



To: Chair and Members, Nelson County Board of Zoning Appeals (BZA)
Mr. Stephen A. Carter, County Administrator, Clerk of the BOS

From: Tim Padalino, Planning Director and Zoning Administrator

Date: May 20, 2015

Subject: Appeal #2015-02 (Shimp / Major Site Plan #2015-004 “Zenith Quest – Afton Mountain”

County staff have received a petition to the Nelson County Board of Zoning Appeals, regarding the County’s approval of Major Site Plan #2014-005 (“Zenith Quest – Afton Mountain”). The appeal is specifically related to “condition #3”, which reads: “A written clarification should be provided of the availability of Family Lane as legal access for Nelson County fire department.”

Please review the following materials, which contain all the pertinent details regarding the Family Lane legal access portion of the approved Major Site Plan #2014-005 for Zenith Quest International (ZQI). Attached materials include:

1. Copy of Appeal #2015-02, submitted on April 23, 2015 by Mr. Justin Shimp of 148 Tanbark Drive. The appeal includes a letter written by the petitioner stating that, “*The Zoning Administrator is responsible for determining information presented meets the applicable standards for review and addresses the requirements of the site plan ordinance,*” and that, “*The [Planning] Commission erred in accepting the information presented as satisfaction of “condition #3.”*” The appeal also states that the approval signature of the Zoning Administrator, “*...was based upon an erroneous decision by the planning commission, which was predicated on the Zoning Administrator failing to provide appropriate guidance on information that was required to make positive determination on satisfaction of condition #3.*” The petitioner requests that the BZA “*reverse the decision of the [Planning] Commission and revoke the approval given for the site development plan.*”
2. Copy of the County approval letter, dated February 9, 2015, notifying ZQI of the conditional approval granted by the PC at their January 28th meeting. Within the overall motion granting conditional approval, four (4) conditions were specified; please see condition #3 regarding the availability of Family Lane as legal access for Nelson County fire department.
3. Two separate emails regarding the issue of fire access to Family Lane sent by (1) Mr. Tommy Harvey, Chief, Rockfish Valley Fire Department (dated 3/20/2015) and by (2) Mr. David Graves, Assistant Chief, Rockfish Valley Volunteer Fire Department (dated 3/23/2015).
4. Copy of my correspondence with Zenith Quest International and Roudabush, Gale & Associates, dated March 26, 2015, notifying the applicant team that I had provided my approval signature to

the Site Plan drawings upon satisfaction of the four pending conditions that were established by the Planning Commission.

Please reference the following chronological summary of Nelson County's review of Major Site Plan #2014-005 (prior to receipt of Appeal #2015-02), with specific focus on the issue of providing secondary emergency access and the use of Family Lane for said purposes:

- Initial Site Plan Review Committee review (10/10/2014):
 - No pertinent comments regarding secondary emergency access and/or Family Lane were provided from any of the following Committee members:
 - Nelson County Zoning Administrator
 - Nelson County Building Official
 - VDOT
- Initial Planning Commission review (10/22/2014):
 - In discussion of site plan details, applicant representative Ms. Ammy George of Roudabush Gale & Associates stated (from Meeting Minutes): "...a small 'break' in the forested buffer would result from the gravel fire access road and locked gate which would be installed between Family Lane and the warehouse."
 - The Planning Commission did not respond with any questions or comments regarding the gravel fire access road and/or Family Lane.
- Zoning Administrator's review comments (dated 1/15/2015) delivered in preparation for the Planning Commission's review of the re-submitted revised plans:
 - "In addition to providing **my most recent review comments to your written responses** ... the following issues or questions also remain, and should be addressed at the January 28th Planning Commission meeting:"
 - *"Compliance with fire access and emergency access requirements:"*
 - "request to provide documentation that ZQI has legal right to access / use Family Lane (private road) for satisfying secondary emergency access requirements"
 - "request to provide documentation of compliance with Fire Code requirements and Building Code requirements regarding the design and layout of the 20' gravel fire access road"
- Planning Commission review of the re-submitted revised plans (1/28/2015) (from Meeting Minutes):
 - Zoning Administrator provided the following updated review comments from members of the Site Plan Review Committee:
 - "Mr. David Thompson, Building Code Official, confirmed that the layout of the proposed fire access road is sufficient and it does meet code requirements. It would be a twenty (20) foot wide (gated) gravel road, accessing the rear of the property. Mr. Thompson also confirmed that the secondary emergency access provides acceptable access to all areas of the warehouse, with respect to maximum distances allowed between the end of the emergency access road and the farthest extent of the building footprint."
 - "Mr. Kenneth L. Kent, Assistant Fire Marshall in the Western Region of the State Fire Marshall's Office, clarified that they do not get involved in plan review; they only do walk-throughs after a building is permitted and constructed; and only engage in any necessary enforcement activities after buildings are planned, permitted, constructed and operated."
 - The Planning Commission's response and inquiry regarding the secondary emergency

