels to escape and being borne downstream or infiltrating into the ground.

(2) All development shall comply with landscaping standards found in article XXVII of this ordinance.

(3) Outdoor lighting shall be energy efficient with an Energy Star or comparable rating. Outdoor lighting shall also be sufficient to protect public safety and shall comply with the standards of the Crime Prevention through Environmental Design Guidelines produced by the Virginia Crime Prevention Association and dated December 2004; however, it shall be directed away from property lines and rights-of-way and shall not cast unreasonable or objectionable glare or

reflecting, nuisance or inconvenience of any kind on adjacent properties and streets. All site lighting fixtures shall be mounted a maximum of twenty-five feet (25') above ground, shall be full-cutoff, as defined by the Illuminating Engineering Society of North America (IESNA), and shall have fully shielded and/or recessed luminaires with horizontal-mount flat lenses that prevent upward light scatter and protect the dark night sky. All site lighting fixture styles and illumination levels shall be compatible with the architecture of the principal building on the site.

(4) Outdoor speaker or paging systems shall be directed away from property lines and shall not unreasonably interfere with use and occupancy of adjacent residential properties.

(5) All utilities serving any transportation uses and facilities shall be placed underground. Existing overhead utilities that require relocation or expansion for any reason shall be removed and placed underground.

(6) Irrigation of transportation uses and facilities shall require the use of low water volume and water-conserving systems. Any irrigation system, regardless of type shall be equipped with devices to measure natural rainfall and meter irrigation water usage and timing accordingly.

(7) No outdoor storage of goods or materials shall be permitted in any front yard nor shall it encroach upon any required landscaping, public or private street right-of-way, parking facility, or loading space.

(8) All dumpster pads, loading areas and outdoor storage areas shall be screened from view of all public streets or residential properties by landscaping supplemented by masonry or wooden fencing. Illumination of dumpster pads and the area between dumpsters and the service doors of facilities that utilize the dumpsters for trash disposal shall be provided in accordance with the standards of the Crime Prevention through Environmental Design Guidelines for any facility having working hours between dusk and dawn.

(9) All transportation uses and facilities shall be operated and maintained in a neat and orderly manner, free from junk, inoperable equipment, trash, or debris. Buildings shall be maintained in a sound condition, in good repair and appearance. Weeds shall be cut as frequently as necessary, but not less than four (4) times a year.

(b) *Standards for airports and helipads*. [Existing Sec. 98-745(b)(1)]

(1) All airports and helipads shall be designed in accordance with Federal Aviation Administration rules and regulations.

(2) All approvals must be obtained from the board of supervisors.

(3) A crash, fire, rescue plan shall be submitted to the Fire Chief and Sheriff for review and approval

(4) A current Airport Layout Plan (ALP) shall be kept on file with the Fire Chief and Sheriff.

(c) *Standards for marina, dock or boating facility*

(1) Commercial marinas, docks and boating facilities shall be designed in accordance with the "Criteria for the Siting of Marinas or Community Facilities for Boat Mooring" as prepared by the Virginia Marine Resources Commission, VR 450-01-0047.

(2) All federal, state and local requirements for marina facilities shall be met and the necessary permits obtained prior to the issuance of a zoning certificate for docks, piers or boat houses.

(3) When in the conservation district, all requirements of the conservation district shall be addressed as part of any plan approval.

(4) In addition to the general requirements applicable to outdoor lighting, all outdoor lighting associated with marinas shall be designed, installed and maintained to prevent unreasonable or objectionable glare onto adjacent waterways.

(5) The marina operator shall be responsible for ensuring that parking occurs only in designated off-street parking spaces and shall not allow marina patrons to park in access drives, service drives, fire lanes or landscaped areas. The marina operator shall be responsible for installing or erecting appropriate curbing, bollards, fencing or similar measures needed to limit parking to the approved parking spaces on the site.

(6) Other facilities and accessory structures located on the marina property shall conform to applicable standards for those types of facilities and structures located elsewhere in the article.

(7) The subject facility shall meet all Coast Guard standards for the containment of Hazardous Material.

