

**NELSON COUNTY BOARD OF ZONING APPEALS
December 5, 2016
MEETING MINUTES**

Present: Gifford Childs, Goffrey Miles, Ron Moyer, Mary Kathryn Allen, Carole Saunders and Shelby Bruguere (Alternate)

Staff: Tim Padalino, Director, Planning & Zoning, and Stormy Hopkins, Secretary

Call to Order: Mr. Childs called the meeting to order at 7:02 P. M. in the General District Courtroom, County Courthouse, Lovington. There were six members present to establish a quorum.

Approval of Minutes (October 3, 2016): Mr. Childs asked for any changes or corrections on the minutes.

Mr. Childs noted that on page 3 – last paragraph – last sentence: remove “be”.

Mr. Moyer made the motion that the meeting minutes be approved. Mr. Miles provided the second; the vote 5-0 with Mrs. Allen abstaining.

Mr. Childs then provided an overview of the meeting procedures for the public.

1. Special Use Permit #2016-05 – Mr. Peter and Mrs. Paula Welch:

Mr. Padalino noted this is a Special Use Permit (SUP) for floodplain development. The request is from Mr. Peter and Mrs. Paula Welch, owners of 1258 Greenfield Road, a 20.95-acre parcel, further identified as Tax Map Parcel #13-A-63, and is zoned Agricultural (A-1) and General Floodplain (FP) overlay.

Mr. Padalino further noted that the request is to construct a “*swimming pool, carport with storage shed, and small partially-open equipment shed.*” The Site Plan references those as follows: A – swimming pool; B – carport with storage shed; and C – small partially open equipment shed. The application includes a Site Plan, and a project narrative which were both prepared by Mr. Steven L. Key, LS.

Mr. Padalino stated that there are three evaluation criteria (as specified in Z.O. 10-22) that the BZA must consider for issuing SUP applications (as described in the Staff Report dated November 28, 2016 – see attached):

- A. A showing of good and sufficient cause;*
- B. Determination by the Board of Zoning Appeals that failure to grant the variance would result in exceptional hardship to the applicant; and*

Mr. Padalino then noted that it is his opinion that criteria B is not applicable with this SUP request. Mr. Childs noted the differences in the Z.O. requirements and Mr. Padalino’s Staff Report regarding the evaluation criteria for Variances and SUPs. Mr. Padalino noted that criteria B for Variances do not apply to this SUP application; and explained that the problem is that the ordinance has one set of criteria for two different application types. He further stated that the Model Ordinance (produced by the State) only refers to Variances; and that, to his knowledge, Nelson County is the only locality which mixes SUPs and Variances in the Floodplain Ordinance. Mr. Padalino also noted that recommendations have been made to make amendments to the Floodplain Ordinance that would resolve this issue. Mrs. Allen then noted that the “hardship” is not referring to the applicant(s) but to the land itself.

Mr. Padalino continued with the evaluation criteria:

C. Determination by the Board of Zoning Appeals that the granting of such Variance or Special Use Permit will not result in:

- 1. Unacceptable or prohibited increases in flood heights;*
- 2. Additional threats to public safety;*
- 3. Extraordinary public expense;*
- 4. Nuisances being created;*
- 5. Fraud or victimization of the public; or*
- 6. Conflict with local laws or ordinances.*

Mr. Padalino noted that most of the criteria do not apply to this particular residential property. However, he think that those that do apply are (criteria C-1) “*Unacceptable or prohibited increases in flood heights*”; and (criteria C-2) “*Additional threats to public safety.*” Based on the application materials and based on seeing the property for himself, he does not envision either of the proposed structures or the swimming pool to be unacceptable relative to the applicable criteria. Therefore, he considers those proposed improvements to be acceptable.

Mr. Padalino also noted that the Z.O. (10-22) requires the BZA to also consider a number of other factors, but many of those factors also do not apply. As noted in the Staff Report, the “danger to life and property due to increased flood heights or velocities caused by encroachments” does not seem problematic; and considering the locations of these proposed improvements, the proposed construction methods, and the nature of their use would not create any discernable danger or otherwise “increase the Base Flood Elevation” (factor A). Furthermore, he does not believe that these proposed improvements would create any unacceptable “danger that materials may be swept on to other lands or downstream to the injury of others” (factor B). For example, the swimming pool is a hole in the ground, so it is not likely to cause debris or concern to the downstream neighbors, but it is development inside a Floodplain so it requires a SUP. The proposed improvement labeled “C” (pole barn and equipment shed) would be built with one of the sides being open so that floodwaters could pass underneath the siding (it does not connect with the ground level). The same construction method would apply to the carport, with the exception that the storage on the rear would be enclosed but would be elevated one-foot above the Base Flood Elevation (BFE).

Therefore, it is the Staff’s recommendation that SUP #2016-05 be approved.

Mrs. Allen asked if the closest neighbors are upstream or downstream. Mr. Childs noted that he lives on Taylor Creek and downstream there isn’t much and it crosses over Greenfield Road. He noted that upstream there are several neighbors across the road.

Mr. Childs asked that the applicants come forward and present. The applicant was sworn in by Mr. Childs before the Board, and asked to sign the oath.

Peter Welch and Paula Welch: Mrs. Welch stated that she appreciates the interaction that Mr. Padalino has given them and has been very supportive through the process. She also noted how pleased they are with the amount of support from residents up Taylor Creek. The property was purchased from Mr. George ~~Nicholson~~ **Nicholas**, who has been very informative. Mr. Welch noted that they want to put the pool in to have a gathering place for family.

Mr. Childs opened the public hearing at 7:17 p.m. No comments were given; the public hearing was closed.

The board discussed the application. Mrs. Bruguere noted that they were already in a low spot and does not believe flooding will affect any neighbors.

Mrs. Allen made the following motion:

I make a motion for the review and approval for Special Use Permit #2016-05 pursuant to Z.O. Article 10.13-A for site address 1258 Greenfield Road with Peter and Paula Welch, for Tax Map Parcel #13-A-63, which is zoned Agricultural (A-1) and General Floodplain (FP); to include a swimming pool, carport with storage shed, and small partially open equipment shed; and including the professional site plan prepared by Mr. Steven L. Key, LS, dated November 1, 2016; and in accordance with all the required permits involving land disturbance and construction, as may be applicable with their completed application which was received on November 8, 2016.

With no further discussion, Mrs. Saunders provided the second; the vote 5-0.

Other Business:

Mr. Padalino noted as an update on the composition of the Board, County is awaiting an action by the Circuit Court Judge to address Mr. Miles' expired term. Mr. Padalino noted that he has no involvement in the process. If there are questions regarding the transition, it is best to contact County Administration (Mr. Steve Carter or Mrs. Candy McGarry) to see how the Board has made their recommended appointments.

Mr. Childs noted that he feels it makes more sense to have a new person coming in as an Alternate.

Mrs. Brugiure then provided an update on the appointment. She noted that Judge Garrett signed the Order earlier in the day, noting that Ms. Angela Jones would be taking Mr. Miles' appointment, and she would remain the Alternate.

Mr. Padalino then noted that year-end reports will be sent to all the BZA members.

Adjournment:

Mr. Childs adjourned the meeting at 7:24 P.M.

Respectfully submitted,

Stormy V. Hopkins
Secretary