



NELSON COUNTY PLANNING COMMISSION

Meeting Agenda: June 24, 2015

General District Courtroom, 3rd Floor, Nelson County Courthouse, Lovingston

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

– Review of Meeting Minutes from May 27th meeting

– **Public Hearing Items:**

○ **Special Use Permit #2015-03 – “Dance Hall” / Jose & Elpidia Gaona**

Consideration of a Special Use Permit application seeking approval to operate a “dance hall” in Lovingston pursuant to §8-1-3a of the Zoning Ordinance.

Specifically, the applicant wishes to operate a dance hall on Friday nights and Saturday nights, remaining in operation until 2:00AM the following morning(s). The requested dance hall would be co-located with “La Michoacana Authentic Mexican Taqueria & Restaurant” (which is a permissible by-right use, and which received County zoning approval via Minor Site Plan #2015-03 on May 27, 2015). The subject property is located in Lovingston at 37 Tanbark Place, and is further identified as Tax Map Parcels #58B-A-36 and #58B-A-37. These parcels are zoned Business (B-1) and owned by Mr. Joe Lee McClellan.

– **Other Agenda Items:**

- Referral of proposed ordinance amendments re: “brewery” and “limited farm brewery”
- Final draft of proposed ordinance amendments re: “off-farm retail ag sales”
- Introduction of possible ordinance amendments re: “floodplain development” Special Use Permits
- Presentation: “Rural Long Range Plan (RLRP) update” – Mr. Will Cockrell, Program Manager, Thomas Jefferson Planning District Commission

– **Other Business:**

- Other (as determined by Planning Commission members / as applicable)

– **Adjournment**

– **Next Meeting:** July 22, 2015 | 7:00pm

NELSON COUNTY PLANNING COMMISSION
MEETING MINUTES
May 27, 2015

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

Absent: Commissioner Mike Harman

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.

Approval of Minutes – March 25, 2015 and April 22, 2015: Chair Proulx asked if there were any further changes to the revised March 25th meeting minutes.

Commissioner Allen noted on page 2 – Joyce Burton’s comments – 1st paragraph: change hope to “hopes” and remove “that” (first sentence).

Commissioner Allen noted on page 6 – Commissioner Goad’s comments – 1st paragraph (after motion) – remove be and replace with “the” (first sentence); insert a colon (:) after the word condition (third sentence).

Commissioner Allen made a motion that the March 25, 2015 Planning Commission meeting minutes be approved with the following corrections as noted; vote 5-0.

Chair Proulx asked if there were any further changes to the revised April 22nd meeting minutes.

Commissioner Allen noted on page – Other Business – 3rd paragraph: change ...not do a retail operation to “not for a retail operation” (fourth sentence).

Commissioner Allen made a motion that the April 22, 2015 meeting minutes of the Planning Commission be approved with the following corrections as noted; vote 5-0.

1. Rezoning #2015-01 “Mountain Sports / Joseph B. “Sepp” Kober:

Before the discussion began, Mr. Saunders stated that there seems to be a question about a conflict of interest for him. He noted that he contacted County Staff two or three days ago, and they do not feel that it is a conflict. He noted that he would remain quiet unless there was something that he disagrees with.

Mr. Padalino stated on March 27th, 2015 the Planning Department received an application from Mr. Sepp Kober, representing Mountain Sports, seeking a rezoning of Tax Map Parcel(s) #22-A-19 and #22-A-18 from the current Residential (R-1) to Business (B-1). He noted that the applicant noted that, “This request is being submitted to determine the feasibility of applicant’s future intended use prior to purchase.” He also noted that the application included documented permission from both current property owners.

Mr. Padalino noted that the applicant provided a brief narrative explaining the intent and purpose of this rezoning application:

Our reasoning for this [rezoning] request is fourfold:

1. *The “Mountain Sports” store would offer for sale a complete line of outdoor sports equipment and clothing.*

2. *The Mountain Sports store would provide shopping that fits well with the other venues along the 151 corridor. It is also projected to provide 25 local jobs.*
3. *The site is in the center of what is a mixed use commercial area. It would fit well with the other businesses in the vicinity.*
4. *The plan is designed to provide minimal environmental impact and storm water runoff generation. The parcels slope gently from southwest to northeast with a slightly steeper spot in the middle that drops to the flood plain. The relative flatness of the front allow storm water to soak in rather than run off.*

Mr. Padalino stated that the subject properties are located in the Nellysford area (Central District). He then stated that he needed to provide an important clarification regarding the two subject properties that was brought to his attention the day before the meeting. The County's GIS parcel data represents the property boundaries of these two parcels incorrectly – and the error is rather substantial. Mr. Padalino showed an image of a recorded plat of the correct parcel (see attached); which shows both parcels having road frontage. He also explained that he does not have access to change the County's GIS data. He also stated that to the applicant's credit, they did depict the parcels correctly on the Minor Site Plan submitted with the application. Mr. Padalino then apologized to both the applicant and the Planning Commission (PC) for not catching the discrepancy sooner, and for the ways that error affected his staff report.

Mr. Padalino noted that two subject properties are on the southern-most edge of a Residential (R-1) District. Across the road is the Stoney Creek area, which is a Residential Planned Community (RPC) District (further designated on the approved Master Plan as a "Multiple Use – Village Center" designation). There are also some adjoining properties zoned Agricultural (A-1). Additionally, there are properties that are designated as Service Enterprise (SE-1) and Business (B-1) zoning that are located within close proximity in Nellysford proper.

Mr. Padalino noted that Parcel 18 (in the rear) contains the 100-year floodplain of the South Fork of the Rockfish River; and that there is no development on this parcel, it being just forested river bottom and floodplain. He indicated that as you leave Route 151 and enter the property, there is a descending vertical grade change of approximately six (6) feet. Beyond that gradual drop off, the area's wet soils, standing water, tree species, and other features are characteristic of what you would expect in river bottoms. He also noted that those river bottom features extend beyond the area officially designated as floodplain, and generally occur closer to the highway than the outermost limits of the 100-year floodplain.

Mr. Padalino also noted that Parcel 19 contains a circa 1878 dwelling/boardinghouse that is very close to the road.

Mr. Padalino explained that in reviewing this request, he referenced the Nelson County Comprehensive Plan, and more specifically, the Future Use Land Plan. He further explained that Nellysford is designated as Nelson County's only "Neighborhood Mixed Use Development Model." He shared the following excerpts from the Future Land Use Plan's "Neighborhood Mixed Use Development Model" section:

- "A central gathering place able to fulfill the diverse needs and interests of nearby residents and visitors to the county, all within a focused, walkable and identifiable place."
- "Appropriate "Neighborhood Mixed Use" land uses include...a variety of commercial establishments...Over time, a neighborhood mixed use community may expand to offer a wider variety of retail and civic uses."
- "Multifamily dwellings, commercial, and office buildings may be up to three stories in height. ... Parking lots should be placed behind buildings or in other areas where the impact of the lot on the neighborhood is minimized. ... Dark sky lighting and unobtrusive signage is appropriate for all new development."

Mr. Padalino stated that it appears that the Future Land Use Plan strongly supports this type of proposed land use. He noted that the Minor Site Plan submitted by the applicant would have to be followed up by a Major Site Plan if the rezoning is approved, and that many of the project's specific details would not be fully planned or designed until that time. He reminded the Commissioners that rezoning applications only require a Minor Site Plan as a tool for providing County officials and members of the public with a preliminary sense of how the site would be developed.

Mr. Padalino summarized the Site Plan Review Committee Members' comments from the April 8th meeting as follows:

- The proposed facility would be 8,000 square foot (SF) retail facility with approximately 6,000 SF dedicated to public floor area and 2,000 SF would be for operations and not open to the public. The proposed facility would have a commercial entrance with a total of 32 parking spaces located on the side and rear of the building. The front façade of the building would be visible from the Rockfish Valley Highway (which is a designated Scenic Byway). Sheet 2 shows how both properties have frontage along Route 151, with Parcel 18 extending all the way down to the Rockfish River (in the rear).
- The applicant provided a conceptual rendering of the proposed facility to help illustrate what they are envisioning. He also indicated that the applicant noted that the existing frame building may be retained, or may be demolished. The applicant is undecided on how to proceed. The structure's historic character, reuse potential, and poor condition were all discussed by the Site Plan Review Committee members.
- Mr. Jeff Kessler of the Virginia Department of Transportation (VDOT) identified some additional information that was needed. That information was submitted on May 11th, and was provided to VDOT on May 12th. Mr. Padalino noted that at 5:07 p.m. on the day of this meeting, the following additional comments were received from VDOT:
 - The reported distance of 725 feet to the closest adjoining commercial entrance/street intersection (Adial Road) still exceeds the 470 feet minimum spacing requirement.
 - The proposed construction of an 8,000 SF sporting goods store involves only a portion of the developable area; therefore, additional traffic impacts may occur with the continued development of the remaining land. Subsequent traffic studies may be required by VDOT if future expansion or change in trip generation occurs.
 - Nelson County should also consider the potential impacts on future commercial access along this section of the Route 151 corridor for the adjoining parcels.
 - If this commercial entrance were approved and built, this would affect the commercial access to the three parcels located to the south (between this property and Adial Road) and the six or so parcels located immediately to the north along the east side of Route 151. In anticipation of continued commercial development of the corridor, we recommend the consideration of requiring a shared "joint" commercial entrance that would serve both this property and the adjoining parcels as well.
- Ms. Alyson Sappington of the Thomas Jefferson Soil & Water Conservation District noted that a stormwater management plan does not seem to be a necessity, due to the fact that the project would only contain 28,000 SF of surface disturbance. An Erosion & Sediment Control Plan will be necessary; that would be typically handled during the Major Site Plan submittal and review process.

Mr. Padalino stated that with considerations of the existing zoning and land use patterns, and with consideration of the Future Land Use Plan, Staff recommends that Tax Map Parcel(s) 18 and 19 be rezoned to Business (B-1) to a depth of 350 feet from the centerline of Route 151. He recommends this depth to avoid the low-lying wet areas and the designated floodplain; which, in his professional opinion, are not suitable for development.

The Commissioners and Staff then discussed the difference between wetlands and floodplain. It was clarified that Parcel 18 contains a designated 100-year floodplain, but that some of the information presented by the Planning & Zoning Director also included informal reference to river bottom features such as wet soils, standing water, etc. They also discussed the proposed three hundred fifty (350) feet distance from the centerline; Mr. Padalino stated it appears that depth would be almost identically in line with the rear property boundary of Parcel 19, and would accommodate the proposed development footprint as shown on the Minor Site Plan.

Sepp Kober: Mr. Kober stated that, “he is real excited to try to put this project through, and to put a nice looking building up, and to add some commerce to the Nellysford property area.” He is happy to answer any questions they may have.

Commissioner Russell asked Mr. Kober for some clarification on what exactly he is asking for, with regards to the B-1 rezoning request. Mr. Kober stated that he is looking to make a successful project with minimal impact, which is why part of the parking was located behind or beside the building. He also indicated that keeping the beauty of this area is very important to him. He noted that lighting would be downward and signage would also be of minimal impact.

Commissioner Russell noted that in Steve Key’s letter, Mr. Kober is asking for rezoning from Residential (R-1) to “retails sales”; and yet, has chosen to ask for a straight B-1 rezoning. Commissioner Russell then asked Mr. Kober if he had purposely done this. Mr. Kober said he had not, and that his goal is to go from Residential to a commercial application (retail sales). He said he is willing to have a discussion with the PC and BOS about limiting the future possibilities for the subject properties while still obtaining zoning approval to conduct retail sales. Mr. Kober also indicated that he is willing to utilizing a shared entrance.

The Commissioners’ and Staff then discussed the procedural details required of all conditional rezoning applications. It was determined that this application does not meet the requirements to be considered as a “conditional rezoning” request pursuant to Zoning Ordinance Article 16, Section 4 – and that a new application would have to be submitted before Mr. Kober’s request could formally be processed and reviewed as a conditional rezoning.

The Commissioners also expressed and discussed their concerns with recommending a full rezoning of the subject properties. Mr. Kober concluded that he, “understands your concerns; but hopes to set the bar high for the Nellysford area with something that has a tasteful look, [using] a lead-by-example approach.”