(d) *Standards for truck stop.*

(1) Truck stops shall only be located on roads with a functional classification of minor arterial or higher order street and shall have a minimum lot frontage of four hundred feet (400') along each such road from which access to the facility is provided.

(2) A minimum of fifteen (15) acres shall be required to establish a truck stop.

(3) A traffic impact analysis shall be prepared by the applicant and submitted to the zoning administrator. Said study shall upon submission be peer reviewed by the Virginia Department of Transportation and an independent professional with demonstrated expertise in transportation engineering selected by the County. The recommendations of the study, together with those of the Virginia Department of Transportation and the independent professional shall be implemented on the site upon approval.

(4) A parking and on-site circulation analysis and plan shall be prepared by one or more professionals acting within the scope of their professional licensure or certification and submitted with any application for a truck stop. Said analysis and plan shall specifically address methods to prevent queuing on public roads caused by on-site operations, preventing conflicts between movements on the site, providing adequate standing areas that do not interfere with site circulation and provide safe pedestrian movements to and between facilities on the site, pavement structures to provide for lasting and durable surfaces without deformity on public roads and site access points, and an appropriate number and arrangement of designated parking spaces. The analysis and plan shall also demonstrate that the points of site ingress and egress and public road(s) from which site ingress and egress is provided are designed and constructed to withstand the weights and turning radii of vehicle types anticipated to use the facility. If the facilities on the site are designed and marketed to the general motoring public or a segment thereof (e.g.: recreational vehicles) as well as trucks, the analysis and plan as well as the safety and security plan required below shall address the differing needs of different vehicle types and provide appropriate space(s) for other user and vehicle types.

(5) All parking on the site shall be in designated, defined and marked spaces.

(6) Perimeter buffers of no less than one hundred feet (100') in width shall be provided along all side and rear yards. Within said buffers

shall be established as a Type C transitional buffer (see article XXVII).

(7) The maximum impervious area of the parcel on which the use is located shall not exceed seventy percent (70%) of the total parcel area.

(8) A safety and security plan for the site shall be developed and submitted to the Sheriff's Office for approval. Such plan shall fully address the physical and operational methods to be utilized to ensure the safety and security of the patrons of the site and the adjoining properties as well as the prevention of illegal and illicit activities from occurring on the site and adjoining properties. The site may not operate as a truck stop without an approved safety and security plan and said plan shall be updated and re-approved by the Sheriff's Office at least annually.

(9) Truck stops shall not permit trucks on their property to idle longer than 45 minutes. Truck stops shall provide Truck Stop Electrification (TSE) stations for every parking space identified on the approved site plan for long term truck parking.

Sec. 98-875. Specific conditions applicable to utilities uses and facilities.

(a) *Standards for all public and private utilities and facilities.*

(1) The proposed location of the specific utility use shall be necessary for the efficient provision of service to customers. Documentation of the public necessity shall be submitted with applications and plans for such uses.

(2) All utility uses shall be conducted so as not to produce hazardous, objectionable, or offensive conditions at or beyond property line boundaries by reason of odor, dust, lint, smoke, cinders, fumes, noise, vibration, heat, glare, solid and liquid wastes, fire, or explosion.

(3) Utility locations shall not be permitted in such a manner as would preclude or seriously hinder development of commercial and industrial properties except where it is demonstrated to the satisfaction of the zoning administrator that no alternative routing, location, or installation is practical or reasonably possible.

(4) Main/Primary Utility lines shall be parallel to and contiguous with property lines where practical. Exceptions for good cause shown may be granted by the Director of Public utilities.

(5) Landscaping and screening appropriate to the use shall be provided in all cases and especially when trees have been removed to accommodate the facility.

(6) All public and private utilities and facilities shall be operated and maintained in a neat and orderly manner, free from junk, inoperable equipment, trash, or debris. Buildings shall be maintained in a sound condition, in good repair and appearance. Weeds shall be cut as frequently as necessary, to maintain a neat and orderly appearance.