access road and/or Family Lane was as follows (from Meeting Minutes):

- “Commissioner Russell asked about the private road issue and if there was more information. Ms. George stated that they have been talking with some of the Fire Chiefs in the area to discuss whether they needed legal access to enter the rear of the building property. Mr. Miles noted that back in September, the Building Official, David Thompson, deferred to the Fire Chief. He also noted that he met with Tommy Harvey and Don Fitzgerald, former Fire Chief at Wintergreen; and they came up with the option to have a back gate with a driveway. He stated that during conversation, it was asked several times if an easement was needed for Family Lane due to it being a private property. He noted that Mr. Harvey and Mr. Fitzgerald stated that from their experience, fire or emergency services do not need an easement to go anywhere during an emergency. At that point, he did not pursue an easement. He noted that he later met with Mr. Harvey, who stated that he should meet with David Graves of the fire department and Don Fitzgerald and share the proposed plans. From that meeting, he stated that Mr. Graves indicated that he did not know of anything that would prohibit the fire company to go anywhere they needed to in order to fight fire; so he didn’t see a need for an easement. He stated that Mr. Graves reviewed the plans and stated that a lock box should be put up so that the crews could get through the gates. He noted that he has not met with Mr. Fitzgerald. Mr. Miles indicated that he plans to go back to Mr. Harvey and request something in writing from the Rockfish Valley Fire Department.”
 - “[Commissioner Russell] stated that she is still concerned with the fire issue and unseen hazards, and is personally uncomfortable with approving this without some assurance that the County is not going to be held liable for lack of preparation, should there be some sort of issue.”
 - “Commissioner Russell made a motion in relation to the Major Site Plan application #2014-005 ... [that] this project is approved with the following conditions:
 - [#3 of 4]: “A written clarification should be provided of the availability of Family Lane as a legal access for Nelson County fire department.”
- Applicant response to Planning Commission conditional approval (February 2015):
 - Applicants caused the requested information regarding PC approval condition #3 to be obtained/submitted, including:
 - E-mail communication from Mr. Tommy Harvey, Chief, Rockfish Valley Fire Department (dated March 20th)
 - E-mail communication from Mr. David Graves, Assistant Chief, Rockfish Valley Volunteer Fire Department (dated March 23rd)
 - Planning Commission review of submitted materials regarding approval condition #3 (3/25/2015):
 - Planning Commission reviewed the two submitted emails which were provided in the meeting materials packet prepared by County staff and distributed prior to meeting
 - After brief discussion among Planning Commission members, Commissioner Allen made a motion to accept the emails as satisfaction of condition #3, with a 5-1 vote in favor of the motion (with Commissioner Russell casting the only “no” vote)

In conclusion, please contact Department staff with any questions you may have regarding this staff report, the attached materials, or the broader review and approval process for Zenith Quest International’s Major Site Plan #2014-005 (“Zenith Quest – Afton Mountain”).