



## NELSON COUNTY PLANNING COMMISSION

Meeting Agenda: January 27, 2016

General District Courtroom, 3<sup>rd</sup> Floor, Nelson County Courthouse, Lovingston

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– **7:00 – Meeting Convenes / Call to Order**

– **Election of Officers**

– **Review of meeting minutes:** November 18, 2015 and December 16, 2015

– **Public Hearing Items:**

○ **Special Use Permit #2015-18 - Quarry Gardens at Schuyler**

*“Banquet Hall” / Mr. Armand Thieblot*

Consideration of a Special Use Permit application seeking approval to “allow for subdivision of property to be used as a banquet hall”. The application has been submitted pursuant to Zoning Ordinance §4-1-4a (“banquet hall”). The subject property is located in Schuyler at 1981 Salem Road; is further identified as Tax Map Parcel #61-A-23; and is zoned Agricultural (A-1).

○ **Consideration of Proposed Amendments to Zoning Ordinance Regarding “Temporary Events, Festival Grounds, and Out-of-Door Accessory Uses”**

Consideration of Zoning Ordinance amendments that were initially referred to the Planning Commission by Board of Supervisors Resolution R2015-68 (“Temporary Events, Festival Grounds, and Out-of-Door Accessory Uses”).

– **Other Agenda Items:**

○ **Minor Site Plan #2016-01 (“Limited Farm Brewery”):**

*“Barefoot Bucha Farm Brewery” / Ethan & Kate Zuckerman (Tax Map Parcel #12-10-1)*

○ **Zoning Ordinance Amendments Referred from BOS (continued from December 16<sup>th</sup> PC meeting):**  
Bed and Breakfast Uses – R2015-66

○ **Zoning Ordinance Amendments Referred from BOS (referred at December 8<sup>th</sup>, 2015 BOS meeting):**  
Review by the Planning Commission for consideration of possible amendments to Article 10 (General Floodplain District FP)

○ **Zoning Ordinance Amendments Referred from BOS (referred at January 12<sup>th</sup> BOS meeting):**  
Review by the Planning Commission for consideration of possible amendments to Article 18 (Limited Industrial District M-1)

– **Other Business (as determined by Planning Commission members / as applicable)**

– **Adjournment**

– **Next Meeting:** February 24, 2016 | 7:00pm

**NELSON COUNTY PLANNING COMMISSION  
MEETING MINUTES  
November 18, 2015**

**Present:** Chair Philippa Proulx, Commissioners Linda Russell, Robert Goad and Larry Saunders (Board of Supervisors Liaison)

**Absent:** Mike Harman and Mary Kathryn Allen

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

**Call to Order:** Chair Proulx called the meeting to order at 7:00 P. M. in the General District Courtroom, County Courthouse, Lovington.

Chair Proulx announced that the Special Use Permit (deferred from the October 28<sup>th</sup> meeting) for the Averitt's application for a remote farm winery/tasting room has been withdrawn and will not be discussed tonight.

**Approval of Minutes – September 29, 2015:** Chair Proulx asked if there were any further changes/corrections to the meeting minutes. No changes were made.

**Commissioner Russell made a motion to approve the minutes of the Nelson County Planning Commission meeting of September 29, 2015. The vote 4-0.**

**Approval of Minutes – October 28, 2015:** Chair Proulx asked if there were any further changes/corrections to the meeting minutes (draft dated November 16, 2015). No changes were made.

**Commissioner Russell made a motion to approve the Nelson County Planning Commission meeting minutes of October 28, 2015 as updated on November 16, 2015. The vote 4-0.**

**1. Special Use Permit #2015-15 - "Dwelling" / Mr. Michael Tapager**

Mr. Padalino noted that on October 27<sup>th</sup>, the Planning department received a Special Use Permit (SUP) application from Mr. Mike Tapager (property owner).

Mr. Padalino showed a slide that contained information regarding the subject property's location, characteristics, and other information. He explained that the property is located in Lovington proper at 622 Front Street, and is further identified as Tax Map Parcel #58B-3-2; and he noted that, according to the County's "ProVal" records, this parcel contains 0.0 acres, which he does not believe to be accurate.

Mr. Padalino noted that Minor Site Plans are required with all SUP applications. However, with this particular request, he indicated that he accepted a waiver from the requirement to prepare a Minor Site Plan based on the following reasons:

1. The Zoning Ordinance provides that authority and discretion;
2. This subject property is almost entirely built-out, with the historic structure sited right at the front property line, and with the upper-floor porches actually hanging over the sidewalk;
3. There is virtually no yard area; and
4. It is a previously developed site with no proposed modifications to the exterior of the building, the landscape, or the yard.

Mr. Padalino noted that the building is in the heart of the Lovingson Historic District, and that it has a long history of previously being used for residential purposes. He explained that the ground floor was historically used for retail space and the top two (2) stories have historically been used for residential dwelling uses.

He then explained that the reason for this request is because the property has not been used as a dwelling in more than two (2) years. That discontinuation means that the “non-conforming” or “grandfathered” status of that dwelling is no longer valid. The property owner would like to reestablish that use, which requires that a SUP be obtained.

Mr. Padalino concluded by providing his analysis of the four (4) evaluation criteria (Zoning Ordinance Article 12, Section 3-2) that must be considered with all SUP applications. He then stated that the opinion of Staff is that the proposed use is appropriate and acceptable (details described in the Staff Report dated November 10, 2015-see attached); and recommended approval of Special Use Permit #2015-15.

Commissioner Russell asked the following questions: If the BOS approves the proposal, does it mean that Mr. Tapager has to use the entire building, including the ground floor, for residential dwelling units? Mr. Padalino noted that he believes SUP approval would authorize the applicant to do so, but that it would not obligate him to do so – and that the property could still be used to conduct any permissible by-right B-1 use.

Chair Proulx opened the public hearing at 7:08 P.M. No public comments were made. The public hearing was closed.

Chair Proulx noted that she does not have any problems with the proposed use, but she added that she has that opinion because she thinks it is an appropriate use – and not because it would help make it easier to sell the property.

**Commissioner Russell made the following motion:**

**I make a motion that the Planning Commission recommend the BOS approval of SUP #2015-15 for Michael Tapager for property that he owns with a Tax Map #58B-3-2, located in Lovingson, VA. Commissioner Goad provided the second; the vote 3-0 with Mr. Saunders abstaining.**

## **2. Zoning Ordinance Amendments: “Bed and Breakfast Uses”**

Mr. Padalino noted that the PC has reviewed the proposed amendments a few times before tonight’s scheduled public hearing. The amendments were originally referred to the PC by the BOS and have since been modified several times. He then noted that these were not law; they are recommendations. A public hearing is being held to gain good public input. He further noted that this one set of amendments actually has two areas to focus on:

1. Establishing new definitions for new uses and redefining some existing uses; and
2. Determining the regulation of those uses within various zoning districts.

Mr. Padalino made the recommendation to delete the following existing definitions: Boardinghouse, tourist home; and Tourist home. He stated these uses are addressed separately and differently in the proposed amendments.

Mr. Padalino then read the proposed definition for the following proposed new uses: Bed & Breakfast, Class A; Bed & Breakfast, Class B; Boardinghouse; Tent; Transient; Transient lodging; and Vacation House (see attached draft dated 10/30/2015).

Mr. Padalino noted that he received a "very insightful phone call from Mr. Curtis Bruguere. He pointed out that we are recommending that Vacation House be a special use in the Residential (R-1) district, and I think there are very good reasons for doing that. However, the language in the RPC Article references R-1 as to what's permissible in RPC." He thinks this makes sense in some cases, such as in traditional Residential (R-1) districts such as Windy Acres (Afton) or Green Acres (Lovingston), which are very different than a four-season resort. He believes the PC should have discussion as to how that discrepancy needs to be addressed. Currently, the proposed amendments would require a SUP for new homes to operate as a vacation house at Wintergreen or Stoney Creek; and it is his understanding that this is not the Commission's intent.

Mr. Padalino concluded by noting that the third type of definition amendments would be modifications to existing definitions, and he read the proposed definition for each of the following existing uses: Campground; Dwelling; Dwelling, single-family detached; Home occupations, class A; Home occupation, class B; Hotel; and Travel Trailer.

Mr. Padalino then reviewed the proposed regulations of the various uses by zoning districts (see attached draft dated 10/31/2015).

After Mr. Padalino concluded his staff report, Chair Proulx opened the public hearing at 7:21 P.M.

Shelby Bruguere, Stoney Creek: Mrs. Bruguere stated that the issue of people renting rooms and vacation homes at Wintergreen and Stoney Creek seems that it will fall in a negative way, and she believes that was unintended. She noted that perhaps the remedy would be to remove the SUP for the Residential (R-1) and Residential (R-2) districts. She then noted that the easiest way may be to keep the definitions which would allow them by-right so that Wintergreen homeowners wouldn't have to go through the SUP process. She further noted that there are very popular online rental programs, such as Air B&B that many people have started to use, including herself. She concluded by stating that she "has an older home that is in Afton that I rent the entire home as a B&B, so I'm not really sure where I'm gonna fall in that and it is the entire house, but it's an older house." She would like to see a "definition for a Bed & Breakfast Inn which would allow for older farm houses/older structures to not have to comply with new hotel requirements just to rent them, so that people can earn a little bit of extra money."

Curtis Bruguere: Mr. Bruguere noted that the reason he came to tonight's meeting is to try to get some understanding of why this amendment process was initiated. He noted that he understands some of these are for clarification, but some seem to be reducing some opportunities for people in Residential (R-1). He asked why R-1 was being restricted from renting a single room. They should be able to do that by-right and not have to go through the SUP process, which can get very expensive. He further noted that he had a conversation with Mr. Padalino today and noted that Green Acres was one of the places that this "would really make sense", and that may be the case, but why would the County want to restrict that area if owners wanted to rent room. He also noted that as the area grows with more breweries, wineries, and other tourist-type places, there is going to be more of a need for these types of vacation places for people to come.

Mr. Bruguere then noted that Wintergreen falls under all of these criteria and is in the R-1 designation. He estimated that the County is comprised of about 20% of residential homes. He stated that he is afraid this is more restrictive government; and that by requiring a SUP, there's the need for a Site Plan – and that would be putting

“a lot of hardship on folks for no real reason.” He then asked, “What’s the difference of having a vacation house rental versus a full-time rental?” He further noted that by having weekend guests, it would benefit the County because they would spend money in the County (revenue). He reiterated that he would like an explanation for why this amendment process is happening.

Chair Proulx noted that after the public hearing is concluded, the questions will be addressed.

Heather Goodwin: Mrs. Goodwin began by providing comments regarding Special Events Permits (SEP). Chair Proulx explained to Mrs. Goodwin that the PC is not currently conducting a public hearing on the temporary events, and that this public hearing is in regards to the “bed and breakfast uses” items. Mrs. Goodwin apologized and stated that her “concern with all the regulations that I’m seeing being stemmed is a lot of them are reaction to tourism coming into our County. People who are citizens here are paying taxes and trying to keep vast pieces of property in rental properties available; them trying to find a way to be able to pay those real estate taxes. My concern and what I caution the board, is that when you put definitions behind these, they have to be workable, or else all they are going to do is go around them and figure out how to list their item.” She encouraged the PC to take a “long look at what has been drafted; think about other angles from which this can come, and I do question if there is a real health or safety concern that is necessary for this.” She concluded by asking, “Is there a real harm here that we are trying to prevent or are we regulating for the sake of regulating?”

Ellie Ray, Afton: Ms. Ray noted that she thinks there have been good efforts put towards these and it helps bring clarity for residents that own property in the County. She then noted that there are some concerns that she doesn’t feel have been thought of, and that her husband would speak about those. The area that he lives in (Rt. 6 corridor) is split-zoned (R-1 and A-1) with R-1 being along the roadway.

Brian Ray, Afton: Mr. Ray noted that there seems to be a technicality issue with Home Occupations, A&B and Bed & Breakfast A&B; the intensity of the use is flipped with those and feels the assignment of letters or classes need to be consistent. He then noted that he was speaking on the R-1 rights and what is allowed and what is not. He further noted that none of the split-zoned properties in the area are protected from A-1 uses. He feels that those properties with the R-1 zoning are being restricted from doing what is a by-right use for their A-1 zoned neighbors, but he feels as if they “are not protected from the same [A-1] uses if our neighbors choose to do them and find them objectionable. So, we don’t have protection or property rights.” He noted that he feels that restricting the B&B uses in R-1 can be accomplished in other sections of the ordinance. He then stated that, “removing the home occupations lodging by-right use that currently exists in the Ordinance is just taking away property rights from R-1 owners.” He feels as though that would create a lot of unenforceable non-conforming uses (such as Air B&B) and eliminate tax opportunities for the County. He concluded by noting a large portion of the 151 Corridor is bordered by Albemarle County, specifically their RA [“Rural Area”] district (most protected), which allows for more intensive lodging options (by-right) than either of the proposed B&B uses; and that restricting the “ability to create flexible and creative lodging options for Nelson County” would encourage the development of these options in Albemarle instead of Nelson.

Anne Wachtmeister: Ms. Wachtmeister noted that she owns a B&B in Nelson County. She stated that, as a business owner in Nelson County, the proposed amendments are very helpful and provide clarity. She noted that owners/operators of B&B are required to get state permits, business licenses, and other documentation/approval to operate their businesses. She then noted that she believes this is about accountability and clarity. She concluded by stating that she doesn’t see the proposed amendments as an over-regulatory effort.

Chair Proulx closed the public hearing at 7:46 p.m.

The Commissioners provided the following comments:

1. It was a good catch on the RPC and R-1 issue; the resulting SUP requirement was not intentional.
2. Older structures can still be used as a B&B as long as they meet the business requirements; it doesn't have to be a new construction.
3. The main reasons this amendment process was initiated are the contradictions and lack of clarity in the current ordinance.
4. A Site Plan can be done cheaper than \$1,500, and a Site Plan can potentially be waived.
5. Once B&B are done and are permitted properly, the County will get the tax revenue.
6. Acknowledgement that there are some weird R-1 zoning patterns in the County.
7. Agreement that Home Occupations A & B categories need to be switched.
8. They understand the thought that the County should not keep regulating, cause hardship, or create extra expense.
9. In a classic R-1 neighborhood (not including Wintergreen), could provide conveyances.
10. Could possibly limit the amount of time that an entire house can be rented in the R-1 districts.

Chair Proulx indicated that she is not sure of the timeline for making recommendations to the BOS; and she feels these amendments need to be revisited further. Mr. Padalino noted that if a formal recommendation to the BOS is not made by December 4<sup>th</sup>, it would legally become the PC's recommendation that the referred amendments are the PC's recommendation.

**Commission Russell made the following motion:**

**I make a motion that Staff ask for a three (3) month extension from December 4, 2015 to allow the PC to continue to refine their recommendations on Bed & Breakfast in the future in the County. Commissioner Goad provided the second; the vote 4-0.**

**Other Agenda Items:**

**1. Minor Site Plan #2015-16: "Woodbridge Farm Brewery & Tasting Room" / Mr. Barry Wood**

Mr. Padalino noted this is a by-right use for a limited farm brewery. The subject property is located in Woods Mill; it is zoned Agricultural (A-1) and consists of 170-acres. Mr. Padalino showed slides of the subject property. He noted this is a bona-fide agricultural operation. The farm brewery and tasting room are already partially built, but an approved Site Plan is required for this project.

Mr. Padalino noted that the Site Plan Review Committee met in October and provided the following comments:

1. Jeff Kessler, Virginia Department of Transportation (VDOT): requested some changes; those changes have been made. Mr. Kessler noted that a Land Use permit would be required, but that would take place after County's approval of the Site Plan.
2. Alyson Sappington, Thomas Jefferson Soil & Water Conservation District (TJSWCD): reviewed the Erosion & Sediment Control Plan (E&S) and accepted the plan; it is complete and approved.
3. Tom Eick, Health Department: working with the applicant and his consultant, Mr. Roger Nelson, on the conventional drainfield and septic system (for bathrooms, sinks, etc.), which is not yet approved. Mr. Padalino noted that he received correspondence in writing from Mr. Eick that states, "Roger was just about to submit a report for the sanitary waste water stream. I quickly reviewed the submittal and found it satisfactory. Seconds later, Roger said that Barry wanted him to enlarge the system for added capacity for

any potential future growth, so Roger rescinded the submittal.” Mr. Eick further noted that, “I don’t expect there to be any problems with the revised plan, but don’t know if I’ll have a chance to review it before the meeting.” Mr. Padalino noted that brewery operations create a separate waste stream, and the Health Department does not review or regulate that process water; it is a separate review process handled through state and/or federal agencies.

Mr. Padalino noted that he accepted a request for a waiver from the requirement that an engineer prepare the Site Plan because of the acreage; because of the farm brewery use itself; because it is drawn to scale by a licensed contractor; and because it is partially built.

The following questions were asked by the Commissioners:

1. Does this fall under an agricultural exemption; will David Thompson (Building Official) oversee the building for safety regulations or would it be the responsibility of the Planning Office? Mr. Padalino noted that it would be Mr. Thompson’s office that administers the Uniform Statewide Building Code and which issues agricultural exemptions.
2. Will a Certificate of Occupancy be given? Mr. Padalino noted a CO will not be issued because it is an ag-exempt building.
3. Will the business sign and lights be added to the Site Plan? Mr. Padalino noted that the Site Plan includes the location of some light poles; and that the sign location and details could be submitted separately at a later time and reviewed administratively.

Mr. Wood then addressed the Planning Commission. He noted that it was done as a farm-exempt building and inspections would not be done. He then noted that what he is doing everything to [building] code, if not better; and that he would welcome any type of inspection. He then noted that, with respect to the septic system, he decided to increase the numbers for the flow rate and he is currently working on that issue. He noted that the drainfield for the brewery is an EPA injection system. He also explained his plan for some of the settled yeast to be drawn off, put in a tank, and sprayed on the areas of the farm in cultivation for the beneficial nutrients.

He then noted that there would be three (3) full-closure lights that will be twelve feet (12’) high located in the parking lot. He would also like to use 24-volt low wattage lights that would be installed close to the ground. There will be a handicap accessible ramp that will be lit with the low wattage lights as well. The sign will be located at the entrance, once the entrance is widened.

**Commissioner Russell made the following motion:**

**Having met the Nelson County Zoning Ordinance requirements for Minor Site Plan approval, the Planning Commission approves this Minor Site Plan #2015-16 for Barry Wood to construct a farm brewery and tasting room on his property, identified as Tax Map #34-A-96A; and by three (3) pages of plans prepared by the applicant dated November 6, 2015. Commission Goad provided the second; the vote 3-0 with Mr. Saunders abstaining.**

2. **Referral of amendments from BOS – Temporary Events, Festival Grounds, and Out-Of-Door Accessory Uses – R2015-68:**

Mr. Padalino noted that the three (3) month extension that the PC asked for was approved by the BOS.

The following questions/comments were posed by the Commissioners for Mr. Payne:

1. The use of the word “control” and how it’s used with regards to contiguous parcels.
2. Why Mr. Payne removed the stipulation that uses be regulated differently depending upon the acreage of the property and depending upon the number of attendees.
3. The provision that festival grounds SUPs automatically terminate in five (5) years should be eliminated.
4. Article 23 already exists, and this proposed new article needs to be changed to Article 24.

Chair Proulx asked for a revised draft of the proposed amendments before the December meeting. Mr. Padalino stated that he would have a revised copy for the PC.

Chair Proulx then asked if the PC had to make a recommendation regarding Mr. Phillip’s SUP application for Wintergreen Brewery. Mr. Padalino noted that he was not sure what the timeframe would be since it does not meet the legal definition of a “complete” application, because there are aspects of the Site Plan checklist that have not been completed. He then noted that there has been a lot of communication with Mr. Phillips, and “F.P.” knows what needs to be done – but no revised resubmissions have been received yet.

Staff Updates:

Mr. Padalino reported on the following:

1. The Virginia Department of Agricultural and Consumer Services (VDACS) awarded a grant to restart the Rockfish Valley Area Plan (RVAP). He noted that he met with individuals at the Thomas Jefferson Planning District Commission, who are available and eager to assist with the project.
2. The County received a response to the questionnaire for the Atlantic Coast Pipeline, LLC (ACP).

Board of Supervisors Report: Mr. Saunders did not report anything.

Mr. Padalino noted that a working group, headed up by Mr. Tommy Bruguere, is being established for the Wayside Stands/Farmers Market proposed amendments. Chair Proulx indicated that she believes Mr. Brady Nicks would be a good member to add to the working group, and asked staff to help coordinate his involvement.

Adjournment:

At 8:27 P.M. Commissioner Goad made a motion to adjourn; vote 4-0.

Respectfully submitted,

Stormy V. Hopkins  
Secretary, Planning & Zoning

**NELSON COUNTY PLANNING COMMISSION**  
**MEETING MINUTES**  
**December 16, 2015**

**Present:** Chair Philippa Proulx, Commissioners Mike Harman, Linda Russell, Mary Kathryn Allen, Robert Goad and Larry Saunders (Board of Supervisors Liaison)

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

**Call to Order:** Chair Proulx called the meeting to order at 7:00 P. M. in the General District Courtroom, County Courthouse, Lovingson.

**Approval of Minutes:** Chair Proulx noted that a copy of the November 18<sup>th</sup> meeting minutes were received; they will be reviewed at next month's meeting.

**Public Hearing Items:** Chair Proulx noted that there are not public hearing items.

**1. "Bed and Breakfast Uses" – R2015-66**

Mr. Padalino noted that the slides only reflect the modifications (noted in red) that were requested at the last meeting by the Planning Commissioners (PC), in response to comments received during the public hearing (see attached, dated October 30, 2015). He also noted that he did have Mr. Phil Payne review these; and that Mr. Payne indicated that they looked good from a technical standpoint and from here forward, it is a policy decision. He then noted that the PC's request to the Board of Supervisors (BOS) for a three (3) month extension was authorized/approved on December 8<sup>th</sup>. The new deadline for a recommendation is March 4<sup>th</sup>, 2016.

The Commissioners and Staff discussed the proposed changes and the PC recommended the following:

1. Article 5: Residential District R-1 – Section 5-1 Uses – Permitted by-right: remove the following:
  - a. Bed and breakfast, Class A and Vacation house: remove *"two or more of the following apply: (a) the subject property is five (5) acres or greater; (b)"; and "or (c) the subject property adjoins contiguous property(s) entirely zoning Agricultural A-1"*.
2. Article 5: Residential District R-1 – Section 5-1-a Uses – Permitted by Special Use Permit only: remove the following:
  - a. *5-1-6a Boardinghouse*
3. Article 6: Residential District R-2 – Section 5-1-a Uses – Permitted by Special Use Permit only: add the following:
  - a. *Boardinghouse (rearrange number sequence accordingly)*
4. Article 2: Definitions: Bed and breakfast, Class A and Bed and Breakfast Class B – remove *home occupations* from both.
5. Article 2: Definitions: Hotel – remove *rooming house*,
6. Article 8: Business District B-2: remove the following:
  - a. *8A-1-15 Bed and breakfast, Class A*
  - b. *8A-1-16 Bed and breakfast, Class B*

c. *8A-1-18 Hotel*

7. Article 8: Business District B-2 – Section 8A-1-a Uses – Permitted by Special Use Permit only: add 8A-1-15 Hotel
8. Article 8: Business District B-2 – Section 8A-1-a Uses – Permitted by Special Use Permit only: remove the following:
  - a. *8A-1-7a Campground*

The Commissioners posed the following questions:

1. If a SUP is applied for (such as a B&B) and the use requested is defined by ordinance, is it possible for conditions to be created that are more restrictive than what is allowed by definition? Mr. Padalino noted that the BOS could impose more restrictive conditions if there is a reason for doing so and if the conditions have a nexus with the protection or promotion of public health, safety, or welfare.
2. Is there a definition of the number of room there has to be to be called a hotel? Mr. Padalino noted that a hotel would allow for transient lodging exceeding eight (8) rooms, which is the maximum number of rooms permissible in a Bed & Breakfast, Class B definition. It would also depend on the length of stay.
3. Should the Uses – Permitted by right in Sections 8-1 and 8-2 be changed to Uses – Permitted by SUP only? Mr. Padalino stated that he does not think so. Commissioner Goad suggested the following:
  - a. Section 8-1 Uses – Permitted by right. *“subject to obtaining a SUP for a single family dwelling unless it is a non-conforming use.”*

Chair Proulx asked for another draft of the proposed amendments and to have Mr. Payne review those before the January meeting. Commissioner Russell asked if there needs to be an advertisement for a public hearing. Mr. Saunders noted that with removing some items, he thinks those are major changes. Mr. Padalino noted that he would check with Mr. Payne regarding the procedure.

**Chair Proulx made a motion that Staff check with Phil Payne regarding advertising for a public hearing on the proposed amendment changes; if required to do so, advertise for the January Planning Commission meeting. Commissioner Russell provided the second; the vote 6-0.**

The PC took a five (5) minute break at 8:10 p.m. The meeting reconvened at 8:15 p.m.

**Other Agenda Items:**

**1. “Temporary Events, Festival Grounds, and Out-Of-Door Accessory Uses” – R2015-68:**

Mr. Padalino noted that the slides only reflect the modifications (noted in red) that were requested at the last Planning Commission meeting (see attached documents dated 12/2/2015). He noted that he met with Mr. Payne on the 30<sup>th</sup> of last month regarding these proposed amendments. He further noted that the PC’s request to the BOS for a three (3) month extension was authorized/approved on December 8<sup>th</sup>, and the new deadline for a recommendation is March 4<sup>th</sup>, 2016.

The Commissioners and Staff discussed the proposed changes, and the PC had the following questions/comments/changes:

1. Is "temporary" defined? Mr. Padalino noted that it was specified in each of the event categories.
2. There needs to be some clarity given for chart in Section 24-3-C (page 5). It should include "and" to clearly indicate that someone could do all numbers in each category (as opposed to being an "either/or).
3. Need to add "Planning & Zoning" before Director in Section 24-3-D (page 5).
4. Need to change spelling of promotor to "promoter" in Section 24-3-E (page 5).
5. What if a property is split-zoned (A-1 and R-1), that gets a Category 1 temporary event permit, does that follow under the third line (Any other property zoned A-1, B-1, B-2, or SE-1)? Mr. Padalino stated that he believes as long as the event is held in the A-1 portion of the property, it would be permissible.
6. In Section 24-2-E-2 (page 3), should/could the PC review the SUP first, every five (5) years before the BOS? Mr. Padalino referenced Section 12-3-8 ("Renewal of SUP with Time Limits, Expiration, Revocation") in the current Zoning Ordinance, which contains established procedures.
7. Could an event permit be revoked? Mr. Padalino noted that it could be revoked, if the use is not being conducted as it is supposed to be under the terms or conditions or approval.
8. Are the fees a one-time thing? Mr. Padalino indicated that SUP application fees are a one-time payment and that Temporary Event Permits require fee payment for each permit application but not necessarily for each event, depending on the details of the application.
9. The word "renew" needs to be removed from Section 24-2-E-2 (page 3).