Chair Proulx opened the public hearing at 7:32 p.m.

Donna Small, Nellysford: Ms. Small stated that her mom owns the adjacent property. She said they always thought that you should not have a B-1 in R-1 district. She asked what happens when the applicant gets B-1 with no conditions, and then they decide not to do a sporting store. This opens the door for a lot of things that would not be good for the neighborhood. Ms. Small noted that the Planning Commission should remember that families still live in Nellysford, and stated that she thinks having six-and-a-half (6.5) acres of B-1 would have a negative effect on the neighborhood.

Carole Saunders, Realtor representing seller: Ms. Saunders indicated that the sellers do not live in Nelson County but do have considerable ties to Nelson. She noted that the house has been sitting idle and empty until around 2010 or late 2009. She was approached in February 2011 to list the property; at that time it was 2.9 acres. In

walking the property with one of the owners (Judy Tharpe); she explained that it looked like a smaller tract than what was showing on the tax maps. Ms. Saunders further explain that in 1969, Mr. Hughes (who owned both parcels 18 and 19) was in need of money, and sold this 4.5 +/- acres to his neighbor, Claude Dodd. There was no survey done on the remainder. Ms. Saunders stated that she doesn't think a survey was done on the 4.5 acres; but it was stepped off and measured, and was in the deed as to the accurate footage from Route 151 and from the stakes that were placed there. Ms. Saunders indicated that parcel 19 was surveyed more recently, which revealed the listed 2.9 acres was actually 1.27 acres. She noted that before the property was listed, the owners came to Mr. Fred Boger about having the properties rezoned. Ms. Saunders stated that owners were very excited that Mr. Kober approached them with an offer and shared their same feelings: that this property is destined for Business (B-1) or any commercial use. She also noted that at the time of the listing, the assessment of the property was \$152,300.00 and in 2014 it was increased to \$213,600.00. She further noted that the value of the house on the property was going down but the land value is going up. Ms. Saunders stated that she and the family believe that this property is destined to be Business (B-1) or similar zoning that would accommodate Mr. Kober's needs.

Sara Ray, Nellysford: Ms. Ray stated that she lives across the river from where the proposed project would be. She stated that she purchased her property in 1987. She stated that, *"this particular business would be out of character with the character of Nellysford."* She stated that it seems like a huge building compared to what else is in the area. She is concerned with how that will impact other things in the area. For example, she expressed concern that the lights in the parking lot might be bright enough to hit her house, in the middle of the night, which she does not want. She would like to know what is being done with the rest of the property if they only intend to use a small part. She noted that she does not feel positive about this request and proposed project.

Barbara Funke, Nellysford: Ms. Funke stated that she came tonight because she was *"on the fence"* about the proposal. She stated that Nelson County could use more jobs, and what they are proposing seems like an architecturally correct structure that would enhance Nellysford. She stated that, *"what I am hearing is a lot of concern and I would be in total agreement that you wouldn't want to have a used parking lot, trailer sales, or something like that."* She asked the PC if there is a way that they could do a conditional approval and have certain things removed from the B-1 zoning. She also stated that there is concern regarding access to properties on either side of these. She asked if there was a way that this could be designed that would allow access to the other homes, should they choose to develop their property.

Chair Proulx noted that she received a call from a lady that lives down the road, north of Ms. Small's property. She wanted to register her concern and her objection. She is worried about lights, activity, and similar disruptions if this was opened up to any kind of business, after having bought in to what she considers a residential area.

Commissioner Russell noted that she too had received a phone call from someone who lives on the other side of the river. That person is not in favor of this rezoning; felt that the shopping in Nellysford is sufficient; and does not want to see it expanded.

Chair Proulx closed the public hearing at 7:41 p.m.

The Commissioners discussed some of their concerns with recommending a split property zoning, as had been recommended by Staff. Mr. Padalino acknowledged that properties with split zoning have created some confusion in other pre-existing scenarios and with administering the ordinance in the past. The difference with this recommendation is that a specific depth or dimension could be established from the centerline of the public right-of-way, and it wouldn't be ambiguous or vague.

Mr. Padalino then commented on the Commissioner's concerns with the straight B-1 zoning, and the procedures for conditional rezoning requests. He noted that a conditional rezoning must be initiated voluntarily by the applicant, starting with the applicant proffering away certain allowable uses or proffering other conditions during the pre-application phase. He also stated that it seems that the Zoning Ordinance allows for the governing body to make modifications or changes to a rezoning application, if it were appropriate and more limiting in nature or not more permissive in nature. Mr. Padalino referenced Zoning Ordinance Section 16-2-3.

Commissioner Allen asked if the applicant could still move forward with this application and voluntarily attach conditions or proffers at this phase of the application review process. Mr. Padalino stated that Zoning Ordinance Section 16-4 requires for conditional rezoning applications to be processed as such from the time of the application being filed, and that Mr. Kober cannot add proffers or other conditions at this time. However, if the PC has legitimate concerns with particular B-1 uses, they could recommend that the Board of Supervisors strike those potential B-1 uses from the rezoning request, but otherwise approve the application, and thereby effectively arrive at a conditional rezoning. He stated that this approach appears to be possible per the Zoning Ordinance, and represents an opportunity to allow the application to move forward while also addressing the PC's concerns.

Commissioner Russell asked Mr. Padalino why it was suggested that only a portion of the properties be rezoned, since almost half of it is undevelopable due to water issues. Mr. Padalino stated that it is technically possible to develop land in a designated wetland or designated floodplain; but it is very expensive and is not a regulatory certainty. He noted that as far as general suitability, there is a gradual six (6) to eight (8) foot vertical drop on the property and the back is "swampy" and not as suitable for commercial development.

Mr. Tim Hess commented that he walked the property with Mr. Steve Key. All the information (elevations, etc.) are reflected on the Site Plan, and that area is not suitable for development. Chair Proulx stated that the Minor Site Plan is not definitive and the applicants are not bound by the terms of the Minor Site Plan in any way.

Commissioner Russell asked the applicant if this was a project that would be constructed five (5) or six (6) years down the road. Mr. Kober stated that he would like to get going on the project. He has a contract on the property and pushing this back a month would be an issue. He asked what could be done to work around these issues. The Commissioners discussed the possible outcomes with the applicant: take a vote and either recommend approval or recommend denial to the BOS; or the applicant may withdraw and submit a new conditional rezoning application. Chair Proulx asked Mr. Kober if he would like the PC to vote; or if he would like to take another route. Mr. Kober stated that he would like for the PC to vote on the application.

Commissioner Russell made the following motion:

With respect to the application by Mr. Joseph Kober to rezone property 2950 Rockfish Valley Highway in Nellysford; consisting of Tax Map Parcels #22-A-19 and #22-A-18 from Residential (R-1) to Business (B-1). It is the recommendation of the Planning Commission that this application be denied. Commission Goad provided a second; the vote 3 -1 in favor of the motion, with Commissioner Allen voting against the motion. Mr. Saunders abstained.

2. Special Use Permit #2015-02: "Halls Family Auto Clinic" / Donald and Cindy Hall

Mr. Padalino stated this was a Special Use Permit application seeking approval to operate a public garage in the Agriculture (A-1) district. The subject property is on Mill Lane in Afton, directly behind Patrick Brothers off of Route 151. The zoning map indicates that the property has Limited Industrial (M-1) zoning behind it; with Residential (R-1) and Business (B-1) zoning in close proximity to the north.

Mr. Padalino noted that in regards to the existing structure, it has been operated as a public garage since at least 1997 (according to County records). The property owner, Mr. Gary Bryant, currently has a Conditional Use Permit (CUP) for this property that authorizes the operation of a public garage. However, the BOS passed that CUP with conditions that only Mr. Bryant could operate a garage there; and now the applicants, Donald and Cindy Hall, wish to operate a public garage there. It's an existing public garage but they do not have permission to do it under the terms and conditions of the previous permit. Mr. Padalino also noted that when the Halls first attempted to solicit regulatory guidance from Nelson County staff, there was some miscommunication among different County departments; and despite that communication breakdown, the Halls have been exceptionally cooperative and patient since being informed that their existing public garage operations represented a zoning violation. Mr. Padalino then recommended that the PC recommend approval of the SUP for Hall's Family Auto Clinic.

The Commissioners and Staff discussed if the PC could recommend approval of the SUP for the Halls to use the existing space for a garage, or if they could recommend approval of the SUP for use of the entire building. It was determined that the PC could make a recommendation to the BOS as they see fit; and the BOS could put conditions on a SUP, if there is a reason for doing so.

Chair Proulx opened the public hearing at 8:14 p.m. No comments were given and the public hearing was closed at 8:14 p.m.

Mr. Padalino noted that Mr. Gary Bryant, in his capacity as the property owner, submitted documentation that provides his permission for this SUP application. It was also noted that Mr. Hall had not signed the application, but was listed as a co-applicant; he then came forward and signed the application.

Commissioner Russell made a motion that the Planning Commission recommends that the Board of Supervisors approves a Special Use Permit for Donald and Cindy Hall for property that they are leasing at 47 Mill Lane in Afton; to enable them to operate a public garage. This permit will cover the entire building. Commissioner Allen provided the second; the vote 4-0 with Mr. Saunders abstaining.

Other Agenda Items:

1. Minor Site Plan #2015-03 – “La Michoacana Restaurant” / Jose Gaona:

Mr. Padalino stated the applicant is requesting approval to operate a restaurant, which is a by-right use in the Business (B-1) district. Even though this is a by-right use, it does require a Site Plan. Mr. Padalino stated that Mr. Edgar Gaona, representative for the applicants, has noted that the application is seeking approval for “La Michoacana” restaurant, which would be open from 11AM – 10PM Monday – Saturday (as proposed). He also noted that the property owner, Mr. Joe Lee McClellan has signed the application, and has been involved in previous meetings. The subject property(s) are a total of 1.26 acres, and are zoned Business (B-1).

Mr. Padalino summarized the Site Plan Review Committee Members' comments from the May 13th meeting, which are as follows:

- Director of Planning & Zoning: Mr. Padalino noted that this is for a proposed restaurant and the applicant has also submitted a separate SUP application for a “dance hall”, which will be discussed at next month's PC meeting. He noted that the proposed renovation and reuse would include 3,150 SF of restaurant floor

area; 1,080 SF of food prep area; and 2,260 SF of private dining area as an accessory to the restaurant use (confirmed upon legal review). He further noted that the 2,260 SF private dining area would be utilized as a dance hall (if approved). There are 48 parking spaces, including some dedicated handicap spaces. However, it is worth noting that this property is in the “exempt” area; there are no minimum parking requirements in the downtown area of Lovingston. On the original proposed site plan, there was no proposed land disturbance. However, a dumpster and a solid fence need to be installed and that would require “minimal land disturbance.” Regarding exterior lighting, the applicant has provided updated information (including an illumination schedule) that the existing light poles will be reused and outfitted with LED light fixtures; additional poles are proposed along Main Street; and a few LED lights will be mounted on the building to make sure the parking lot is properly illuminated. Regarding signage, the existing signs will be removed. The existing sign structure on the corner of the property will be reused and the old sign will be replaced with a new one for La Michoacana.

- Mr. Jeff Kessler of Virginia Department of Transportation (VDOT) noted that the road is in poor condition, but he did not have any requirements or requests.
- Ms. Alyson Sappington of the Thomas Jefferson Soil & Water Conservation District (TJSWCD) did not have any comments since there is no site disturbance proposed. The dumpster update may require “minimal land disturbance.”
- Mr. Tom Eick of the Virginia Department of Health (VDH) noted that a food license permit would need to be obtained, and the pertinent applications were provided to the applicant during the meeting. He clarified that no minimal number of commodes are required by the VDH, but hand sink requirements will need to be met.
- Mr. George Miller of the Nelson County Service Authority noted that the existing 4” gravity sewer line is adequate. The existing 1” water meter for this business would probably be sufficient, but it ultimately depends on the floor plan and building uses, specifically depends on the “fixture count” of total number of sinks, commodes, etc. A cross-connection and back-flow prevention device to be installed on the water line. A grease arrester (trap) needs to be installed to protect the sewer lines. He noted that something minor under the sink should take care of that, by way of a 40-gallon trap. If there are problems with that, they can discuss the need for an underground tank.
- Mr. David Thompson, Nelson County Building Official noted that, “Asbestos certification for any permit application is required from the owner of the building for any renovations.” He also stated that, “A permit application is required for a change of use group (M) to a use group (A-2) with plans drawn by a registered design professional licensed by the Commonwealth of Virginia. The application must be submitted to the Building Inspections Department for the required permits prior to any alterations / renovations / changes, etc. for the A-2 use group.” He further noted that final inspections and certificate of occupancy are required prior to using it for private or public uses.
- Commissioner Russell noted the issue with the dumpster and the need to have it in a safe and accessible place, and the need to have it fully screened. Mr. Padalino noted that those issues were addressed on the revised Site Plan.

