

Draft: 07/24/2019

Final: 08/28/2019

**NELSON COUNTY PLANNING COMMISSION
MEETING MINUTES
July 24th, 2019**

Present: Vice Chair Mark Stapleton and Commissioners Mike Harman, Chuck Amante, Phil Proulx, and Tommy Harvey

Staff Present: Dylan M. Bishop, Director of Planning & Zoning and Emily Hjulstrom, Secretary

Call to Order: Vice Chair Mark Stapleton called the meeting to order at 7:00 P. M. in the General District Courtroom, County Courthouse, Lovingston.

Approval of minutes: March 27th, 2019

Ms. Proulx motioned that the minutes from March 27th, 2019 be approved. Mr. Amante seconded the motion. The minutes were approved with a vote of 5-0.

Yes:

Phil Proulx

Mike Harman

Mark Stapleton

Chuck Amante

Tommy Harvey

No:

Other Business:

Solar:

Ms. Bishop presented the following information:

**Nelson County
Planning Commission**

Memo

To: Planning Commission
From: Dylan M. Bishop, Director of Planning & Zoning
Date: July 24, 2019
Re: Solar Energy Systems

The County has recently received multiple inquiries regarding the installation of commercial solar energy systems. Currently, the Zoning Ordinance does not address this subject, and has been requested for review by the County Administrator's Office. The intent of this memo is to provide interim recommendations so that upcoming solar applications can be regulated, until such time when staff and Planning Commission can review and formulate a complete solar farm ordinance.

Residential solar installations are treated as accessory uses, and are administratively approved subject to setback and height requirements. This is an existing practice and should remain in place.

A definition for "commercial solar energy systems" should be added to Article 2 of the Zoning Ordinance. "*Commercial solar energy systems*: An energy conversion system consisting of photovoltaic panels, support structures, and associated facilities, the principal purpose of which is to produce electric power for sale to third parties."

Commercial solar energy systems should be added as a by-right use in the M-2 District (9-1-33), and as a Special Use Permit (SUP) in the following districts:

- C-1 (3-1-18a)
- A-1 (4-1-52a)
- B-1 (8-1-15a)
- B-2 (8A-1-9a)
- M-1 (18-3-10)

This allows the Planning Commission to review any commercial solar application individually, and impose conditions as needed. Staff will be working on a draft ordinance to address commercial solar energy systems more thoroughly.

I recommend that the Planning Commission direct staff to move the proposed amendments forward to a public hearing at the next meeting to be held on August 21, 2019.

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Mr. Amante asked what the possible pros and cons of having solar farms are. Ms. Proulx noted that she does not have a fundamental objection to it but that they were talking about a 600-acre solar farm at a seminar she recently went to. She noted that the life span was estimated to be 30 years at this point. She noted that there are some possible environmental issues with it and that one form includes a toxic chemical and another does not. She noted that one jurisdiction allowed only the nontoxic type. She also noted that decommissioning of solar farms can be an issue and that requiring a bond is something that other jurisdictions have considered. Ms. Proulx noted that she doesn't think it should be allowed as an SUP in certain zones without finding out what the fundamental requirements are going to be.

Mr. Harvey noted that he has seen that there are some environmental issues with solar farms and he thinks it would take 6 months to a year to come up with something to put in the ordinance. Mr. Harman noted that CVEC sells Solar Shares so that residents don't need to have solar on their own sites to use solar energy. Mr. Amante noted that putting this in the ordinance is a little presumptuous. Mr. Amante asked where this request was coming from. Ms. Hjulstrom noted that there have been several inquiries recently that caused the Board to request that the Planning Commission begin discussion on it. Ms. Proulx asked if there had been a time limit set for the Planning Commission to act on it. Ms. Bishop noted that there had been no time limit communicated to county staff.