Mr. Saunders asked if the BOS could revoke a SUP? Mr. Padalino again referenced Section 12-3-8 and stated that a SUP could be revoked if there was a violation, and there would have to be cause to do so.

**Commissioner Allen made a motion to hold a public hearing on temporary events. Commissioner Harman provided the second; the vote 6-0.**

Chair Proulx asked for a revised draft of the proposed amendments before the January meeting. Mr. Padalino stated that he would have a revised copy for the PC.

**Staff Updates:**

Mr. Padalino reported on the following:

1. Farmer's Market working group: The citizen's working group, headed up by Mr. Tommy Bruguiere, met on November 19<sup>th</sup>. Mr. Brady Nicks was added to the group. A lot of progress has been made. A final draft reflecting the most recent discussions will be made available to the working group members before the next BOS meeting.
2. A SUP for a "banquet hall" for Mr. Thieblot will be on the PC's agenda for next month.
3. Work on the Rockfish Valley Area Plan will soon begin due to a grant award through the AFID Planning Grant program. That program requires that an "Ag Working Group" be created with representatives from the community to participate in the RVAP in a formalized way. Within the grant application, staff recommended that the Ag Working Group contain two (2) County Supervisors, one (1) Planning Commissioner, and others from the local agricultural industries (agritourism/forestry). After discussion among the Commissioners, it was determined that Chair Proulx would be the PC representative on the Ag Working Group.

**Board of Supervisors report:** Mr. Saunders did not report anything.

**Adjournment:**

At 9:20 P.M. Commissioner Allen made a motion to adjourn; vote 6-0.

Respectfully submitted,

Stormy V. Hopkins  
Secretary, Planning & Zoning

DRAFT

**Please publish Thurs. January 14 and Thurs. January 21 in The Nelson County Times:**

**LEGAL NOTICE  
NOTICE OF PUBLIC HEARING**

In accordance with Volume 3A, Title 15.2, Counties, Cities and Towns, of the Code of Virginia, 1950, as amended, and pursuant to §15.2-107, §15.2-2204, §15.2-2285, §15.2-2310, and §15.2-4307, the Nelson County Planning Commission hereby gives notice that a Public Hearing will start at 7:00 p.m., **Wednesday, January 27<sup>th</sup>** in the **General District Courtroom** on the third floor of the Nelson County Courthouse located at 84 Courthouse Square, Lovingston, for the following:

**Public Hearing**

**1. Special Use Permit #2015-18 – “Banquet Hall” / Mr. Armand Thieblot**

Consideration of a Special Use Permit application made pursuant to Zoning Ordinance §4-1-4a (“banquet hall”). Specifically, the applicant wishes to “allow for subdivision of property to be used as a banquet hall”. The subject property is located in Schuyler at 1981 Salem Road; it is further identified as Tax Map Parcel #61-A-23 and is zoned Agricultural (A-1).

**2. Consideration of Proposed Amendments to Zoning Ordinance Regarding “Temporary Events, Festival Grounds, and Out-of-Door Accessory Uses”**

Consideration of Zoning Ordinance amendments that were initially referred to the Planning Commission by Board of Supervisors Resolution R2015-68 (“Temporary Events, Festival Grounds, and Out-of-Door Accessory Uses”). The full text of the proposed amendments is available for public inspection at the Planning & Zoning office; and a descriptive summary of the proposed amendments is as follows:

**ARTICLE 24. TEMPORARY EVENTS, FESTIVAL GROUNDS, OUT-OF-DOORS ACCESSORY USES**

The proposed Article provides regulations designed to address temporary uses in districts where such uses would not otherwise be permissible, establishes criteria for the approval or disapproval of such temporary uses, and provides requirements for the permitting and conduct of such uses. The Article also requires for the issuance of a Special Use Permit for properties where the intended use envisions large scale events, and provides for the regulation of out-of-door activities conducted as an accessory use to certain permitted commercial uses. The Article is not intended to regulate, and does not regulate, the traditional non-commercial use of property by its owners.

24-1. Definitions are created for Agritourism Activity; Festival Grounds; Out-of-Door, Accessory Use; Temporary Event; Temporary Event, Historical Property; Temporary Event, Non-Profit; and, Temporary Event, Social.

Out-of-Door, Accessory Use provides that: The following out-of-door activities are accessory uses to a Banquet Hall, Conference Center, Corporate Training Center, Restaurant, Brewery, and Distillery: receptions, dining, and entertainment, such as musical or small band performances, which (i) are conducted in connection with the primary permitted use, (ii) do

not involve amplified sound later than 9:00 p.m. on Sundays through Thursdays or later than 10:00 p.m. on Fridays or Saturdays, and (iii) hosts less than 1,000 attendees at any one time during the activity. Unless otherwise specified in (ii), all such accessory activities are limited to 10:00 p.m. on Sundays through Thursdays, and are limited to 11:00 p.m. on Fridays and Saturdays.

24-2. A Temporary Event Permit is required for Temporary Events defined in this subsection as either Category 1, 2, or 3.

24-2-A. Lists Temporary Events exempted from Temporary Event Permit requirements and fees: Private non-commercial functions conducted on the property of the host, Social Temporary Events where permitted by right, Historical Property Temporary Events, Non-Profit Temporary Events having or projecting less than 1,000 attendees at any time during the event, Athletic and sporting events conducted on sites approved for such events, Political gatherings, Religious gatherings, Out-of-Door Accessory Uses, and Farm winery and Agritourism activities conducted between the hours of 7:00 a.m. and 7:00 p.m.

24-2-B. Provides that a Category 1 Temporary Event is any event which is neither an otherwise permitted use nor exempt and (i) for which admission is charged or at which goods and services are sold, having or projecting less than 1,000 attendees, or, (ii) is a Non-Profit Temporary Event having or projecting more than 1,000 attendees, or, (iii) is a Farm winery or Agritourism activity conducted after 7:00 p.m. and having or projecting less than 1000 attendees. Contains limitations on duration and amplified sound.

24-2-C. Provides that a Category 2 Temporary Event is any event which is neither an otherwise permitted use nor exempt, for which admission is charged or at which goods and services are sold, having or projecting 1,000 or more attendees but less than 10,000 attendees. Contains limitations on duration and amplified sound.

24-2-D. Addresses structures used for either a Category 1 or 2 event.

24-2-E. Defines a Category 3 Temporary Event as any event having or projecting more than 10,000 attendees and requires a Special Use Permit for Festival Grounds, provides for review of a Festival Grounds Special Use Permit by the Board of Supervisors every five (5) years after which the Board may renew, revoke, or modify its terms and conditions, and contains limitations on duration and amplified sound.

24-2-F. For the purposes of Article 24, defines "applicant" to include the members of an applicant's immediate family or an affiliated business entity relationship and lists factors.

24-3A and B. Lists six factors to be considered by the Planning and Zoning Director when determining whether a Temporary Event Permit will be issued and limitations the Director may impose.

24-3-C. Provides a chart listing the number of non-exempt Temporary Events which may be conducted in a calendar year by property category type.

Type of Property	Category 1	Category 2	Category 3
Farm Winery or Bona Fide Agricultural Operation, the aggregate acreage of which is equal to or greater than 250 acres*	16	8	4
Farm Winery or Bona Fide Agricultural Operation, the aggregate acreage of which is less than 250 acres*	12	6	3
Any other property zoned A-1, B-1, B-2, or SE-1**	8	4	2
*Contiguous parcels under the same or different ownership or control may be aggregated to attain the minimum acreage. **Category 3 Temporary Events are not permissible in Service Enterprise District (SE-1)			

24-3-D. Permits the Director to issue a single Temporary Event Permit for more than one Temporary Event.

24-3-E. Establishes Temporary Event Permit application requirements and fees.

In addition to the proposed introduction of Article 24, the following amendments are also proposed for existing Articles:

Article 4. Agricultural District (A-1)

Remove the following: Temporary events not otherwise a permitted use may be allowed pursuant to a Special Events Permit for a specified time period. [...]

Add the following:

4-1 Uses – Permitted by right:

Agritourism Activity

Social Temporary Event, provided that there are no more than fifty such events in a calendar year and that any noise generated by the event is not discernible by adjoining landowners.

Category 1 Temporary Event

Category 2 Temporary Event

Category 3 Temporary Event in connection with a Festival Grounds Special Use Permit

4-1a Uses – Permitted by Special Use Permit Only:

Festival Grounds

Article 8. Business District (B-1)

Add the following:

8-1 Uses – Permitted by right:

Category 1 Temporary Event

Category 2 Temporary Event

Category 3 Temporary Event in connection with a Festival Grounds Special Use Permit

8-1a Uses – Permitted by Special Use Permit Only:  
Festival Grounds

Article 8A. Business District (B-2).

Add the following:

8A-1 Uses – Permitted by right:

Category 1 Temporary Event

Category 2 Temporary Event

Category 3 Temporary Event in connection with a Festival Grounds Special Use Permit

8A-1a Uses – Permitted by Special Use Permit Only:  
Festival Grounds

Article 8B. Service Enterprise District (SE-1)

Add the following:

8B-1 – Uses – Permitted by right:

Category 1 Temporary Event

Category 2 Temporary Event

Following the hearing, the Planning Commission may vote to approve or deny an agenda item, or to forward an agenda item to the Board of Supervisors, as applicable. The agenda items requiring Board of Supervisors' review and approval will be forwarded (with a recommendation for approval, a recommendation for approval with conditions, or a recommendation for denial) for action by the Board, which may adopt a resolution or ordinance to approve, modify, or reject an item.

The Nelson County Board of Supervisors will hold a public hearing on **Tuesday, February 9, 2016 at 7:00 p.m.** on those items referred to it by the Planning Commission. The meeting will be held at the location listed above. The following items are scheduled to be considered:

1. **Special Use Permit #2015-18 – “Banquet Hall” / Mr. Armand Thieblot**

Consideration of an application as described above in Item 1.

Copies of the above files are available for review in the Dept. of Planning & Zoning office, 80 Front Street, Lovingson, Virginia, Monday through Friday, 9:00 a.m. to 5:00 p.m. Telephone inquiries may also be directed to the Dept. of Planning & Zoning, (434) 263-7090, or toll free at 888-662-9400, selections 4 and 1. Nelson County does not discriminate on the basis of handicapped status in admission or access to its programs and activities. Accommodation will be made for handicapped persons upon advance request.



DEPARTMENT OF  
PLANNING & ZONING

PLANNING COMMISSION  
BOARD OF ZONING APPEALS

To: Chair and Members, Nelson County Planning Commission  
From: Tim Padalino | Planning & Zoning Director  
Date: January 19, 2016  
Subject: **Public Hearing for Special Use Permit #2015-18**  
**("Quarry Gardens at Schuyler" Banquet Hall / Mr. Armand Thieblot)**

### Summary of Application(s)

<u>Site Address / Location:</u>	Salem Road / Schuyler / East District
<u>Tax Parcel(s):</u>	#61-A-23
<u>Parcel Size:</u>	439.8 acres (current); 40-acre "Quarry Gardens" parcel to be subdivided from existing parcel (per application)
<u>Zoning:</u>	Agricultural (A-1) with General Floodplain overlay (FP)
<u>Applicants:</u>	Mr. Armand Thieblot
<u>Request:</u>	Review and Approval of Special Use Permit #2015-18
<ul style="list-style-type: none"> <li>▪ <i>Completed Applications Received On:</i> November 23<sup>rd</sup>, 2015</li> </ul>	

On November 23<sup>rd</sup>, the Department of Planning & Zoning received a Special Use Permit (SUP) application and supporting materials from Mr. Armand Thieblot (property owner) and Mr. Chris Sonne (authorized agent for property owner). Specifically, the application materials include the following submittals:

- Special Use Permit request for SUP #2015-18, requesting permission to conduct "banquet hall" operations within an existing structure and throughout the grounds of the "Quarry Gardens at Schuyler," a partially-built arboretum for native plant exhibits centered around former soapstone quarries. This banquet hall SUP request is made pursuant to Zoning Ordinance (Z.O.) §4-1-4a.
  - This requested SUP would allow for the renovation of an existing Quonset hut and its reuse as a space for educational exhibits, private events, and administrative facilities for a small number of staff.
  - The requested banquet hall use would be seasonal; it would not be continuously operated year-round.
- Minor Site Plan prepared by Mr. Chris Sonne, PE, LEED AP, which portrays the proposed configuration of all the site features, and which distinguishes the existing site features and improvements from the proposed (additional) improvements.

### **Subject Property Location and Characteristics:**

The subject property is an approximately 440-acre parcel in Schuyler with frontage on Salem Road and also along the Rockfish River. It is further identified as Tax Map Parcel #61-A-23, which is zoned Agricultural (A-1) and which also contains General Floodplain overlay district (FP) in certain locations. *Please see maps on pages 7-10.*

The subject property is the site of an abandoned soapstone quarry and also a residential dwelling; as noted above, the property owner has declared the intent to formally divide a new 40-acre property for the "Quarry Gardens" (banquet hall and arboretum) out of the existing parcel of record. Currently, a large portion of the 440-acre parcel is held in conservation easement.

### **Review Process Overview:**

- November 23<sup>rd</sup> – official submission
- December 9<sup>th</sup> – Site Plan Review Committee meeting
- January 27<sup>th</sup> – Planning Commission public hearing
- February 9<sup>th</sup> – Board of Supervisors public hearing

### **Site Plan Review Committee Comments:**

The Site Plan Review Committee reviewed the Minor Site Plan for this SUP application on December 9<sup>th</sup>, which resulted in the following review comments being provided to County staff:

- **VDOT:** Mr. Jeff Kessler, Virginia Department of Transportation representative, provided written review comments on December 16<sup>th</sup>. Mr. Kessler's initial review comments include the following:
  - "Based on the size of the existing buildings (3,550 Sq. Ft.) and the proposed 20 parking spaces and one bus, an entrance design meeting VDOT's Moderate Volume Commercial Entrance requirements will be needed. The Engineer, Chris Sonne, P.E., has presented such an entrance design, which he will need to verify [the following]:
    - that it will accommodate the turning movements for a bus as the design vehicle [and]
    - the location of the entrance must meet the minimum sight distance requirements (both stopping and intersection) for the existing speed limit. In this case, a 55 mph design speed for an unposted (statutory) speed limit. The measured intersection sight distance provided on plan sheet C2 does not [meet] the minimum requirements for this design speed, and no stopping sight distance was provided. If the applicant feels the actual travel speeds at the entrance are less than 55 mph, a speed study that is signed and sealed by a Professional Engineer may be considered to justify a lower design speed."

Mr. Kessler also wrote that, as part of the site plan review which follows, he will provide more detailed comments regarding the design of the commercial entrance, VDOT Plan Notes, and VDOT's signature block and disclaimer. Please come prepared to engage the property owner and applicant with your comments and questions about this important commercial entrance issue during the review and hearing on January 27<sup>th</sup>.

- Nelson County Building Official: Mr. David Thompson provided written review comments on December 9<sup>th</sup>. Because this project has already been partially constructed (including site preparation and grading as well as construction of some site features), Mr. Thompson noted the following requirements:
  - “A Nelson County Land Disturbing Activity Permit application and permit issuance is required prior to development.”
  - “An erosion and sediment control plan shall be filed for a development and the buildings constructed within, regardless of the phasing of construction.”

And because this project involves the proposed reuse of an existing structure, inclusive of what the Building Official deems a “change in use,” Mr. Thompson noted the following:

- “Nelson County Building permits are required to authorize construction and a change of use for facilities, structures, and buildings regulated by the Uniform Statewide Building Code (USBC), unless specifically exempted.”
  - “Existing agricultural buildings – No change of occupancy shall be made in any structure when the current USBC requires a greater degree of accessibility, structural strength, fire protection, means of egress, ventilation, or sanitation.
  - “A certificate of occupancy from the Nelson County Inspections Department is required for a use other than agricultural.”
- TJSWCD: Mrs. Alyson Sappington of the Thomas Jefferson Soil & Water Conservation District noted in writing on December 4<sup>th</sup> that a full Erosion & Sediment Control Plan is required. She also provided the following details:
    - The E&SC Plan must include documentation of the total disturbed area (including previous areas of site disturbance as well as proposed / requested future areas of site disturbance). If the total disturbed area is over 1 acre, the applicants will need to apply for a Virginia Stormwater Management Program Permit.
      - *Note: On December 7<sup>th</sup>, the applicant stated in writing that the total area of disturbance does not exceed the one acre threshold, and as such the project is not subject to VSMP regulations.*
    - Because the construction of this project was started prior to obtaining County approval, Mrs. Sappington noted that “the E&SC controls are probably irrelevant at this point,” but also emphasized that “the stormwater computations for both E&SC & VSMP will need to include all previously disturbed areas.”
  - VDH: Mr. Tom Eick of the Nelson County Health Department attended the meeting and has since been in communication with the co-applicants. His main points of discussion/review were the provision of drinking water (the applicants stated their intention to provide bottled water in lieu of installing and permitting a public well) and the proper disposal of waste.

Regarding the latter issue, the applicants wish to install a permanent structure next to the existing building containing two bathrooms (one handicap accessible) which would be pumped out periodically. The applicant and property owner state that the site is entirely unsuitable for private septic systems: the entire site contains no sufficient soils, as the former quarry has only bedrock

under the surface. Therefore, the co-applicants and VDH continue to coordinate on this proposed alternative solution for waste disposal. Please come prepared to engage the property owner and applicant with your comments and questions about this important waste disposal issue during the review and hearing on January 27<sup>th</sup>.

**Staff Evaluation:**

Per Zoning Ordinance Article 12, Section 3-2, there are four criteria which must be evaluated when reviewing all requests for Special Use Permits. The following list includes the SUP review criteria and corresponding review comments from County staff:

***A. The use shall not tend to change the character and established pattern of development of the area or community in which it proposes to locate.***

The immediate area is quite rural with numerous dwellings located along Salem Road, and with large sections of undeveloped land or very low-density rural residential areas in most directions. The subject property is in the vicinity of Schuyler, which historically has included a highly concentrated mix of land uses including industrial, commercial, and residential uses.

The project site is sufficiently remote, and set back far enough from the roadway, so as to not alter the visual character or pattern of development in the area. The only possible change would be an intermittent (and seasonal) increase in traffic patterns, which would likely be noticeable but not major. It does not appear that the proposed use would produce unacceptable changes to the area.

***B. The use shall be in harmony with the uses permitted by right in the zoning district and shall not affect adversely the use of neighboring property.***

The proposed use (banquet hall) would be located on a very large property which includes the property owner's dwelling. Additionally, the requested use would be not be in continuous operation – it would be conducted seasonally (early spring – late autumn).

Please note there is one dwelling (1527 Salem Road, T.M. Parcel #62-A-24C, Phillips) located in relatively close proximity to the project site (approximately 400 feet between dwelling and parking lot area). However, it is not known if this dwelling is currently occupied, or (if so) what the occupant and/or owner think about this requested use. It is also not well understood if the existing dwelling would be subject to any undesirable changes or perceived nuisances associated with the operation of the proposed banquet hall, or if site-specific details (such as existing landform, vegetation, and/or site plan configuration) are such that the impacts would be negligible or non-existent.

In consideration of these details, and in consideration of the fact that the Agricultural (A-1) District provides for a large variety of by-right uses, it does not appear that the proposed use would be unharmonious with neighboring properties or adversely affect neighboring properties.

**C. *The proposed use shall be adequately served by essential public or private services such as streets, drainage facilities, fire protection and public or private water and sewer facilities.***

As noted above, the Health Department's review and final position on the proposed bathroom facility is critically important. Although this type of facility is not commonly proposed or approved, the site-specific conditions (former quarry; extensive bedrock; absence of soils) merit careful consideration. Please also note that such a facility currently exists in Nelson County, at Wintergreen Adaptive Sport. Ultimately, it is the opinion of staff that, if the Health Department has completed their review and is comfortable with approving the installation and operation of this proposed bathroom facility, then it can be considered reasonable and acceptable given the property's attributes.

Additionally, as noted above, VDOT's initial review comments indicate that the proposed commercial entrance is not acceptable without further analysis and documentation and/or modification of the proposed entrance design (location). Currently, it is unclear if the applicants have conducted a speed study for that portion of Salem Road, or if they have proposed a modified location for the commercial entrance. Ultimately, it is the opinion of staff that the proposed use is acceptable, if the applicants continue their coordination with VDOT and modify the site plan such that VDOT completes their review and recommends approval of the site plan.

**D. *The proposed use shall not result in the destruction, loss or damage of any feature determined to be of significant ecological, scenic or historic importance.***

The proposed use would include the reuse of abandoned quarries, as well as the adaptive reuse of an existing industrial storage structure. The proposed use would in fact preserve and highlight historic features (the soapstone quarries) which are of central importance to the Schuyler's heritage and history. Additionally, the proposed use would include sustainable land management practices, most notably the extensive installation of native plant communities for ecological, recreational, and educational benefits.

**Staff Recommendation(s):**

The opinion of Staff is that the requested Special Use Permit, as detailed in the application materials for SUP #2015-18, seems to be acceptable relative to all four evaluation criteria (above) – conditional upon the following:

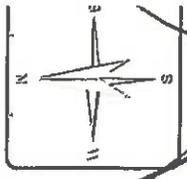
- appropriate resolution of issues related to safe and proper disposal of waste, which is an issue most directly managed by the Department of Health; and
- appropriate resolution of issues related to commercial entrance location and design, which is an issue most directly managed by VDOT and typically resolved during final site plan process

Therefore, conditional upon VDH review and recommendations (approval) of the installation and operation of the proposed waste disposal facility, I recommend that the Planning Commission recommend to the Board of Supervisors approval of SUP #2015-18 for "Quarry Gardens at Schuyler" Banquet Hall.

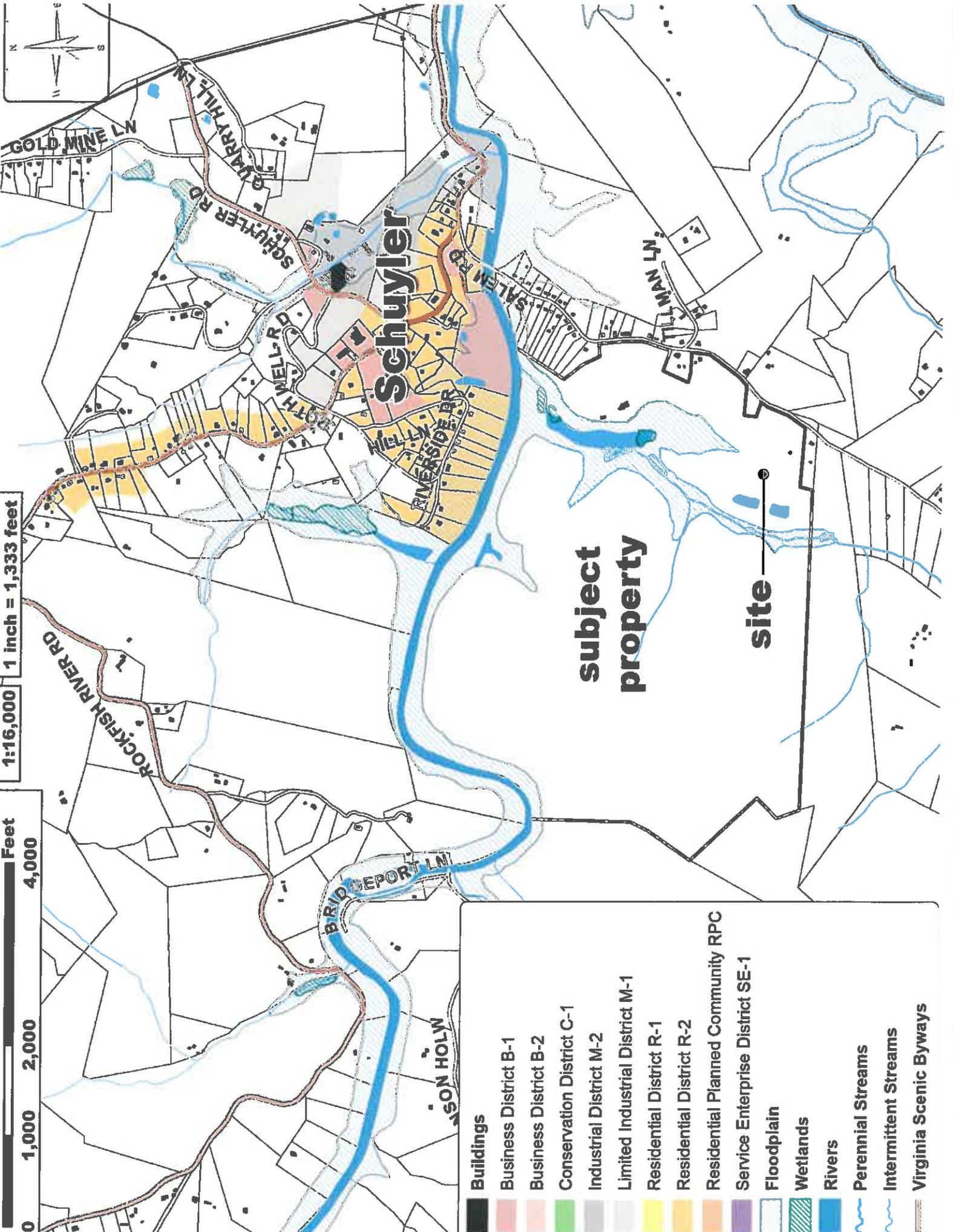
Please note that, if the applicants eventually obtain SUP approval from the BOS, the issue of the commercial entrance would still need to be resolved and approved by VDOT for site plan approval (which is required before the applicants can obtain approvals from Building Inspections, including a change in Use Permit and Certificate of Occupancy).

In conclusion, please contact me with any questions, concerns, or requests for assistance leading up to the January 27<sup>th</sup> Planning Commission public hearing for Special Use Permit #2015-18. Thank you very much for your time and attention to this application.

