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**NELSON COUNTY PLANNING COMMISSION  
SPECIAL MEETING MINUTES  
August 8, 2018**

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**Present:** Chair Mike Harman, Commissioners Mark Stapleton, Chuck Amante, Mary Kathryn Allen, Philippa Proulx and Tommy Bruguere

**Staff Present:** Sandy Shackelford, Director of Planning & Zoning and Emily Hjulstrom, Secretary

**Call to Order:** Chair Harman called the meeting to order at 6:04 PM. in the General District Courtroom, County Courthouse, Lovington

**Special Use Permit #2018-05 - Farm Winery permanent remote retail and Restaurant**

Ms. Shackelford presented the Planning Commission with correspondence from VDOT, a revised version of the conditions requested by the Rockfish Orchard Home Owner's Association, Mr. Rath's comments on those conditions, and Mr. Sipe's response as well. She also noted that at this point the VDOT studies are not complete and that there has been concern about turn lanes and the drainage on Route 151. Mr. Rath noted that he is not able to begin construction without approval from VDOT or DEQ.

Mr. Harman stated that the Planning Commission would begin by addressing the proposed conditions.

SUP 2018-05  
"Afton Depot" Project  
Rockfish Valley Events LLC, Applicant  
Conditions

1. Uses. Uses shall be limited to a "Farm winery permanent remote retail establishment," a "chocolatier and gelato maker," and other uses permitted by right under the existing A-1 Agricultural zoning district as of the date of approval.
2. Development Plan. Approval is for a 3,672 square foot building with three rental units described as "Building #2" and as shown on Page 7 of the memo by 1230 Architects dated July 13, 2018, submitted by the Applicant (the "Memo"). The site shall be developed in general conformance with the "Site Diagram Showing Proposed Building #2" shown on page 4 of the Memo and in conformance with all applicable regulations of the Nelson County zoning ordinance.
3. Architectural. All Buildings shall be constructed in general conformance with the appearance and materials of the buildings illustrated in the "Leasing Plans" submitted by the Applicant with the SUP application. Buildings shall be one story and limited to 35 feet in height.
4. Fencing of Property Lines. Developer shall construct an 8 foot tall privacy board fence along the entire length of the northern property line abutting Tax Parcel 6-15-18. Developer shall install an 8 foot tall privacy board fence along all other property lines and on the east side of the stream dividing the Applicant's property from Tax Parcel 6-A-130A. All fences along property lines shall be posted with signs every 10 feet indicating that there is no access to, or trespassing on, adjacent properties. All fencing and signs required under this condition shall be maintained in good repair at all times. All fences required shall be constructed prior to issuance of any certificates of occupancy for any uses on the property.
5. Music and Noise. No amplified music shall be permitted at any time, and other, purely acoustic, music performances shall be limited to the hours between 1:00 p.m. and 7:00 pm Sunday through Thursday and Noon and 8:00 pm Friday and Saturday. An 8 foot tall sound-blocking solid board fence shall be constructed around the perimeter of each and every deck.
6. Lighting. All exterior lighting shall be fully-shielded and no light trespass shall be permitted on adjacent properties. All light fixtures shall meet professional standards for fully-shielded, full cut-off fixtures designed to protect the dark night sky. Parking lot light poles shall be limited to 18 feet in height, and shall be on automatic timers with lights turned off by 9:00 p.m. or within one hour of the close of business.
7. Landscaping. Landscaping shall be provided in accordance with Section 12-7-8L of the Nelson County Zoning Ordinance and further, a continuous line of shrubs with a minimum

height of 2' shall be planted along the edge of all parking areas and decks to screen them from the public road and all abutting properties and uses. All existing trees greater than 4" in caliper and which are located outside of the footprint of building, parking and road areas as shown on the Site Diagram shall be preserved.

8. Hours of Operation. All businesses shall be limited to operating between 9:00 a.m. and 7:00 p.m. Sunday through Thursday and 9:00 a.m. and 8:00 p.m., Friday and Saturday.
9. Events. No events with greater than 200 attendees shall be held on the property
10. Existing Garage. Developer shall remove the old existing garage that does not meet current setback requirements prior to issuance of any certificates of occupancy for any uses on the property.
11. Fire Protection. No outdoor fires or grilling shall be permitted. Fire extinguishers shall be required in each separately leased space.
12. Septic. Applicant shall secure health department approval for both a primary drainfield area sufficient to meet the need of all uses on the property together with a reserve area equal to a minimum of one hundred (100) percent capacity of the primary area.
13. Water. Developer shall do a drawdown test on all wells to serve the approved uses, and shall monitor the wells of abutting landowners during the test to confirm there will be no negative impact on abutting landowners wells due to level of usage.
15. Traffic. Applicant shall install both a right and left turn lane along Route 151 serving the principal entrance to the property prior to issuance of any certificates of occupancy for uses on the property.
16. Signs. Signage shall be limited to signs serving the uses on the property, and no more than one freestanding sign shall be permitted on the property which freestanding sign shall not exceed 8 feet in height and 24 square feet total in sign area.