Massie Saunders, Engineer for the project: Mr. Saunders clarified that the property lines that are shown on GIS are incorrect. He noted that the correct property lines are shown on the Site Plan. He also noted that the site disturbance has been discussed at length; whether the dumpster will be put in initially or later; and it will be fully screened with some type of fencing so that it is in compliance with the ordinance. They will change the fixtures on the existing lights to lights that are directed downwards to try to stay dark sky as much as possible to be compliant. The light fixtures on the poles are of a similar setup. He clarified that the “Old Town Hardware” sign is not on the property, and that it would be removed.

Commissioner Russell made a motion that the Planning Commission approve Minor Site Plan #2015-03 for a restaurant to be located at 37 Tanbark Plaza in Lovington, as evidenced by Site Plan dated March 31, 2015, revised May 14, 2015. Commissioner Allen provided the second; the vote 5-0.

Other (as determined by Planning Commission members / as applicable):

Mr. Padalino noted that he included a copy of the Monthly Department Report for the BOS in this month's PC meeting materials packet the Planning Commission's reference. He noted that he has recently reformatted the Monthly Department Reports, which now give an updated snapshot of all active permits, applications, and other administrative reviews and activities. Mr. Padalino also provided a copy of his Scoping Period comments that were submitted (April 28th) to FERC for the PCs' review and reference.

Mr. Padalino provided updates on items that the PC had recommended to the BOS; those are as follows:

- All four (4) of the AFD applications were enacted; three expansions and one new creation.
- Stormwater Management Program amendments for the VSMP program were adopted.
- Artist Community amendments were adopted.
- BZA Appeal #2015-01 for the approval of landscape plan condition for Zenith Quest's approved Site Plan was dismissed, for a lack of legal standing.
- BZA Appeal #2015-02, will be heard on Monday, June 1st at 7:30 PM. Appeal is in relation to the Family Lane (private road) condition. He noted that Mr. Payne provided a written statement (June 26th) that the applicant does not have legal standing.

Mr. Padalino noted that there are issues with lodging and brewery definitions that are currently in the Zoning Ordinance. He noted there are other items (alcoholic and non-alcoholic) that are "brewed" that need to be added to the definition.

Board of Supervisors Report: Supervisor Saunders provided the following:

1. Budget is being finalized.
2. Final inspection on the Blue Ridge Tunnel is scheduled for next Thursday.
3. Closed out the Blue Ridge Walking Trail.
4. Still on schedule to bid out for the next phase of the addition to the Courthouse.
5. Working on Phase 2 and Phase 3 of the Blue Ridge Tunnel. Asked the State if both Phases (2 & 3) could be combined; looks like that may happen.

Commissioner Russell asked if Mr. Padalino had heard from Mr. Penny. Mr. Padalino stated that he had not. It was his understanding that he wanted to postpone through April. Commissioner Russell asked to get updated copies of both the Zoning Ordinance and Subdivision Ordinance.

Adjournment:

At 8:40 P.M. Commissioner Allen made a motion to adjourn.

Respectfully submitted,

Stormy V. Hopkins
Secretary, Planning & Zoning



DEPARTMENT OF
PLANNING & ZONING

PLANNING COMMISSION
BOARD OF ZONING APPEALS

To: Chair and Members, Nelson County Planning Commission
From: Tim Padalino | Director | Department of Planning & Zoning
Date: June 15, 2015
Subject: Public Hearing for SUP #2015-03 (“Dance Hall”) – Mr. Jose & Mrs. Elpidia Gaona

Application Summary

<u>Site Address / Location:</u>	37 Tanbark Plaza / Lovingson / East District
<u>Tax Parcel(s):</u>	#58-A-36 and #58-A-37 ... (Please see maps on pages 5-8)
<u>Parcel Size:</u>	1.26 acres (total)
<u>Zoning:</u>	Business (B-1)
<u>Applicant:</u>	Mr. Jose Gaona and Mrs. Elpidia Gaona
<u>Request:</u>	Approval of Special Use Permit #2015-03 / application made pursuant to § 8-1-3A in connection with recently-approved Minor Site Plan #2015-03
<ul style="list-style-type: none"> • <i>Completed Application Received On:</i> April 24th, 2015 • Mr. Edgar Gaona, representative for the applicants, has noted that the SUP application is seeking County approval to operate a “dance hall” on Friday nights and Saturday nights, remaining in operation until 2:00AM the following morning(s). • The requested dance hall would be co-located with “La Michoacana Authentic Mexican Taqueria & Restaurant” (which is a permissible by-right use, and which received County zoning approval via Minor Site Plan #2015-03 on May 27th, 2015) • The application includes documented permission from the property owners: Mr. Joe Lee McLellan signed the affidavit on the application. 	

Subject Property Location, Characteristics, and Other Information:

The subject property is located at the intersection of Main Street and Thomas Nelson Highway. The subject property(s) also fronts along a small private road (Tanbark Plaza). The subject property(s), comprising a total of 1.26-acres, are located in the Business (B-1) zoning district. The existing building was formerly a grocery store and is currently vacant. *Please see maps on pages 5-8.*

Site Plan Review Committee Meeting and Comments:

Please note that the Planning Commission approved Minor Site Plan #2015-03 for the proposed redevelopment of the existing vacant structure for use as a restaurant. Since this proposed

dance hall would be located within the same structure and would simply utilize the space currently designated as a “private dining area,” the approved site plan was determined to be acceptable for this proposed “dance hall” use. Therefore, it does not need to go through the Site Plan Review Committee process a second time.

However, a summary of the original review comments from the May 13th Site Plan Review Committee meeting are included for your reference are as follows:

- Director of Planning & Zoning:

- The Minor Site Plan is being reviewed for a proposed restaurant, which is a permissible by-right use. However, an approved site plan is required for a by-right land use in the Business District per §8-5 and §13-1-1.
- The proposed renovation and reuse would include 3,150 SF of restaurant area; 1,080 SF of food prep area; and 2,260 SF of private dining area as an accessory to the restaurant use.
 - Note: The 2,260 SF private dining area would eventually be utilized as a dance hall, pending County review of Special Use Permit #2015-03.
- 48 parking spaces, including dedicated handicap parking spaces, would be available. There are no minimum parking requirements per §12-7-3.
- There is “minimal land disturbance” proposed for the installation of a dumpster and solid fence beside the existing greenhouse. *Please see Notes 9, 10, and 11 on the site plan.*
- Details for exterior lighting and signage include the following:
 - The existing sign structure in the western corner of the property will be reused for a new “La Michoacana” sign.
 - The existing “SUPERMARKET” sign on the end of the building (facing Main Street) will be removed and eventually replaced by lettering for “La Michoacana.”
 - An additional 24 SF sign is proposed over the entrance to the restaurant near the northern end of the building.
 - The existing light poles will be reused and outfitted with LED light fixtures. One existing pole will be moved slightly to avoid conflict with an existing canopy tree; it will also be outfitted with an LED light fixture.
 - Two new light poles with LED lighting fixtures are proposed in the parking lot along the frontage of Main Street.
 - Several LED light fixtures are proposed for the existing building, some of which would replace existing lights that are inefficient and which currently cast glare out from the building.

- VDOT: Mr. Jeff Kessler had extremely brief review comments, and did not have any requirements or requests regarding the proposed use.

- TJSWCD: Mrs. Alyson Sappington of the Thomas Jefferson Soil & Water Conservation District did not attend the meeting and did not provide review comments, as no new development or surface disturbance was being proposed at the time of her original review.

- Update: The installation of a dumpster and solid fence beside the existing greenhouse would require “minimal land disturbance.” *Please see Note 11 on the site plan.*

- VDH: Mr. Tom Eick of the Nelson County Health Department noted that a food license permit would need to be obtained, and the pertinent applications were provided to Mr. Edgar Gaona

during the meeting. Mr. Eick noted that VDH has no required minimum number of commodes, but hand sink requirements will need to be met.

- Nelson County Service Authority: Mr. George Miller noted the following:
 - The existing 4” gravity sewer line would be adequate.
 - The existing 1” water meter for this business would probably not be a problem, either – but it ultimately depends on the floor plan and building uses, regarding the “fixture count” of total number of sinks, commodes, etc.
 - A cross-connection and back-flow prevention device would need to be installed on the water line.
 - A grease arrester (trap) would need to be installed on the sewer line. He recommended the installation of a 40-gallon grease trap under the sink, but noted that an underground tank might potentially be required depending on the performance of the smaller grease trap under the sink(s).
- Nelson County Building Code Official: Mr. David Thompson provided written review comments:
 - “Asbestos certification for any permit application is required from the owner of the building for any renovations.”
 - “A permit application is required for a change of use group (M) to a use group (A-2) with plans drawn by a registered design professional licensed by the Commonwealth of Virginia. The application must be submitted to the Building Inspections Department for the required permits prior to any alterations / renovations / changes, etc. for the A-2 use group.”
 - “Final inspections and a certificate of occupancy for a restaurant / dance hall must be obtained from the Nelson County Inspections Department for the existing building prior to opening or operations for private or public use of the occupancy classification.”
- Planning Commission Representative: Commissioner Russell inquired about the location of the dumpster and the method by which it would be screened. The approved site plan includes a dumpster located beside the existing greenhouse, which would be fully screened by a solid fence. The installation of the dumpster pad and fence would require “minimal land disturbance.” *Please see Note 11 on the site plan.*

Conclusion:

Per Zoning Ordinance Article 12, Section 3-2, the following criteria must be evaluated when reviewing a request for a Special Use Permit:

- 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;
- 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;
- 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; and
- 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 opinion of Staff is that the proposed “Dance Hall” use, as proposed in the application materials

for SUP #2015-03 and as depicted on Minor Site Plan #2015-03, seems to be satisfactory relative to evaluation criteria C and D. The proposed use appears to be questionable with respect to evaluation criteria A (“shall not change the community character”) and evaluation criteria B (“shall be in harmony with by-right uses and shall not affect adversely the use of neighboring property”).

Because downtown Lovington – which is officially designated as a Historic District – is relatively quiet in the evenings and at night, and because the village of Lovington is substantially residential in nature, the County must give careful attention to operational issues (and potential public nuisances) related to project details such as the noise from amplified music, increased vehicular traffic, and increased social / recreational activities during late night and/or early morning hours within the village of Lovington.