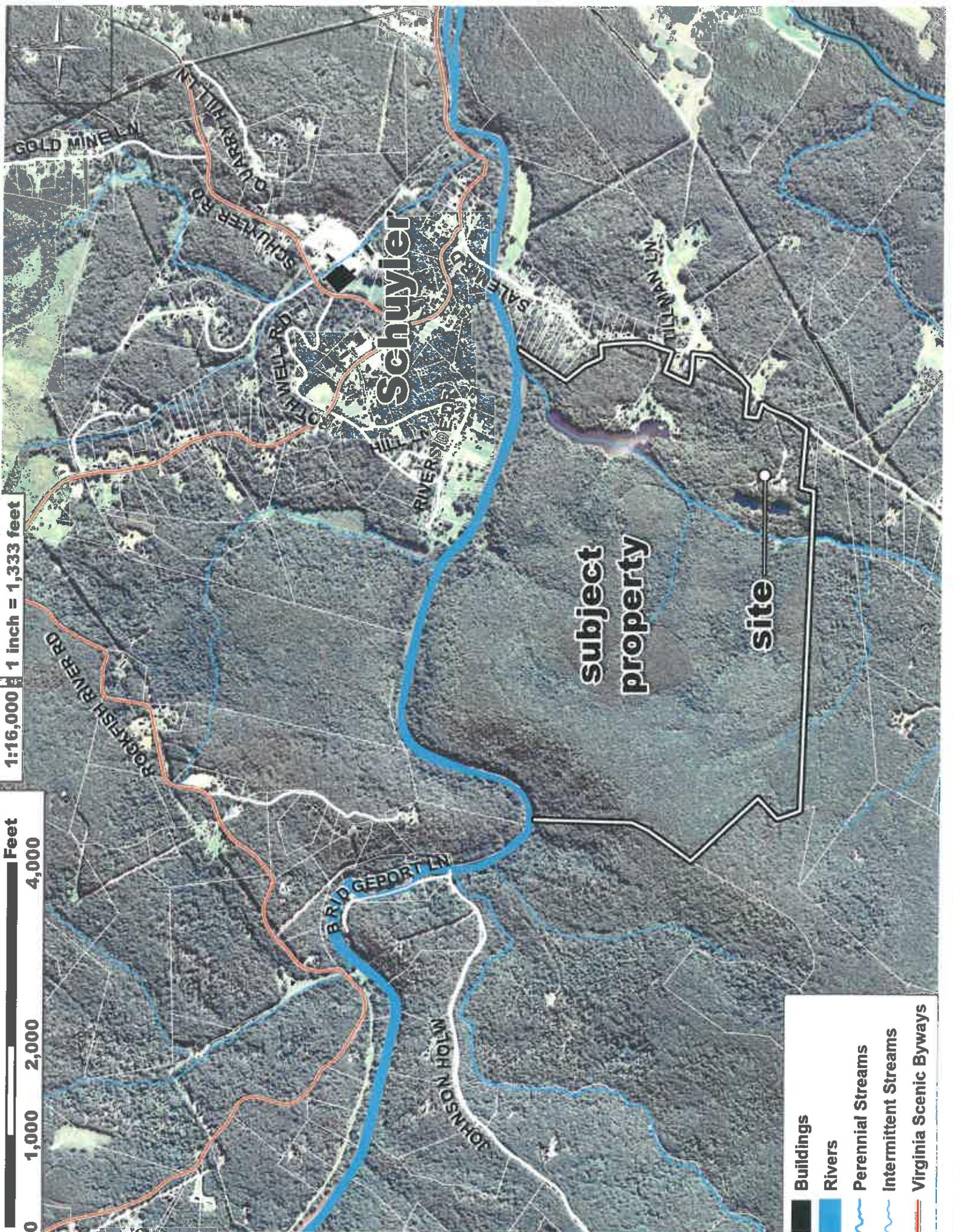




1:16,000 | 1 inch = 1,333 feet



- Buildings
- Business District B-1
- Business District B-2
- Conservation District C-1
- Industrial District M-2
- Limited Industrial District M-1
- Residential District R-1
- Residential District R-2
- Residential Planned Community RPC
- Service Enterprise District SE-1
- Floodplain
- Wetlands
- Rivers
- Perennial Streams
- Intermittent Streams
- Virginia Scenic Byways



**Schuyler**

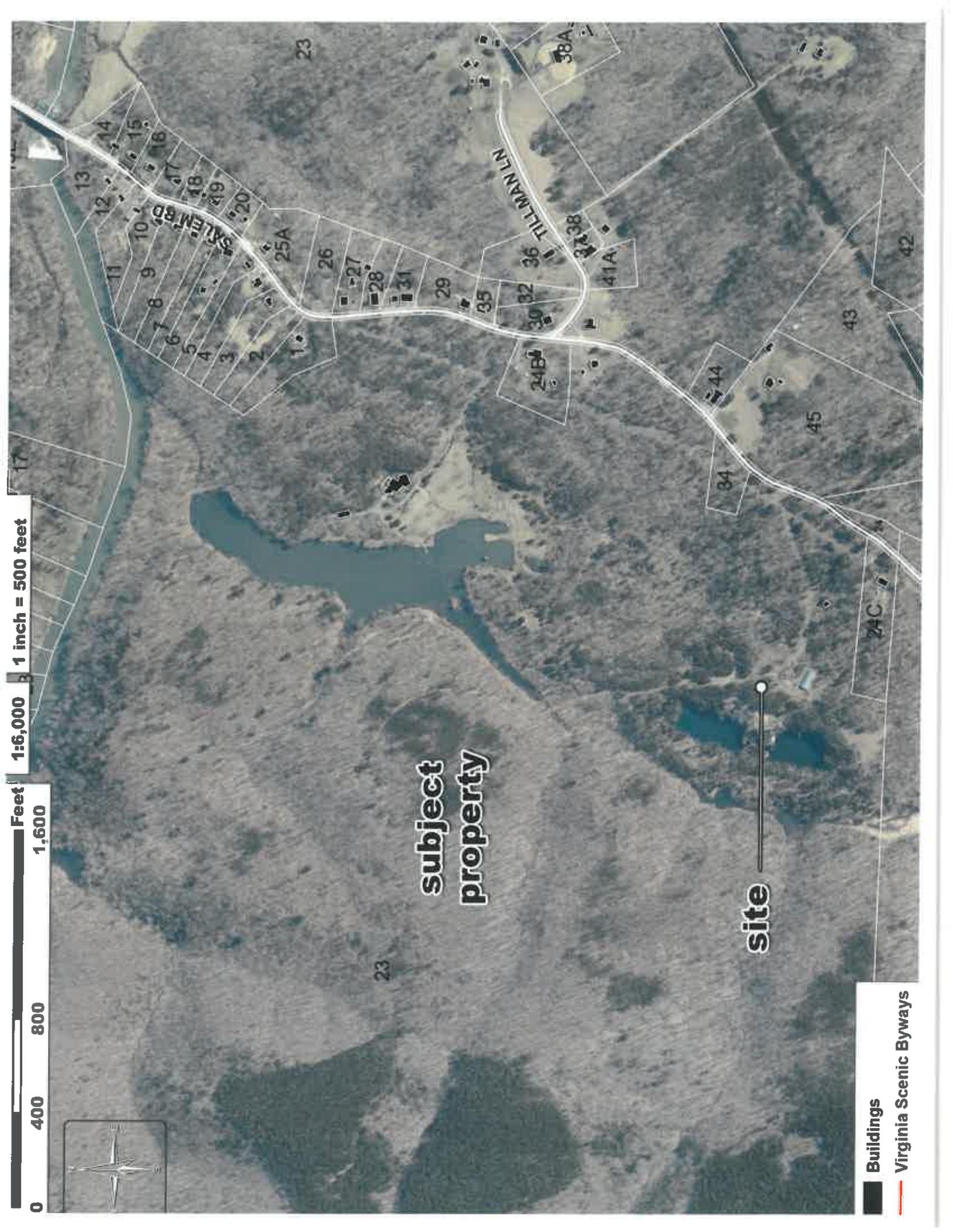
**subject  
property**

**site**

-  Buildings
-  Rivers
-  Perennial Streams
-  Intermittent Streams
-  Virginia Scenic Byways

1:16,000 1 inch = 1,333 feet

Feet  
0 1,000 2,000 4,000



**subject  
property**

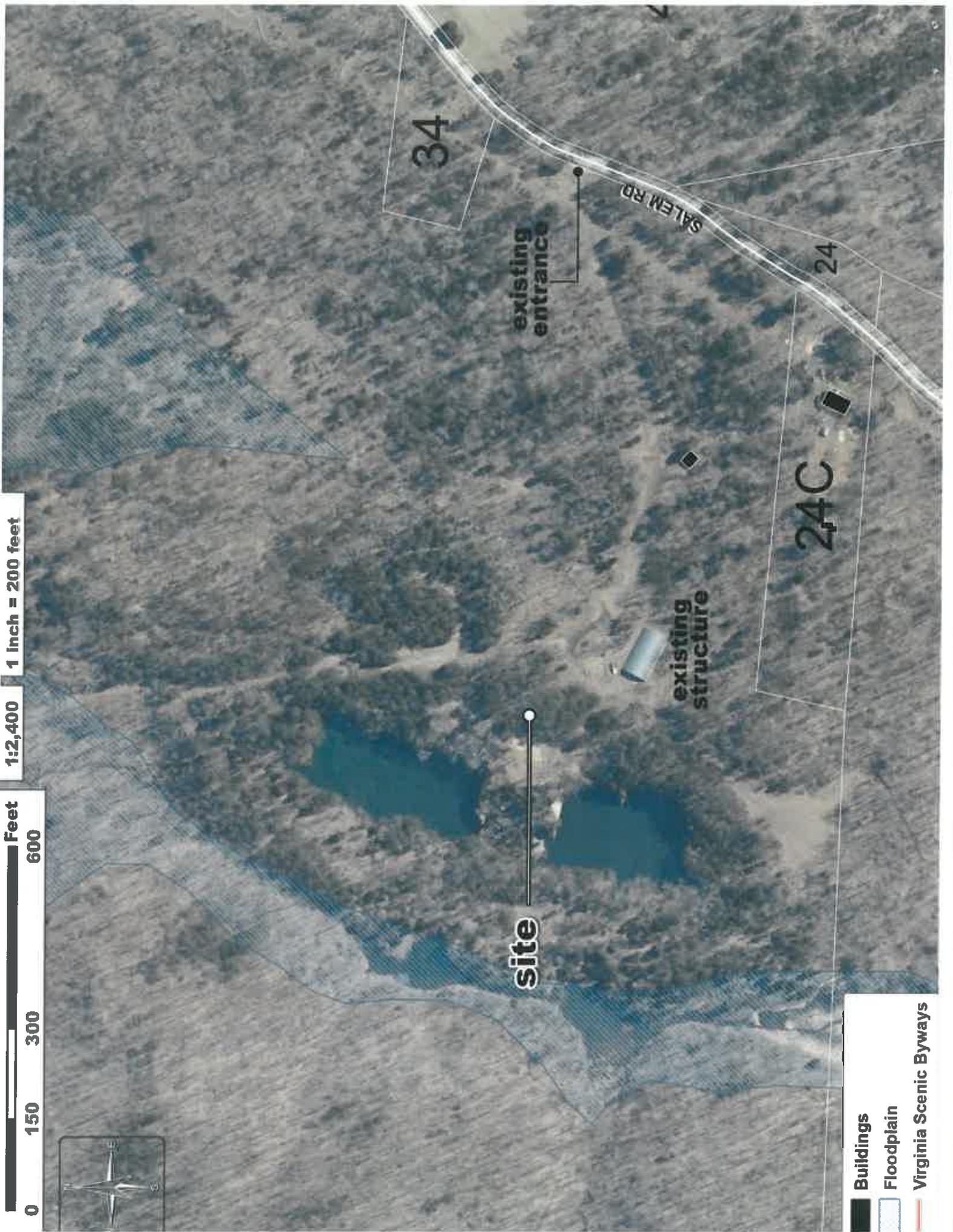
**site**

-  Buildings
-  Virginia Scenic Byways

1:6,000 1 inch = 500 feet

0 400 800 1,600 Feet





1:2,400 1 inch = 200 feet

Feet  
0 150 300 600

34

24

24C

SALEM RD

existing entrance

existing structure

site

- Buildings
- Floodplain
- Virginia Scenic Byways



# PERMIT APPLICATION:

## Nelson County Department of Planning & Zoning

TO THE ZONING ADMINISTRATOR: Special Use Permit # 2015-18  
*application type* *application number*

**1. The undersigned hereby petitions the Planning Commission and/or Board of Supervisors for approval of the following (check appropriate box):**

- |   |   |
|---|---|
| <input type="checkbox"/> Rezoning from _____ to _____ | <input type="checkbox"/> Conditional Rezoning from _____ to _____ |
| <input type="checkbox"/> Subdivision – Preliminary    | <input type="checkbox"/> Site Plan – Preliminary (optional)       |
| <input type="checkbox"/> Subdivision – Final          | <input type="checkbox"/> Site Plan – Final                        |
| <input type="checkbox"/> Major Site Plan              | <input checked="" type="checkbox"/> Special Use Permit            |
| <input checked="" type="checkbox"/> Minor Site Plan   | <input type="checkbox"/> Other: _____                             |

- Pursuant to Article \_\_\_\_\_, Section \_\_\_\_\_ of the Nelson County Zoning Ordinance.  
 Pursuant to Section \_\_\_\_\_, Subsection \_\_\_\_\_ of the Nelson County Subdivision Ordinance.

Reason(s) for request: Require Special Use Permit to allow for subdivision of property to be used as a banquet hall.

*(Please use reverse or attach additional sheet if more space is needed.)*

**2. Applicant(s) and Property Owner(s):**

*(Please provide names of applicants and property owners and indicate applicable title; if applicant is not the property owner, please show relationship, i.e. lessee, contract purchaser, etc.)*

Applicant  Property Owner Name: Armand & Bernice Thieblot  
Mailing Address: 1981 Salem Road, Schuyler, VA 22969  
Telephone # (434) 831-2153 E-mail Address: AThieblot@me.com  
Relationship (if applicable):

Applicant  Property Owner Name: Chris Sonne, PE, LEED AP  
Mailing Address: 191 Satinwood Lane, Nellysford, VA 22958  
Telephone # (434) 361-1443 E-mail Address: 1civilengr@gmail.com  
Relationship (if applicable): Site Engineering Consultant

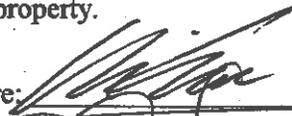
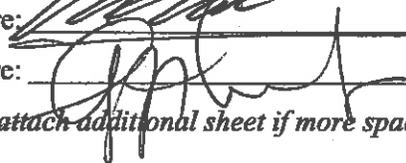
*(Please attach additional sheet if more space is needed for applicant(s) / property owner(s) info.)*

**3. Location and Characteristics of Subject Property:**

- a. Address of property (specific location, route numbers, street names, voting district, etc.):  
1981 Salem Road, Schuyler, VA
- b. Official tax map number: 61-A-23
- c. Acreage of property: 40.0 (To be subdivided from existing 439.8 acre lot)
- d. Present use: Abandoned soapstone quarry
- e. Present zoning classification: A-1 Agricultural
- f. Zoning classification of surrounding properties: A-1 Agricultural

4. Names of Adjacent Property Owners: A.O. Jones (TM#61-A-25); C.B. Phillips (TM#62-A-24C)  
R.R. Phillips, Jr. (TM#62-A-45); E.W. Tillman (TM#62-A-41); R.N. III & G.J. Hayes (TM#62-A-34)  
H.T. & K.R. Stevens (TM#62-A-24B)

5. Affidavit: The undersigned applicant(s) and/or property owner(s) certifies that this application and the foregoing answers, statements, and other information herewith submitted are, in all respects, true and correct to the best of their knowledge and belief. Also, the applicant(s) and/or property owner(s) gives permission for members of the Planning Commission, Board of Supervisors, and County Staff to visit and view the subject property.

Signature:  Printed Name: Chris Sonne  
 Signature:  Printed Name: ARMANISTHA EBLOT  
 (Please attach additional sheet if more space is needed for applicant(s) / property owner(s) signatures.)

6. Additional information: (Please attach separate sheet for additional details, explanations, etc.)

7. Please note: In the event of cancellation or postponement at your request after the initial newspaper advertisement for this application, an additional fee will apply for re-advertisement (determined by the actual cost of the ad). This fee will not apply in cases of Planning Commission or Board of Supervisors deferment.

..... TO BE COMPLETED BY PLANNING & ZONING STAFF .....

- Completed application and fee (\$380.00<sup>11/23/15</sup>) received on \_\_\_\_\_
- Hearing Notice published on \_\_\_\_\_
- Planning Commission action: Date of Meeting / Hearing: \_\_\_\_\_  
Recommendation: \_\_\_\_\_
- Board of Supervisors action: Date of Hearing: \_\_\_\_\_ Date of Decision: \_\_\_\_\_  
Action: \_\_\_\_\_

MINOR SITE PLAN CHECKLIST – PROJECT

Date: 11/23/2015



# MINOR SITE PLAN CHECKLIST

Nelson County Dept. of Planning & Zoning

A	<input checked="" type="checkbox"/>	A vicinity map showing the location of the subject property.
B	<input checked="" type="checkbox"/>	Boundary lines of the subject property.
C	<input checked="" type="checkbox"/>	General layout design of what is proposed on a scale not smaller than one (1) inch equals (20) feet, including the location of all proposed streets, pathways, easements, and all proposed uses of the land. A different scale may be used provided it is approved by the Planning and Zoning Director.
D	<input checked="" type="checkbox"/>	Building setback lines.
E	<input checked="" type="checkbox"/>	Zoning of subject property and adjacent property.
F	<input checked="" type="checkbox"/>	Amount of land to be disturbed, including drain fields.
G	<input checked="" type="checkbox"/>	Tax map and parcel number.
H	<input checked="" type="checkbox"/>	Floodplains.
I	<input checked="" type="checkbox"/>	Wetlands, streams, rivers, etc.
J	<input checked="" type="checkbox"/>	Existing structures and roads.
K	<input checked="" type="checkbox"/>	Existing and proposed topography and contour lines of the development site with a contour interval of twenty (20) feet or less for minor site plans, supplemented where necessary by spot elevation.
L	<input checked="" type="checkbox"/>	The location of all existing and proposed utilities and easements including the width of the easement.
M	<input checked="" type="checkbox"/>	A legend that shows:
	<input checked="" type="checkbox"/>	o Ownership (Name and Address)
	<input checked="" type="checkbox"/>	o North arrow
	<input checked="" type="checkbox"/>	o Graphic scale
	<input checked="" type="checkbox"/>	o Area in acres
N	<input checked="" type="checkbox"/>	A signature panel to indicate approvals from the following:
	<input checked="" type="checkbox"/>	o Planning and Zoning Director
	<input checked="" type="checkbox"/>	o Virginia Department of Transportation
	<input checked="" type="checkbox"/>	o Virginia Department of Health
	<input checked="" type="checkbox"/>	o Nelson County Service Authority
O	<input type="checkbox"/>	Any other information which the Planning and Zoning Director deems necessary for the proper consideration of the application.



Parcel ID	Parcel Address	Owner Name	Parcel ID	Parcel Address	Owner Name
11-A-23, 61-A-25	1981 SALEM ROAD	THIEBLOT ARMAND J & BERNICE A	62-A-27	2006 SALEM ROAD	PHILLIPS GEORGE W
12-2-3, 62-2-2	2085 SALEM RD	BARNETT DRURY A & GLORIA J	62-A-26	2030 SALEM ROAD	PHILLIPS HAROLD LEE & REBECCA ANN
12-3-23	489 RIVERSIDE DR	BEASLEY GREGORY S &	62-A-31	PHILLIPS JAMES I JR	
12-2-9	2183 SALEM RD	BRANDT RUTH MARION	62-A-46	PHILLIPS RONALD E	
11-A-51		BRUNSVOLD BRIAN G & MARY H S	62-A-45	1706 SALEM ROAD	
11-A-13		CAMPBELL BETTY J	62-A-24		
12-A 28	1982 SALEM ROAD	CAREY DAVID RICHARD	61-A-13A		
12-2-6	2143 SALEM RD	DAVIS BARTON R & JAYE B	62-2-1		
12-2-8	2177 SALEM RD	FAIRCLOTH GERRY	62-3-24	547 RIVERSIDE DR	
12-2-7	2160 SALEM RD	FITZGERALD RONALD KEITH &	62-2-10	2208 SALEM RD	
12-3-16	339 RIVERSIDE DR	GRAY STEPHEN M	62-2-5	2121 SALEM RD	
12-A-30	1888 SALEM ROAD	HALL RACHEL M	62-3-22	463 RIVERSIDE DR	
18-A-120	7381 ROCKFISH RIVER RD	HAMNER SUSAN N, LEWIS C & LEWIS N	62-A-24B	1875 SALEM ROAD	
12-A-34	1827 SALEM RD	HAYES RICHARD III & GLORIA J	62-A-29	1946 SALEM ROAD	
11-A-14	570 RIVERSIDE DRIVE	KLIMA ROBERT W & PATRICIA J	62-3-21	423 RIVERSIDE DR	
12-A-35		MARKS WILBERT L & KATHLEEN M	62-3-17	305 RIVERSIDE DR	
12-3-25	571 RIVERSIDE DR	MERRITT REBECCA C	62-A-41		
12-2-4	2105 SALEM RD	MEWS JUSTIN M	62-2-11	2238 SALEM ROAD	
12-3-20	403 RIVERSIDE DR	NORMENT JOHN RICHARD &	62-3-19	381 RIVERSIDE DR	
12-A-44	1724 SALEM ROAD	PENTASCOTAL HOLINESS CHURCH	62-A-15		

9/24 Draft Amendments for PC Consideration

Payne's comments 10/8/15

TP recommendations 10/20/2015

TP modifications 12/2/2015

## ARTICLE 24. TEMPORARY EVENTS, FESTIVAL GROUNDS, OUT-OF-DOORS ACCESSORY USES

### *Statement of Intent*

This Article provides regulations designed to address temporary uses in districts where such uses would not otherwise be permissible, establishes criteria for the approval or disapproval of such temporary uses, and provides requirements for the permitting and conduct of such uses. The Article also requires for the issuance of a Special Use Permit for properties where the intended use envisions large scale events, and provides for the regulation of out-of-door activities conducted as an accessory use to certain permitted commercial uses. The Article is not intended to regulate, and does not regulate, the traditional non-commercial use of property by its owners; such use is subject to other provisions of this Ordinance, the Noise Ordinance, and other applicable law.

### 24-1 Definitions

*Agritourism Activity:* any activity carried out on a farm or ranch engaged in bona fide Agricultural Operations that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, wineries, ranching, historical, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity.

*Festival Grounds:* The use of land for the hosting and operation of Category 3 Temporary Events, and the construction, erection, or other use of structures or other improvements (temporary or permanent) associated with Category 3 Temporary Events. The minimum acreage for a Festival Grounds is 250 acres. Contiguous parcels under the same or different ownership or control may be aggregated to attain the minimum acreage; if contiguous parcels are under different ownership or control, the owner or agent for each parcel must formally authorize the application for a Festival Grounds Special Use Permit.

*Out-of-Door, Accessory Use:* The following out-of-door activities are accessory uses to a Banquet Hall, Conference Center, Corporate Training Center, Restaurant, Brewery, and Distillery: receptions, dining, and entertainment, such as musical or small band performances, which (i) are conducted in connection with the primary permitted use, (ii) do not involve amplified sound later than 9:00 p.m. on Sundays through Thursdays or later than 10:00 p.m. on Fridays or Saturdays, and (iii) hosts less than 1,000 attendees at any one time during the activity. Unless otherwise specified in (ii), all such accessory activities are limited to 10:00 p.m. on Sundays through Thursdays, and are limited to 11:00 p.m. on Fridays and Saturdays.

**Comment [TMP1]:** This was added as a recommendation for amplified outdoor music to be conducted no later than 9:00pm on weeknights or 10:00pm on weekend nights, while allowing all other outdoor accessory uses (such as a theater performance, etc.) to be conducted until 10:00pm or 11:00pm on those same nights.

The concept is to have amplified music stop earlier in the night as compared to other types of accessory uses, since amplified music may be more likely to cause a nuisance or impact to neighbors and adjoining properties.

**Deleted:** comply in all respects with other applicable ordinances and regulations.

**Deleted:** Such

*Temporary Event:* The temporary use of property that is not otherwise a by-right use or use permitted by special or conditional use permit.

*Temporary Event, Historical Property:* An event such as historical reenactments, living history, home tours, or similar activities which are conducted in connection with a property of historical or natural value when there is either (i) no admission or (ii) a nominal admission dedicated to preservation, restoration, or charitable purposes.

*Temporary Event, Non-Profit:* An event conducted by local non-profit community service organizations such as fire departments, rescue squads, schools, fraternal organizations, faith-based organizations, or community centers.

*Temporary Event, Social:* A one day private social event which is not open to the general public, such as weddings, receptions, and reunions, to which attendance does not exceed 300 people, conducted on property not zoned for commercial uses and for which the landowner charges a fee for the use of his property.

#### 24-2 Temporary Event Permits

A Temporary Event Permit is required for Temporary Events defined in this subsection as either Category 1, 2, or 3.

#### 24-2-A Exempt Events

The following Temporary Events are exempt from Temporary Event Permit requirements and fees:

1. Private non-commercial functions conducted on the property of the host
2. Social Temporary Events where permitted by right
3. Historical Property Temporary Events
4. Non-Profit Temporary Events having or projecting less than 1,000 attendees at any time during the event
5. Athletic and sporting events conducted on sites approved for such events
6. Political gatherings
7. Religious gatherings
8. Out-of-Door Accessory Uses
9. Farm winery and Agritourism activities conducted between the hours of 7:00 a.m. and 7:00 p.m.

#### 24-2-B Temporary Event, Category 1

A Category 1 Temporary Event is any event which is neither an otherwise permitted use nor exempt and:

- (i) for which admission is charged or at which goods and services are sold, having or projecting less than 1,000 attendees, or,
- (ii) Non-Profit Temporary Events having or projecting more than 1,000 attendees, or,
- (iii) Farm winery or Agritourism activities conducted after 7:00 p.m. and having or projecting less than 1000 attendees.

**Deleted:** The temporary outdoor use of property(s) for activities not otherwise permissible and which involve activities and/or structures outside the scope of the properly permitted use(s) of the subject property(s), or which otherwise extend beyond the normal uses and standards allowed by the Zoning Ordinance. Temporary events are subject to the provisions, regulations, and limitations of Article 23 of the Nelson County Zoning Ordinance.

**Deleted:** as permissible pursuant to VA Code §15.2-2288.3 and having or projecting less than 400 attendees for properties 5 acres or smaller, or having or projecting less than 1,000 attendees for properties greater than 5 acres

10. Agritourism activities as permissible pursuant to VA Code §15.2-2288.6, §3.2-300 and §3.2-640 and having or projecting less than 400 attendees for properties 5 acres or smaller, or having or projecting less than 1,000 attendees for properties greater than 5 acres

**Deleted:** for properties 5 acres or smaller, or having or projecting 1,000 or more attendees for properties greater than 5 acres, or, (iv) Agritourism activities having or projecting 400 or more attendees for properties 5 acres or smaller, or having or projecting 1,000 or more attendees for properties greater than 5 acres

**Deleted:** No more than (6) Category 1 Temporary Events may be conducted in a calendar year by the same applicant or on the subject property or on properties contiguous to or adjacent to the subject property if under the same ownership or control as the subject property.

Each such event may not exceed a maximum duration of four (4) consecutive days open to the attending public, inclusive of an arrival day and a departure day. Amplified sound is not permitted after 11:00 p.m. on any Sunday, Monday, Tuesday, or Wednesday night; nor after 11:59 p.m. on any Thursday night; nor after 1:00 a.m. on any Saturday or Sunday morning. A Category 1 Temporary Event Requires a Temporary Event Permit.