(7) All on-site utility facilities including but not limited to wires, cables, pipes, conduits and appurtenant equipment, carrying or used in connection with the furnishing of electric, telephone, telegraph, cable television or similar service to a development subject to the provisions of this chapter shall be placed underground except, however, the following shall be permitted above ground:

A. Electric transmission lines and facilities in excess of sixty-five (65) kilovolts;

B. Equipment such as electric distribution transformers, switch gear, meter pedestals, telephone pedestals, CATV pedestals and power supplies, outdoor lighting poles or standards, radio antennae, traffic control devices, manholes, air release valve vaults and associated equipment, which is, under accepted utility practices, normally installed above ground;

C. Meters, service connections and similar equipment normally attached to the outside wall of the customer's premises;

D. Temporary aboveground facilities required in conjunction with an authorized construction project.

E. Certain communication antennae as permitted as accessory structures or elsewhere in this chapter as a stand-alone use.

(8) Existing utilities located above ground may be maintained or repaired provided that such repair does not involve relocation or expansion.

(9) Whenever any existing on-site above ground utilities other than those exempted above requires relocation for any reason, they shall be removed and placed underground. In the event a development

project impacts existing off-site above ground utilities and necessitates their relocation onto the development site, such utilities shall be placed underground.

(10) All utilities shall be placed within easements or public street rights-of-way. Utilities may not be placed within private road rights-of-way except as they lead to the structure whose access is a private driveway.

(11) Sewage pump and lift stations and communication switching and relay facilities larger than one-hundred fifty square feet (150 ft^2) in building area shall, at a minimum, be surrounded by a landscaped buffer no less than twenty feet (20') in width. The buffer shall be comprised of naturally-occurring vegetation protected and preserved during the construction process or landscaped in accordance with the landscaping provisions of this chapter or a combination of both to achieve a visual screen throughout the year when viewed from public roads or adjacent properties.

(12) Utility equipment installed at ground level, including transformers, pedestals, switch gear and other similar types of equipment which is visible from a public right-of-way shall be screened from view by appropriate evergreen shrubs planted in accordance with a landscape plan approved by the zoning administrator.

Sec. 98-876. Specific conditions applicable to temporary uses.

(a) *Standards for carnival, circus, fair, festival, temporary craft sales or show, flea markets, and truckload sales*. The subject uses shall apply for an administrative permit and shall be subject to the conditions enumerated below. There shall be no fee for this administrative permit.

(1) A sketch plan containing sufficient detail to determine the manner in which the carnival, circus, fair, festival, temporary craft sale or show, flea market or truckload sale will be conducted on the property shall be submitted at the time of application for an administrative permit. Upon review, the Zoning Administrator may require the sketch plan to be drawn to scale and resubmitted.

(2) Adequate provisions shall be made for parking and safe and convenient ingress and egress and shall be shown on the sketch plan required above. Access to the site shall be via a driveway constructed in accordance with all applicable Virginia Department of Transportation standards for temporary access. Parking of vehicles associated with such use on any street or highway right-of-way shall

be cause for revocation of the permit unless such parking arrangements are specifically requested and shown on the sketch plan at time of application and approved as part of the issuance of the permit.

(3) The applicant shall provide written evidence to the zoning administrator of the consent of the owner of the property on which such event is to be conducted.

(4) The dates of the event and hours of operation shall be noted as part of the permit application and approval. Craft shows or sales shall not extend for longer than seven (7) consecutive days.

(5) Goods, materials, or products associated with such uses shall not be stored out of doors on the site when said use is not in operation provided, however, that this restriction shall not apply to overnight storage between consecutive days of operation. For purposes of this section, Saturday and Monday shall be construed as consecutive days if the craft show or sale is not operated on the intervening Sunday.

(6) Vendor displays shall be arranged on the site so as to facilitate safe and convenient vehicular and pedestrian circulation.

(7) All parking demand generated by the event must be accommodated by an off-street arrangement. Such off-street parking spaces shall be arranged so as to ensure safe and convenient pedestrian and vehicular circulation. Parking of vehicles associated with such use on any street or highway right-of-way shall be cause for revocation of the permit.

(8) The site shall be cleaned and restored subsequent to termination of the activity.