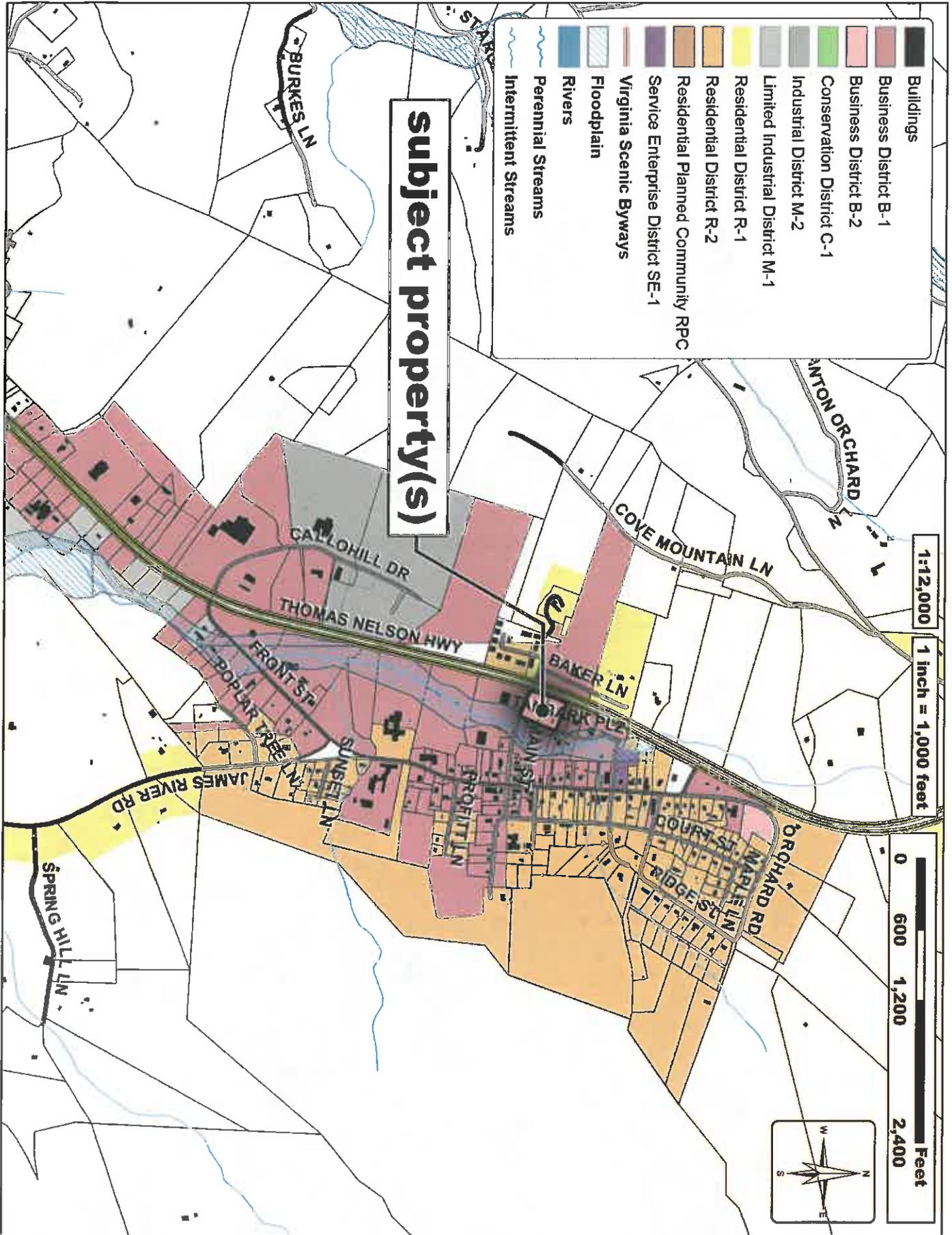
Specifically, the applicant has requested County approval to operate the proposed “dance hall” on Friday nights and Saturday nights, remaining in operation until 2:00AM the following morning(s). This particular proposed “dance hall” use, combined with the proposed pattern of operations, could:

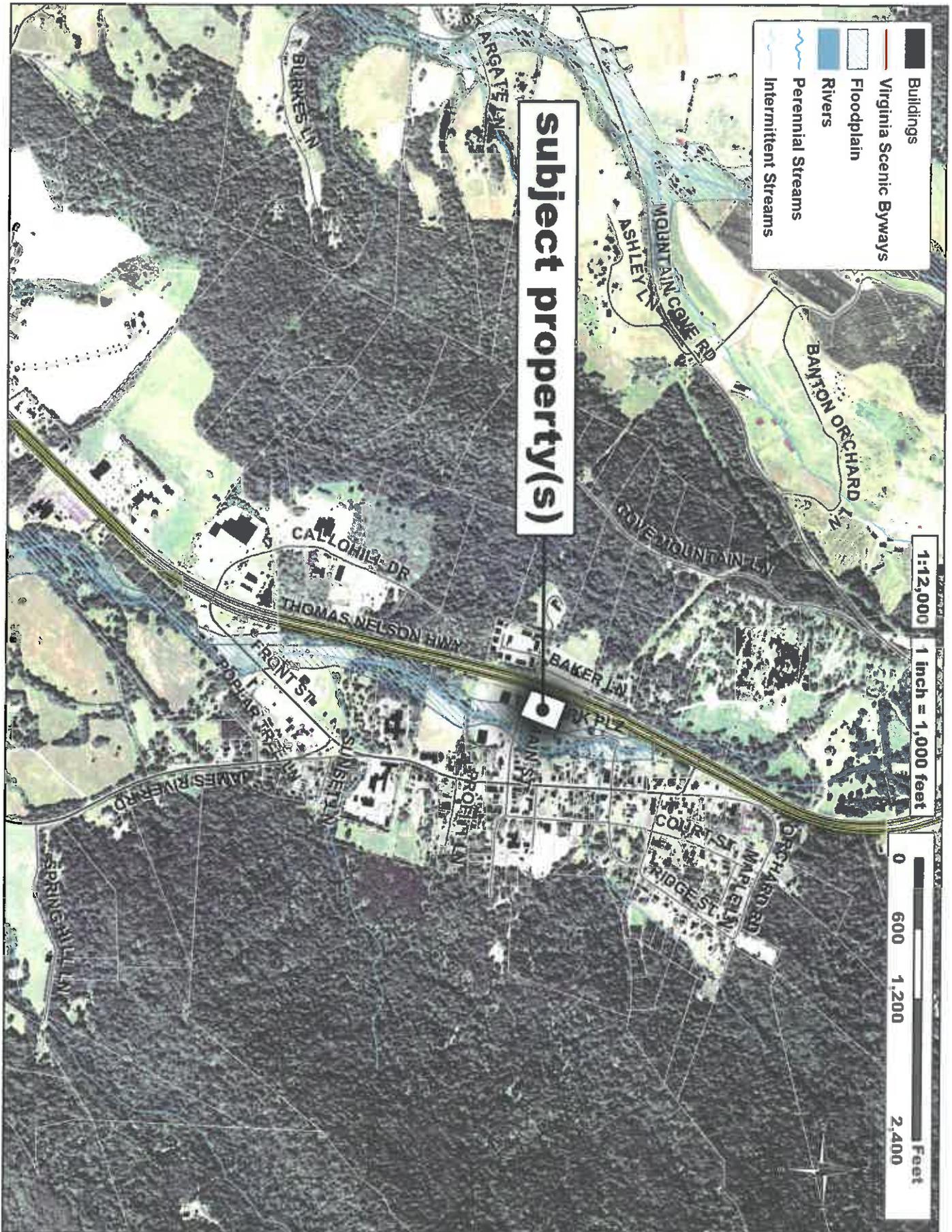
- Potentially alter the character of the village of Lovington; and/or
- Potentially be unharmonious with proximal by-right uses (including the multi-family dwelling units in the Residential (R-2) zoning district); and/or
- Potentially affect adversely the use of neighboring properties, including residential district properties.

With respect to those concerns associated with the evaluation criteria, and with respect to the details of the “dance hall” proposal as provided by the applicant, Staff cannot recommend a straight approval of SUP #2015-03. Instead, staff recommends approval for the “dance hall” special use with some combination of the following conditions, subject to the Planning Commission’s review and determination:

- Approval is conditional upon the applicant documenting a strategy for ensuring that the Nelson County Noise Control Ordinance is complied with, that the Nelson County Sheriff’s Office reviews and endorses said strategy, and that such strategy for compliance is implemented and maintained;
- Approval is conditional upon Dance Hall operations being permitted no later than 11:00PM on any night of operation;
- Approval is conditional for 18 months from the issuance of a Certificate of Occupancy, at which time the SUP will be reviewed at public hearing in order for the Board of Supervisors to determine if the SUP will continue or be revoked (pursuant to §12-3-8).

Please contact me with any questions, concerns, or requests for assistance leading up to the June 24th Planning Commission review of Special Use Permit #2015-03 for “Dance Hall.” Thank you very much for your time and attention to this application.