**24-2-C Temporary Event, Category 2**

**24-2-C-1** A Category 2 Temporary Event is any event which is neither an otherwise permitted use nor exempt, for which admission is charged or at which goods and services are sold, having or projecting 1,000 or more attendees but less than 10,000 attendees. Each such event may not exceed a maximum duration of six (6) consecutive days open to the attending public, inclusive of an arrival day and a departure day. Amplified sound is not permitted after 11:00 p.m. on any Sunday, Monday, Tuesday, or Wednesday night; nor after 11:59 p.m. on any Thursday night; nor after 1:00 a.m. on any Saturday or Sunday morning. A Category 2 Temporary Event Requires a Temporary Event Permit.

**24-2-D Structures for Category 1 and 2 Temporary Events**

Each structure used for either a Category 1 or 2 event (i) shall have been in existence on the date of adoption of this Article, provided that this requirement shall not apply to accessory structures less than 150 square feet in size and (ii) shall be a lawful conforming properly permitted structure and shall support or have supported a lawful use of the property. The installation of temporary structures and facilities, such as tents and portable lavatories, is permissible in connection with approved Temporary Event Permits, subject to all applicable laws and regulations.

**24-2-E Temporary Event, Category 3**

**24-2-E-1** A Category 3 Temporary Event is any event having or projecting more than 10,000 attendees and requires a Special Use Permit for Festival Grounds land use to be obtained pursuant to Article 12, Section 3 “Special Use Permits” and Article 13 “Site Development Plan” and also a Temporary Event Permit. The erection of permanent structures and/or the installation of permanent infrastructure used in connection with Category 3 Temporary Events is permissible, subject to all other Zoning Ordinance provisions, including but not limited to Article 13 “Site Development Plan.”

**24-2-E-2** A Festival Grounds Special Use Permit shall be automatically reviewed at a public hearing conducted by the Board of Supervisors every five (5) years after the initial issuance, after which hearing the Board may renew, revoke, or modify the terms and conditions of the Special Use Permit in accordance with Article 12, Section 3 “Special Use Permits.”

**24-2-E-3** A Category 3 Temporary Event may not exceed a maximum duration of six (6) consecutive days open to the attending public, inclusive of an arrival day and a departure day. Amplified sound is not permitted after 11:00 p.m. on any Sunday, Monday, Tuesday, or Wednesday night; nor after 11:59 p.m. on any Thursday night;

**Deleted: ¶**

~~-2-C-2 Except as provided in connection with Festival Grounds, and subject to the criteria for issuance of a Temporary Event Permit provided in Section 23-3, no more than two (2) Category 2 Temporary Events may be conducted in calendar year by the same applicant or on the subject property or on properties contiguous to or adjacent to the subject property if under the same ownership or control as the subject property. ¶~~

**Deleted:** no more than twelve Category 2 Temporary Events may be conducted in a calendar year two (2) Category 2 Temporary Event Permits may be issued in a calendar year to the same applicant or for the same property or for properties contiguous to, or adjacent to, such property

**Deleted:** A Festival Grounds Special Use Permit shall automatically terminate five years after its issuance, upon which time a new Festival Grounds Special Use Permit may be applied for.

**Deleted:** A property granted a Special Use Permit for Festival Grounds use may host no more than three (3) Category 3 Temporary Events and no more than six (6) three (3) Category 1 or 2 Temporary Event in a calendar year.

nor after 1:00 a.m. on any Saturday and Sunday morning. Without limiting the general authority of the Board of Supervisors under Article 12, the Board of Supervisors may impose additional conditions or further restrict the number of events, days, and times in granting a Special Use Permit for Festival Grounds land use.

Deleted: pursuant to this subsection

24-2-F For the purposes of this Article 24, “applicant” includes the members of an applicant’s immediate family or an affiliated business entity relationship. An affiliated business entity relationship exists when (i) one business entity has a controlling ownership interest in the other business entity, (ii) a controlling owner in one entity is also a controlling owner in the other entity, or (iii) there is shared management or control between the business entities. Factors that may be considered in determining the existence of an affiliated business entity relationship include that the same person or substantially the same person owns or manages the two entities, there are common or commingled funds or assets, the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis, or there is otherwise a close working relationship between the entities.

### 24-3 Issuance of Temporary Event Permits

24-3-A The Planning and Zoning Director will consider the following factors when determining whether a Temporary Event Permit will be issued:

Deleted: Whether a Temporary Event Permit will be issued will be determined after consideration of the following factors:

1. If and how the proposed event would result in undue interference with other planned activities in the County;
2. The schedules of churches, schools, governmental operations, and similar public and quasi-public entities;
3. The availability and provision of necessary resources such as transportation infrastructure, law enforcement, emergency services, parking, and similar considerations;
4. The location and operation(s) of other permitted Temporary Events during the same time period as the proposed event; and
5. Compliance with the requirements of other agencies and departments; and
6. The prior history of compliance by the applicant or landowner with this article, the zoning ordinance, and applicable conditions. Prior or existing non-compliance may be grounds for the denial of a permit.

Deleted: shall

24-3-B In issuing the permit, the Planning and Zoning Director, may, after consideration of the foregoing factors:

1. Establish or modify times during which activities or amplified sound, or both, may be conducted;
2. Fix the permitted dates for the event;
3. Limit the number of attendees; and
4. Impose such conditions as are necessary to protect the health, safety and welfare of attendees and residents of the County.

**24-3-C** The maximum number of properly-permitted non-exempt Temporary Events which may be conducted in a calendar year on the same subject property, or on properties contiguous to or adjacent to the subject property if under the same ownership or control as the subject property, is limited as follows:

Type of Property	Category 1	Category 2	Category 3
<u>Farm Winery or Bona Fide Agricultural Operation, the aggregate acreage of which is equal to or greater than 250 acres*</u>	<u>16</u>	<u>8</u>	<u>4</u>
<u>Farm Winery or Bona Fide Agricultural Operation, the aggregate acreage of which is less than 250 acres*</u>	<u>12</u>	<u>6</u>	<u>3</u>
<u>Any other property zoned A-1, B-1, B-2, or SE-1**</u>	<u>8</u>	<u>4</u>	<u>2</u>
<i>*Contiguous parcels under the same or different ownership or control may be aggregated to attain the minimum acreage.</i>			
<i>**Category 3 Temporary Events are not permissible in Service Enterprise District (SE-1)</i>			

**24-3-D** The Director may issue a **single** Temporary Event Permit for more than one Temporary Event if he determines that each Temporary Event is substantially similar in nature and size and that a single set of conditions would apply to each Temporary Event. **Any** such combined Temporary Event Permit shall not have the effect of allowing more Temporary Events than the limits set forth in the preceding subsections.

**24-3-E** A Temporary Event Permit application requires the following submissions to be considered a completed application:

1. Temporary Event Permit application signed by the property owner(s) and the **event promotor or** sponsor, who shall collectively constitute the "Applicant";
2. Temporary Event Permit application fee, as follows:
  - a. Category 1 Temporary Event Permit application = \$100
  - b. Category 2 Temporary Event Permit application = \$500
  - c. Category 3 Temporary Event Permit application = **\$2,500**
3. Site Plan, drawn to scale and containing all necessary dimensions, annotation, and other details regarding event layout and event operations; **except that Category 3 Temporary Event Permit applications require a Site Plan to be prepared in accordance with Article 13 "Site Development Plan" and Article 24-2-E-1 and submitted with the Festival Grounds Special Use Permit in accordance with Article 12, Section 3 "Special Use Permits."**
4. Transportation Plan, containing all necessary details regarding vehicular arrival, departure, informational signage, and on-site circulation (as applicable);

**Deleted:** , provided that, if allowable, no more than six such temporary events in a calendar year may be permitted under a single permit.

**Deleted:** , per event

**Deleted:** , per event

**Deleted:** , per event

**Deleted:** 5,000

5. Safety Plan, containing all necessary details regarding emergency preparedness and emergency response plans, emergency services, medical services, law enforcement and security services, and similar details necessary for ensuring the safety of attendees and the general public; and
6. Any other event information deemed necessary by the Director of Planning and Zoning.

In addition to the proposed introduction of Article 24 (above), the following amendments are also proposed for existing Articles:

➤ **Article 4. Agricultural District (A-1)**

**Remove the following:**

4-11-3 Temporary events not otherwise a permitted use may be allowed pursuant to a Special Events Permit for a specified time period. [...]

**Add the following:**

**4-1 Uses – Permitted by right:**

- Agritourism Activity
- Social Temporary Event, provided that there are no more than fifty such events in a calendar year and that any noise generated by the event is not discernible by adjoining landowners.
- Category 1 Temporary Event
- Category 2 Temporary Event
- Category 3 Temporary Event in connection with a Festival Grounds Special Use Permit

**4-1a Uses – Permitted by Special Use Permit Only:**

Festival Grounds

➤ **Article 8. Business District (B-1)**

**Add the following:**

**8-1 Uses – Permitted by right:**

- Category 1 Temporary Event
- Category 2 Temporary Event
- Category 3 Temporary Event in connection with a Festival Grounds Special Use Permit

**8-1a Uses – Permitted by Special Use Permit Only:**

Festival Grounds

➤ **Article 8A. Business District (B-2)**

**Add the following:**

**8A-1 Uses – Permitted by right:**

Category 1 Temporary Event

Category 2 Temporary Event

Category 3 Temporary Event in connection with a Festival Grounds Special Use Permit

**8A-1a Uses – Permitted by Special Use Permit Only:**

Festival Grounds

➤ **Article 8B. Service Enterprise District (SE-1)**

**Add the following:**

**8B-1 – Uses – Permitted by right:**

Category 1 Temporary Event

Category 2 Temporary Event

LAW:

**§ 15.2-2288.3. Licensed farm wineries; local regulation of certain activities. —**

A. It is the policy of the Commonwealth to preserve the economic vitality of the Virginia wine industry while maintaining appropriate land use authority to protect the health, safety, and welfare of the citizens of the Commonwealth, and to permit the reasonable expectation of uses in specific zoning categories. Local restriction upon such activities and events of farm wineries licensed in accordance with Title 4.1 to market and sell their products shall be reasonable and shall take into account the economic impact on the farm winery of such restriction, the agricultural nature of such activities and events, and whether such activities and events are usual and customary for farm wineries throughout the Commonwealth. Usual and customary activities and events at farm wineries shall be permitted without local regulation unless there is a substantial impact on the health, safety, or welfare of the public. No local ordinance regulating noise, other than outdoor amplified music, arising from activities and events at farm wineries shall be more restrictive than that in the general noise ordinance. In authorizing outdoor amplified music at a farm winery, the locality shall consider the effect on adjacent property owners and nearby residents.

B, C. [Expired.]

D. No locality may treat private personal gatherings held by the owner of a licensed farm winery who resides at the farm winery or on property adjacent thereto that is owned or controlled by such owner at which gatherings wine is not sold or marketed and for which no consideration is received by the farm winery or its agents differently from private personal gatherings by other citizens.

E. No locality shall regulate any of the following activities of a farm winery licensed in accordance with subdivision 5 of § 4.1-207:

1. The production and harvesting of fruit and other agricultural products and the manufacturing of wine;
2. The on-premises sale, tasting, or consumption of wine during regular business hours within the normal course of business of the licensed farm winery;
3. The direct sale and shipment of wine by common carrier to consumers in accordance with Title 4.1 and regulations of the Alcoholic Beverage Control Board;
4. The sale and shipment of wine to the Alcoholic Beverage Control Board, licensed wholesalers, and out-of-state purchasers in accordance with Title 4.1, regulations of the Alcoholic Beverage Control Board, and federal law;
5. The storage, warehousing, and wholesaling of wine in accordance with Title 4.1, regulations of the Alcoholic Beverage Control Board, and federal law; or
6. The sale of wine-related items that are incidental to the sale of wine.

"Agritourism activity" means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, wineries, ranching, historical, cultural, harvest-your-own activities,

or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity. *Virginia Code* § 3.2-6400

**§ 15.2-2288.6. Agricultural operations; local regulation of certain activities.**

A. No locality shall regulate the carrying out of any of the following activities at an agricultural operation, as defined in § 3.2-300, unless there is a substantial impact on the health, safety, or general welfare of the public:

1. Agritourism activities as defined in § 3.2-6400;
2. The sale of agricultural or silvicultural products, or the sale of agricultural-related or silvicultural-related items incidental to the agricultural operation;
3. The preparation, processing, or sale of food products in compliance with subdivisions A 3, 4, and 5 of § 3.2-5130 or related state laws and regulations; or
4. Other activities or events that are usual and customary at Virginia agricultural operations. Any local restriction placed on an activity listed in this subsection shall be reasonable and shall take into account the economic impact of the restriction on the agricultural operation and the agricultural nature of the activity.

B. No locality shall require a special exception, administrative permit not required by state law, or special use permit for any activity listed in subsection A on property that is zoned as an agricultural district or classification unless there is a substantial impact on the health, safety, or general welfare of the public.

C. Except regarding the sound generated by outdoor amplified music, no local ordinance regulating the sound generated by any activity listed in subsection A shall be more restrictive than the general noise ordinance of the locality. In permitting outdoor amplified music at an agricultural operation, the locality shall consider the effect on adjoining property owners and nearby residents.

D. The provisions of this section shall not affect any entity licensed in accordance with Chapter 2 (§ 4.1-200 et seq.) of Title 4.1. Nothing in this section shall be construed to affect the provisions of Chapter 3 (§ 3.2-300 et seq.) of Title 3.2, to alter the provisions of § 15.2-2288.3, or to restrict the authority of any locality under Title 58.1.

**§ 3.2-300. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Agricultural operation" means any operation devoted to the bona fide production of crops, or animals, or fowl including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silviculture activity.

Deleted: ¶

"Production agriculture and silviculture" means the bona fide production or harvesting of agricultural or silvicultural products but shall not include the processing of agricultural or silvicultural products or the above ground application or storage of sewage sludge.

### § 3.2-6400. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agricultural products" means any livestock, aquaculture, poultry, horticultural, floricultural, viticulture, silvicultural, or other farm crops.

"Agritourism activity" means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, wineries, ranching, historical, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity.

#### **Land use tax consideration:**

Real estate upon which recreational activities are conducted for a profit or otherwise shall be considered real estate devoted to agricultural use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it does not meet the uniform standards prescribed by the Commissioner. Real property that has been designated as devoted to agricultural use shall not lose such designation solely because a portion of the property is being used for a different purpose pursuant to a special use permit or otherwise allowed by zoning, provided that the property, excluding such portion, otherwise meets all the requirements for such designation. The portion of the property being used for a different purpose pursuant to a special use permit or otherwise allowed by zoning shall be deemed a separate piece of property from the remaining property for purposes of assessment. *Virginia Code* § 58.1-3230

State law mandates that day festival-type activities on farms are permitted by right (except, perhaps, Sundays, which is not worth trying to regulate). Night functions on farms can be regulated.



To: Chair and Members, Nelson County Planning Commission  
From: Tim Padalino | Planning & Zoning Director  
Date: January 19, 2016  
Subject: **Review of Minor Site Plan #2016-01**  
**("Barefoot Bucha" Farm Brewery / Mr. Ethan Zuckerman)**

### Summary of Application(s)

<u>Site Address / Location:</u>	Creek Road / Greenfield area of Afton / North District
<u>Tax Parcel(s):</u>	#12-10-1
<u>Parcel Size:</u>	2.52 acres
<u>Zoning:</u>	Agricultural (A-1)
<u>Applicants:</u>	Mr. Ethan & Mrs. Kate Zuckerman
<u>Request:</u>	Review and Approval of Minor Site Plan #2016-01
▪ <i>Completed Applications Received On:</i> January 4, 2016	

On January 4<sup>th</sup>, the Department of Planning & Zoning received a Minor Site Plan application and supporting materials from Mr. Ethan Zuckerman and Mrs. Kate Zuckerman (applicants and owners of Barefoot Bucha). The Zuckermans wish to relocate and expend their existing Nelson County brewery, and are seeking Site Plan approval to do so at an undeveloped property in Greenfield. The applicants' submittals include the following:

- Minor Site Plan application form
- Project narrative – dated January 4<sup>th</sup>
- Authorization letter from property owner (Mr. Morris Foster) – dated December 16<sup>th</sup>, 2015
- Minor Site Plan prepared by Mr. Steven L. Key, LS, which portrays the proposed configuration of proposed site features including agricultural operations, limited farm brewery structure, new entrance(s) and road(s), and parking / turnaround area.

### **Subject Property Location and Characteristics:**

The subject property is an approximately 2.5-acre parcel in Greenfield with frontage on Creek Road. It is further identified as Tax Map Parcel #12-10-1, which is zoned Agricultural (A-1). It is currently an undeveloped site generally located behind and below Ashley's Market (on the opposite side of Creek Road), and in the vicinity of several dwellings on properties zoned A-1. *Please see the enclosed map.*

As indicated above, the applicants do not currently own the subject property. Please note that the current property owner has provided a written and signed letter declaring his authorization of this application (dated December 16, 2015). Please also note that it is the understanding of staff that both parcel #12-10-1 and adjoining parcel #12-10-2 (2.68 acres) will be utilized as part of the limited farm brewery operation (for a total 5.2-acre operation), if the site plan is approved and if the land transfer is completed.

### **Summary of Proposed Use(s):**

The applicants have submitted this Minor Site Plan in connection with a Use – permitted by-right in the Agricultural (A-1) District. Specifically, the proposed use is pursuant to Zoning Ordinance 4-1-29, “Limited Farm Brewery,” which is defined as follows:

*Farm Brewery, Limited:* A brewery that manufactures no more than 15,000 barrels of brewed beverages per calendar year, provided that (i) the brewery is located on a farm owned or leased by such brewery or its owner and (ii) agricultural products, including barley, other grains, hops, or fruit, used by such brewery in the manufacture of its brewed beverages are grown on the farm. The on-premises sale, tasting, or consumption of brewed beverages during regular business hours within the normal course of business of such licensed brewery, the direct sale and shipment of brewed beverages and the sale and shipment of brewed beverages to licensed wholesalers and out-of-state purchasers in accordance with law, the storage and warehousing of brewed beverages, and the sale of limited farm brewery-related items that are incidental to the sale of brewed beverages are permitted. **O2014-06 / O2015-06**

However, please note that the limited farm brewery use requires the on-site farming of ag products used in the brewing process. More specifically, please note that Tax Map Parcel #12-10-1 does not currently contain an agricultural operation involving the production of agricultural products used in the manufacture of the brewed beverage (kombucha). By definition, it is essential that agricultural products used by the brewery in the manufacture of its brewed beverages are grown on the farm.

I have discussed this very important issue with the applicant, and Mr. Zuckerman has provided detailed explanations of Barefoot Bucha’s proposed ag operations in his project narrative (dated January 4<sup>th</sup>; see enclosure).

To summarize, the narrative explains that that the agricultural operations cannot currently be established due to this being the winter season and due to inherent limitations associated with not yet transferring the ownership of the property. The narrative also explains in detail how the establishment of an agricultural operation will be a primary priority beginning in March if/when the Site Plan is approved and if/when they obtain title to the land. Mr. Zuckerman also pointed out the inclusion on the Minor Site Plan of areas dedicated to agricultural operations and (specifically) the growing of products to be used in the production of their kombucha.

### **Site Plan Review Committee Comments:**

The Site Plan Review Committee did not meet in January. However, the following review comments have been provided to County staff at the time of this staff report:

- **VDOT:** Mr. Jeff Kessler, Virginia Department of Transportation representative, provided written review comments on January 11<sup>th</sup>. Mr. Kessler’s initial review comments include the following:

- Mr. Kessler noted he has been working with the applicants on this proposed project (at this particular location) since May 2015.
- A low-volume commercial entrance (as proposed for the initial phase of limited farm brewery operations) may be acceptable. Mr. Kessler noted he is continuing to work with the applicants to reach final determination on the eligibility of the entrance for low-volume classification, and to make final determination on the resulting entrance design requirements.
- While the proposed entrance location is acceptable with regards to stopping sight distance requirements, the intersection sight distance to the right or west would not be acceptable, if it were applicable (as it would be for a regular volume commercial entrance). Therefore, Mr. Kessler recommended the applicants consider trimming or removing the vegetation along Creek Road in order to maximize the visibility of vehicles approaching from the western end of Creek Road.

Please also note that the applicant has discussed with staff the possible phasing of the entrance, whereas the existing entrance would continue to be used (inclusive of any improvements required to meet VDOT entrance requirements), and whereas a new entrance would be designed and installed in the future if the limited farm brewery were to expand or seek permission for additional uses.

- Nelson County Building Official: Mr. David Thompson provided written review comments on January 13<sup>th</sup>. Mr. Thompson noted the following requirements:
  - Fee payment for the Erosion & Sediment Control Plan is required prior to plan review by TJSWCD. (Please note the Minor Site Plan includes E&SC Plan information.)
  - A Nelson County Land Disturbing Activity Permit application and permit issuance is required prior to development.
  - A Nelson County Building Permit is required unless a structure is specifically exempted.
- TJSWCD: Mrs. Alyson Sappington of the Thomas Jefferson Soil & Water Conservation District has not provided review comments. At the time of this staff report, David Thompson's review comments indicate that Mrs. Sappington will complete her plan review and provide comments after the County processes the remaining fee payment. Please also note that, due to the total disturbed area equaling approximately 36,000 SF, VSMP Permit coverage will not be required from DEQ.
- VDH: Mr. Tom Eick of the Nelson County Health Department has not provided written review comments at the time of this staff report. The applicant stated on January 19<sup>th</sup> that he has been coordinating this project with Mr. Eick and his colleague at VDH Mr. Josh Kirtley; and that Mr. Roger Nelson and Mr. Chris Sonne (PE, LEED AP) are consultant Mr. Zuckerman on the project.

The applicant further explained that the overall strategy is to establish two separate waste systems: conventional waste would be treated through an on-site private septic system with a conventional drainfield, to be regulated by the Health Department; and brewery process water would also be treated on-site through an entirely separate system, to be regulated by the Environmental Protection Agency (EPA) and Virginia Department of Environmental Quality (DEQ). Mr. Zuckerman explained that Mr. Eick has expressed satisfaction with the proposed waste disposal; staff will provide further confirmation at the January 27<sup>th</sup> PC meeting.

In conclusion, please contact me with any questions, concerns, or requests for assistance leading up to the January 27<sup>th</sup> Planning Commission review of Minor Site Plan #2016-01. Thank you very much for your time and attention to this application.



# PERMIT APPLICATION:

## Nelson County Department of Planning & Zoning

TO THE ZONING ADMINISTRATOR: MINOR SITE PLAN # 2016-01  
application type application number

**1. The undersigned hereby petitions the Planning Commission and/or Board of Supervisors for approval of the following (check appropriate box):**

- |   |   |
|---|---|
| <input type="checkbox"/> Rezoning from _____ to _____ | <input type="checkbox"/> Conditional Rezoning from _____ to _____ |
| <input type="checkbox"/> Subdivision - Preliminary    | <input type="checkbox"/> Site Plan - Preliminary (optional)       |
| <input type="checkbox"/> Subdivision - Final          | <input type="checkbox"/> Site Plan - Final                        |
| <input type="checkbox"/> Major Site Plan              | <input type="checkbox"/> Special Use Permit                       |
| <input checked="" type="checkbox"/> Minor Site Plan   | <input type="checkbox"/> Other: _____                             |

- Pursuant to Article \_\_\_\_\_, Section \_\_\_\_\_ of the Nelson County Zoning Ordinance.  
 Pursuant to Section \_\_\_\_\_, Subsection \_\_\_\_\_ of the Nelson County Subdivision Ordinance.

Reason(s) for request: Seeking Approval of Minor Site plan for a Limited Farm Brewery.

*(Please use reverse or attach additional sheet if more space is needed.)*

**2. Applicant(s) and Property Owner(s):**

*(Please provide names of applicants and property owners and indicate applicable title; if applicant is not the property owner, please show relationship, i.e. lessee, contract purchaser, etc.)*

Applicant     Property Owner    Name: Ethan S Kate Zuckerman  
Mailing Address: 615 Paul's Creek Rd. Asher, VA 22920  
Telephone # 434-760-3629    E-mail Address: ethanzuckerman@gmail.com  
Relationship (if applicable): \_\_\_\_\_

Applicant     Property Owner    Name: Morris Foster  
Mailing Address: PO Box 174 Nellysford, VA 22958  
Telephone # 434-361-2274    E-mail Address: \_\_\_\_\_  
Relationship (if applicable): \_\_\_\_\_

*(Please attach additional sheet if more space is needed for applicant(s) / property owner(s) info.)*

**3. Location and Characteristics of Subject Property:**

a. Address of property (specific location, route numbers, street names, voting district, etc.):

Creek Rd. Lot 7 Appin, VA 22920

b. Official tax map number: 12 10 1

c. Acreage of property: 2.52

d. Present use: None

e. Present zoning classification: A1

f. Zoning classification of surrounding properties: A1

4. Names of Adjacent Property Owners: Carol Monroe, Michael McClain,  
Fred Thompson,

5. **Affidavit:** The undersigned applicant(s) and/or property owner(s) certifies that this application and the foregoing answers, statements, and other information herewith submitted are, in all respects, true and correct to the best of their knowledge and belief. Also, the applicant(s) and/or property owner(s) gives permission for members of the Planning Commission, Board of Supervisors, and County Staff to visit and view the subject property

Signature: [Signature] Printed Name: Ethan Zuckerman

Signature: See Seller Authorization Letter Printed Name: \_\_\_\_\_

*(Please attach additional sheet if more space is needed for applicant(s) / property owner(s) signatures.)*

6. **Additional information:** *(Please attach separate sheet for additional details, explanations, etc.)*

7. **Please note:** In the event of cancellation or postponement at your request after the initial newspaper advertisement for this application, an additional fee will apply for re-advertisement (determined by the actual cost of the ad). This fee will not apply in cases of Planning Commission or Board of Supervisors deferment.

..... TO BE COMPLETED BY PLANNING & ZONING STAFF .....

o Completed application and fee (\$ 100.00 ) received on 1/4/2016

o Hearing Notice published on N/A

o Planning Commission action: Date of (Meeting) / Hearing: 1/27

Recommendation: \_\_\_\_\_

o Board of Supervisors action: Date of Hearing: \_\_\_\_\_ Date of Decision: \_\_\_\_\_

Action: \_\_\_\_\_

Kate & Ethan Zuckerman  
615 Paul's Creek Rd.  
Afton, VA 22920

January 4<sup>th</sup>, 2016

Tim Padalino,  
Director of Planning and Zoning  
Nelson County Planning and Zoning Department  
80 Front Street  
Lovingson, VA 22949

Dear Mr. Padalino,

We are writing in regards to our recent Minor Site Plan application for a Limited Farm Brewery in Afton, VA. Our proposed project consists of a perennial berry farm from which we will utilize the berry juice as flavor infusions in our non-alcoholic kombucha tea. As soon as we receive Site Plan approval and are able to purchase the property we have under contract on Creek Road, we will begin cultivating blueberry bushes which will provide us with one of our main infusion ingredients, blueberry juice.