Mr. Harvey noted that the Board needs to hire a consultant to help with the matter. Mr. Amante agreed and noted that prime agricultural land is something to worry about. Ms. Proulx noted that if someone wants to sell their prime agricultural land to one of these companies they should be able to. Mr. Harvey noted that tourism is the County's biggest asset and that if one were to put solar farms up and down Rte 151 then it would get a bad reputation. Mr. Harman recommended that someone from CVEC come in to educate the commission on what their goals and perimeters are. Ms. Proulx noted that she has the contact information from someone she met at the seminar that should be able to help. Mr. Harman noted that when someone comes to the county with an application then they're going to have to put it aside. Mr. Harvey and Ms. Proulx noted that because it is not addressed in the ordinance then no solar farms can go in until it is addressed. Mr. Amante noted that he would like to know what the County Attorney's opinion on this is. Ms. Bishop noted that she has a memo from the County Attorney where he recommends adding solar farms as a Special Use Permit in all zones except for heavy industrial (M-2), with the definition, and a decommissioning plan with surety, projected life of the project, and estimated cost. She noted that this would be temporary until a full solar ordinance could be adopted. Ms. Proulx noted that this doesn't address whether or not someone has something they want to apply for. Ms. Hjulstrom noted that several attempts have been made to apply for a solar application and that one applicant even made their own application because the county did not offer a way to apply for a solar farm. Mr. Harvey noted that he doesn't understand where the push is coming from. Ms. Hjulstrom noted that she believes it is because CVEC is wanting to expand their solar capacity. Ms. Proulx noted that maybe they could get Gary Wood to speak to them about their intentions. Mr. Amante asked if it was on them to recommend to the Board stipulations on this topic. Ms. Proulx noted that the Planning Commission was free to make their recommendations but that the Board makes the final decision.

Mr. Stapleton asked that at the next meeting an expert be brought in that can answer their more specific questions. Ms. Proulx asked that samples of other Zoning Ordinances be given to the Planning Commissioners. Ms. Bishop noted that there might be pressure because other jurisdictions have been working on this. Ms. Proulx noted that these other Counties have not adopted anything overnight. Ms. Bishop noted that Albemarle County has done a similar thing to what has been proposed where they adopted a SUP only system until a Solar Ordinance can be adopted. Ms. Proulx noted that SUP may be the way to go but that they still want to know more about it.

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Construction camps:

Ms. Bishop presented the following information:

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**Nelson County
Planning Commission**

Memo

To: Planning Commission
From: Dylan M. Bishop, Director of Planning & Zoning
Date: July 24, 2019
Re: Construction Camp Use

The Planning & Zoning Department has recently received a request to extend the allowable stay of transient lodgers to a period longer than 30 days. "Transient lodging" is defined in the Zoning Ordinance as, "lodging in which the temporary occupant lodges in overnight accommodations for less than thirty (30) consecutive days." This is currently the maximum length of stay allowable.

A possible route to address this, is to introduce a "construction camp" use as a special use in the A-1 Agriculture District. A definition for "construction camp" as found in *A Planner's Dictionary*, is "buildings and or trailers that are temporarily used to house and feed construction workers and/or store project construction materials and/or provide office space for contactors and sub-contractors." Adding this as a special use would allow the Planning Commission to review each individual request for extended lodging.

Staff is requesting that the Planning Commission discuss the addition of this use into the Zoning Ordinance as a special use in the A-1, as well as its associated definition.

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Mr. Harvey noted that the whole issue with Devil's Backbone was so that they could not do Construction Camps there. He noted that it would be visible to tourists on their way to Wintergreen. Ms. Bishop noted that this is not a discussion to vote on this but just to start the discussion. She also noted that if this were to be considered it would be as a Special Use Permit only. Mr. Amante noted that this would allow it to be addressed on a case by case basis. He noted that sometimes there are instances that this would be needed for big construction projects other than the pipeline. Ms. Proulx noted that there are other options available, like having workers going home on the weekends. Mr. Harvey noted that this is designed solely for the pipeline. Mr. Harvey noted that any other project could be done in other ways.

Ms. Proulx noted that if this was enacted she would like the definition to be much more restrictive. Mr. Harvey noted that a construction camp would not fit at Devil's Backbone. Mr. Harman noted that one of their options is to leave things as is and not allow construction camps.

Mr. Harvey asked how this would affect migrant workers. Mr. Amante noted that they don't want the construction camp to become a cover for housing. Mr. Harvey noted that there is a trailer park North of Lovington that was supposed to be a temporary situation. Ms. Bishop noted that this would be similar to the solar situation in that it would not be permitted unless it was addressed in the ordinance. Ms. Proulx noted that there are ways of circumventing the ordinance but that circumventing the ordinance is addressed in the Zoning Ordinance. Mr. Stapleton asked who was asking about construction camps. Mr. Harvey noted that it was Devil's Backbone. The Commissioners noted that Devil's Backbone stated they would not be having a construction camp in their initial application that was approved in the past. Ms. Proulx noted that currently they can only have people camp there for 30 days. The Planning Commission came to the consensus to not pursue adding construction camps to the ordinance.