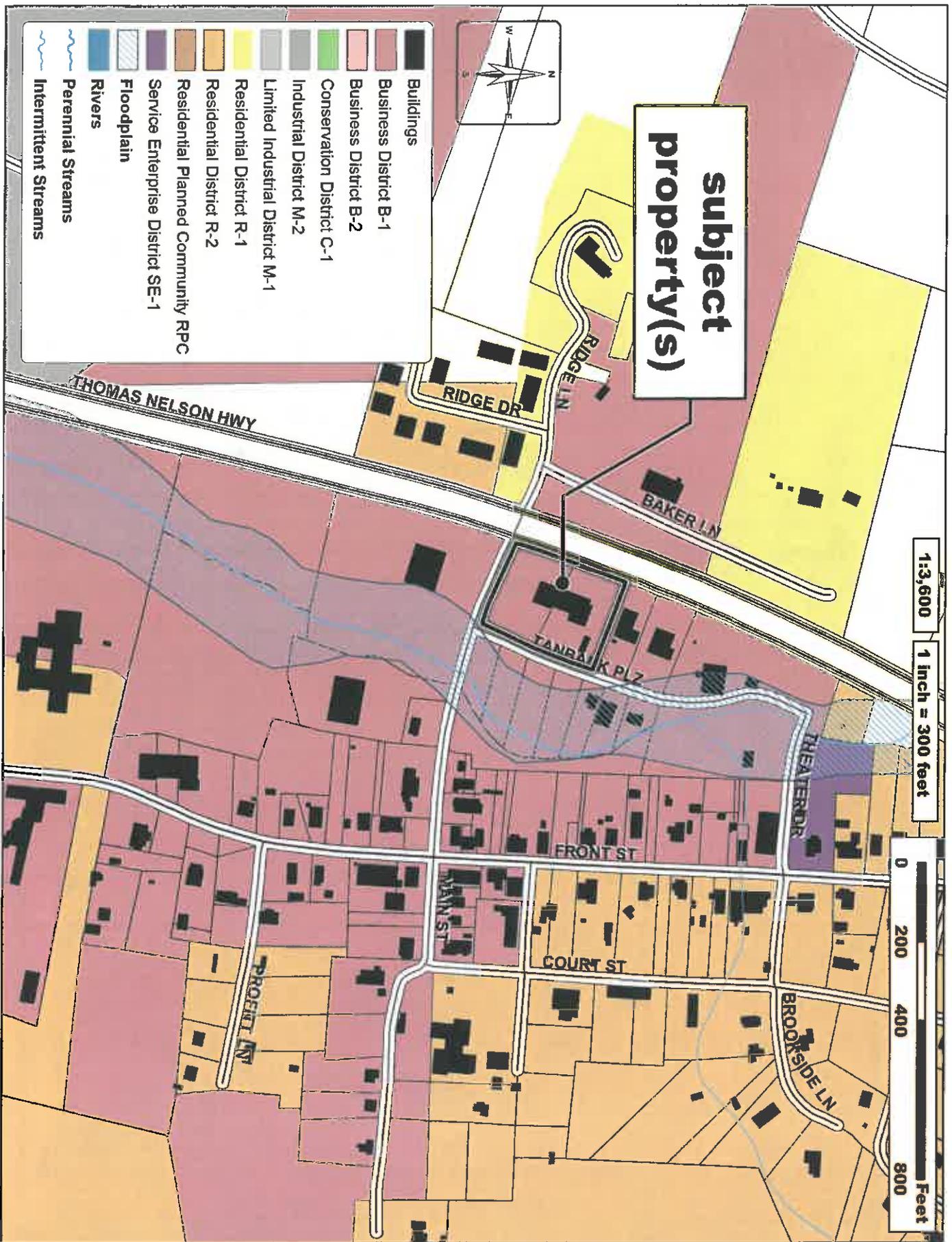


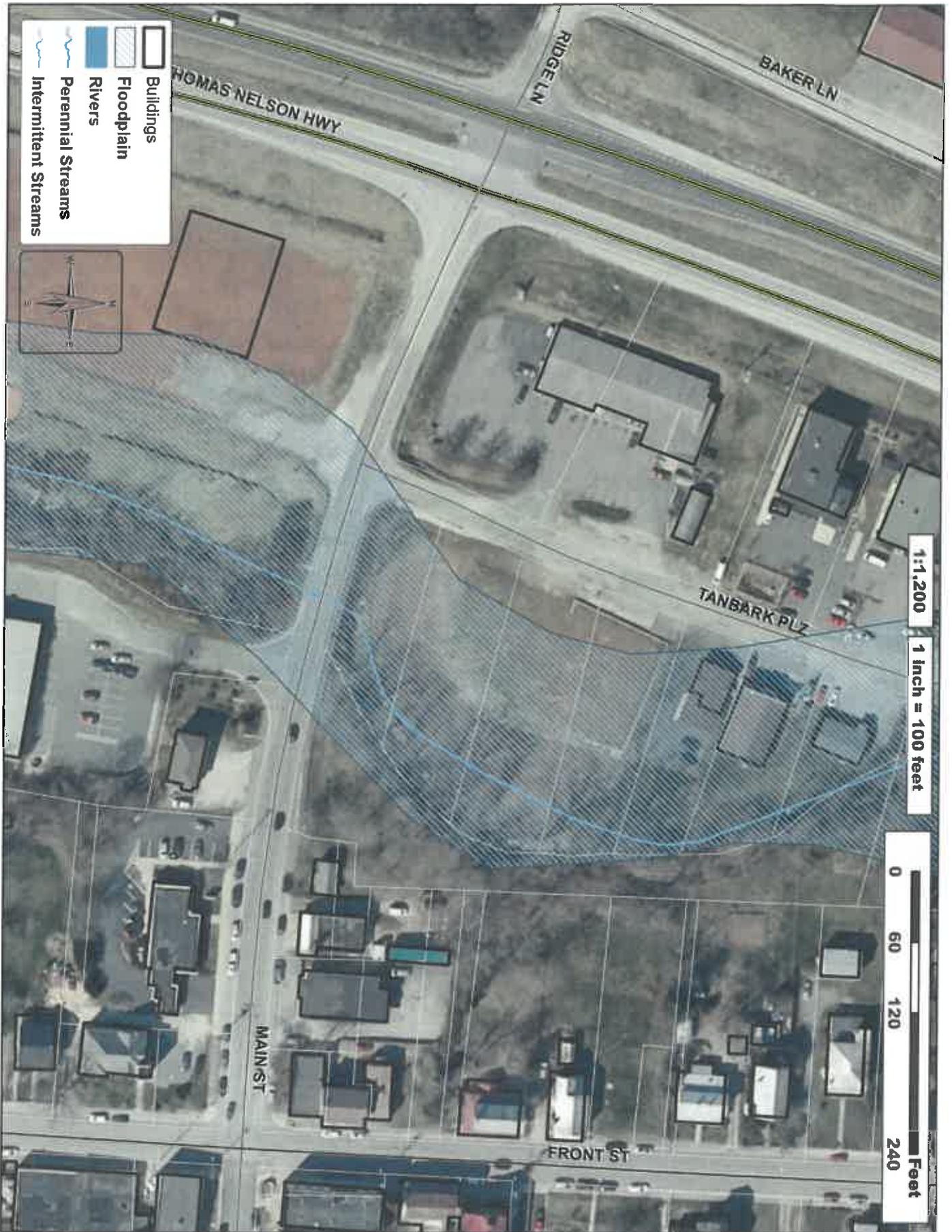
subject property(s)

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

1:12,000
1 inch = 1,000 feet









PERMIT APPLICATION:

Nelson County Department of Planning & Zoning

TO THE ZONING ADMINISTRATOR: Special Use Permit # 2015-03
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 type="checkbox"/> Minor Site Plan | <input type="checkbox"/> Other: _____ |

- Pursuant to Article 8, Section 1-3-2 of the Nelson County Zoning Ordinance.
 Pursuant to Section _____, Subsection _____ of the Nelson County Subdivision Ordinance.

Reason(s) for request: Plan to open a Restaurant with
dance 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: Jose + Elpidia Gaona
Mailing Address: 3808 Monacan trail Rd North Garden VA 22959
Telephone # (434) 825-0104 E-mail Address: ajgona89@ymail.com
Relationship (if applicable): _____

Applicant Property Owner Name: Joe Lee McEllon
Mailing Address: 380 Front St, PO Box 395 Lovingson
Telephone # (434) 263-4411 E-mail Address: Joe.lee.m@att.net
Relationship (if applicable): None

(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.):

37 Tanbark Plaza, Lovingson VA. 22949

b. Official tax map number: 58B-A-36 ; 58B-A-37

c. Acreage of property: _____

d. Present use: _____

e. Present zoning classification: Business (B-1)

f. Zoning classification of surrounding properties: Business (B-1)

4. Names of Adjacent Property Owners: Region ten, family dollar

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: [Handwritten Signature] Printed Name: Jose Ganna / Elpidia Ganna

Signature: [Handwritten Signature] Printed Name: Joe Lee McClinton

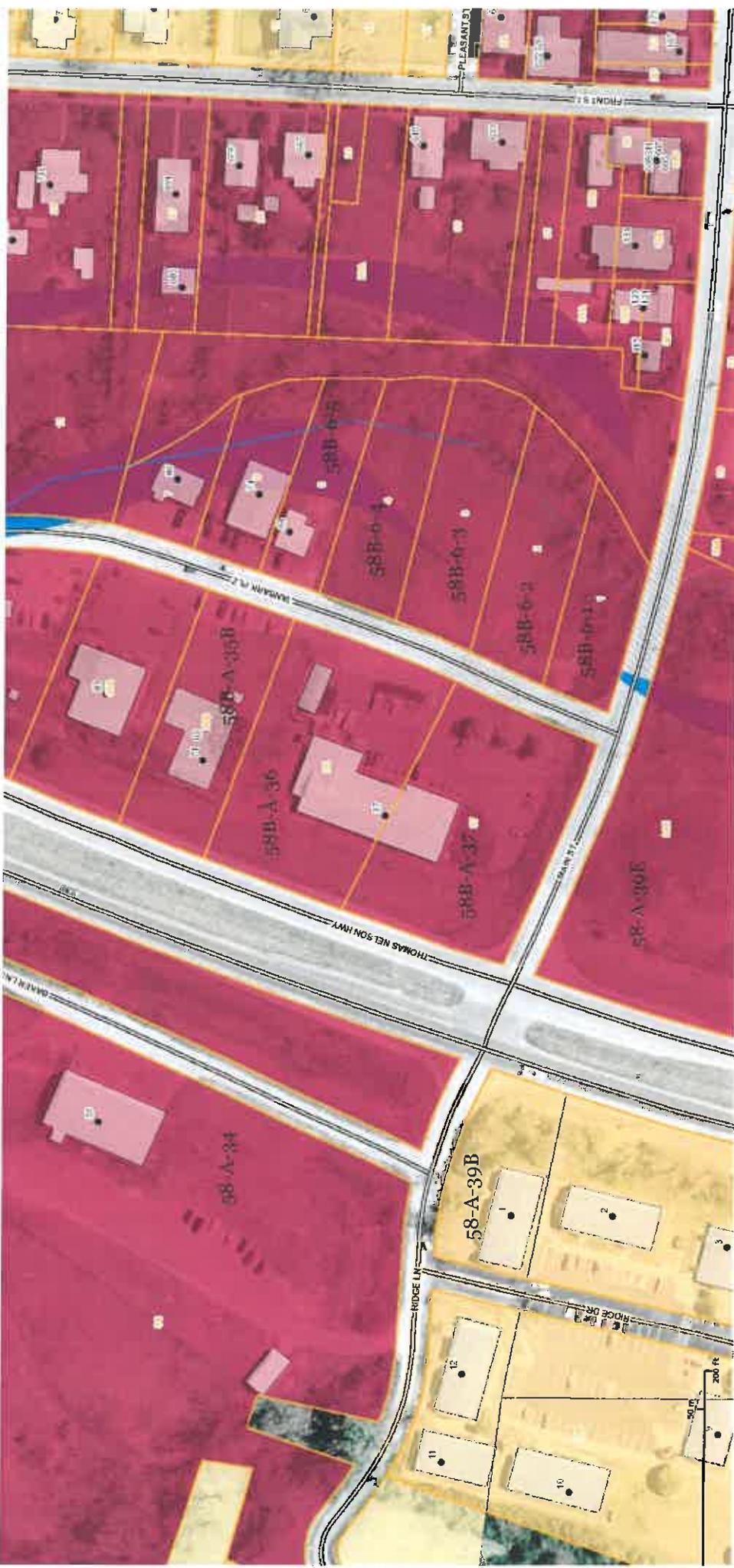
(Please attach additional sheet if more space is needed for applicant(s) / property owner(s) signatures.)

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 (\$ 200.00) received on 4-24-2015
- o Hearing Notice published on May 14th + 21st, 2015
- o Planning Commission action: Date of Meeting / Hearing: May 27th, 2015
- Recommendation: _____
- o Board of Supervisors action: Date of Hearing: _____ Date of Decision: _____
- Action: _____



Parcel ID

**58B-A-37; 58B-A-36

ADJACENT PROPERTY OWNERS:

- 58B-A-35B
- 58B-6-5
- 58B-6-4; 58B-6-3; 58B-6-2; 58B-6-1
- 58-A-39E
- 58-A-34
- 58-A-39B

Confirmed with Jean Payne - Parcel ID is #58-A-37; #58-A-36

Parcel Address

- 71 TANBARK DRIVE
- 64 TANBARK DRIVE
- THOMAS NELSON
- 53 BAKER LANE
- 9 RIDGE DRIVE

Owner Name

- MCCLELLAN, JOE LEE
- REGION TEN COMMUNITY SERVICES
- SAUNDERS LARRY D & CAROLE C
- SAUNDERS LARRY D & CAROLE C
- PC PARWAY INVEST HOLDINGS LLC
- NELSON CO VOLUNTEER FIREMAN ASSOC
- LOVINGSTON RIDGE VA LLC



FILE COPY

DEPARTMENT OF
PLANNING & ZONING

PLANNING COMMISSION
BOARD OF ZONING APPEALS

June 11, 2015

Dear Property Owner:

The following petition has been made to the Planning Commission (PC) regarding a tract of land adjacent to or near property you own in Nelson County:

Special Use Permit #2015-03 – “Dance Hall” / Jose & Elpidia Gaona

Consideration of a Special Use Permit application seeking approval to operate a “dance hall” pursuant to §8-1-3a of the Zoning Ordinance. Specifically, the applicant wishes to operate a dance hall on Friday nights and Saturday nights, remaining in operation until 2:00AM the following morning(s). The requested dance hall would be co-located with “La Michoacana Authentic Mexican Taqueria & Restaurant” (which is a permissible by-right use, and which received County zoning approval via Planning Commission approval of Minor Site Plan #2015-03 on May 27, 2015). The subject property is owned by Mr. Joe Lee McClellan and is located in Lovingson at 37 Tanbark Place; it is further identified as Tax Map Parcels #58B-A-36 and #58B-A-37 which are zoned Business (B-1).

This application will be considered at a public hearing conducted by the PC on Wednesday, June 24, 2015 at 7:00 P.M. in the General District Courtroom on the third floor of the County Courthouse, Lovingson. After the PC conducts a public hearing, they will vote to refer the application, with recommendations, to the BOS.

As required by law, this notice is being sent to inform adjoining property owners of this request. If you wish to learn more about this request and/or to comment on it, you may contact and/or visit the Department of Planning & Zoning, and/or attend the meeting(s). Please contact staff with any questions and/or requests for assistance.

Sincerely,

Timothy M. Padalino
Nelson County Planning & Zoning Director

TMP/svh

Copy to: Jose & Elpidia Gaona
Joe Lee McClellan



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: June 15, 2015

**Subject: Board of Supervisors referral of Zoning Ordinance amendments regarding
"Brewery" and "Limited Farm Brewery" (BOS Resolution R2015-51)**

Issue Introduction:

On June 9th, 2015, the Nelson County Board of Supervisors (BOS) approved Resolution R2015-51, which referred proposed Zoning Ordinance amendments to the Planning Commission for review and recommendation. Please see the following staff report, attached resolution, and attached information provided by the interested County residents.

Issue Background & Explanation:

The Department of Planning & Zoning has recently coordinated with the Department of Economic Development & Tourism in assisting an existing Nelson County business ("Barefoot Bucha") with their efforts to relocate and expand their operations to a new location in Nelson County.

The existing business currently brews a non-alcoholic, certified organic beverage called "kombucha," which is essentially fermented tea infused with natural flavors such as berries, herbs, etc. *(Please see the attached summary provided by the existing business.)*

This existing operation is currently permitted as a Home Occupation. Barefoot Bucha's proposed new facility would not be eligible as a home occupation; the new facility would not be located at their residence.