Provided that our minor site plan application is approved in January, our farm trajectory is as follows:

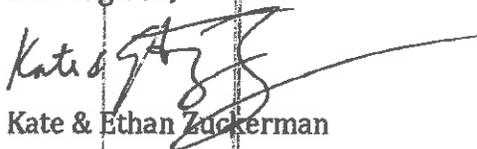
- Purchase property- January 2016
- Building Permit approval- February 2016
- Initial groundwork infrastructure- March 2016
  - Driveway, foundation, etc.
- Soil preparation- March 2016
- Organic Certification Inspection- March 2016
- Berry plantings – April 2016
  - 1 gallon pots, mixed varieties – some fruit Summer 2016
  - 3 gallon pots, mixed varieties – significant fruit Summer 2016
- Initial berry harvest – June 2016
  - Press blueberries and freeze juice
- Subsequent berry harvests – July through August 2016
  - Press blueberries and freeze juice
- Receive Certificate of Occupancy – August 2016
- Move current brewery – November 2016
- Begin production at new brewing facility – November 2016
  - Flavors include Bluegrass Bucha, which will now be made with juice pressed from certified organic blueberries grown on the Creek Rd property
- Additional berry plantings (blackberries, raspberries) – Spring 2017

We are sincerely inspired by the opportunity this new property will afford us to grow some of our own ingredients. Our commitment to a low carbon footprint makes locally-sourced ingredients a natural step for us. Although we will begin with

blueberries, we plan to add additional berries in subsequent years. We also plan to experiment with growing other ingredients, such as tea, ginger, and hops.

Thank you for your assistance and consideration.

Best regards,

A handwritten signature in black ink, appearing to read "Kate & Ethan Zuckerman", with a long horizontal flourish extending to the right.

Kate & Ethan Zuckerman

**Timothy M. Padalino  
Director- Planning & Zoning  
County of Nelson  
P.O. Box 558  
Lovingson , Va. 22949**

**Dec. 16, 2015**

**Dear Tim,**

**This is to advise that W. Morris Foster and James M. Rodgers III are the present owners of Tax Map 12 - 10- Parcels 1 and 2 and Ethan J. Zuckerman and Kate Zuckerman are the contract purchasers of these two parcels .**

**The undersigned owners hereby give authorization for the Zuckermans to submit a site plan to the County of Nelson for their proposed use of these parcels . It is our understanding their proposed use of the property is under the Use by Right of the Nelson County Zoning Ordinance .**

**Please advise if you need any further authorization from us for the Zuckermans to proceed with their Site Plan submittal.**

**Sincerely,**



**W. Morris Foster**

**Authorization to submit Site Plan**



**W. Morris Foster**

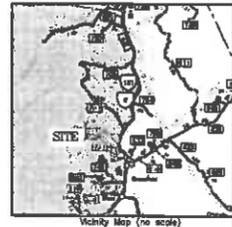
12-16-2015  
**Date**



**James M. Rodgers III**

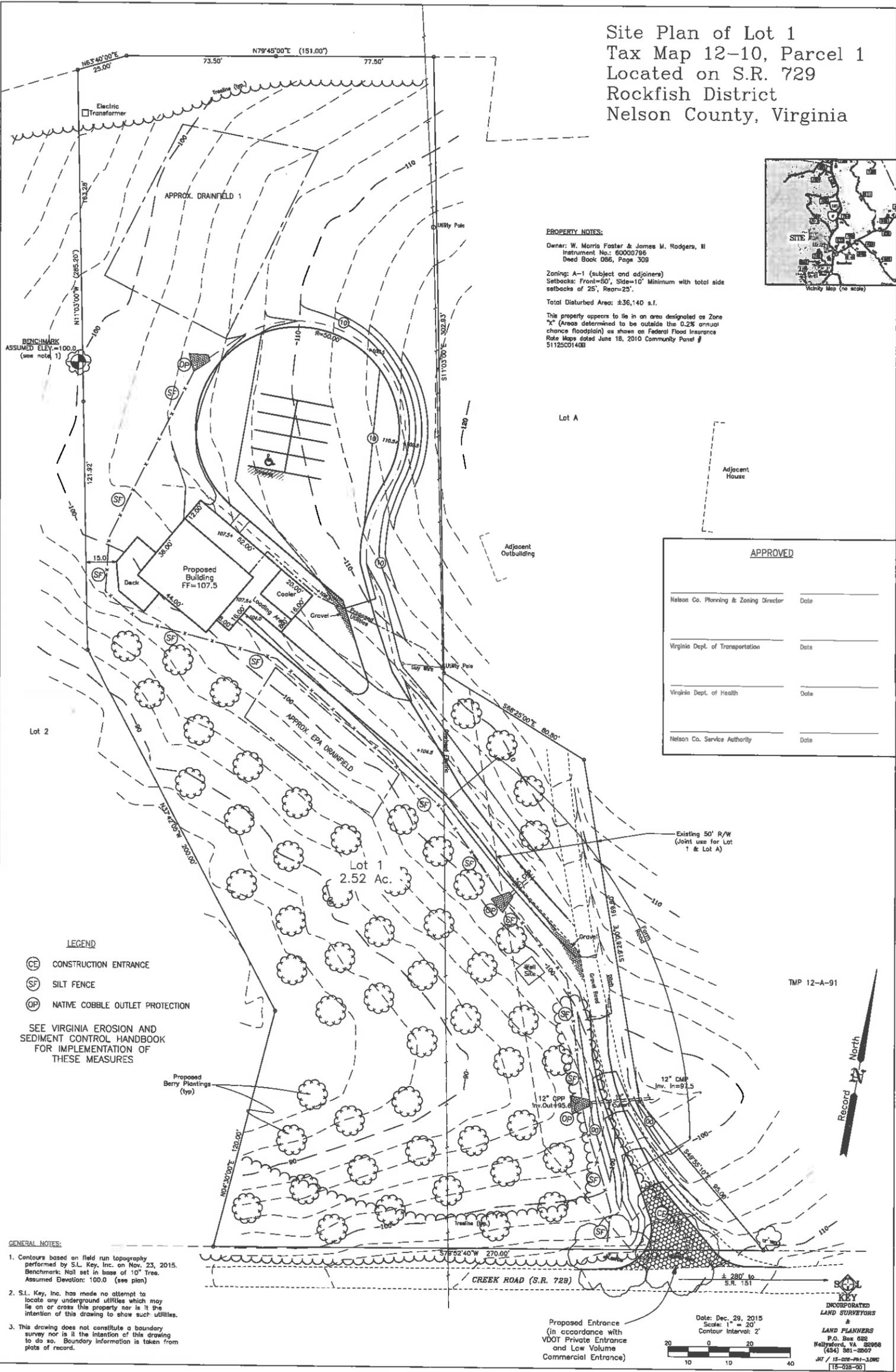
12-16-15  
**Date**

Site Plan of Lot 1  
 Tax Map 12-10, Parcel 1  
 Located on S.R. 729  
 Rockfish District  
 Nelson County, Virginia



PROPERTY NOTES:

Owner: W. Morris Foster & James M. Rodgers, III  
 Instrument No: 6000796  
 Deed Book 066, Page 308  
 Zoning: A-1 (subject and adjacent)  
 Setbacks: Front=50', Side=10' Minimum with total side setbacks of 25', Rear=25'  
 Total Disturbed Area: ±36,140 s.f.  
 This property appears to lie in an area designated as Zone "X" (Areas determined to be outside the 0.2% annual chance floodplain) as shown on Federal Flood Insurance Rate Maps dated June 18, 2010 Community Panel # 51125001408



**LEGEND**  
 (CE) CONSTRUCTION ENTRANCE  
 (SF) SILT FENCE  
 (OP) NATIVE COBBLE OUTLET PROTECTION  
 SEE VIRGINIA EROSION AND SEDIMENT CONTROL HANDBOOK FOR IMPLEMENTATION OF THESE MEASURES

**GENERAL NOTES:**  
 1. Contours based on field run topography performed by S.L. Key, Inc. on Nov. 23, 2015. Benchmark: Nail set in base of 10" Tree. Assumed Elevation: 100.0 (see plan)  
 2. S.L. Key, Inc. has made no attempt to locate any underground utilities which may lie on or cross this property nor is it the intention of this drawing to show such utilities.  
 3. This drawing does not constitute a boundary survey nor is it the intention of this drawing to do so. Boundary information is taken from plots of record.

**APPROVED**

Nelson Co. Planning & Zoning Director	Date _____
Virginia Dept. of Transportation	Date _____
Virginia Dept. of Health	Date _____
Nelson Co. Service Authority	Date _____

Date: Dec. 29, 2015  
 Scale: 1" = 20'  
 Contour Interval: 2'

**S.L. KEY**  
 INCORPORATED  
 LAND SURVEYORS  
 &  
 LAND PLANNERS  
 P.O. Box 682  
 Halfpenny, VA 22068  
 (484) 561-8507  
 JLT / 15-076-P1-1.000  
 [15-028-00]

## Minor Site Plan: Narrative

The purpose of the proposed project is to create a Farm Brewery for Barefoot Bucha, a kombucha brewery that has been operating in Nelson County for the past five years as a home business under a special use permit. Unlike other Farm Breweries in Nelson County, or in Virginia for that matter, this will be the first Farm Brewery dedicated to brewing kombucha. Kombucha is a nonalcoholic fermented tea, which is full of beneficial bacteria and digestive enzymes.

This project will be additionally unique in that Barefoot Bucha is a Certified Organic company and, therefore, its agricultural activities will also be Certified Organic. The company emphasizes a healthful lifestyle for its employees and customers, as well as a low carbon footprint in all aspects of its operations. It is a responsible business and an employer that is making positive contributions to Nelson County.

The new brewery is intended for the small-scale production of kombucha, which will include the growing of many of its ingredients in the form of perennial fruit. The facility will be designed to brew a maximum amount of 12,500 barrels per year. The design of the new brewery will take into account the sustainable focus of Barefoot Bucha by incorporating elements such as passive solar design, rainwater collection, solar panels, organic farming, and composting.

## Minor Site Plan: Requirements

- A. Vicinity map
  - a. See drawing
- B. Boundary lines
  - a. See drawing
- C. General layout
  - a. See drawing
- D. Building setbacks
  - a. See drawing
- E. Zoning of subject property and adjacent property
  - a. All properties zoned A1 Agriculture
- F. Amount of land to be disturbed
  - a. 36,140 sq. ft.
- G. Tax map and parcel number
  - a. 12 10 1
- H. Floodplains
  - a. See drawing
- I. Wetlands, streams and roads.
  - a. See drawing
- J. Existing structures and roads.
  - a. See drawing
- K. Existing and proposed topography
  - a. See drawing
- L. The location of all existing and proposed utilities and easements

- a. See drawing
- M. A legend
  - a. See drawing
- N. A signature panel
  - a. See drawing
- O. Other information
  - a. Farming
    - i. As a Farm Brewery, Barefoot Bucha will grow ingredients needed for the flavor infusion process.
    - ii. Agricultural plantings will begin with blueberries and will expand to include a variety of other herbs and fruits.
    - iii. Barefoot Bucha is a Certified Organic business, and thus its agricultural practices will also be certified organic.
  - b. Wastewater
    - i. Wastewater will be divided into two systems.
      - 1. Nelson County Approved System
        - a. Sanitary wastewater disposal system (conventional septic tank and drain field)
      - 2. EPA Approved System
        - a. Process wastewater (wash water) disposal system (septic tank, recirculation gravel bed and drain field)
  - c. Driveway
    - i. Entrance
      - 1. Designed to be Low Volume Commercial, meeting all of VDOTS requirements, including the 250' stopping distance from Rt. 151.
    - ii. Road
      - 1. Barefoot Bucha is seeking a waiver from the requirements of the Private Road Standards, based on an extremely low volume of traffic. See attached waiver request.
  - d. Parking
    - i. Eight total parking spaces.
    - ii. There are four current employees, and four additional spaces to provide room to grow.
  - e. Lighting
    - i. All exterior lighting will be full-cut off and of the "Dark Sky" variety.
  - f. Erosion and Sediment Control Plan
    - i. To be approved before groundbreaking.



Parcel ID	Parcel Address	Owner Name
12-10-1		FOSTER W MORRIS & JAMES M RODGERS III
12-10-2		FOSTER W MORRIS & JAMES M RODGERS III
12-A-91	6529 ROCKFISH VALLEY HWY	MCCLAIN MICHAEL S
12-A-92B	54 CREEK ROAD	MONROE CAROL
12-A-87		THOMPSON FRED D JR
12-A-93A	6445 ROCKFISH VALLEY HWY	PATRICK BARRY WAYNE & STEVEN S
12-A-93	6411 ROCKFISH VALLEY HWY	ASHLEY HILDA S



**To:** Chair and Members, Nelson County Planning Commission  
**From:** Tim Padalino | Planning & Zoning Director  
**Date:** January 19, 2016  
**Subject:** **Continued PC Review of Referred Zoning Ordinance Amendments –  
“Bed and Breakfast Uses” and Transient Lodging (BOS Resolution R2015-66)**

### **Issue Introduction:**

The existing Zoning Ordinance provisions for permitting and regulating “transient lodging” uses are problematic in multiple ways: they are unclear and somewhat contradictory; and they do not reflect or account for the current variety of lodging types that exist in Nelson County. After conferring on this matter multiple times over the course of 2015, County staff determined that the Planning Commission (PC) and Board of Supervisors (BOS) should formally conduct a policy review of the existing provisions in the Zoning Ordinance in order to identify possible amendments.

County staff believe a text amendment process could result in the following beneficial outcomes:

- ensure that provisions and regulations are appropriate for and reflective of the current economy
- ensure that provisions and regulations are clear, consistent, and reasonable
- minimize the amount of time and effort required of staff for interpreting and explaining the provisions and regulations which are contradictory, outdated, and otherwise insufficient
- simplify and clarify the issues of property rights and permitting processes for local residents and businesses

As such, in August 2015 County staff provided the BOS with an introduction to these issues and presented a request of the BOS to make a text amendment referral to the PC. The BOS then acted to refer BOS Resolution R2015-66 “Bed and Breakfast Uses” to the PC. Please see below for a summary of the text amendment review process to date.

### **Summary of Review Process:**

*August 11, 2015:* BOS refers amendments to PC via BOS Resolution R2015-66

*August 26:* PC formally receives referred amendments and begins review

*September 23 and October 28:* PC continues review, proposes various modifications, and directs staff to advertise for a public hearing

*November 18:* PC conducts public hearing and requests three (3) month extension from BOS for continued review(s) prior to making recommendation to BOS

*December 8:* BOS grants requested three (3) month extension

*December 16:* PC continues review inclusive of additional proposed modifications

*January 27, 2016:* PC continues review

### **Commentary on Most Recent Version of Modified Referred Amendments:**

The enclosed Word document (dated December 17, 2015 and showing “track changes” format) contains the most recent version of modified referred amendments. Please note that this version contains several modifications which were proposed in response to public comments received during the public hearing process; and also contains modifications requested by the PC at the December 16<sup>th</sup> meeting.

Importantly, please also note that additional comments have been received from members of the public since the December 16<sup>th</sup> PC meeting. Specifically, some County residents have pointed out that the proposed amendments would actually eliminate property rights which currently exist for properties zoned Residential R-1. This argument requires careful consideration from staff and Planning Commissioners.

The recent comments focus on the fact that, under the existing ordinance, properties zoned Residential R-1 are permitted to engage in transient lodging uses as a permissible by-right use. More specifically, transient lodging may be conducted on R-1 properties as a by-right use pursuant to Zoning Ordinance Article 5-1-3 (“Home occupations, class A”) and Article 2 (“*Home occupation, class A:* An occupation carried on by the occupant of a dwelling as a secondary use in connection with which there is no display, and not more than one (1) person is employed, other than members of the family residing on the premises such as the rental of rooms to tourists...”).

However, under the most recent version of proposed amendments (dated December 17, 2015), transient lodging uses would only be permissible by-right on a property zoned Residential R-1 if the property is “split-zoned” with a majority of the property being zoned Agricultural A-1. Please reference “Article 5” on page 3 of the enclosed draft dated 12/17.

As a response to those comments received since the December 16<sup>th</sup> PC meeting, I have drafted an alternative text amendment pertaining to the R-1 District (dated December 28, 2015) which I ask each Planning Commissioner to review carefully. That alternative option would allow for Class A Bed & Breakfast to be a by-right use in Residential R-1 (without having to meet any qualifications, such as being split-zoned); and would allow Class B Bed & Breakfast to be a by-right use in Residential R-1 if the property is “split-zoned” with a majority of the property being zoned Agricultural A-1. Please reference “Article 5” on page 3 of the enclosed draft dated 12/28.

Regarding these recent comments received from the public, it is the Planning & Zoning Director’s recommendation that the Article 5: Residential District R-1 language contained in the 12/28 draft (which says Class A Bed & Breakfast is permissible by-right) should be included in the Planning Commission’s recommendations, and should replace the R-1 language contained in the 12/17 draft.

I believe the 12/28 draft (which is more permissible) most closely reflects the earlier intentions of staff and Commissioners: to continue allowing smaller-scale transient lodging on R-1 properties, and to not eliminate a property right which currently exists (vis a vis the “Class A Home Occupation – rental of rooms to tourists” language).

In conclusion, please contact me with any questions, concerns, or requests for assistance leading up to the January 27<sup>th</sup> Planning Commission review of these proposed amendments. Thank you very much for your time and attention to this important subject.

December 28, 2015

➤ **Article 2: Definitions**

**Delete the following:**

~~**Boardinghouse, tourist home:** A building arranged or used for lodging, with or without meals, for compensation by more than five (5) and not more than fourteen (14) persons and open to transients. A boardinghouse or tourist home shall not be deemed a home occupation.~~

~~**Tourist home:** See Boardinghouse.~~

**Add the following:**

**Bed and Breakfast, Class A:** A use composed of transient lodging provided by the resident occupants of a dwelling that is conducted within said dwelling and/or one or more structures that are clearly subordinate and incidental to the single family dwelling, having not more than five (5) guest rooms in the aggregate, and having not more than twelve (12) transient lodgers in the aggregate, and which also may include rooms for dining and for meetings for use by transient lodging guests of the **class A** bed and breakfast provided that the dining and meeting rooms are accessory to the **class A** bed and breakfast use.

Deleted: home occupation

Deleted: home occupation

**Bed and Breakfast, Class B:** A use composed of transient lodging provided within a single family dwelling and/or one or more structures that are clearly subordinate and incidental to the single family dwelling, having not more than eight (8) guest rooms in the aggregate, and having not more than twenty-four (24) transient lodgers in the aggregate, and which also may include rooms for dining and for meetings for use by transient lodging guests of the bed and breakfast provided that the dining and meeting rooms are accessory to the bed and breakfast use.

**Boardinghouse:** A use composed of a single building in which more than one room is arranged or used for lodging by occupants who lodge for thirty (30) consecutive days or longer, with or without meals, for compensation. A boardinghouse may be occupied by the owner or operator, but may not be operated on the same parcel as a bed and breakfast.

**Tent:** A structure or enclosure, constructed of pliable material, which is supported by poles or other easily removed or disassembled structural apparatus.

**Transient:** A guest or boarder; one who stays for less than thirty (30) days and whose permanent address for legal purposes is not the lodging or dwelling unit occupied by that guest or boarder.

**Transient lodging:** Lodging in which the temporary occupant lodges in overnight accommodations for less than thirty (30) consecutive days.

**Vacation House:** A house rented to transients. Rental arrangements are made for the entire house, not by room. Vacation houses with more than five (5) bedrooms are subject to the requirements contained in Article 13, Site Development Plan.

***Amend the following:***

Campgrounds: Any place used for transient camping where compensation is expected in order to stay in a tent, travel trailer, or motor home. Campgrounds require the provision of potable water and sanitary facilities. ~~A tract of land developed to accommodate paying guests, or nonpaying guests as in a group-sponsored outing, for short duration in tents designed for single families or travel trailers owned by the guests.~~

Dwelling: Any building which is designed for residential purposes (except ~~apartment houses, boardinghouses, dormitories, hotels, and motels~~).

Dwelling, single-family detached: A building arranged or designed to contain one (1) dwelling unit ~~with not more than (5) lodgers or boarders.~~

Home Occupation, class A: An occupation carried on by the occupant of a dwelling as a secondary use in connection with which there is no display, and not more than one (1) person is employed, other than members of the family residing on the premises, such as the tailoring of garments, ~~rental of rooms to tourists,~~ the preparation of food products for sale, and similar activities;; beauty parlors, professional offices such as medical, dental, legal, engineering, and architectural offices conducted within a dwelling or accessory building by the occupant.

Home Occupation, class B: An occupation carried on by the occupant of a dwelling as a secondary use in connection with which there is no display, and not more than four (4) persons are employed, other than members of the family residing on the premises, such as the tailoring of garments, ~~rental of rooms to tourists,~~ the preparation of food products for sale, and similar activities;; beauty parlors, professional offices such as medical, dental, legal, engineering, and architectural offices conducted within a dwelling or accessory building by the occupant.

Hotel: Any hotel, inn, hostelry, motel, ~~or other place used for overnight lodging which is rented by the room to transients, is not a residence, and where the renting of the structure is the primary use of the property. A building designed or occupied as the more or less temporary abiding place for fifteen (15) or more individuals who are, for compensation, lodged, with or without meals, and in which provision is not generally made for cooking in individual rooms or suites.~~

Deleted: rooming house,

Travel Trailer: A vehicular, portable structure built on a chassis, designed as a temporary dwelling for travel, recreational, and vacation uses. The term "travel trailer" does not include mobile homes or manufactured homes. ~~Any vehicle less than thirty two (32) feet and used or constructed for use as a conveyance upon highways, so designed and constructed as to permit occupancy thereof as a dwelling or sleeping place for one (1) or more persons.~~

➤ **Article 4: Agricultural District A-1**

**Amend as follows:**

- Section 4-1** *Uses – Permitted by right.*
- 4-1-3 ~~Boardinghouse, tourist home~~ Boardinghouse
  - 4-1-30 Bed and Breakfast, Class A
  - 4-1-31 Bed and Breakfast, Class B
  - 4-1-32 Vacation House

- Section 4-1-a** *Uses – Permitted by Special Use Permit only:*
- 4-1-10a Campgrounds

➤ **Article 5: Residential District R-1**

**Amend as follows:**

- Section 5-1** *Uses – Permitted by-right:*
- ~~5-1-17~~ **5-1-17** ~~Bed and Breakfast, Class A~~
  - 5-1-18 Bed and Breakfast, Class **B**, if the subject property contains more than one zoning classification with a majority portion of the subject property zoned Agricultural A-1.
  - 5-1-19 Vacation House, if the subject property contains more than one zoning classification with a majority portion of the subject property zoned Agricultural A-1.
- Section 5-1-a** *Uses – Permitted by Special Use Permit only:*
- 5-1-4a Bed and Breakfast, Class **B**, if the provisions in 5-1-18 do not apply to the subject property
  - 5-1-5a Vacation House, if the provisions contained in 5-1-19 do not apply to the subject property.

➤ **Article 6: Residential District R-2**

**Amend as follows:**

- Section 6-1-a** *Uses – Permitted by Special Use Permit only:*
- 6-1-3a Boardinghouse
  - 6-1-4a Bed and Breakfast, Class A
  - 6-1-5a Vacation House

➤ **Article 7: Residential Planned Community District RPC**

**Amend as follows:**

**Section 7-5-2** Single-Family Residential Sector - SR

In Single-Family Residential Sectors, the following uses will be permitted:

1. Single-family detached dwellings.
2. Single-family attached dwellings.

**Deleted:** two or more of the following apply: (a) the subject property is five (5) acres or greater; (b)

**Deleted:** ; or (c) the subject property adjoins contiguous property(s) entirely zoned Agricultural A-1

**Deleted:** two (or more) of the following apply: (a) the subject property is five (5) acres or greater; (b)

**Deleted:** ; or (c) the subject property adjoins contiguous property(s) entirely zoned Agricultural A-1

**Deleted:** ¶  
5-1-6a . Boardinghouse¶

**Deleted:** ¶  
Section 6-1 Uses – Permitted by right. ¶  
6-1-18 . Boardinghouse¶

3. Other uses as permitted in Residential Districts R-1 and in Section 7-5-1(b); except that Vacation House shall be a permissible by-right use in the SR Sector of the RPC District and shall not require a Special Use Permit.

➤ **Article 8: Business District B-1**

**Amend as follows:**

*Section 8-1 Uses – Permitted by right:*

- 8-1-25 Bed and Breakfast, Class A, if the subject property contains an existing non-conforming dwelling or has an approved Special Use Permit for dwelling units pursuant to 8-1-10a
- 8-1-26 Bed and Breakfast, Class B, if the subject property contains an existing non-conforming dwelling or has an approved Special Use Permit for dwelling units pursuant to 8-1-10a
- 8-1-27 Vacation House, if the subject property contains an existing non-conforming dwelling or has an approved Special Use Permit for dwelling units pursuant to 8-1-10a

*Section 8-1-a Uses – Permitted by Special Use Permit only:*

- 8-1-13a Campground

➤ **Article 8A: Business District B-2**

**Amend as follows:**

*Section 8A-1-a Uses – Permitted by Special Use Permit only:*

- ~~8A-1-15 Hotel~~

➤ **Article 8B: Service Enterprise District SE-1**

**Amend as follows:**

*Section 8B-1 Uses – Permitted by right.*

- 8B-1-3 Boardinghouse, ~~tourist house~~ vacation house, ~~bed and breakfast inn~~ class A bed and breakfast, class B bed and breakfast, churches, church adjunctive graveyards, libraries, schools, hospitals, clinics, parks, playgrounds, post offices, fire department, and rescue squad facilities

*Section 8B-1-a Uses – Permitted by Special Use Permit only:*

- 8B-1-14a Campground

**Deleted:** 8A-1-15 Bed and breakfast, Class A  
8A-1-16 Bed and breakfast, Class B

**Deleted:** 8A-1-18 Vacation House

**Deleted:** Section 8A-1-a Uses - Permitted by Special Use Permit only:

8A-1-7a Campground

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December 17, 2015

➤ **Article 2: Definitions**

**Delete the following:**

~~Boardinghouse, tourist home: A building arranged or used for lodging, with or without meals, for compensation by more than five (5) and not more than fourteen (14) persons and open to transients. A boardinghouse or tourist home shall not be deemed a home occupation.~~

~~Tourist home: See Boardinghouse.~~

**Add the following:**

Bed and Breakfast, Class A: A use composed of transient lodging provided by the resident occupants of a dwelling that is conducted within said dwelling and/or one or more structures that are clearly subordinate and incidental to the single family dwelling, having not more than five (5) guest rooms in the aggregate, and having not more than twelve (12) transient lodgers in the aggregate, and which also may include rooms for dining and for meetings for use by transient lodging guests of the class A bed and breakfast, provided that the dining and meeting rooms are accessory to the class A bed and breakfast use.

Deleted: home occupation

Deleted: home occupation

Bed and Breakfast, Class B: A use composed of transient lodging provided within a single family dwelling and/or one or more structures that are clearly subordinate and incidental to the single family dwelling, having not more than eight (8) guest rooms in the aggregate, and having not more than twenty-four (24) transient lodgers in the aggregate, and which also may include rooms for dining and for meetings for use by transient lodging guests of the bed and breakfast provided that the dining and meeting rooms are accessory to the bed and breakfast use.