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1. Ms. Proulx asked if condition #1 were a legal issue. Ms. Shackelford noted that the Planning Commission could endorse it and she would need clarification from legal counsel. Mr. Amante noted that this condition was redundant. The Planning Commission decided to remove condition #1 from the list.
2. The Planning Commission decided to change the word 'general' to 'substantial'.
3. Mr. Sipe noted that he did not see where the mezzanine was represented in the square footage of the site plan. He also noted that condition 2 and 3 needed to remain. Ms. Proulx noted that she supported limiting it to one story. Ms. Allen asked if this were enforced would it change the architectural plans. Mr. Simon noted that there is a percentage allowed by code for a mezzanine to be in a public space. Ms. Shackelford noted that they could include in the condition "one story (including the mezzanine shown in the architectural plans".
4. Mr. Bruguiere noted that the Planning Commission had discussed an 8ft fence along the northern border and a 3 board fence with wire along the DeJong property. Mr. Bruguiere objected to requiring an 8ft privacy fence on all property lines. Ms. Proulx asked if this line was the one abutting the McGatha property. Mr. Rath noted that it was. Mr. Rath noted that he had no issue with the 8ft fence along the northern property line. He also noted that the 3 board fence would extend to a point in the property that he had agreed upon with Mr. DeJong where the property became marshy. Ms. Allen found a sign every 10 feet to be excessive. Mr. Sipe noted that Mr. DeJong did not agree to a shorter fence and that he wanted one along the entire property line between himself and Mr. Rath. Mr. Sipe also noted that he was fine with a sign space change. Mr. Amante asked if they could require the applicant to post signs. Ms. Proulx noted that an 8 ft fence would probably not require signs.

Mr. Rath noted that building a fence through the marsh was not possible. Mr. Stapleton noted that he believes the applicant can fence in his operation by building a fence from the location where the marsh begins to the road. Mr. Bruguiere noted that customers are not going to wander around the property. Mr. Stapleton noted that this is a small property with on-premise lodging and that there needs to be a border between the property and the neighbors. Ms. Allen noted that any conditions on this Special Use Permit will not affect the applicants last Special Use Permit. Mr. Rath asked why he should need to build a fence that splits his property and that no one would try to cross the marsh.

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Ms. Allen noted that the Planning Commission would come back to the issue. Ms. Shackelford explained that four commissioners had to agree to change the condition. The Planning Commission noted that they have no issue with an 8 ft fence on the north side. Mr. Harman proposed that the fence on the west side would be a 3 board fence with chicken wire stapled to it. Mr. Rath noted that they had the same fence at the current Bold Rock Cidery. Ms. Allen noted that she didn't think the fence would need to have chicken wire and that a 3 board fence would be enough. Mr. Sipe noted that it is very common to see wood fences with a woven wire to prevent children or animals from climbing through the boards. He noted that people bring their children and dogs to places like this. Mr. DeJong noted that his concern was that the property line between his and Mr. Rath is the centerline of the creek and that he would like Mr. Rath to build a fence on the east side of the creek to prevent children from falling into it.

All commissioners except for Ms. Allen were in favor of requiring a three board fence with wire that runs from the north side down to where the marsh begins. Mr. Amante noted that there is a creek at Bold Rock and that no one has drowned in it so far. Ms. Proulx noted that she knew of a situation where a child drowned in a pond on someone else's property. Ms. Allen noted that her children play in a creek often and still haven't drowned. Mr. Amante noted that if they build a fence on the east side of the creek then over enough time Mr. DeJong would be able to claim ownership of the creek. Mr. DeJong noted that about 1000 ft of their shared property line includes the creek and that he ask that the fence be put on Mr. Rath's side of the creek. The Planning Commission decided to further discuss this condition at the meeting at the end of the month.

5. Mr. Harman noted that he did not like the requirement of an 8 ft fence around the perimeter of the decks. Mr. Sipe noted that the most principal point in blocking noise is blocking it as close to the source as possible. He noted that an 8 ft tall fence would be the only method to block noise from reaching the neighbors. He noted that the fence could include windows to maintain the view from the deck. Mr. Rath requested that the Planning Commission enforce the noise by decibel level. Mr. Harman noted that the Planning Commission is not able to enforce noise by decibel level. Mr. Bruguier noted that it is almost 800 ft and almost all wooded and that he doesn't see the need for a fence there. Mr. Rath proposed having the music directed towards the deck and not outwards. The Planning Commission decided to leave the music curfew at 7pm on Sunday through Thursday nights and 8pm Friday and Saturday nights. Mr. Rath noted that he was ok with the hour limitation but not to giving up the possibility of amplified music. Mr. Harman noted that the Planning Commission had to agree on the conditions before the applicant could comment on them. Margaret Flather noted that there are many options for transparent sound barriers that could close off the deck to sound. Ms. Proulx noted that she was ok with changing the last sentence to be 'a transparent sound barrier along the North and West side of the decking'. Mr. Simon recommended changing to 'no non-acoustic amplified music' to allow for acoustic guitars to

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have a small pick-up. Mr. Bruguere noted that someone on the far end of the deck would not be able to hear a purely acoustic guitar. Mr. Rath asked if this meant that they would not be able to have amplified music inside. Mr. Sipe noted that the main issue is that a commercial venue is being allowed in a residential/agricultural area. He noted that the 8 ft privacy fence is also there to prevent other noises (aside from the music) from leaving the deck. He noted that the neighbors would be ok with amplified music inside and not outside. The Planning Commission agreed to change the condition to: "No amplified music shall be permitted outside at any time, and other purely acoustic music performances shall be limited to the hours between 1pm and 7pm Sunday through Thursday and Noon and 8pm Friday and Saturday."