Additionally, even though this existing business is a brewery, the proposed new facility is not eligible under the recently-adopted "limited farm brewery" land use, which is provided as a by-right use in the Agricultural (A-1) District. The problem is the extremely narrow and limiting definition of brewery:

Brewery: A facility for the production of beer.

The existing business does not brew beer; as noted above, they brew kombucha. Otherwise, they would be eligible to relocate and expand under the “limited farm brewery” land use, as follows:

- The proposed new facility would be located in the Agricultural (A-1) District;
- They would brew less than 15,000 barrels per year; and
- They would produce agricultural products on premises at the proposed new facility. The co-owners have submitted in writing their calculations that they produce approximately 30% - 90% of their total ingredients on site, depending on whether or not “water” is considered an eligible ingredient for agricultural operations. Please note that Virginia Department of Agricultural and Consumer Services (VDACS) “State Food Laws” seem to define water as “food ... intended for human consumption” as follows:
 - § 3.2-5105. Definition of term "food" – The term "food" as used in this article means all articles used for food, drink, confectionery or condiment, whether simple, mixed or compound, and all substances or ingredients used in the preparation thereof, intended for human consumption and introduction into commerce.

Accordingly, in order to assist this existing Nelson County brewing operation in relocating to an expansion site in Nelson County, the following text amendments are proposed:

Brewery: A facility for the production of beer or other fermented beverages.

Farm Brewery, Limited: A brewery that manufactures no more than 15,000 barrels of beer 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 beer brewed beverages are grown on the farm. The on-premises sale, tasting, or consumption of beer brewed beverages during regular business hours within the normal course of business of such licensed brewery, the direct sale and shipment of beer brewed beverages and the sale and shipment of beer brewed beverages to licensed wholesalers and out-of-state purchasers in accordance with law, the storage and warehousing of beer brewed beverages, and the sale of beer limited farm brewery-related items that are incidental to the sale of beer brewed beverages are permitted.

Issue Summary & Next Steps:

As noted above, the BOS has initiated this proposed amendment process by referring these proposed amendments to the Planning Commission for you to review, conduct a public hearing, and provide your recommendation back to the Board of Supervisors within 100 days of the date of the June 24th meeting.

Thank you for your attention to the BOS referral of these proposed Zoning Ordinance amendments; and please contact me with any questions you may have regarding the information contained in this report. I am happy to provide clarifying information at your request.

BOARD OF
SUPERVISORS

THOMAS D. HARVEY
North District

LARRY D. SAUNDERS
South District

ALLEN M. HALE
East District

THOMAS H. BRUGUIERE, JR.
West District

CONSTANCE BRENNAN
Central District



STEPHEN A. CARTER
Administrator

CANDICE W. MCGARRY
Administrative Assistant/
Deputy Clerk

DEBRA K. MCGANN
Director of Finance and
Human Resources

15 June, 2015

To: T. Padalino, Director, Department of Planning and Zoning
From: S. Carter, County Administrator SA
Re: Referral to Nelson County Planning Commission of Proposed Amendments to Nelson County Zoning Ordinance

Transmitted herewith is Resolution R2015-51, as approved on June 9, 2015 by the Board of Supervisors, referring proposed amendments (attached) to Nelson County's Zoning Ordinance to the Nelson County Planning Commission.

The proposed amendments pertain to revising the current definitions of "Brewery" and "Farm Brewery, Limited" to provide for broader application of these two terms than as presently defined.

Please proceed in accordance with the Board's resolution.

I am available at your convenience should you require additional information on the subject of this communication.

Your assistance and cooperation are appreciated.

Cc: Board of Supervisors
Ms. C. McGarry, Deputy Clerk

Attachments:



BOARD OF
SUPERVISORS

THOMAS D HARVEY
North District

LARRY D SAUNDERS
South District

ALLEN M HALE
East District

THOMAS H BRUGUIERE JR
West District

CONSTANCE BRENNAN
Central District

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Administrative Assistant
Deputy Clerk

DEBRA K MCANN
Director of Finance and
Human Resources

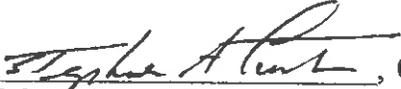
RESOLUTION R2015-51
NELSON COUNTY BOARD OF SUPERVISORS
REFERRAL OF AMENDMENTS TO APPENDIX A, NELSON COUNTY
ZONING ORDINANCE-DEFINITIONS OF "BREWERY" & "FARM BREWERY,
LIMITED" TO THE NELSON COUNTY PLANNING COMMISSION

WHEREAS, the Nelson County Board of Supervisors (the Board) has received and reviewed in public session conducted on June 9, 2015, a staff report on changes proposed to Appendix A-Zoning (Nelson County Zoning Ordinance) of the Code of the County of Nelson, Virginia; and,

WHEREAS, the staff report proposed changes to the Zoning Ordinance in order to revise the definitions of "Brewery" and "Farm Brewery, Limited";

NOW, THEREFORE, BE IT RESOLVED by the Nelson County Board of Supervisors, pursuant to the applicable provisions of Title 15.2 Chapter 22, Planning, Subdivision of Land and Zoning of the Code of Virginia, 1950 with specific reference to §15.2-2285 of said Code, that the proposed amendments to the Code of Nelson County to revise the definitions of "Brewery" and "Farm Brewery, Limited" be referred to the Nelson County Planning Commission for review and development of a report on the Commission's findings and recommendations to the Board, in accordance with §15.2-2285 of the Code of Virginia.

Approved: June 9, 2015

Attest: , Clerk
Nelson County Board of Supervisors



DEPARTMENT OF
PLANNING & ZONING

PLANNING COMMISSION
BOARD OF ZONING APPEALS

To: Chair and Members, Nelson County Board of Supervisors, and
Mr. Stephen A. Carter, County Administrator and Clerk of the Board of Supervisors

From: Tim Padalino | Planning & Zoning Director

Date: June 2, 2015

Subject: Introduction of possible Zoning Ordinance amendments pertaining to existing definitions for "Brewery" and "Limited Farm Brewery"

The Department of Planning & Zoning has recently coordinated with the Department of Economic Development & Tourism in assisting an existing Nelson County business ("Barefoot Bucha") with their efforts to relocate and expand their operations to a new location in Nelson County.

The existing business currently brews a non-alcoholic, certified organic beverage called "kombucha," which is essentially fermented tea infused with natural flavors such as berries, herbs, etc. *(Please see the attached summary provided by the existing business.)*

This existing operation is currently permitted as a Home Occupation. Barefoot Bucha's proposed new facility would not be eligible as a home occupation; the new facility would not be located at their residence.

Additionally, even though this existing business is a brewery, the proposed new facility is not eligible under the recently-adopted "limited farm brewery" land use, which is provided as a by-right use in the Agricultural (A-1) District. The problem is the extremely narrow and limiting definition of brewery:

Brewery: A facility for the production of beer.

The existing business does not brew beer; as noted above, they brew kombucha. Otherwise, they would be eligible to relocate and expand under the "limited farm brewery" land use, as follows:

- The proposed new facility would be located in the Agricultural (A-1) District;
- They would brew less than 15,000 barrels per year; and
- They would produce agricultural products on premises at the proposed new facility. The co-owners have submitted in writing their calculations that they produce approximately 30% - 90% of their total ingredients on site, depending on whether or not "water" is considered an eligible ingredient for agricultural operations. Please note that Virginia Department of

Agricultural and Consumer Services (VDACS) "State Food Laws" seem to define water as "food ... intended for human consumption" as follows:

- § 3.2-5105. Definition of term "food" – The term "food" as used in this article means all articles used for food, drink, confectionery or condiment, whether simple, mixed or compound, and all substances or ingredients used in the preparation thereof, intended for human consumption and introduction into commerce.

Accordingly, in order to assist this existing Nelson County brewing operation in relocating to an expansion site in Nelson County, the following text amendments are proposed for your consideration:

Brewery: A facility for the production of beer or other fermented beverages.

Farm Brewery, Limited: A brewery that manufactures no more than 15,000 barrels of beer 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 beer brewed beverages are grown on the farm. The on-premises sale, tasting, or consumption of beer brewed beverages during regular business hours within the normal course of business of such licensed brewery, the direct sale and shipment of beer brewed beverages and the sale and shipment of beer brewed beverages to licensed wholesalers and out-of-state purchasers in accordance with law, the storage and warehousing of beer brewed beverages, and the sale of beer limited farm brewery-related items that are incidental to the sale of beer brewed beverages are permitted.

If the Board wishes for this proposed amendment process to move forward, the next step would be to refer these proposed amendments to the Planning Commission for their review and public hearing, and for their recommendation back to the Board of Supervisors.

Thank you for your attention to this introduction of these proposed amendments; and please contact me with any questions you may have regarding the information contained in this report. I am happy to provide clarifying information at your request.

Kombucha Brewing: A Case for Broadening the Definition of a Limited Farm Brewery

"I have worked with Ethan and Kate on a brew collaboration and have seen first hand the kombucha brewing process at Barefoot Bucha. It is really interesting to me how similar kombucha brewing is to brewing beer. Just like we do when making beer, kombucha brewers take a sweet liquid, ferment it with yeast and bacteria, carbonate, bottle and keg. It is truly a brewed beverage". - Matt Nucci, Brewer and Co-Owner of Blue Mountain Brewery

Definition of a Brewery:

- Brewing is defined as, "the preparation of a fermented beverage by a process of steeping, boiling, and fermentation."
- Kombucha is a fermented tea.
- Businesses that make kombucha are typically referred to as breweries.
- Some kombucha contains alcohol. Nelson County company Barefoot Bucha produces a nonalcoholic beverage.

Equipment: *Beer and kombucha brewing require nearly identical equipment. (See attached equipment images.)*

- Kettles for steeping the ingredients
- Fermenters for first stage fermentation
- Bright tanks for clarification and carbonation
- Kegs or bottles for sending the fermented beverage to market

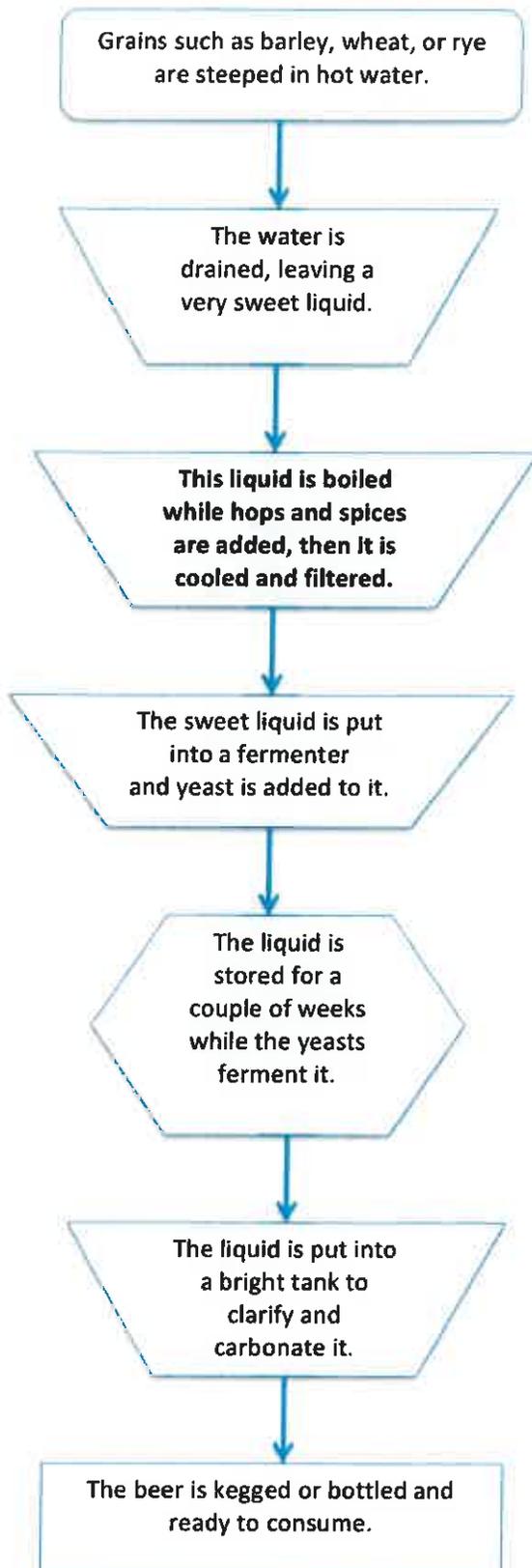
Process: *Beer and kombucha brewing is a nearly identical process. (See attached detailed Comparison Flowchart.)*