Boardinghouse: A use composed of a single building in which more than one room is arranged or used for lodging by occupants who lodge for thirty (30) consecutive days or longer, with or without meals, for compensation. A boardinghouse may be occupied by the owner or operator, but may not be operated on the same parcel as a bed and breakfast.

Tent: A structure or enclosure, constructed of pliable material, which is supported by poles or other easily removed or disassembled structural apparatus.

Transient: A guest or boarder; one who stays for less than thirty (30) days and whose permanent address for legal purposes is not the lodging or dwelling unit occupied by that guest or boarder.

Transient lodging: Lodging in which the temporary occupant lodges in overnight accommodations for less than thirty (30) consecutive days.

Vacation House: A house rented to transients. Rental arrangements are made for the entire house, not by room. Vacation houses with more than five (5) bedrooms are subject to the requirements contained in Article 13, Site Development Plan.

***Amend the following:***

**Campgrounds:** Any place used for transient camping where compensation is expected in order to stay in a tent, travel trailer, or motor home. Campgrounds require the provision of potable water and sanitary facilities. ~~A tract of land developed to accommodate paying guests, or nonpaying guests as in a group-sponsored outing, for short duration in tents designed for single families or travel trailers owned by the guests.~~

**Dwelling:** Any building which is designed for residential purposes (except ~~apartment houses,~~ boardinghouses, dormitories, hotels, and motels).

**Dwelling, single-family detached:** A building arranged or designed to contain one (1) dwelling unit ~~with not more than (5) lodgers or boarders.~~

**Home Occupation, class A:** An occupation carried on by the occupant of a dwelling as a secondary use in connection with which there is no display, and not more than one (1) person is employed, other than members of the family residing on the premises, such as the tailoring of garments, ~~rental of rooms to tourists,~~ the preparation of food products for sale, and similar activities;; beauty parlors, professional offices such as medical, dental, legal, engineering, and architectural offices conducted within a dwelling or accessory building by the occupant.

**Home Occupation, class B:** An occupation carried on by the occupant of a dwelling as a secondary use in connection with which there is no display, and not more than four (4) persons are employed, other than members of the family residing on the premises, such as the tailoring of garments, ~~rental of rooms to tourists,~~ the preparation of food products for sale, and similar activities;; beauty parlors, professional offices such as medical, dental, legal, engineering, and architectural offices conducted within a dwelling or accessory building by the occupant.

**Hotel:** Any hotel, inn, hostelry, motel, or other place used for overnight lodging which is rented by the room to transients, is not a residence, and where the renting of the structure is the primary use of the property. ~~A building designed or occupied as the more or less temporary abiding place for fifteen (15) or more individuals who are, for compensation, lodged, with or without meals, and in which provision is not generally made for cooking in individual rooms or suites.~~

Deleted: rooming house,

**Travel Trailer:** A vehicular, portable structure built on a chassis, designed as a temporary dwelling for travel, recreational, and vacation uses. The term "travel trailer" does not include mobile homes or manufactured homes. ~~Any vehicle less than thirty two (32) feet and used or constructed for use as a conveyance upon highways, so designed and constructed as to permit occupancy thereof as a dwelling or sleeping place for one (1) or more persons.~~

➤ **Article 4: Agricultural District A-1**

**Amend as follows:**

<b>Section 4-1</b>	<b>Uses – Permitted by right.</b>
4-1-3	<del>Boardinghouse, tourist home</del> Boardinghouse
4-1-30	Bed and Breakfast, Class A
4-1-31	Bed and Breakfast, Class B
4-1-32	Vacation House

<b>Section 4-1-a</b>	<b>Uses – Permitted by Special Use Permit only:</b>
4-1-10a	Campgrounds

➤ **Article 5: Residential District R-1**

**Amend as follows:**

<b>Section 5-1</b>	<b>Uses – Permitted by-right:</b>
5-1-17	Bed and Breakfast, Class A, if the subject property contains more than one zoning classification with a majority portion of the subject property zoned Agricultural A-1.
5-1-18	Vacation House, if the subject property contains more than one zoning classification with a majority portion of the subject property zoned Agricultural A-1.

<b>Section 5-1-a</b>	<b>Uses – Permitted by Special Use Permit only:</b>
5-1-4a	Bed and Breakfast, Class A, if the provisions in 5-1-17 do not apply to the subject property
5-1-5a	Vacation House, if the provisions contained in 5-1-18 do not apply to the subject property.

➤ **Article 6: Residential District R-2**

**Amend as follows:**

<b>Section 6-1-a</b>	<b>Uses – Permitted by Special Use Permit only:</b>
6-1-3a	Boardinghouse
6-1-4a	Bed and Breakfast, Class A
6-1-5a	Vacation House

➤ **Article 7: Residential Planned Community District RPC**

**Amend as follows:**

Section 7-5-2 Single-Family Residential Sector - SR

In Single-Family Residential Sectors, the following uses will be permitted:

1. Single-family detached dwellings.
2. Single-family attached dwellings.

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**Deleted: ¶**  
5-1-6a . Boardinghouse¶

**Deleted: ¶**  
Section 6-1 . Uses – Permitted by right. ¶  
6-1-18 Boardinghouse¶

3. Other uses as permitted in Residential Districts R-1 and in Section 7-5-1(b); except that Vacation House shall be a permissible by-right use in the SR Sector of the RPC District and shall not require a Special Use Permit.

➤ **Article 8: Business District B-1**

**Amend as follows:**

*Section 8-1 Uses – Permitted by right:*

- 8-1-25 Bed and Breakfast, Class A, if the subject property contains an existing non-conforming dwelling or has an approved Special Use Permit for dwelling units pursuant to 8-1-10a
- 8-1-26 Bed and Breakfast, Class B, if the subject property contains an existing non-conforming dwelling or has an approved Special Use Permit for dwelling units pursuant to 8-1-10a
- 8-1-27 Vacation House, if the subject property contains an existing non-conforming dwelling or has an approved Special Use Permit for dwelling units pursuant to 8-1-10a

*Section 8-1-a Uses – Permitted by Special Use Permit only:*

- 8-1-13a Campground

➤ **Article 8A: Business District B-2**

**Amend as follows:**

*Section 8A-1-a Uses – Permitted by Special Use Permit only:*

- ~~8A-1-15~~ Hotel

➤ **Article 8B: Service Enterprise District SE-1**

**Amend as follows:**

*Section 8B-1 Uses – Permitted by right.*

- 8B-1-3 Boardinghouse, ~~tourist house~~ vacation house, ~~bed and breakfast in~~ class A bed and breakfast, class B bed and breakfast, churches, church adjunctive graveyards, libraries, schools, hospitals, clinics, parks, playgrounds, post offices, fire department, and rescue squad facilities

*Section 8B-1-a Uses – Permitted by Special Use Permit only:*

- 8B-1-14a Campground

**Deleted:** 8A-1-15 . Bed and breakfast, Class A¶  
8A-1-16 Bed and breakfast, Class B¶

**Deleted:** ¶  
8A-1-18 . Vacation House¶

**Deleted:** Section 8A-1-a . Uses - Permitted by Special Use Permit only:¶

8A-1-7a Campground¶

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DEPARTMENT OF  
PLANNING & ZONING



PLANNING COMMISSION  
BOARD OF ZONING APPEALS

**To:** Chair and Members, Nelson County Planning Commission  
**From:** Tim Padalino | Planning & Zoning Director  
**Date:** January 19, 2016  
**Subject:** **BOS Referral of Zoning Ordinance Amendments – Article 10, Floodplain Overlay District (FP)**

On December 8<sup>th</sup>, the Nelson County Board of Supervisors (BOS) acted to refer to the Planning Commission (PC) Zoning Ordinance Article 10 (“Floodplain Ordinance”) for review and recommendations. The review is to determine what (if any) amendments might be appropriate, inclusive of the proper advertising and conducting of a public hearing; and to provide formal recommendations back to the BOS in the allotted time.

Please note that this review has previously entailed an “audit” of the Nelson County Floodplain Ordinance by staff at the Virginia Department of Conservation and Recreation (DCR), which oversees floodplain management in the Commonwealth. Recommendations from that audit are included in the referred amendments; please see the comments contained in the “track changes” format of the amendments as well as the attached audit. Please also note that additional modifications to the referred amendments may be necessary in order to properly respond to all of the comments provided by Mr. Charles Kline of DCR, who performed the audit and who has provided extensive assistance to Nelson County staff, officials, and residents over the previous 12 months.

Please carefully review the following materials enclosed with this introductory cover letter:

- Referred amendments in “track changes” format – dated 10/8/2015
- BOS staff report introducing and summarizing those amendments – dated 10/8/2015
- Copy of DCR’s “audit” of Nelson County Floodplain Ordinance – dated 6/10/2014

In conclusion, please contact me with any questions, concerns, or requests for assistance leading up to the January 27<sup>th</sup> Planning Commission review of these referred amendments. Thank you very much for your time and attention to this important subject.



To: Chair and Members, Nelson County Board of Supervisors  
From: Tim Padalino | Planning & Zoning Director  
Date: October 8, 2015  
Subject: **Introduction of Recommended Amendments re: Floodplain Ordinance  
(Zoning Ordinance Article 10 – “General Floodplain District FP”)**

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**Issue Introduction:**

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The Nelson County Zoning Ordinance contains provisions for floodplain management and land use regulations within Article 10, “General Floodplain District FP.” Staff recently reviewed this section of the Zoning Ordinance and have identified numerous recommended amendments as identified in this staff report.

Please note that these recommendations are inclusive of recommendations from Mr. Charles Kline, Floodplain Program Planner for the Virginia Department of Conservation & Recreation (DCR). Specifically, Mr. Kline reviewed the existing ordinance and provided the following types of recommendations:

- recommendations for how the existing ordinance could be amended to better encompass the *regular standards* contained in the “Example Floodplain Management Ordinance” (a.k.a. model ordinance); and
- recommendations for how the existing ordinance could be amended to contain some of the *higher standards* contained in the “Guidance for Local Floodplain Ordinances in VA” document prepared by DCR’s Dam Safety and Floodplain Program in February 2014.

Mr. Kline provided the recommendations in an email dated June 10<sup>th</sup>, and on June 15<sup>th</sup> he provided another email stating the following: *“I provided a number of recommendations for the county to consider. While all of these standards would be effective in improving a community’s floodplain management efforts, they may not all be feasible for Nelson County to adopt and/or enforce. It will be at the county’s discretion to choose which ones are best for Nelson.”* In total, Mr. Kline recommended twelve (12) new standards. After reviewing and discussing all recommendations, County staff recommend adopting six (6) of them as explained in this report and as shown in the attached (draft) amended ordinance.

## Summary of Recommendations by Topic / Issue:

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- Amendments intended to bring existing ordinance in line with model ordinance.
- There are numerous amendments identified by Mr. Kline which are relatively minor and which are intended to “clean up” the ordinance to more closely reflect the language and provisions contained in the state model ordinance. These include:
  - adding a statement about the authority of the county to have a floodplain management program and floodplain ordinance;
  - adding a section outlining the administration of the floodplain ordinance;
  - replacing “Planning & Zoning Director” with “Floodplain Administrator” throughout the ordinance; and
  - several other instances of similar “housekeeping” updates
- Affected sections – please see:
  - 10.1 “Purpose”
  - 10.13-A “Permit and Application Requirements – Permit requirement.”
  - 10.13-C “Permit and Application Requirements – Site plans and permits applications.”
  - 10.15-C “Specific Standards – Elevated Buildings”
  - 10.24 “Administration”
- Increase freeboard from existing 12” requirement to 18” requirement.
- This would require the lowest floor (including basement) of any new construction or substantial improvement to be located a minimum of 1.5 feet above the Base Flood Elevation. This would be an increase from the existing requirement of 1 foot minimum.
- Affected sections – please see:
  - 10.15-A “Specific Standards – Residential Construction”
  - 10.15-B “Specific Standards – Non-Residential Construction”
- Define “critical facilities” and prohibit them in the Special Flood Hazard Area (SFHA).
- This would prohibit the placement of critical facilities – such as emergency services and rescue squads, schools, medical facilities, hazardous materials and fuel storage, and other uses, structures, and improvements – within all Special Flood Hazard Areas.
- Affected sections – please see:
  - 10.7 “Definitions”
  - 10.14-L “General Standards”
  - 10.15-E “Specific Standards – Higher Standards and Critical Facilities”
  - 10.22-M “Variances and Special Use Permits”

- Restrict hazardous materials and fuels in the Special Flood Hazard Areas.
- This would entirely prohibit the storage of certain hazardous materials within any SFHA; and would restrict the storage of other hazardous materials (including gasoline, petroleum products, and natural gas) for any time period longer than thirty (30) days.
- Affected sections – please see:
  - 10.14-M “General Standards”
  - 10.15-F “Specific Standards – Higher Standards and Hazardous Materials”
  - 10.22-N “Variances and Special Use Permits”
- Limit land uses in the Floodway to only non-structural uses.
- This would prohibit any and all structures from being located within the Floodway, but would allow other non-structural uses within the portion of the floodplain designated as Floodway. The Floodway is, “*the designated area of the floodplain required to carry and discharge flood waters*” and is generally the lowest area in the middle of the floodplain which actually conveys surface waters.
- Affected sections – please see:
  - 10.17 “Permitted Uses in the Floodway District”
- Modify the requirements for when the Base Flood Elevation needs to be identified and included on subdivision plats.
- This would change the threshold for when applicants need to identify and include the Base Flood Elevation (BFE) on a plat of division. Currently, this information needs to be included for subdivisions containing more than fifty lots or more five acres, whichever is lesser. Specifically, the recommended amendments would alter the threshold as follows:
  - Include the BFE if there are more than eleven (11) lots; and
  - Include the BFE if the subdivision acreage exceeds forty (40) acres.
- Affected sections – please see:
  - 10.20-D “Standards for Subdivision Proposals”
- Restrict the placement of fill in the Special Flood Hazard Area (SFHA).
- This would prohibit certain fill materials from being placed within any designated SFHA, and would only allow for locally-borrowed mineral materials to be used as fill within an SFHA (and would still require that a Special Use Permit be obtained to do so).
- Affected sections – please see:
  - 10.14-N “General Standards”

## **Summary & Conclusion:**

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Please review this report and also the accompanying (draft) amended ordinance. Copies of the materials provided by DCR (including the model ordinance, the higher standards, and recommendations from Mr. Kline) can be provided for your reference – please let me or other County staff know if you need any assistance in obtaining those reference materials.

If the BOS would like for these issues to be further reviewed and addressed through a zoning ordinance amendment process, that process can be formally initiated via BOS referral of these proposed amendments to the Planning Commission for their review (inclusive of public hearing) and recommendation.

Please contact with me any questions you may have regarding the information contained in this report, or regarding the issue of floodplain management in general. Thank you for your attention to this matter.



# FEMA Region III Ordinance Review Checklist (VA)

October 2014

Community: Nelson County State: VA CID: 510102  
 County: Nelson State: VA CID: 510102  
 State Reviewer: Charles Kline Date: 06/10/2015 Recommendation: Non-Compliant  
 FEMA Reviewer: \_\_\_\_\_ Date: \_\_\_\_\_ FEMA Determination: \_\_\_\_\_  
 Addl FEMA Reviewer: \_\_\_\_\_ Date: \_\_\_\_\_ Determination: \_\_\_\_\_

Notes: \_\_\_\_\_  
 Minor problems noted in checklist.

**Note:** The "Item Description" is a synopsis of the regulatory requirement and should not be construed as a complete description. Refer to the actual language contained in the National Flood Insurance Program Rules and Regulations for complete descriptions of the required standards.

**Flood Zones:**  A  AO  AH  AE (w/o FW)  AE w/ FW  VE  
 LiMWA  Level of Regulations: d

Item Description (Section reference to NFIP Regulations follows required Provisions.)	Model Location	State Review	FEMA Review	Comments
<b>Provisions for ordinances</b>				
Adopt definitions of: <input checked="" type="checkbox"/> Base Flood <input checked="" type="checkbox"/> Base Flood Elevation <input checked="" type="checkbox"/> Basement <input checked="" type="checkbox"/> Development <input checked="" type="checkbox"/> Existing Manufactured Home Park or Subdivision <input checked="" type="checkbox"/> Expansion to an Existing Manufactured Home Park or Subdivision <input checked="" type="checkbox"/> Flood Insurance Rate Map <input checked="" type="checkbox"/> Flood Insurance Study <input checked="" type="checkbox"/> Floodway <input checked="" type="checkbox"/> Lowest Floor & other definitions as appropriate such as: <input checked="" type="checkbox"/> Floodproofing <input checked="" type="checkbox"/> Historic Structures	Glossary			NOTE: Definitions for Existing, Expansion to An Existing, Manufactured Home Park or Subdivision or New Manufactured Home Park are not required if community requires elevation of all manufactured homes to the BFE (1986 regulations).  <input checked="" type="checkbox"/> Community requires elevation of all manufactured homes placed/substantially improved to the BFE (1986 regulations)
1. <input checked="" type="checkbox"/> Manufactured Home <input checked="" type="checkbox"/> Manufactured Home Park or Subdivision <input checked="" type="checkbox"/> New Construction Date: 08/01/1978 <input checked="" type="checkbox"/> New Manufactured Home Park or Subdivision <input checked="" type="checkbox"/> Recreational Vehicle <input checked="" type="checkbox"/> Special Flood Hazard Area <input checked="" type="checkbox"/> Start of Construction <input checked="" type="checkbox"/> Structure <input checked="" type="checkbox"/> Substantial Damage <input checked="" type="checkbox"/> Substantial Improvement <input checked="" type="checkbox"/> Violation <input checked="" type="checkbox"/> Highest Adjacent Grade (Required for AO Zones)			10.7	

Item Description (Section reference to NFIP Regulations follows required Provisions.)	Model Location	State Review	FEMA Review	Comments
<b>Provisions for Ordinances</b>				
2. Citation of Statutory Authorization. [59.22(a)(2)]	1.1			Not found - see Model Ordinance 1.1
3. Purpose section citing health, safety, and welfare reasons for adoption. [59.22(1)]	1.1	10.1		
4. Abrogation and Greater Restriction section. [60.1(b)]	1.4	10.4		
5. Adequate enforcement provisions including a violations/penalty section specifying community actions to assure compliance. [60.2(e)]	1.6	10.6		
6. Adopt or reference correct Flood Insurance Rate Map (and where applicable, Flood Boundary Floodway Map) and date. [60.2(h)]	3.1 A	10.8A1		
7. Adopt or reference correct Flood Insurance Study and date. [60.2(h)]	3.1 A	10.8A1		
8. Include a reference to all subsequent revisions and amendments to above-referenced flood maps and Flood Insurance Study.	3.1 A	10.8A1		
9. Severability section. (If any section, provision or portion of the ordinance is deemed unconstitutional or invalid by a court, the remainder of the ordinance shall be effective.)	1.6	10.5		
10. Disclaimer of Liability (Degree of flood protection required by the ordinance is considered reasonable but does not imply total flood protection.)	1.3 B & C	10.3B & D		
11. Framework for administering the ordinance (permit system, establish office for administering the ordinance, <i>recordkeeping</i> , etc.) [59.22(b)(1)]	2.1			Not adequate - need to add from Model Ordinance Article II.
12. Designate title of community Floodplain Administrator [59.22 (b)]	2.1			Not found - see Model Ordinance 2.1
13. Requirement to submit new technical data: within 6 months, notify FEMA of changes in the base flood elevation by submitting technical or scientific data so insurance & floodplain management can be based on current data. [65.3]	2.7	10.12		

Item Description (Section reference to NFIP Regulations follows required Provisions.)	Model Location	State Review	FEMA Review	Comments
<b>PROVISIONS FOR ORDINANCES</b>				
14. Variance section with evaluation criteria & insurance notice. <b>[60.6 (a)]</b>	Article VI	10.22		
Signature of Appropriate Official & Certification (adopted ordinance)				
15. Date ordinance adopted _____ Effective Date _____ Ordinance No. _____	Article VIII			Not found - see Model Ordinance Article VII
<b>(60.3(a))</b> When no SFHAs have been identified, no water surface elevation data has been provided, and no floodways or coastal high hazard areas have been identified and the community applies for participation in the NFIP, the following are required:				
16. Require permits for all proposed construction or other development including placement of manufactured homes. <b>[60.3(a)(1)]</b>	4.1 A	10.13A		
17. Assure that all other State and Federal permits are obtained. <b>[60.3(a)(2)]</b>	4.1 A	10.13A		
18. Review subdivision proposals to assure that: (a) Such proposals minimize flood damage. <b>[60.3(a)(4)(i)]</b> (b) Public utilities and facilities are located & constructed so as to minimize flood damage. <b>[60.3(a)(4)(ii)]</b> (c) Adequate drainage is provided. <b>[60.3(a)(4)(iii)]</b>	4.4 A	10.20A		
	4.4 B	10.20B		
	4.4 C	10.20C		
19. Review permits to assure sites are reasonably safe from flooding and require for new construction and substantial improvements in flood-prone areas: <b>[60.3(a)(3)]</b>	4.1 A			Not found - see Model Ordinance 4.1A
(a) Anchoring (including manufactured homes) to prevent floatation, collapse, or lateral movement. <b>[60.3(a)(3)(i)]</b>	4.2 A. B	10.14A & B		
(b) Use of flood-resistant materials. <b>[60.3(a)(3)(ii)]</b>	4.2 C	10.14C		
(c) Construction methods/practices that minimize flood damage. <b>[60.3(a)(3)(iii)]</b>	4.2 D	10.14D		
(d) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities designed and/or located to prevent water entry or accumulation. <b>[60.3(a)(3)(iv)]</b>	4.2 E	10.14E		

Item Description (Section reference to NFIP Regulations follows required Provisions.)	Model Location	State Review	FEMA Review	Comments
<b>Provisions for ordinances</b>				
20. Require new and replacement water supply and sanitary sewer systems to be designed to minimize or eliminate infiltration. <b>[60.3(a)(5) &amp; (6)]</b>	4.2 G	10.14G		
21. Require on-site waste disposal systems be located to avoid impairment or contamination. <b>[60.3(a)(6)(ii)]</b>	4.2 H	10.14H		
<b>(60.3(b))</b> When SFHAs are identified by the publication of a community's FHBM or FIRFM, but water surface elevation data have not been provided or a floodway or coastal high hazard area has not been identified, then all of the above ordinance provisions for 60.3 (a) and the following are required:				
22. Require permits for all proposed construction and other development within SFHAs on the FIRM <b>[60.3(b)(1)]</b>	4.1 A	10.13A		
23. Where BFE data are utilized, obtain and maintain records of lowest floor and floodproofing elevations for new construction and substantial improvements. <b>[60.3(b)(5)]</b>	4.1 B	10.13C2 & 3		
24. In A Zones, in the absence of FEMA BFE data and floodway data, consider other available data as basis for elevating residential structures to or above base flood level, and for floodproofing or elevating nonresidential structures to or above base flood level. <b>[60.3(b)(4)]</b>	3.3 (3)	10.19		
25. <i>In riverine areas</i> , notify neighboring communities of watercourse alterations or relocations. <b>[60.3 (b)(6)]</b>	4.2 I	10.13B		
26. Maintain flood carrying capacity of altered or relocated watercourse. <b>[60.3(b)(7)]</b>	4.2 J	10.14J		
27. Require base flood elevation data for subdivision proposals or other developments greater than 50 lots or 5 acres. <b>[60.3 (b)(3)]</b>	3.1(3)	10.20D		
28. Require all manufactured homes to be elevated and anchored to resist flotation, collapse, or lateral movement. <b>[60.3(b)(8)]</b>	4.3 D	10.14B, 10.15D1		

Item Description (Section reference to NFIP Regulations follows required Provisions.)	Model Location	State Review	FEMA Review	Comments
<p><b>60.3(c)</b> When final flood elevations, but no floodways or coastal high hazard areas have been provided on a community's FIRM, then all the above ordinance provisions for 60.3(a) &amp; 60.3(b) and the following are required:</p>				
29. Require all new and substantially improved residential structures within A, A1-30, AE, and AH Zones have their lowest floor (including basement) elevated to or above the BFE. [60.3(c)(2)]	4.3 A	10.15A		One foot of freeboard.
30. In AO Zones, require that new and substantially improved residential structures have their lowest floor (including basement) at or above the highest adjacent grade at least as high as the FIRM's depth number. [60.3(c)(7)]	3.1 A(4)(b) (1)	<input checked="" type="checkbox"/> Community has no AO Zones. N/A - No AO Zones.		
31. Require that new and substantially improved nonresidential structures within A, A1-30, AE, and AH Zones have their lowest floor elevated or floodproofed to or above the base flood elevation. [60.3(c)(3)]	4.3 B	10.15B		One foot of freeboard.
32. In AO Zones, require new and substantially improved nonresidential structures have their lowest floor elevated or completely floodproofed above the highest adjacent grade to at least as high as the depth number on the FIRM. [60.3(c)(8)]	3.1 A(4)(b) (2)	<input checked="" type="checkbox"/> Community has no AO Zones. N/A - No AO Zones.		
33. Require that, for floodproofed non-residential structures, a registered professional/architect certify that the design and methods of construction meet requirements at (c) (3) (ii). [60.3(c)(4)]	4.3 B	10.15B		
34. Within Zones A1-30 and AE without a designated floodway, new development shall not be permitted unless it is demonstrated that the cumulative effect of all past and projected development will not increase the BFE by more than 1 foot. [60.3(c)(10)]	3.1 A2	<input type="checkbox"/> All AE Zones have designated floodways 10.18		
35. Require, for all new construction and substantial improvements, that fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage have permanent openings designed to allow the entry and exit of flood waters in accordance with specifications of [60.3(c)(5)].	4.3 C	10.15C		

Item Description (Section reference to NFIP Regulations follows required Provisions.)	Model Location	State Review	FEMA Review	Comments
<b>PROVISIONS FOR ORDINANCES</b>				
36. In Zones AO and AH, require drainage paths around structures on slopes to guide water away from structures. [60.3(c)(11)]	3.1 A	<input checked="" type="checkbox"/> Community has neither AO nor AH zones N/A - No AO/AH Zones.		
37. Require that manufactured homes placed or substantially improved within A1-30, AH, and AE Zones, which meet one of the following location criteria, to be elevated such that the lowest floor is at or above the BFE and be securely anchored: i. outside a manufactured home park or subdivision; ii. in a new manufactured home park or subdivision; iii. in an expansion to an existing manufactured home park or subdivision; iv. on a site in an existing park which a manufactured home has incurred substantial damage as a result of flood. [60.3(c)(6)]	4.3 D	<input checked="" type="checkbox"/> Community requires elevation of all manufactured homes placed/substantially improved to the BFE (1986 regulations)		All Manufactured Homes placed/substantially improved to the BFE must be elevated and anchored.
38. In A1-30, AH, and AE Zones, require that manufactured homes to be placed or substantially improved in an existing manufactured home park to be elevated so that: i. the lowest floor is at or above the BFE <del>or</del> ii. the chassis is supported by reinforced piers no less than 36 inches above grade and securely anchored. [60.3(c)(12)]	4.3 D	<input checked="" type="checkbox"/> Community requires elevation of all manufactured homes placed/substantially improved to the BFE (1986 regulations)		All Manufactured Homes placed/substantially improved to the BFE must be elevated and anchored.
39. In A1-30, AH and AE Zones, all recreational vehicles to be placed on a site must be elevated and anchored <del>or</del> be on the site for less than 180 consecutive days <del>or</del> be fully licensed and highway ready. [60.3(c)(14)]	4.3 D2	10.15D2		
<b>60.3(d) When final flood elevation and floodway delineations have been provided on a community's FIRMI, then all the above ordinance provisions for 60.3(a), 60.3(b) &amp; 60.3(c) and the following are required:</b>				
40. In a regulatory floodway, prohibit any encroachment which would cause any increase in the base flood level unless hydrologic and hydraulic analyses prove that the proposed encroachment would not increase flood levels during the base flood discharge. [60.3(d)(3)]	3.1 A(4)(b)(2)	10.16A		

Item Description (Section reference to NFIP Regulations follows required Provisions.)	Model Location	State Review	FEMA Review	Comments
<p><b>60.3(c)</b> When final flood elevations and coastal high hazard areas have been provided on a community's FIRM, then all the above ordinance provisions for 60.3(a), 60.3(b) &amp; 60.3(c), and the following are required:  <b>NOTE:</b> If a community has both floodways and coastal high hazard areas, it must meet the requirements of both 60.3(d) &amp; 60.3(c)</p>				
41. In V1 - 30, VE, and V Zones, obtain and maintain the elevation of the bottom of the lowest horizontal structural member of the lowest floor of all new and substantially improved structures. [60.3(e)(2)]		N/A - no V/VE Zones.		
42. In V1-30, VE, and V Zones, require that all new construction and substantial improvement: (a) <i>Are elevated on piling/columns so that the bottom of the lowest horizontal structural member is at or above the BFE and the pile/column foundation/structure are anchored to resist flotation, collapse &amp; lateral movement. [60.3(e)(4)]</i>	3.1 A(6)(a) (1) & (2)	N/A - no V/VE Zones.		
(b) A registered professional engineer/architect shall develop/ review structural design, specs & plans; and shall certify that the design and methods of construction meet elevation and anchoring requirements at (e)(4)(i) and (ii). [60.3(e)(4)]	3.1 A(6)(b)	N/A - no V/VE Zones.		
(c) Have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls. Such enclosed space shall be useable solely for parking, building access, or storage. [60.3(e)(5)]	3.1 A(6)(e) & (f)	N/A - no V/VE Zones.		
(d) All new construction is landward of the reach of mean high tide. [60.3(e)(3)]	3.1 A(6)(d)	N/A - no V/VE Zones.		
(e) Prohibit use of fill for structural support. [60.3(e)(6)]	3.1A(6)(g)	N/A - no V/VE Zones.		
(f) Prohibit alteration of sand dunes and mangrove stands which would increase potential flood damage. [60.3(e)(7)]	3.1A(6)(h)	N/A - no V/VE Zones.		