6. Mr. Rath noted that some lights would need to be left on for the cabins and for security around the building. He also noted that employees would need time to leave before the lights went off. Mr. Bruguere noted that the county does not have a lighting ordinance. Mr. Amante was concerned to how 'light trespass' would be evaluated. Mr. Harman noted that the timing limitations and automatic timers should be removed. The Planning Commission decided to change the condition to: "All exterior lighting shall be fully-shielded and no light trespass shall be permitted on adjacent properties. All light fixtures shall meet professional standards for fully-shielded, full cut-off fixtures designed to protect the dark night sky. Parking lot light poles shall be limited to 18 feet in height."
7. Mr. Rath noted that the decks would probably be 10 ft in the air and he was concerned about how he would grow bushes that tall. He noted that the road screening would be no problem. He added that there was very little area that they would clear cut and that it was shown in the site plan. Mr. Sipe noted that removing natural deck screening would allow noise to travel to neighbors' houses. The Planning Commission decided to change it to: "Landscaping shall be provided in accordance with Section 12-7-8L of the Nelson County Zoning Ordinance and further, a continuous line of shrubs with a minimum height of 2' shall be planted along the edge of all parking areas."
8. Mr. Rath noted that he would be ok with 8pm on Sunday through Thursday and 9pm on Friday and Saturday. The Planning Commission agreed to this.
9. The Planning Commission decided to remove the condition.
10. The Planning Commission discussed the amount of parking that the property would hold. Mr. Simon asked if this would limit weddings on the land. Ms. Shackelford noted that the

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applicants can have up to 12 social events a year and that they were not classified as regular events. Mr. Rath noted that if he were going to have an event of more than 200 people then he would have it elsewhere. The Planning Commission decided to leave the condition as-is so that there would not be an issue with parking space.

11. Mr. Rath noted that the garage would be for storage and the public would not be able to use it. Ms. Shackelford noted that the structure itself is grand fathered in but that the use of the building is not. She also noted that the board has already approved that building as an accessory use. Mr. Rath noted that it would cost \$30,000 to rebuild the garage elsewhere and an additional \$80,000 to remodel the garage to his needs for a kitchen. Ms. Shackelford noted that if the applicant needed to move the building then he would need to amend his Special Use Permit. Ms. Margaret Flather noted that the garage should not have been approved as an accessory use in the first place. Mr. Harman noted that the Planning Commission already confirmed that the garage can remain as an accessory use. Mr. Simon noted that the garage would also be a great sound buffer. The Planning Commission decided to further discuss this condition at the end of the month.
12. The Planning Commission decided to remove the condition.
13. The Planning Commission decided to remove the condition.
14. Mr. Rath noted that the design of the signs would follow the designs of the building and that they need to have a good sign on the road to show people where to turn. Mr. Sipe noted that the sign limitations in the zoning ordinance are very generous and that the citizens value the scenic quality for the Route 151 corridor. The Planning Commission decided to further discuss the condition at the end of the month.
15. The Planning Commission decided to remove the condition.
16. Ms. Shackelford explained that if the business lost their ABC license then the applicant would need to come back for another Special Use Permit for the use. Mr. Sipe noted that the reason for the condition is that if a license is revoked then there is an issue. Mr. Rath noted that an ABC license can be removed for many reasons. The Planning Commission decided to further discuss the condition at the end of the month.

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17. Mr. Sipe noted that the zoning ordinance requires only a 50% reserve area and that this condition would require 100%. Mr. Ian Kelly noted that other breweries in the county have had septic and waste issues. Mr. Rath noted that brewery waste is the issue and not human waste and that they had a very small brewery in comparison to other breweries in the area. The Planning Commission decided to further discuss the condition at the end of the month.

18. The Planning Commission decided to remove the condition.

Ms. Proulx noted that she would like to add "Site shall be developed in substantial conformance with site plan and other plans submitted with the request."

Mr. Simon noted that the lighting would be as short as possible and that he would like the 18' limit to be removed from the condition. He explained that one taller light can serve in place of several shorter lights.

**Adjournment:**

**Ms. Allen made a motion to adjourn the meeting at 8:02pm. Mr. Stapleton seconded the motion. The motion was passed with a vote of 6-0.**

Respectfully submitted,



Emily Hjulstrom  
Secretary, Planning & Zoning