- Steep ingredients and create a very sweet liquid
- Ferment this liquid using yeast and/or bacteria
- Clarify and carbonate the fermented liquid
- Keg and/or bottle the finished product and send it to market

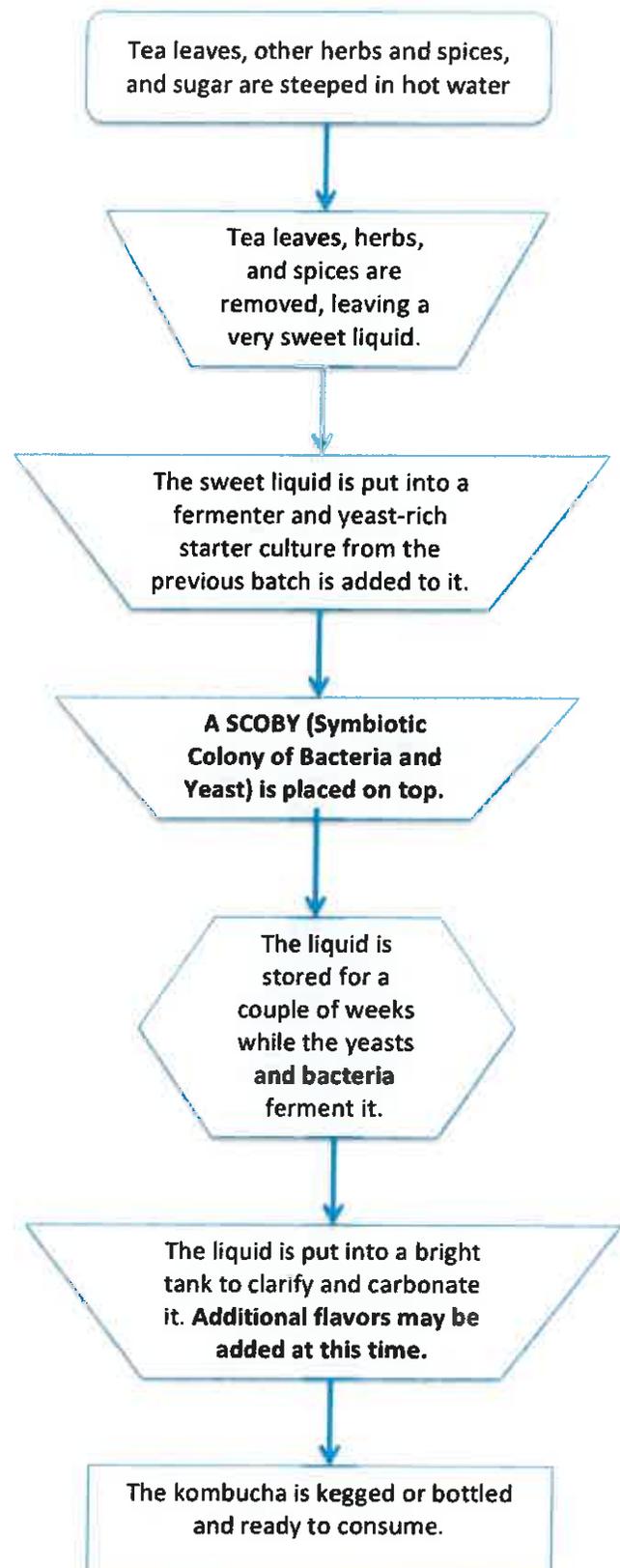
There are other traditional fermented beverages, both alcoholic and nonalcoholic, that are not currently included in the definition of limited farm brewery: mead, kvass, fez, and others.

A COMPARISON FLOWCHART OF BEER AND KOMBUCHA BREWING

Beer Brewing Process:



Kombucha Brewing Process:



Note: Bolded text above indicates areas where the two brewing processes differ.



DEPARTMENT OF
PLANNING & ZONING

PLANNING COMMISSION
BOARD OF ZONING APPEALS

To: Chair and Members, Nelson County Planning Commission
From: Tim Padalino | Director | Department of Planning & Zoning
Date: June 10, 2015

Subject: Final draft of proposed amendments regarding “off-farm agricultural sales”

The Planning Commission (PC) has long been undertaking a review of the existing Zoning Ordinance provisions for the “wayside stand” land use, which is permissible in the Agricultural (A-1) District. Per §2 and §4-11-2, the operation of a wayside stand requires an administrative zoning permit to be obtained, and sales at wayside stands are by definition limited only to products produced by the seller on an agricultural operation owned or controlled by the seller.

The PC has also reviewed “farmers markets” – a land use not currently defined or provided for by ordinance. I will informally refer to these two land uses (collectively) as “off-farm ag retail sales.”

Please note that the PC’s ongoing review of these two topics is related to, but distinct from, the Zoning Ordinance amendments adopted by the Board of Supervisors (BOS) on October 14, 2014 (Ordinance O2014-06 “Agricultural Operations”), which were related to agricultural operations, breweries, distilleries, and other similar land uses.

Specifically, the PC’s ongoing review of “off-farm ag retail sales” land uses attempts to address one broad category of “direct-to-consumer” sales of ag products that were not addressed in the recently-adopted “Agricultural Operations” amendments: *the retail sale of ag products off-site from the actual ag operation*. That category can further be divided into two types of land uses:

1. Off-farm retail sale of agricultural products that were produced solely on agricultural operations controlled or owned by the seller (currently treated as a “wayside stand”); and
2. Off-farm retail sale of agricultural products that were not solely produced on agricultural operations controlled or owned by the seller (“farmers market” – currently not provided for)

At the request of the Planning Commission, I have prepared a final draft of proposed amendments that would substantially modify the way these off-farm sales are permitted and regulated. The specific (draft) language for the proposed amendments is contained on pages 2-4.

For additional background information on this subject, please reference these previous staff reports:

- 2/20/2014 staff report with subject line: “Policy Review of “Wayside Stands” and other direct-to-consumer issues in A-1”
 - Provides overview of existing Zoning Ordinance provisions
 - Contains analysis of existing provisions and identifies common issues and questions
 - Contains recommended policy changes for review / discussion
 - Includes a reminder about “Agricultural operations” legislation (passed in the 2014 General Assembly as “Senate Bill 51”) and the resulting limitations on local zoning authority
- 11/12/2014 staff report with subject line: “Recommendations to revise and improve “Wayside Stand Permits” review process and application procedures”
 - Analysis and recommendations for “wayside stand” provisions
 - Analysis and recommendations for “farmers market” provisions
- 2/20/2015 staff report with subject line: “Recommendations for improved policies and procedures for ‘off-farm retail sales’”
 - Contains recommended policy changes for review / discussion, including:
 - the proposed bifurcation of wayside stand permits into “class A” and “class B” according to the type of roadway the proposed stand would be located on
 - specific regulations, application requirements, and review procedures for each of the two proposed classes of permits
- 3/18/2015 staff report: “Proposed (draft) amendments for ‘off-farm retail sales’”
 - Includes the introduction of proposed application requirements
- 4/15/2015 staff report: “Proposed (draft) amendments for ‘off-farm retail sales’”
 - Includes revisions (proposed “performance requirements” or regulatory standards) to the proposed application requirements which were introduced in the 3/18/2015 report
 - Includes new language about one-year limits, annual permit renewals, and other details

Final Draft Language for Possible Amendments:

➤ Article 2: Definitions

Remove the following definition:

Wayside stand, roadside stand, wayside market: Any structure or land used for the sale of agriculture or horticultural produce; livestock, or merchandise produced by the owner or his family on their farm.

Add the following definitions:

Farmers Market: Any structure, assembly of structures, or land used by multiple vendors for the sale of agricultural and/or horticultural products, and/or agriculture-related goods and services; but not to include the sale of merchandise purchased specifically for resale.

Wayside Stand: Any use of land, vehicle(s), equipment, or facility(s) for the off-site retail sale of agricultural products, horticultural products, or merchandise which are produced on an agricultural operation owned or controlled by the seller or the seller’s family. Wayside stands are a temporary (non-permanent) land use.

Wayside Stand, Class A: A Wayside Stand which is located on a road with a Functional Classification Code of 115 or higher (as defined by the Virginia Department of Transportation).

Wayside Stand, Class B: A Wayside Stand which is located on a road with a Functional Classification Code of 114 or lower (as defined by the Virginia Department of Transportation), or located within six-hundred sixty (660) feet of an intersection with any road with a FCC of 114 or lower.

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

Revise the following provision in Section 4-11 "Administrative Approvals:"

The Zoning Administrator may administratively approve a zoning permit for the following uses, provided they are in compliance with the provisions of this Article.

~~4-11-2 Wayside Stands.~~ **Wayside Stand, Class A, which provides one (1) year of approval. An approved Class A Wayside Stand may be renewed annually; no renewal fee or site plan resubmission is required with a request for annual renewal, unless the layout, configuration, operation, vehicular ingress/egress, and/or scale is substantially modified.**

No Class A Wayside Stand permit may be approved unless the Planning and Zoning Director reviews and approves the following operational details regarding the safety and appropriateness of the proposed wayside stand:

- (i) Signed affidavit declaring that any and all products offered for sale have their source from, or are otherwise derived from, an agricultural operation that is owned or controlled by the wayside stand operator**
- (ii) Proposed frequency and duration of operations (throughout the day, week, month, or calendar year):**
 - a. may not exceed ____ consecutive days; and/or**
 - b. limited to a maximum of ____ hours per day; and/or**
 - c. limited to a maximum of ____ days per week; and/or**
 - d. limited to a maximum of ____ weeks per year**
- (iii) Location and type of proposed wayside stand equipment or facility:**
 - a. All wayside stand structures or facilities must be located outside of VDOT right-of-way**
 - b. All permanent wayside stand structures must comply with the required front yard setback areas of the applicable zoning district**
- (iv) Location and details of proposed signage:**
 - a. Maximum of one sign allowed, which may be double-sided**
 - b. Maximum of twelve (12) square feet of signage**

- (v) Sketch site plan, including accurate locations and dimensions of:
 - a. property boundaries and right-of-way
 - b. proposed location of wayside stand equipment and/or facility(s)
 - c. proposed signage
 - d. proposed layout and provisions for safe vehicular ingress, egress, and parking
 - e. lighting plan and lighting details (for any wayside stand request involving any proposed operation(s) after daylight hours)
- (vi) Review comments from Virginia Department of Transportation
 - a. VDOT review comments must include a formal “recommendation for approval” by VDOT before a Class A Wayside Stand permit can be approved by the Zoning Administrator

Add the following provisions to Section 4-1-a “Uses – Permitted by Special Use Permit only:”

4-1-46a Wayside Stand, Class B

4-1-47a Farmers Market

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

Add the following provisions to Section 8-1-a “Uses – Permitted by Special Use Permit only:”

8-1-13a Farmers Market

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

Add the following provisions to Section 8A-1-a “Uses – Permitted by Special Use Permit only:”

8A-1-7a Farmers Market

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

Add the following provisions to Section 8B-1-a “Uses – Permitted by Special Use Permit only:”

8B-1-14a Farmers Market

Thank you for your attention to this final draft of the proposed amendment language regarding “wayside stands” and “farmers markets,” or what I have been informally referring to (collectively) as “off-farm ag retail sales” land uses.

Please contact me with any questions you may have regarding the information contained in this report.



To: Chair and Members, Nelson County Planning Commission

From: Tim Padalino | Planning & Zoning Director

Date: June 10, 2015

Subject: Introduction of possible Zoning Ordinance amendments regarding Special Use Permits for development in designated floodplains

Issue Introduction & Summary of Existing Law

The Department of Planning & Zoning has recently reviewed the Zoning Ordinance provisions for the review and approval procedures regarding proposed development within floodplains and other "Special Flood Hazard Areas," as designated by FEMA.