Item Description (Section reference to NFIP Regulations follows required Provisions.)	Model Location	State Review	FEMA Review	Comments
<p><b>60.3(c)</b> When final flood elevations and coastal high hazard areas have been provided on a community's FIRM, then all the above ordinance provisions for 60.3(a), 60.3(b) &amp; 60.3(c), and the following are required:  <b>NOTE:</b> If a community has both floodways and coastal high hazard areas, it must meet the requirements of both 60.3(d) &amp; 60.3(e)</p>				
<p><i>For numbers 43 and 44: if checked, then the provisions are NOT required.</i></p>		<input checked="" type="checkbox"/>		<p>Community requires elevation of all manufactured homes placed/substantially improved to the BFE (1986 regulations).</p>
<p>43. Require that manufactured homes placed or substantially improved within V1-30, VE, and V Zones, which meet one of the following location criteria, meet the V Zone standards in 60.3(e)(2) through (e)(7):</p> <ul style="list-style-type: none"> <li>i. outside a manufactured home park or subdivision;</li> <li>ii. in a new manufactured home park or subdivision;</li> <li>iii. in an expansion to an existing manufactured home park or subdivision;</li> <li>iv. on a site in an existing park which a manufactured home has incurred substantial damage as a result of flood. [60.3(e)(8)]</li> </ul>	<p>3.1 A(6)(i)</p>	<p>N/A - no V/VE Zones.</p>		
<p>44. In V1-30, VE and V Zones, require that manufactured homes to be placed or substantially improved in an existing manufactured home park to be elevated so that:</p> <ul style="list-style-type: none"> <li>i. the lowest floor is at or above the BFE, <u>or</u></li> <li>ii. the chassis is supported by reinforced piers no less than 36 inches above grade and securely anchored. [60.3(e)(8)(iv); 60.3(c)(12)]</li> </ul>	<p>3.1 A(6)(d)</p>	<p>N/A - no V/VE Zones.</p>		
<p>45. In V1-30, VE, and V Zones, all recreational vehicles to be placed on a site must be elevated and anchored <u>or</u> be on the site for less than 180 consecutive days <u>or</u> be fully licensed &amp; highway ready. [60.3(e)(9)]</p>	<p>3.1 A(6)(d)(2)</p>	<p>N/A - no V/VE Zones.</p>		

**Additional Comments:** Use this section to provide additional comments on the above provisions, including the specific provision location, or to make general comments on the ordinance.

- Recommendations for higher standards:
1. Increase freeboard (10.15A&B) to at least 1.5 feet.
  2. Define critical facilities (e.g. - emergency services, schools, evacuation centers, medical facilities, senior care centers, hazardous material or fuel storage, etc.) and prohibit them in the SFHA and/or 0.2% (500 year) flood zone.
  3. Empower the county to identify and enforce ordinance in local flood hazard areas not on FEMA maps (e.g. - areas known to flood, but not on FIRM).
  4. Add a cumulative damage section to substantial damage/improvement (e.g. - damage/improvement over 5 years that exceeds 50% of value).
  5. Require SFHA standards in 0.2% (500 year) floodplain.
  6. Require Elevation Certificates for all new construction/substantial improvement.
  7. Restrict Hazardous Materials or Fuels in SFHA (see critical facilities in #2 above).
  8. Limit uses in Floodway to non-structural (e.g. - lawns, non-structural agriculture use, parking, trails, boat launches, etc.)
  9. Lower Subdivision BFE requirement (10.20D) to less than fifty lots/five acres (e.g. - 25 lots, 2 acres).
  10. Enact a Shoreline Recreational Zoning District in identified SFHA areas along major rivers - see Grayson County, VA example in their ordinances, Article 3.8.
  11. Restrict encroachment in Special Floodplain District to less than .1 foot rise (10.18) (down from NFIP minimum of 1 foot).

**Higher Standards:** Use this section to identify higher standards and provide additional comments, including the specific provision location.

<input checked="" type="checkbox"/> Freeboard: <input style="width: 50px; text-align: center;" type="text" value="1"/> feet	<input type="checkbox"/> Lower Threshold for Subdivision Proposals or other Developments <input style="width: 50px; text-align: center;" type="text"/> lots/acres	10.14K - fences must be drop-down or suspended cable and must be parallel to waterway. 10.19 - County reserves the right for H&H for any development in A Zone.
<input type="checkbox"/> Coastal A Zone	<input type="checkbox"/> Cumulative Substantial Improvement <input type="checkbox"/> Repetitive Loss (Cumulative Substantial Damage) <input type="checkbox"/> Setbacks <input type="checkbox"/> Hazardous Materials Restrictions <input type="checkbox"/> Limiting Below BFE Enclosures <input type="checkbox"/> Lower Threshold for Substantial Damage <input type="checkbox"/> Community Identified Flood Hazard Areas <input type="checkbox"/> Require EC and FP Certificates <input type="checkbox"/> Permit Review by Others	
<b>Prohibitions</b> <input type="checkbox"/> Fill <input type="checkbox"/> New Construction <input type="checkbox"/> Floodway Development <input type="checkbox"/> Recreational Vehicles <input type="checkbox"/> Manufactured Homes <input type="checkbox"/> Limit Critical Facilities <input type="checkbox"/> Prohibit Critical Facilities <input type="checkbox"/> Prohibit Critical Facilities <input type="checkbox"/> Subdivision of Floodplain <input type="checkbox"/> Structures in Floodplain <input type="checkbox"/> Encroachment that causes > 0.1 foot Rise		

APPENDIX A - ZONING

ARTICLE 10. GENERAL FLOODPLAIN DISTRICT FP

10.1 *Purpose.*

This ordinance is adopted pursuant to the authority granted to localities by Va. Code §15.2 – 2280. The purpose of these provisions is to prevent the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and necessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

- A. Regulating uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies.
- B. Restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding.
- C. Requiring all those uses, activities, and developments that do occur in flood-prone districts to be protected and/or flood-proofed against flooding and flood damage.
- D. Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

10.2 *Applicability.*

These provisions shall apply to all lands within the jurisdiction of Nelson County and identified as being in the 100-year floodplain by the Federal Insurance Administration.

10.3 *Compliance and liability.*

- A. No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this ordinance and any other applicable ordinances and regulations, which apply to uses within the jurisdiction of this ordinance.
- B. The degree of flood protection sought by the provisions of this ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by manmade or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that districts outside the floodplain district or that land uses permitted within such district will be free from flooding or flood damages.
- C. Records of actions associated with administering this ordinance shall be kept on file and maintained by the Floodplain Administrator.
- D. This ordinance shall not create liability on the part of Nelson County or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

**Comment [CBK1]:** Need citation of statutory authority – see Model Ordinance 1.1.

Need section for administration – see Model Ordinance Article 2.

FEMA reviewers will need to see adoption date and date ordinance went into effect as well as signatures of officials certifying this adoption. See Model Ordinance Article VII.

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**Deleted:** Planning and Zoning Director

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### 10.4 *Abrogation and greater restrictions.*

This ordinance supersedes any ordinance currently in effect in flood prone districts. However, any underlying ordinance shall remain in full force and effect to the extent that its provisions are more restrictive than this ordinance.

### 10.5 *Severability.*

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this ordinance. The remaining portions shall remain in full force and effect and for this purpose, the provisions of this ordinance are hereby declared to be severable.

### 10.6 *Penalties.*

- A. Any person who fails to comply with any of the requirements or provisions of this ordinance or directions of the Floodplain Administrator or any other authorized employee of Nelson County shall be guilty of a misdemeanor and subject to the penalties as provided in Section 15-2 of the Zoning Ordinance.
- B. In addition to the above penalties, all other actions are hereby reserved, including an action of equity for the proper enforcement of this ordinance. The imposition of a fine or penalty for any violation of, or noncompliance with, this ordinance shall not excuse the violation or noncompliance to permit it to continue, and all such persons shall be required to correct or remedy such violations or noncompliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this ordinance may be declared by the Board of Supervisors to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this ordinance.

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### 10.7 *Definitions*

For the purpose of this Article, words and terms are defined as follows:

**Base flood:** The flood having a one percent chance of being equaled or exceeded in any given year.

**Base Flood Elevations (BFE):** The Federal Emergency Management Agency designated one hundred (100)-year water surface elevation. The water surface elevation of the base flood in relation to the datum specified on the community's Flood Insurance Rate Map. For the purposes of this ordinance, the one hundred (100) year flood or 1% annual chance flood.

**Basement:** Any area of the building having its floor sub-grade (below ground level) on all sides.

**Board of Zoning Appeals:** The board appointed to review appeals made by individuals with regard to decisions of the zoning administrator in the interpretation of this ordinance.

Comment [CBK2]: Include definitions from model ordinance glossary

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**Building:** Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or equipment of any kind.

**Critical facilities:** Structures, improvements, or uses that, by virtue of their importance to the community and/or their sensitivity to the risks of flooding, are prohibited from being located within any Special Flood Hazard Area. Critical facilities include but are not limited to: emergency services and rescue squads, schools, medical facilities, senior care centers, evacuation centers, hazardous materials or fuel storage, and other similar improvements and uses. See 10.14 and 10.15.

**Development:** Any man made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

**Drop-down Fence:** A fence design that gives way under the pressure of flood flows to lay flat on the ground, and which can be re-erected after the flood.

**Elevated building:** A non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, or columns (posts and piers).

**Encroachment:** The advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

**Existing construction:** For the purposes of determining rates, structures for which the "start of construction" commenced before August 1, 1978. "Existing construction" may also be referred to as "existing structures."  
**O2010-4**

**Existing manufactured home park or subdivision:** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.  
**O2010-4**

**Expansion to an existing manufactured home park or subdivision:** The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).  
**O2010-4**

**Flood or flooding:**

- (a) A general and temporary condition of partial or complete inundation of normally dry land areas from:
- (1) The overflow of inland or tidal waters.
  - (2) The unusual and rapid accumulation or runoff of surface waters from any source.
  - (3) Mudslides (i.e. mudflows) which are proximately caused by flooding as defined in paragraph (a) (2) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of

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water and deposited along the path of the current.

- (b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or by some similarly unusual and unforeseeable event which results in flooding as defined in (a) (1) of this definition.

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*Flood-prone area:* Any land area susceptible to being inundated by water from any source.

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*Flood Insurance Rate Map (FIRM):* An official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

*Flood Insurance Study (FIS):* An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudflow and/or flood-related erosion hazards.

*Floodplain:*

- (a) A relatively flat or lowland area adjoining a river, stream or watercourse which is subject to partial or complete inundation;
- (b) An area subject to the unusual and rapid accumulation or runoff of surface water from any source.

*Flood-proofing:* Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

*Floodway:* The designated area of the floodplain required to carry and discharge flood waters of a given magnitude. For the purposes of this ordinance, the floodway shall be capable of accommodating a flood of the 100-year magnitude.

*Freeboard:* A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization in the watershed.

*Highest adjacent grade:* The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

*Historic structure:* Any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;
- (c) Individually listed on a state inventory of historic places in states with historic

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- preservation programs which have been approved by the Secretary of the Interior; or
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
- (1) By an approved state program as determined by the Secretary of the Interior; or

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Directly by the Secretary of the Interior in states without approved programs. *Lowest floor:* The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Federal Code 44CFR §60.3.

*Manufactured home:* A structure subject to federal regulations which is transportable in one or more sections, is eight (8) body feet or more in width and forty (40) body feet or more in length in the traveling mode, or is three hundred twenty (320) or more square feet when erected on site, is built on a permanent chassis, is designed to be used as a single family dwelling, with or without a permanent foundation when connected to the required facilities, and includes the plumbing, heating, air conditioning and electrical system contained in the structure.

*Manufactured home park/subdivision:* A parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale. **O2010-4**

*New construction:* For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after August 1, 1978 (the effective date of the initial FIRM) and includes any subsequent improvements to such structures. For floodplain management purposes new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures. **O2010-4**

*New manufactured home park or subdivision:* A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community. **O2010-4**

*Recreational vehicle:* A vehicle which is:

- (a) Built on a single chassis;
- (b) Four hundred (400) square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck; and
- (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or season use.

*Special flood hazard area:* The land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year as determined in Section 10.8.A.1 of this ordinance. **O2010-4**

*Start of construction:* The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first

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placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration on any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

*Structure:* For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. **O2010-4**

*Substantial damage:* Damage of any origin sustained by a structure whereby the cost of restoring the structure to its predamaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

*Substantial improvement:* Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures, which have incurred "structural damage" regardless of the actual repair work performed. The term does not, however, include either:

- (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or
- (2) any alteration of a "historic structure", provided that the alteration will not preclude the structures continued designation as a "historic structure".

*Suspended cable fence:* A steel cable or chain suspended across the waterway between two secured posts. From the cable a fence made of galvanized chain, chain mesh, galvanized mesh or prefabricated fencing or netting is attached. The suspended cable remains taut during the flood while the flood gate fence remains flexible and rises with the flow. Some variations of the flood gate fence have foam or plastic floats at the bottom of the fence to aid in flotation on the surface of the flood flow.

*Violation:* The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Code of Federal Regulations, Title 44: Emergency Management and Assistance, Part 60-Criteria For Land Management and Use, Subpart A-Requirements for Land Management Regulations, Sec. 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

*Watercourse:* A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

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### 10.8 *Establishment of Floodplain Districts*

#### A. *Description of districts.*

1. *Basis of districts.* The various floodplain districts shall include special flood hazard areas. The basis for the delineation of these districts shall be the Flood Insurance Study (FIS) and the Flood Insurance Rate Maps (FIRM) for Nelson County, prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated June 18, 2010 and any subsequent revisions or amendments thereto.

The boundaries of the Special Flood Hazard Area and Floodplain Districts are established as shown on the Flood Insurance Rate Map which is declared to be a part of this ordinance and which shall be kept on file at the Nelson County Planning and Zoning office.

2. The Floodway District is delineated, for purposes of this ordinance, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the one hundred (100)-year flood without increasing the water surface elevation of that flood more than one (1) foot at any point. The areas included in this District are specifically defined in Table 4 of the above-referenced Flood Insurance Study and shown on the accompanying Flood Insurance Rate Map.
3. The Special Floodplain District shall be those areas identified as an AE Zone on the maps accompanying the Flood Insurance Study for which one hundred (100)-year flood elevations have been provided.
4. The Approximated Floodplain District shall be those areas identified as an A or A99 Zone on the maps accompanying the Flood Insurance Study. In these zones, no detailed flood profiles or elevations are provided, but the one hundred (100)-year floodplain boundary has been approximated. For these areas, the one hundred (100)-year flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available. Where the specific one hundred (100)-year flood elevation cannot be determined for this area using other sources of data, such as the U.S. Army Corps of Engineers Flood Plain Information Reports, U.S. Geological Survey Flood-prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this elevation in accordance with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the governing body.

## APPENDIX A - ZONING

### B. *Overlay concept.*

1. The floodplain districts described above shall be overlays to the existing underlying districts as shown on the Official Zoning Ordinance Map, and as such, the provisions for the floodplain districts shall serve as a supplement to the underlying district provisions.
2. Any conflict between the provisions or requirements of the floodplain districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the floodplain districts shall apply.
3. In the event any provision concerning a floodplain district is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

10.9 *Official Zoning Map.* The boundaries of the floodplain districts are established as shown on the Flood Insurance Rate Map dated June 18, 2010 which is declared to be a part of this ordinance and which shall be kept on file at the Nelson County Planning and Zoning office.

10.10 *District boundary changes.* The delineation of any of the floodplain districts may be revised by the Board of Supervisors where natural or manmade changes have occurred and/or where more detailed studies have been conducted or undertaken by the U.S. Army Corps of Engineers or other qualified agency, or an individual documents the need for such change. However, prior to any such change, approval must be obtained from the Federal Insurance Administration.

10.11 *Interpretation of district boundaries.* Initial interpretations of the boundaries of the floodplain districts shall be made by the [Floodplain Administrator](#). Should a dispute arise concerning the boundaries of any of the districts, the Board of Zoning Appeals shall make the necessary determination. The person questioning or contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.

10.12 *Submitting Technical Data.* A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but no later than six months after the date such information becomes available, a community shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.

10.13 *Permit and Application Requirements.*

- A. *Permit requirement.* All uses, activities, and development occurring within any floodplain district, including placement of manufactured homes, shall be undertaken only upon the issuance of a Special Use Permit. Such development shall be undertaken only in strict compliance with the provisions of the ordinance and with all other applicable codes and ordinances, such as the Virginia Uniform Statewide Building Code

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## APPENDIX A - ZONING

(VA USBC) and the Nelson County Subdivision Regulations. Prior to the processing of any permit application the Floodplain Administrator shall review the application to ensure the proposed development is reasonably safe from flooding. Prior to the issuance of any permit the Floodplain Administrator shall require all applications to include compliance with all applicable state and federal laws. Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodway of any watercourse, drainage ditch, or any other drainage facility or system.

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**Comment [CBK3]:** Needs to include permit review to ensure development is 'reasonably safe from flooding'

- B. *Alteration or relocation of watercourse.* Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction a permit shall be obtained from the U.S. Corps of Engineers, the Virginia State Water Control Board, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). Furthermore, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Division of Soil and Water Conservation (Department of Conservation and Recreation), and the Federal Insurance Administration.
- C. *Site plans and permits applications.* All applications for Special Use Permit for development in the floodplain district and all building permits issued for the floodplain shall incorporate the information contained in subparagraph 1., 2., 3., 4., and 5. and the Floodplain Administrator may require the applicant to furnish any and all of the following information in subparagraphs 6. through 8. As deemed necessary for determining the suitability of the particular site for the proposed use, the following is required:
1. Eight (8) copies of a site plan, drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, flood proofing measures, and the relationship of the above to the location of the channel, floodway, and the flood protection elevation.
  2. For structures to be elevated, the elevation of the lowest floor (including basement).
  3. For structures to be flood proofed (nonresidential only), the elevation to which the structure will be flood proofed.
  4. The elevation of the 100-year flood.
  5. Topographic information showing existing and proposed ground elevations.
  6. A typical valley cross section showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross sectional areas to be occupied by the proposed development, and high water information.
  7. Plans (surface view) showing elevations or contours of the ground; pertinent structure, fill, or storage of all proposed and existing structures on the site; location and elevations of streets, water supply, sanitary facilities; photographs showing existing land uses and vegetation upstream and downstream, soil types, and other pertinent information.
  8. Specifications for building construction and materials, flood proofing, filling, dredging, grading, channel improvement, storage of materials, water supply, and sanitary facilities.

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## APPENDIX A - ZONING

### 10.14 *General Standards*

The following provisions shall apply to all permits:

- A. New construction and substantial improvements shall be according to the VA USBC, and anchored to prevent flotation, collapse or lateral movement of the structure.
- B. Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable State anchoring requirements for resisting wind forces.
- C. New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- D. New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
- E. Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- F. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- G. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
- H. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

In addition to provisions A. – H. above, in all special flood hazard areas, these additional provisions shall apply:

- I. Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction a permit shall be obtained from the U. S. Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). Furthermore, in riverine areas, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and the Federal Insurance Administrator.
- J. The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.
- K. Fences shall be installed parallel to a waterway. When a fence crosses a waterway, it shall be designed as a drop-down fence or a suspended cable fence.
- L. No Special Use Permit or Variance shall be granted for any proposed critical facilities as defined by this ordinance within any Special Flood Hazard Area (SFHA). See 10.15-E.
- M. No Special Use Permit or Variance shall be granted for the storage of hazardous materials for any time period longer than 30 days within any SFHA. See 10.15-F.
- N. No Special Use Permit or Variance shall be granted for the placement of any non-native fill materials (such as fly ash or other waste by-products) within the SFHA. Only locally-borrowed mineral materials may be used as fill within the SFHA, and all such uses must first obtain the necessary permit approval as required by this ordinance.

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### 10.15 *Specific Standards*

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In all special flood hazard areas where Base Flood Elevations have been provided in the Flood Insurance Study or generated according to Section 10.18, the following provisions shall apply:

#### A. Residential Construction

New construction or substantial improvement of any residential structure (including manufactured homes) shall have the lowest floor, including basement, elevated eighteen (18) inches or more above the Base Flood Elevation.

Comment [CBK4]: RECOMMENDED

Increase freeboard to at least 18 inches.

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#### B. Non-Residential Construction

New construction or substantial improvement of any commercial, industrial, or non-residential building (or manufactured/mobile home) shall have the lowest floor, including basement, elevated eighteen (18) inches or more above the Base Flood Elevation. Buildings located in all A1-30, AE, and AH zones may be flood-proofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the BFE plus one foot are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification, including the specific elevation (in relation to mean sea level) to which such structures are flood-proofed, shall be maintained by the Floodplain Administrator.

Comment [CBK5]: RECOMMENDED

Increase freeboard to at least 18 inches.

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#### C. Elevated Buildings – Space Below the Lowest Floor

Fully enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation shall:

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Comment [CBK6]: Recommend changing to "Space Below the Lowest Floor" to avoid confusion See Model Ordinance 4 3C

1. Not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator);
2. Be constructed entirely of flood resistant materials below the regulatory flood protection elevation;
3. Include, in Zones A, AO, AE, and A1-30, measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet the following minimum design criteria:
  - a. Provide a minimum of two openings on different sides of each enclosed area subject to flooding;
  - b. The total net area of all openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
  - c. If a building has more than one enclosed area, each area must have openings

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to allow floodwaters to automatically enter and exit;

- d. The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade;
- e. Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions;
- f. Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.

### D. Standards for Manufactured Homes and Recreational Vehicles

1. All manufactured homes placed, or substantially improved, on individual lots or parcels, in expansions to existing manufactured home parks or subdivisions, in a new manufactured home park or subdivision or in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood, must meet all the requirements for new construction, including the elevation and anchoring requirements in Section 10.13 A. and B. and Section 10.15 A.
2. All recreational vehicles placed on sites must either:
  - a. be on the site for fewer than 180 consecutive days;
  - b. be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions); or,
  - c. meet all the requirements for manufactured homes in Section 10.13 and Section 10.15 D.

In addition, the following higher standards which go beyond National Flood Insurance Program minimum requirements shall apply to all Special Flood Hazard Areas, pursuant to 44 CFR 60.1(d):

### E. Higher Standards and Critical Facilities.

For some activities and uses, even a slight chance of flooding poses too great a threat to public health, safety, and welfare. Critical facilities, as defined in this ordinance, are examples of such activities and uses which require special regulation. Therefore, critical facilities are prohibited from being constructed or operated within a SFHA. The following list of critical facilities provides examples of uses or improvements which are prohibited:

1. Structures or facilities that produce, use, store, or transport highly volatile, flammable, explosive, toxic, and/or water-reactive materials.
2. Hospitals, nursing homes, or other housing likely to have occupants who may not be sufficiently capable of avoiding injury or death during a flood.
3. Police stations, fire departments, rescue squads, and/or emergency operations centers and equipment storage facilities which are needed for flood response

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**Comment [TMP7]:** This clause ("or transport") was added to these recommendations by staff and is not explicitly listed in the VA DCR "Guidance for Local Floodplain Ordinances in VA" document

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APPENDIX A - ZONING

activities before, during, and after a flood.

- 4. Public and private utility facilities that are vital to maintaining or restoring normal services to flooded areas before, during, and after a flood.

F. Higher Standards and Hazardous Materials.

Some items and products are extremely hazardous and vulnerable to flood conditions, and would pose an unacceptable risk to public health, safety, and welfare during flooding. Therefore, the following hazardous materials are prohibited as follows:

- 1. The storage of Acetone, Ammonia, Benzene, Calcium carbide, Carbon disulfide, Celluloid, Chlorine, Hydrochloric acid, Magnesium, Nitric acid, Oxides of nitrogen, Phosphorus, Potassium, Prussic acid, Sodium, and/or Sulfur is prohibited in any and all SFHA.
- 2. The storage of Acetylene gas containers, Storage tanks, Lumber/buoyant items, Gasoline, Charcoal/coal dust, Petroleum products, and/or Natural gas for any time period longer than 30 days is prohibited in any and all SFHA.