Ms. Bishop noted that in August Devil's Backbone is applying for a SUP to convert their 25 dry RV spots to wet.

Nonconforming Uses:

Ms. Bishop presented the following information:

**Nelson County
Planning Commission**

Memo

To: Planning Commission
From: Dylan M. Bishop, Director of Planning & Zoning
Date: July 24, 2019
Re: Nonconforming Article

In recent months, there has been much discussion and debate on nonconforming uses, structures, and their relationship to each other. The intent of this memo is to make the Planning Commission aware of initial staff recommendations following a preliminary review of the Article, and receive feedback from members, prior to introducing any revisions.

Currently, the ordinance addresses sections including *Continuation*, *Permits*, *Expansion/Enlargement*, and *Restoration/Replacement*. Staff recommends reworking these Sections to address these aspects as they relate to nonconforming uses, structures, and lots individually.

Staff also believes that the addition of an Intent section would clear up some confusion. Many ordinances of regional localities include language indicating the intention of the nonconforming ordinance. Some examples of this (paraphrased) language include:

- "existing nonconformities should be permitted to continue, but not encouraged to survive..."
- "elimination and prevention of nonconformities is a matter of public health, safety, welfare"
- "maintain the character of uses permitted in the underlying district"
- "structures, uses, lots, or any combination thereof are considered nonconforming and declared (by the Board of Supervisors) to be inconsistent with the character of the districts in which they occur"

By referring to a district's intent section when evaluating requests involving nonconformities, it will be clearer to determine the types of uses and improvements that may be allowable. This ordinance amendment has also been requested for review by the County Administrator's Office. Staff is requesting feedback from the Planning Commission, as well as direction to rework the nonconforming ordinance.

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Mr. Stapleton noted that the purpose of an intent section should come from some higher vision. Mr. Harman asked if this was still under legal review. Mr. Harvey noted that it is still in court but that since the Board agreed with the Planning Commission then he doesn't see it going forward. Ms. Hjulstrom explained that the application had brought up the nonconforming issue what went separately to the Board of Zoning Appeals. Mr. Harvey noted that they denied the Rockfish Valley Events application due to the fact that it was nonconforming because of setbacks. Mr. Amante noted that he liked Ms. Bishop's recommendations. Mr. Harvey explained that usually in the case of a nonconforming structure it is something you would eventually like to see go away. Mr. Harman noted that he believes that when it changes ownership it should come back to the Board and they should have to comply with the setback.

Ms. Bishop noted that it might be a state code thing that if the ownership changes hands then it maintains its status as nonconforming. Mr. Harvey noted that Ms. Shackelford was wrong when she said that a nonconforming structure should be able to have any use that is by-right in that zone. Mr. Amante noted that the County Attorney noted that when there is a question in the ordinance then things will be decided in favor of the property owner. Ms. Bishop said she's not sure how many requests she has seen for permitted uses in nonconforming structures She then quoted 15.2-2307 from the Virginia State code "May provide that land, buildings and structures and the uses which do not conform to the zoning prescribed for the district may be continued only so long as the then existing or more restricted use continues, such use is not discontinued for more than two years, structures are maintained in their structural condition."

The Planning Commission requested that the staff present them with a specific amendment that they can review.

Mr. Amante asked Ms. Bishop what Amherst County's decision had been in a recent setback issue. Ms. Bishop explained that it was in a scenic byway were the setback was higher than normal making a lot of the structures nonconforming. She noted that when the Ruritan Club was destroyed they wanted to build it back with an addition on the front. She noted that the Board ultimately decided to revise the ordinance to lower the setback in a section of the scenic byway.

Miscellaneous:

Ms. Bishop noted that she needs to go to a conference in September that conflicts with the September Planning Commission meeting.

Mr. Stapleton welcomed Ms. Bishop to the Planning Commission.

Board of Supervisors Report:

Mr. Harvey noted that he had nothing to report.

Adjournment:

Mr. Amante made a motion to adjourn the meeting at 7:56 pm. Ms. Proulx seconded the motion. The motion was passed with a vote of 5-0.

Respectfully submitted,

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A handwritten signature in blue ink, consisting of a stylized 'E' followed by a horizontal line with a small flourish at the end.

Emily Hjulstrom
Secretary, Planning & Zoning