(9) No more than one (1) flea market event may be operated on a parcel in any sixty (60) day period.

(10) Truckload sales and similar events shall require an certificate of zoning for the temporary use of trailers in conjunction with on-premises "truckload" sales events conducted by commercial establishments possessing a valid county business license subject to the following provisions:

A. Such use may be authorized for a period not to exceed fifteen (15) days per event. No more than four (4) such truckload sales events may be conducted on the same premises by a single commercial establishment during any

one calendar year. At least 60 days shall transpire between such consecutive "truckload" sales events.

B. Such trailer shall be parked on the site at a location where it will not obstruct safe and convenient vehicular and pedestrian circulation.

C. Signs, pennants, or banners authorized under the terms of this chapter must be attached to such trailer.

(b) *Standards for temporary construction trailers and offices*. Administrative permits may be issued for trailers and industrialized building units used in conjunction with construction or land disturbing projects subject to the following:

(1) Such use shall be in conjunction with a bona fide construction or land disturbing project for which all necessary state and local permits have been obtained.

(2) The use, for office or storage purposes, of an industrialized building unit which meets the definition of "manufactured home", may be authorized; however, such unit shall in no instance be utilized for residential purposes.

(3) The installation of construction trailers and offices shall be subject to all applicable permits and inspections as required by the Virginia Uniform Statewide Building Code.

(4) The location of such units on the site shall be in conformance with all applicable yard requirements of the zoning district in which located.

(5) The applicant shall enter into a performance agreement and post a surety by cash, certified check, or letter of credit in the amount of two thousand dollars ($2,000.00) per trailer or building, not to exceed ten thousand dollars ($10,000.00) per construction or land disturbing project, to guarantee the removal of such temporary trailer or building.

(6) The permit shall be issued for a period not to exceed one year; however, such permit may be extended when the zoning administrator finds good cause.

(c) *Standards for temporary use of trailers for office or business purposes*. Administrative permits may be issued for the temporary use of trailers for office or business purposes subject to the following provisions:

(1) Issuance of building permits for such permanent construction activity shall be a prerequisite for authorization of a temporary administrative permit for a temporary trailer. Such trailer(s) shall be removed from the site within fourteen (14) days of the lapse of actual and substantial construction activity, expiration of an active building permit for the project, or issuance of the certificate of occupancy, whichever occurs first. Actual and substantial construction activity shall be determined by the zoning administrator, but in no case shall an administrative permit remain valid if there has been a continuous period of lapse in actual and substantial construction activity of ninety (90) days. The maximum term of any permit issued under the terms of this section shall be one hundred eighty (180) days; however, renewals may be authorized by the zoning administrator for good cause shown.

(2) The subject trailer shall be located on the site in a position which does not impede construction of the permanent commercial or office space and which does not infringe upon required transitional buffers, setbacks or off-street parking space.

(3) The zoning administrator may, because of the visibility of the site or placement in relations to adjacent roads or properties, require that temporary trailers be landscaped, skirted, or otherwise be wholly or partially screened from view. This may include without limitation a requirement that transitional buffers and landscaped yards which are or would be required for permanent construction be installed either entirely or in part before use of the temporary trailer is permitted.

(4) Compliance with the above specified standards shall be demonstrated through the submission of a sketch plan, including a landscaping plan if deemed necessary by the zoning administrator, which depicts the proposed placement of the trailer and the site improvements. Such plan shall be approved by the zoning administrator prior to placement of the trailer on the site.

(5) The applicant shall enter into a performance agreement and post a surety by cash, certified check, or letter of credit in the amount of two thousand dollars ($2,000.00) per manufactured home, not to exceed ten thousand dollars ($10,000.00) per construction or land disturbing project, to guarantee the removal of such temporary trailer or building.

(d) *Standards for transportable self-contained food service units.* Transportable self-contained food service units are operated under two distinctly different business models although the physical units themselves are substantially the same.

The first business model is that of a unit that travels to and from a site or sites from a base of operations. It serves the customer by physically moving to the location where the customer is located.

The second model is a unit that although capable of being moved is more or less maintained in a stationary place and where additional physical amenities are often provided. The customer is served by coming to the location of the unit.