10.16 *Standards for the Floodway District*

The following provisions shall apply within the Floodway District:

- A. Encroachments, including fill, new construction, substantial improvements and other developments are prohibited unless certification such as hydrologic and hydraulic analyses (with supporting technical data) is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator.

Development activities which increase the water surface elevation of the base flood may be allowed, provided that the property owner first applies and obtains the following:

- 1. Receives an endorsement from the State's Floodplain Program Engineer;
- 2. Receives a Special Use Permit from The Nelson County Board of Zoning Appeals for a conditional Flood Insurance Rate Map and floodway revision; and
- 3. Receives the approval of the Federal Emergency Management Agency.
- B. If Section 10.19 is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Article.
- C. The placement of manufactured homes (mobile homes) is prohibited, except in an existing manufactured homes (mobile homes) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring, elevation, and encroachment standards are met.

10.17 *Permitted Uses in the Floodway District.* The following non-structural uses and activities

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Comment [TMP8]: This specific hazardous material ("Natural gas") was added to these recommendations by staff and is not explicitly listed in the VA DCR "Guidance for Local Floodplain Ordinances in VA" document

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## APPENDIX A - ZONING

are permitted, provided they are in compliance with the provisions of the underlying area and are not prohibited by any other ordinance and provided that they do not require structures, fill, or storage of materials or equipment:

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- A. Agricultural uses, such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.
- B. Public and private recreational uses and activities, such as parks, day camps, picnic grounds, golf courses, boat launching and swimming area, horseback riding and hiking trails, wildlife and nature preserves, game farms, fish hatcheries, trap and skeet game ranges, and hunting and fishing areas.
- C. Accessory residential uses, such as yard areas, gardens, play areas, and pervious loading areas;
- D. Accessory industrial and commercial uses, such as yard areas, pervious parking and loading areas, airport landing strips, etc.
- E. Flood warning aids and water measurement devices.

### 10.18 *Standards for the Special Floodplain District*

The following provisions shall apply within the Special Floodplain District:

Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within the areas of special flood hazard, designated as Zones A1-30 and AE on the Flood Insurance Rate Map, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within Nelson County.

Development activities in Zones A1-30, AE, and AH, on the Nelson County's Flood Insurance Rate Map which increase the water surface elevation of the base flood by more than one foot may be allowed, provided the property owner first applies, with the Nelson County Board of Zoning Appeal's endorsement, for a conditional Flood Insurance Rate Map revision, and receives the approval of the Federal Emergency Management Agency.

### 10.19 *Standards for Approximated Floodplain*

The following provisions shall apply with the Approximated Floodplain District:

The Approximated Floodplain District shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a one hundred (100)-year floodplain boundary has been approximated. Such areas are shown as Zone A on the maps accompanying the Flood Insurance Study. For these areas, the one hundred (100)-year flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available.

Where the specific one hundred (100)-year flood elevation cannot be determined for this area using other sources of data, such as the U. S. Army Corps of Engineers Floodplain Information Reports, U. S. Geological Survey Flood-Prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this elevation. For development proposed in the approximate floodplain the applicant must use technical methods that correctly reflect currently accepted technical concepts, such as point on

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boundary, high water marks, or hydrologic and hydraulic analyses. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator.

The Floodplain Administrator reserves the right to require a hydrologic and hydraulic analyses for any development.

When such base flood elevation data is utilized, the lowest floor shall be elevated to one foot above the base flood elevation. During the permitting process, the Floodplain Administrator shall obtain:

1. the elevation of the lowest floor (including the basement) of all new and substantially improved structures; and,
2. the elevation (in relation to mean sea level) to which the structure has been flood-proofed if the structure has been flood-proofed in accordance with the requirements of this article

### 10.20 *Standards for Subdivision Proposals*

- A. All subdivision proposals shall be consistent with the need to minimize flood damage;
- B. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- C. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards; and
- D. Base Flood Elevation data shall be provided for subdivision proposals and other development proposals (including manufactured home parks and subdivisions) that exceed eleven lots or forty acres, whichever is the lesser.

### 10.21 *Design criteria for utilities and facilities.*

- A. *Sanitary sewer facilities.* All new or replacement sanitary sewer facilities and private package sewage treatment plants (including all pumping stations and collector systems) shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into the flood waters. In addition, they should be located and constructed to minimize or eliminate flood damage and impairment.
- B. *Water facilities.* All new or replacement water facilities shall be designed to minimize or eliminate infiltration of flood waters into the system and be located and constructed to minimize or eliminate flood damages.
- C. *Drainage facilities.* All storm facilities shall be designed to convey the flow of surface waters without damage to persons or property. The systems shall ensure drainage away from buildings and on site waste disposal sites. The Board of Supervisors may require a primarily underground system to accommodate frequent floods and a secondary surface system to accommodate large, less frequent floods. Drainage plans shall be consistent with local and regional drainage plans. The facilities shall be designed to prevent the discharge of excess runoff onto adjacent properties.
- D. *Utilities.* All utilities, such as gas lines, electrical and telephone systems being placed in flood prone areas should be located, elevated (where possible), and constructed to

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minimize the chance of impairment during a flooding occurrence.

- E. *Streets and sidewalks.* Streets and sidewalks should be designed to minimize their potential for increasing and aggravating the levels of flood flow. Drainage openings shall be required to sufficiently discharge flood flows without unduly increasing flood heights.

### 10.22 *Variations and Special Use Permits*

Variations and Special Use Permits shall be issued by the Board of Zoning Appeals upon:

- 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
- 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.

While the granting of variations generally is limited to a lot size less than one-half acre, deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases. Variations may be issued by the Board of Zoning Appeals for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the provisions of this section.

Variations may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of this section are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

In passing upon applications for Variations and Special Use Permits, the Board of Zoning Appeals shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:

- A. The danger to life and property due to increased flood heights or velocities caused by encroachments. No Special Use Permit or Variance shall be granted for any proposed use, development, or activity within any floodway district that will cause any increase in the Base Flood Elevation (BFE).
- B. The danger that materials may be swept on to other lands or downstream to the injury of others.
- C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- D. The susceptibility of the proposed facility and its contents to flood damage and effect of such damage on the individual owners.

## APPENDIX A - ZONING

- E. The importance of the services provided by the proposed facility to the community.
- F. The requirements of the facility for a waterfront location.
- G. The availability of alternative locations not subject to flooding for the proposed use.
- H. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- I. The relationship of the proposed use to the Comprehensive Plan and floodplain management program for the area.
- J. The safety of access by ordinary and emergency vehicles to the property in time of flood.
- K. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site.
- L. The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- M. No Special Use Permit or Variance shall be granted for any proposed critical facility within any Special Flood Hazard Area (SFHA) as established by 10.14 and 10.15-E.
- N. No Special Use Permit or Variance shall be granted for any proposed hazardous materials within any SFHA as established by 10.14 and 10.15-F.
- O. Such other factors which are relevant to the purposes of this ordinance.

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The Board of Zoning Appeals may refer any application and accompanying documentation pertaining to any request for a Special Use Permit or Variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.

Special Use Permits or Variances shall be issued only after the Board of Zoning Appeals has determined that Special Use Permit or Variance will be the minimum required to provide relief from any hardship to the applicant.

The Board of Zoning Appeals shall notify the applicant for a Special Use Permit or Variance, in writing, that the issuance of a Special Use Permit or Variance to construct a structure below the Base Flood Elevation: (a) increases the risks to life and property; and (b) will result in increased premium rates for flood insurance.

A record shall be maintained of the above notification as well as all Special Use Permits or Variance actions, including justification for the issuance of a Special Use Permit or Variance. Any Special Use Permit or Variance which is issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.

### 10.23 Existing Structures in Floodplain Districts

A structure or use of a structure or premises which lawfully existed before the enactment of these provisions but which is not in conformity with these provisions may be continued subject to the following conditions:

- A. Existing structures in the Floodway District shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed expansion would not result in any increase in the Base Flood Elevation.
- B. Any modifications, alteration, repair, reconstruction, or improvement of any kind to a

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structure and/or use, located in any floodplain area to an extent or amount of less than fifty (50) percent of its market value, shall be elevated and/or flood-proofed to the greatest extent possible.

- C. The modifications, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use, regardless of its location in a floodplain area to an extent or amount of fifty (50) percent or more of its market value, shall be undertaken only in full compliance with the provisions of this ordinance and the Virginia Uniform Statewide Building Code.

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10.24 Administration.

A. Designation of the Floodplain Administrator. The Nelson County Planning & Zoning Director (or authorized designee) shall be designated as the Floodplain Administrator and is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator. The Floodplain Administrator may:

- 1. Do the work themselves. In the absence of a designated Floodplain Administrator, the duties are conducted by the chief executive officer for Nelson County.
- 2. Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees.
- 3. Enter into a written agreement or written contract with another community or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.

B. Duties and Responsibilities of the Floodplain Administrator. The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

- 1. Review applications for permits to determine whether proposed activities will be located in the Special Flood Hazard Area (SFHA).
- 2. Interpret floodplain boundaries and provide available base flood elevation and flood hazard information.
- 3. Review applications to determine whether proposed activities will be reasonably safe from flooding and require new construction and substantial improvements to meet the requirements of these regulations.
- 4. Review applications to determine whether all necessary permits have been obtained from the Federal, State or local agencies from which prior or concurrent approval is required; in particular, permits from state agencies for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, structures), any alteration of a watercourse, or any change of the course, current, or cross section of a stream or body of water, including any change to the 100-year frequency floodplain of free-flowing non-tidal waters of the State.
- 5. Verify that applicants proposing an alteration of a watercourse have notified adjacent communities, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), and other appropriate agencies (VADEQ, USACE) and have submitted copies of such notifications to FEMA.

## APPENDIX A - ZONING

6. Advise applicants for new construction or substantial improvement of structures that are located within an area of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act that Federal flood insurance is not available on such structures; areas subject to this limitation are shown on Flood Insurance Rate Maps as Coastal Barrier Resource System Areas (CBRS) or Otherwise Protected Areas (OPA).
7. Approve applications and issue permits to develop in flood hazard areas if the provisions of these regulations have been met, or disapprove applications if the provisions of these regulations have not been met.
8. Inspect or cause to be inspected, buildings, structures, and other development for which permits have been issued to determine compliance with these regulations or to determine if non-compliance has occurred or violations have been committed.
9. Review Elevation Certificates and require incomplete or deficient certificates to be corrected.
10. Submit to FEMA, or require applicants to submit to FEMA, data and information necessary to maintain FIRMs, including hydrologic and hydraulic engineering analyses prepared by or for Nelson County, within six months after such data and information becomes available if the analyses indicate changes in base flood elevations.
11. Maintain and permanently keep records that are necessary for the administration of these regulations, including:
  - a. Flood Insurance Studies, Flood Insurance Rate Maps (including historic studies and maps and current effective studies and maps) and Letters of Map Change; and
  - b. Documentation supporting issuance and denial of permits, Elevation Certificates, documentation of the elevation (in relation to the datum on the FIRM) to which structures have been floodproofed, inspection records, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.
12. Enforce the provisions of these regulations, investigate violations, issue notices of violations or stop work orders, and require permit holders to take corrective action.
13. Advise the Board of Zoning Appeals regarding the intent of these regulations and, for each application for a variance, prepare a staff report and recommendation.
14. Administer the requirements related to proposed work on existing buildings:
  - a. Make determinations as to whether buildings and structures that are located in flood hazard areas and that are damaged by any cause have been substantially damaged.
  - b. Make reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct. Prohibit the non-compliant repair of substantially damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a building or structure to prevent additional damage.
15. Undertake, as determined appropriate by the Floodplain Administrator due to the circumstances, other actions which may include but are not limited to: issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged structures; coordinating with other Federal, State, and local agencies to assist with substantial damage determinations; providing owners of damaged structures information related to the proper repair of

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**APPENDIX A - ZONING**

damaged structures in special flood hazard areas; and assisting property owners with documentation necessary to file claims for Increased Cost of Compliance coverage under NFIP flood insurance policies.

16. Notify the Federal Emergency Management Agency when the corporate boundaries of Nelson County have been modified and:

- a. Provide a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to these regulations has either been assumed or relinquished through annexation; and
- b. If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.

17. Upon the request of FEMA, complete and submit a report concerning participation in the NFIP which may request information regarding the number of buildings in the SFHA, number of permits issued for development in the SFHA, and number of variances issued for development in the SFHA.

18. It is the duty of the Community Floodplain Administrator to take into account flood, mudslide and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use throughout the entire jurisdictional area of the Community, whether or not those hazards have been specifically delineated geographically (e.g. via mapping or surveying).

C. Use and Interpretation of FIRMs. The Floodplain Administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries. The following shall apply to the use and interpretation of FIRMs and data:

- 1. Where field surveyed topography indicates that adjacent ground elevations:
  - a. Are below the base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as special flood hazard area and subject to the requirements of these regulations;
  - b. Are above the base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the SFHA.
- 2. In FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified SFHAs, any other flood hazard data available from a Federal, State, or other source shall be reviewed and reasonably used.
- 3. Base flood elevations and designated floodway boundaries on FIRMs and in FISs shall take precedence over base flood elevations and floodway boundaries by any other sources if such sources show reduced floodway widths and/or lower base flood elevations.
- 4. Other sources of data shall be reasonably used if such sources show increased base

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## APPENDIX A - ZONING

flood elevations and/or larger floodway areas than are shown on FIRMs and in FISs.  
5. If a Preliminary Flood Insurance Rate Map and/or a Preliminary Flood Insurance Study has been provided by FEMA:

- a. Upon the issuance of a Letter of Final Determination by FEMA, the preliminary flood hazard data shall be used and shall replace the flood hazard data previously provided from FEMA for the purposes of administering these regulations.
- b. Prior to the issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data pursuant to Section 3.1.A.3. and used where no base flood elevations and/or floodway areas are provided on the effective FIRM.
- c. Prior to issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary base flood elevations or floodway areas exceed the base flood elevations and/or designated floodway widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.

D. Jurisdictional Boundary Changes. The County floodplain ordinance in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements for participation in the National Flood Insurance Program. Municipalities with existing floodplain ordinances shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards prior to annexation of any area containing identified flood hazards. If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.

In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 59.22 (a) (9) (v) all NFIP participating communities must notify the Federal Insurance Administration and optionally the State Coordinating Office in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area.

In order that all Flood Insurance Rate Maps accurately represent the community's boundaries, a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority must be included with the notification.

E. District Boundary Changes. The delineation of any of the Floodplain Districts may be revised by Nelson County where natural or man-made changes have occurred and/or where more detailed studies have been conducted or undertaken by the U. S. Army

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**APPENDIX A - ZONING**

Corps of Engineers or other qualified agency, or an individual documents the need for such change. However, prior to any such change, approval must be obtained from the Federal Emergency Management Agency. A completed LOMR is a record of this approval.

F. Interpretation of District Boundaries. Initial interpretations of the boundaries of the Floodplain Districts shall be made by the Zoning Administrator. Should a dispute arise concerning the boundaries of any of the Districts, the Board of Zoning Appeals shall make the necessary determination. The person questioning or contesting the location of the District boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.

G. Submitting Model Backed Technical Data. A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Federal Emergency Management Agency of the changes by submitting technical or scientific data. The community may submit data via a LOMR. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.

H. Letters of Map Revision. When development in the floodplain will cause or causes a change in the base flood elevation, the applicant, including state agencies, must notify FEMA by applying for a Conditional Letter of Map Revision and then a Letter of Map Revision. Example cases:

- Any development that causes a rise in the base flood elevations within the floodway.
- Any development occurring in Zones A1-30 and AE without a designated floodway, which will cause a rise of more than one foot in the base flood elevation.
- Alteration or relocation of a stream (including but not limited to installing culverts and bridges) 44 Code of Federal Regulations §65.3 and §65.6(a)(12)

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DEPARTMENT OF  
PLANNING & ZONING



PLANNING COMMISSION  
BOARD OF ZONING APPEALS

**To:** Chair and Members, Nelson County Planning Commission  
**From:** Tim Padalino | Planning & Zoning Director  
**Date:** January 19, 2016  
**Subject:** **BOS Referral of Zoning Ordinance Amendments – Article 18, Limited Industrial District (M-1)**

On January 12<sup>th</sup>, the Nelson County Board of Supervisors (BOS) acted to refer to the Planning Commission (PC) Zoning Ordinance Article 18 (“Limited Industrial District M-1”) for review and recommendations. The review is to determine what (if any) amendments might be appropriate, inclusive of the proper advertising and conducting of a public hearing; and to provide formal recommendations back to the BOS in the allotted time.

The BOS referral and requested review are essentially a question of whether the following use should be permissible in the Limited Industrial District M-1; and if so, if it should be permissible by-right or as a special use:

“Contractors’ equipment storage yard or plant, or rental of equipment commonly used by contractors”

That use is presently permissible by-right in the Industrial District, M-2, pursuant to Zoning Ordinance Article 9, Section 1-12. That use is not further defined in Article 2, Definitions.

Please refer to the enclosed BOS staff report (dated January 6) for more information; and please also refer to the enclosed memo from the County Administrator’s office (dated January 14) for further direction. Please also note that this issue is the Board’s response to staff’s recent (and ongoing) code enforcement activities involving real property in Nelson County; those code enforcement actions are currently on hold while the PC and BOS review the possible Zoning Ordinance text amendments and take action pursuant to the regulations applicable to the Limited Industrial (M-1) zoning district.

In conclusion, please contact me with any questions, concerns, or requests for assistance leading up to the January 27<sup>th</sup> Planning Commission review of these referred amendments. Thank you very much for your time and attention to this important subject.



To: Chair and Members, Nelson County Board of Supervisors

From: Tim Padalino | Planning & Zoning Director

Date: January 6, 2016

Subject: **Staff Comments for "Correspondence" Items on Jan. 12 BOS Meeting Agenda – Mrs. H. Goodwin (12/15/2015) and Mrs. E. Woodson (12/30/2015)**

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**[ Introduction ]:**

I have been asked by County Administrator Steve Carter to prepare a brief report for the two correspondence items pertaining to Planning & Zoning on your January meeting agenda. Please review the following summaries, comments, and recommendations for these two items (below).

**[ Correspondence from Mrs. Heather Goodwin – 12/15/2015 ]:**

This is the latest correspondence between myself (as Zoning Administrator) and Mrs. Goodwin (as attorney representing Mr. Gary Bryant, property owner of Tax Map Parcel #6-A-102D on Mill Lane in Afton, which is in violation of the Zoning Ordinance).

Mrs. Goodwin's correspondence ultimately seeks to establish "contractor's equipment storage yard" as a permissible use in the Limited Industrial District M-1. That land use is currently only a permissible use in Industrial District M-2. Mrs. Goodwin's request of the BOS to consider initiating a text amendment would remedy the zoning violation at Mr. Bryant's property, as the subject property is zoned M-1 and is currently the operational headquarters of Bryant Paving (which was previously determined to be a "contractor's equipment storage yard").

While it is my position that amending the Ordinance to resolve a zoning violation is typically not a good practice, it may be justified in this case. Specifically, my recommendation is as follows:

*Amend Zoning Ordinance Article 18, Limited Industrial District M-1, Section 3, to include "contractor's equipment storage yard, or rental of equipment commonly used by contractors" as a Use – Permissible by Special Use Permit only.*

As noted above, this particular land use is currently permissible in M-2, but not in M-1. In some cases, the use may be acceptable or appropriate in Limited Industrial District M-1; but it is also

possible that it may not be acceptable or appropriate in the M-1 district in other cases (depending on the scale of the operation and other property-specific and project-specific details).

Therefore, allowing this land use as a “special use” in M-1 gives property owners the opportunity to request a Special Use Permit from the BOS; but it doesn’t guarantee the property owner the right to use M-1 property for that land use (as it would be if it were made a “Use – permissible by-right”). Additionally, requiring a SUP for this type of land use in M-1 would allow the BOS to make case-by-case decisions about establishing conditions to any SUP approval, if the Board were to determine that there were property-specific or project-specific reasons for doing so.

In conclusion, please contact me with any questions or comments you may have pertaining to my recommendation to amend the Zoning Ordinance to establish “contractor’s equipment storage yard, or rental of equipment commonly used by contractors” as a “Use – Permissible by Special Use Permit only” in the Limited Industrial District M-1.

**[ Correspondence from Mrs. Elaine Woodson – 12/30/2015 ]:**

This correspondence seeks to initiate a text amendment to the Zoning Ordinance which would allow sheds, garages, and/or other structures (typically considered “accessory structures”) to become permissible (by-right) primary uses/structures.

This requested amendment would represent a significant departure from current County policies and from traditional County practices.

Currently, there is no limit to the number of sheds, outbuildings, garages, or other accessory structures which may be placed or constructed on a property – but only if a permissible primary use or structure already exists on the property. Commonly, the permissible primary use/structure is a dwelling, to which the other structures are permissible accessory uses/structures. There are numerous examples in most zoning districts of properties having both primary and accessory uses.

In my opinion, amending the ordinance to allow such sheds, outbuildings, or other garages without a permissible primary use or structure on the same parcel is not advisable. Allowing sheds and/or garages prior to establishing a primary use or structure may help certain individuals in certain instances, but it is not in the interest of the County at large.

Consider the following thoughts regarding the requested amendments; these attempt to take into account all possible scenarios (and not just the one current circumstance involving Mrs. Woodson):

- It would create conditions in which the shed or garage has an increased potential for being used as a dwelling (regardless of whether that is the initial intent, or not) – despite the structure not being compliant with all applicable Building Inspections and/or Health Department regulations. In essence, this concern is related to public health and safety, and more specifically the issues of sub-standard housing, child welfare, and at-risk seniors with fixed, limited, or no income.
- It would contribute to some (perhaps many) properties not being utilized for their “highest and best use,” which would in turn result in reduced aggregate property values and would negatively affect County tax revenues. If property owners are permitted to construct or place a

shed on a property in lieu of building a dwelling, cottage, or vacation house, that would ultimately impact the County's ability to fully realize potential tax revenues.

- It would represent an abrupt departure from deliberate County policies and established procedures. The ordinance is clearly written to prevent sheds, garages, and other such structures from being a permissible primary use. Consider (among other provisions) Article 14, Section 2 "Powers and Duties of Board of Zoning Appeals" Item 1a: *"To hear and decide applications for Special Use Permits to erect an accessory building prior to the construction of the primary building on the same parcel or lot."* This provision clearly shows that previous Nelson County Board of Supervisors, in their judgment and discretion, did not wish for sheds or garages to be permissible by-right as a primary use, but rather to only be permissible with a Special Use Permit issued by the Board of Zoning Appeals (a quasi-judicial body).

Therefore, with respect to those considerations, my recommendation is as follows:

*Do not amend the ordinance to allow sheds, outbuildings, garages, or other structures typically considered "accessory structures" to be permissible as a by-right primary use/structure.*

In my opinion, the only possible amendment which should be considered in regards to this issue would be to explicitly add "accessory building(s) prior to the construction of the primary building(s) on the same parcel or lot" as a "Use – Permissible with Special Use Permit only" to certain Articles, including Article 4 (Agricultural District A-1), and/or whichever other zoning districts the PC and BOS consider to be appropriate. Such an amendment would help to clarify the existing policy (which is currently only referenced in Article 14, "Board of Zoning Appeals"), but is not necessary.

**[Conclusion]:**

County staff will await BOS direction on how to proceed with regards to Mrs. Goodwin's correspondence and related code enforcement issues against Mr. Bryant; and with regards to Mrs. Woodson's correspondence and any possible amendment efforts related to sheds and garages.

Thank you for your time and attention to this report and to the subjects referenced herein. Please contact me with any questions or comments you may have regarding the correspondence and/or the subjects and recommendations contained in this staff report.



BOARD OF SUPERVISORS

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Deputy Clerk

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Director of Finance and  
Human Resources

14 January, 2016

To: T. Padalino, Director, Department of Planning and Zoning  
From: S. Carter, County Administrator  
Re: Planning and Zoning

Please be herewith advised of the following decisions by the Board of Supervisors from the Board's regular session on January 12, 2016:

**1. Spruce Creek Resort & Market/Averitt (SUPs 2015-10, 11, 2 and 13):** The four Special Use Permits were unanimously approved, including a condition that the permit holders have twenty-four months with which to initiate work on the subjects that encompass the approved SUPs. Please so notify the permit applicants of the Board's approval of the four SUPs (Mr. Richard Averitt, accompanied by his wife and the project's architectural consultant attended the public hearing on the SUPs and are aware of the Board's decision, subject to formal notification). Included with this communication are all of the subject documentation that were presented to the Board for review, including the January 5, 2016 letter from J. Kessler of VDOT advising on the project's Preliminary Transportation Assessment Report, as completed by the Timmons Group.

**2. Zoning Fees:** The Board of Supervisors directed that County staff continue to require the \$25.00 zoning permit fee for specific zoning permit types (the P&Z Department's memo on this subject, which was reviewed by the Board in making their decision, is attached for your reference). The question of whether or not additional formal action is required to affirm the \$25.00 fee is pending further review. The Department is, however, to proceed pursuant to the Board's decision.

**3. Zoning Ordinance Related Citizen Correspondences:** The Board of Supervisors acted as follows on citizen correspondences requesting amendments to the Zoning Ordinance:

**A) Ms. Heather Goodwin – Correspondence dated December 15, 2015:** The Board of Supervisors unanimously resolved (5-0) to refer to the Planning Commission, pursuant to §15.2-2285 of the Code of VA, a proposed amendment requested by letter received from Ms. Heather Goodwin (copy attached), as summarized by County staff, as follows: "Amend Zoning Ordinance Article 18, Limited Industrial District M-1, Section 3, to include "contractor's equipment and storage yard, or rental of equipment commonly used by contractors" as a Use – Permitted By Right." It is noted for clarification purposes that the Department of Planning and Zoning's report on this subject to the Board proposed that the requested amendment be considered as a Use – Permissible by Special Use Permit. However, as stated herein, Ms. Goodwin's proposed amendment seeks the use(s) described herein as a Use – Permitted by Right. The Board of Supervisors in deciding to refer the proposed amendment to the Planning Commission concurred that the Commission should consider the requested amendment as a Use-Permitted by Right rather than as proposed by County staff as a Use-Permissible by Special Use Permit. Please refer this subject to the Commission at the Department's earliest ability to do so.

**B) Ms. Elaine Woodson – Correspondence dated December 30, 2015:** Following review of Mrs. Woodson's correspondence (copy attached) submitting a request, "to modify Section 4-1 of the Nelson County Zoning Ordinance so that buildings such as garages and specifically sheds are recognized as a "use permitted by-right", the Board by consensus agreed that the proposed amendment was not appropriate and would not be referred to the Planning Commission. Please so advise the Commission.

The County Administrator's office will communicate the Board's decisions to Mrs. Goodwin and to Mrs. Woodson.

Please proceed on the above subjects, as delineated herein. I am available at your convenience should additional discussion or input be required and do appreciate your assistance and cooperation.

**Cc:** Board of Supervisors (Memo Only)  
C. McGarry  
Subject File