The standards contained herein address both business models with sub-section (1) applying to the former and sub-section (2) applying to the latter. The proprietor of either model shall obtain a zoning certificate, a New Kent County business license and all other applicable state and local licenses and permits.

(1) For transportable self-contained food service units that are moved from place-to-place on a routine, frequent, or recurring basis, (hereinafter referred to as a "mobile transportable self-contained food unit") the following standards shall apply:

A. Mobile transportable self-contained food service units shall manage inventory and foodstuffs in a manner approved by the Health Department. Pushcarts shall operate in conjunction with a commissary and shall return to the commissary for servicing, cleaning and sanitizing at regular intervals approved by the Virginia Department of Health.

B. The operator shall be responsible for the pick-up of all litter, generated from the business and within fifty feet of the unit location and shall provide a receptacle for trash, throughout the period of operation on the site.

C. Water carried or used within mobile transportable self-contained food service units shall be from a source approved by the Health Department. Dumping of sewage and wastewater from mobile transportable self-contained food service units shall only occur at facilities licensed by the Health Department to receive such sewage and wastewater.

D. Mobile transportable self-contained food service units shall conduct business only between the following hours:

i. Six a.m. to midnight in business and industrial zoning classifications except within fifty feet of a residential zoning classification;

ii. Eight a.m. to nine p.m. in agricultural and residential zoning classifications and in business and industrial zoning classifications within fifty feet of a residential zoning classification.

iii. Hours of business operation on any property may not exceed six hours. An additional hour is allowed for set-up and take-down for a maximum time allowed on any property of seven hours.

E. Mobile transportable self-contained food service units shall not be located less than 100 feet from an occupied residential dwelling.

F. No signs shall be permitted at the location of any mobile transportable self-contained food service unit. This does not include signage attached to or part of a unit.

G. Permanent structures, carports and sheds shall not be permitted with the operation of mobile transportable self-contained food service units. Seating and umbrellas are only permitted during the operating hours of the unit.

(2) For transportable self-contained food units that remain in a stationary location for extended periods of time (hereinafter referred to as a "stationary transportable self-contained food unit"), the following standards shall apply:

A. Stationary transportable self contained food units shall only operate on property within zoning districts where restaurants are permitted.

B. Stationary transportable self contained food units shall manage inventories and foodstuffs in a manner that has been permitted by the Virginia Department of Health. Where a commissary is used in conjunction with the stationary food unit, such commissary shall be located within one hundred fifty feet (150′) of the stationary location of the food unit. The zoning administrator may approve a somewhat greater distance based on the physical requirements of the site and structures on which the stationary self-contained food unit is located.

C. The stationary transportable self-contained food unit shall be connected to a water supply and to a wastewater disposal system, both of which shall be approved by the Virginia Department of Health. The manner of connection shall comply

with Virginia Department of Health Rules and Regulations. The water supply and wastewater disposal systems may be permanent connections, but need not be as long as the Virginia Department of Health approves of them.

D. Sanitary and hand-washing facilities shall be provided for employees and customers of stationary transportable self-contained food units within one hundred fifty feet (150') of the stationary location of the food unit. These facilities may be located within an adjacent structure or, with the proper local and state approvals, may be provided by the use of transportable chemical toilets or any other arrangement that achieves the standard. The zoning administrator may approve a somewhat greater distance based on the physical requirements of the site and structures on which the stationary self-contained food unit is located.

E. Stationary transportable self-contained food units may be located adjacent to or under permanent awnings or other similar structures provided that all building code and zoning setback requirements are met by the structure.

F. Parking shall be available for the customers of stationary transportable self-contained food units. Such parking shall be in marked, legal parking spaces.

G. The operator shall be responsible for the pick-up of all litter, generated from the business and within fifty feet (50') of the unit location and shall provide a receptacle for trash, throughout the period of operation on the site.

H. The proprietor may post temporary signage at the location of a stationary transportable self-contained food unit during hours that the unit is open for business.

This Ordinance is effective immediately.

John A. Budesky
County Administrator

James H. Burrell
Chairman