As currently specified by the Zoning Ordinance, and as recently clarified by Virginia Department of Conservation and Recreation staff, any projects involving surface disturbance or any other form of "development" within a regulatory floodplain require a Special Use Permit from the County for each occurrence of floodplain "development" or land disturbance.

The Zoning Ordinance currently designates the Nelson County Board of Zoning Appeals (BZA) as the sole entity with the duty to review such Special Use Permits, and the sole entity with authority to approve such Special Use Permits, as follows:

§10-7: "Definitions"

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.

§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. ... Prior to the issuance of any permit the Planning and Zoning Director shall require all applications to include compliance with all applicable state and federal laws.

§10-22: "Variances and Special Use Permits"

Variances 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.

...[omitted information pertaining to “Variances” and not pertaining to “Special Use Permits”]...

In passing upon applications for Variances 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.*
- 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. Such other factors which are relevant to the purposes of this ordinance.

Staff Observations & Commentary

These existing provisions mean that, for any proposed projects including any land disturbance within a designated 100-year floodplain or floodway:

- a Special Use Permit (or Permits) would be required from the BZA; and
- the Board of Supervisors (BOS) or the Planning Commission (PC) would not be directly involved in the review or approval process for the required Special Use Permit(s).

Members of the PC and BOS should consider if this regulatory responsibility and decision-making authority should potentially be reserved for the Board of Supervisors, and if this responsibility and authority should potentially no longer be delegated solely to the BZA. If so, the following possible amendments (below) could serve as a starting point for discussion on this matter.

Possible Zoning Ordinance Text Amendments

§10-22: “Variances and Special Use Permits”

*Variances and Special Use Permits shall be issued by the ~~Board of Zoning Appeals~~ **Board of Supervisors, in accordance with all applicable provisions in Zoning Ordinance Article 10 and Article 12, Section 3, upon:...***

Please note: the phrase “Board of Zoning Appeals” would also need to be replaced with “Board of Supervisors” an additional seven times in §10-22, in addition to the possible amendment presented above.

Conclusion

Upon review and consideration of these issues, if the PC wishes for this proposed amendment process to move forward (as presented or with modifications), the next step (pursuant to Zoning Ordinance Article 16, Section 1-3) would be to direct staff to advertise for a Legal Notice advertisement announcing the PC review of this matter at public hearing. After conducting a public hearing, the PC would then need to complete their review by affirmatively voting on a resolution to provide the BOS with formal recommendations for a text amendment to the Zoning Ordinance.

Please note that staff have provided an almost identical BOS staff report to County Administration on June 5th, but have not yet received any response or reply. It is unclear if County Supervisors have received a copy of that staff report; it was not included in the June 9th meeting packet.

Thank you for your attention to this introductory report regarding this issue and possible text amendments; and please contact me with any questions or requests for assistance.

Memorandum

To: Nelson County Planning Commission
From: Will Cockrell – TJPDC, Rural Transportation Program
Date: June 15, 2015
Re: Update of 2010 Rural Long Range Transportation Plan (RLRP)

Purpose: The existing RLRP was approved in 2010, with a 5-year update scheduled for 2015. At the June Commission meeting, TJPDC staff will provide an overview of the update, to establish a dialogue at the beginning of the process.

Background: Several years ago, VDOT partnered with 20 Planning District Commissions (regional councils) that house rural transportation programs. The effort focused on development of Long Range Transportation Plans for rural areas of the State. These plans would complement the transportation plans in Metropolitan areas, except that the rural versions would not include fiscally constrained project lists. Overall, the RLRP is intended to serve several functions, including to:

- Identify of transportation deficiencies and recommendations of remedies;
- Assistance with comprehensive plan updates and traffic impact studies (Chapter 527);
- Evaluate the effects of land use and development;
- Establish programming of transportation improvements; and,
- Provide content and guidance for statewide transportation plans.

Summary: Since the RLRP was last adopted in 2010, staff is preparing for the five (5) year update. This effort will include several improvements from the previous version, bringing additional value to the document. The update will include useful resources for localities, including:

- Updated projects lists;
- An reassessment of local and regional priorities;
- A section that better identifies how the RLRP should be integrated into the transportation planning process;
- The addition of other modes of travel and facility types, other than just roads;
- A new profile system that provides additional detail on identified road deficiencies, including more defined action items and timelines;
- An improved format to help local staff and officials assess their transportation needs; and,
- Tools that will help Planning Commissions and Boards with land use decisions.

An online version of the existing plan is here: <http://www.tjpc.org/transportation/ruralTrans.asp>. *Note: the link is on the right column of the page.*

Actions: TJPDC staff recently began the update of our region's RLRP, with an initial step of reaching out to local Commissions. Staff identifies local officials as key stakeholder and will focus the process on consistent communication with our localities. At this time, we are looking for feedback from Planning Commissioners, as the new plan is intended to be a tool for localities. If any Commissioners have questions or comments about this project, please contact me at wcockrell@tjpc.org or (434)979-7310 x440.

DRAFT Revisions: June 10, 2015

NELSON COUNTY PLANNING COMMISSION BYLAWS

ARTICLE I

Name

The name of the organization shall be the NELSON COUNTY PLANNING COMMISSION.

ARTICLE II

Authority for Establishment

The Planning Commission is established under the authority of the Code of Virginia (1950, as amended), Chapter 22, and Article 2. The Planning Commission (the "Commission") members shall be appointed by the Board of Supervisors (the "Board"). There shall be one (1) member from each election district, **and one (1) Board of Supervisor member**. All members must reside in the County. Half of the membership must own property (Code of Virginia 15.2-2212).

ARTICLE III

A. Powers and Duties of the Nelson County Planning Commission

1. The Commission shall have and exercise the powers and duties conferred upon the Commission by the Code of Virginia (1950, as amended), the Code of the County of Nelson, Virginia, 1989, as amended, and any applicable County policies.
2. To make recommendations to the Board and assist them in the administration of the Zoning and Subdivision Ordinances, the Comprehensive Plan, other County policies and matters affecting the development and growth of the County and other matters as may be directed by the Board.
3. To promote programs, policies and plans to achieve a desirable distribution of population and land development within the County to facilitate effective and adequate provision of public services and facilities.
4. To appoint any committees or subcommittees.
5. By a majority vote, establish a work program with projects and priorities.

DRAFT Revisions: June 10, 2015**B. Elections and Appointments**

1. The officers of the Commission shall consist of a Chair, a Vice-Chair and a Secretary, who may or may not be a voting member.
2. The Chair shall be elected by a majority of the Commission members present at each annual meeting and shall hold office until the next annual meeting. The Chair shall have the following duties:
 - a) Preside at meetings of the Commission, promote the orderly and expeditious conduct of the meeting, and such other duties as are usually exercised by the Chair of a Commission or as may be assigned by the Commission or Board.
 - b) Preserve order and decorum; decide questions of order and procedure; and set reasonable time limits for speakers and public hearings provided that by majority vote the Commission may reject such time limits.
 - c) The Chair may speak and vote on all questions.
3. The Vice-Chair shall be elected by a majority of the Commission members present at each annual meeting, immediately after the election of the Chair, and shall hold office until the next annual meeting.
4. In the absence or disability of the Chair and Vice-Chair, the member with the most seniority, alphabetically, shall preside as Temporary Chair until the Chair or Vice-Chair is present or is elected.
5. Any vacancy in the office of Chair or Vice-Chair may be filled by a majority vote of the Commission members present at the next meeting after such vacancy has occurred.
6. The Director of Planning, or other staff member, shall serve as Secretary to the Commission. In his/her absence, the Director of Planning shall designate a Temporary Secretary. The Secretary or his/her designee, shall have the following duties:
 - a) Perform the duties specified in these Bylaws and those assigned by the Commission, Chair or Board.
 - b) Attend all Commission meetings and ensure that minutes are taken.

DRAFT Revisions: June 10, 2015

- c) Maintain all official books, papers, maps and records of the Commission and conduct all official correspondence of the Commission.
- d) Notify the Vice-Chair, by telephone or in person, as soon as possible after the Secretary is informed that the Chair will not attend a future Commission meeting.
- e) Notify the Temporary Chair, by telephone or in person, as soon as possible after the Secretary is informed that the Chair and Vice-Chair will not attend a future meeting.
- f) Publish notice of public hearings once a week for two successive weeks in the *Nelson County Times* at least ten (10) days before the day of the public hearing. Such notice shall specify the time and place of the hearing, which cannot be less than six nor more than twenty-one days after the second newspaper advertisement.
- g) When required by law, notify all applicants of the final action of the Commission on tentative subdivision plans, schematic plans, site plans, development standard waivers, appeals or any other item on which the Commission has final authority.
- h) Forward applications to amend, supplement or change the district boundaries or regulations of the zoning ordinance to the Commission with recommendations, if any.
- i) Forward Commission recommendations to the Board. If the Commission's vote is split, or if the Commission's recommendation differs from staff's recommendations, both positions shall be explained. Attend Board meetings as required.

7. The Board member shall report to the Commission on all action taken by the Board on applications referred to it by the Commission.

ARTICLE IV**A. Committees**

- 1. Committees shall be established by majority vote of the Commission as deemed necessary.
- 2. Each committee shall consist of no fewer than two (2) appointees, at least one (1) of whom shall be a member of the Commission.
- 3. Subcommittees of committees shall be appointed by majority vote of any committee.

DRAFT Revisions: June 10, 2015

- 4 The members of committees (including subcommittees) shall serve until a reassignment is made of a committee member by a majority vote of the Commission or a committee member resigns with written notice to the Secretary. Any vacancy in committees shall be filled by a majority vote of the Commission.

ARTICLE V

A. Meetings

1. Annual Meeting

The annual meeting of the Commission shall be held in January of each year. The business of the meeting shall include election of officers and scheduling of regular meeting dates for the year. There shall be at least one regular meeting date each month. The annual meeting may be held on, but is not required to be held on, a regular meeting date.

2. Regular Meetings

On regular meeting dates, the Commission shall hold public hearings to consider subdivision, schematic, site plan and development standard waiver requests, amendments to the comprehensive plan, substantial accord requests, zoning, conditional use, ordinance amendments and historic designation requests. In addition, the Commission may have a work session to discuss the business of the Commission and other matters, which may come before it. Cases will not be called after 11:00 p.m. without a unanimous vote of the Commission members present.

In the event more than one regular meeting date is scheduled in any month, the required public notice shall establish the later date as a date to consider any items that cannot be disposed of on the first meeting date of the month. The meeting will be held in the General District Court room at the County Courthouse Building or at a place and time designated by the Commission.

When a matter is set for a public hearing pursuant to required advertisement, the matter shall be heard even though no one in favor of or in opposition to the application appears at the hearing unless the matter is deferred or withdrawn. In the absence of a personal appearance by the applicant or agent, the Commission may either proceed to dispose of the application or defer it to another meeting in accordance with applicable law.

DRAFT Revisions: June 10, 2015

All motions to defer an item shall be to a date certain.

The applicant may withdraw an application at any time prior to the Commission acting on the application. The Commission shall acknowledge the withdrawal.

All persons who speak at the hearing shall furnish their names to the Commission and become parties of record. A speaker shall only speak once on any item unless the Commission asks the speaker to address questions.

No speaker may address the Commission unless recognized by the Chair. Each person who desires to speak shall be given time to present oral or written comments. Comments shall be directed to the Commission, not to the audience.

A deputy sheriff or Virginia law enforcement officer may serve as Sergeant at Arms.

3. Special Meetings

Special meetings may be called by: i) the Chair; (ii) two (2) members upon written request to the Secretary; or (iii) by a majority vote of the Commission. At least five (5) days in advance of a special meeting, the Secretary shall mail or email to all members a written notice specifying the time, date, place, and purpose of the meeting.

Written notice to individual Commissioners of a special meeting is not required if the time of the special meeting has been fixed at an annual, special or regular meeting of the Commission, or if all members file a written waiver of notice, or if all members are present at the special meeting.

B. Rescheduling Meetings

1. The Chair may cancel any meeting because of inclement weather and reschedule any such canceled meeting upon proper advertisement and notification.
2. The Commission may adjourn any meeting to any date and time that the Commission may set if required advertising and notification provisions are met. Provided, however, that a meeting that continues after midnight may be adjourned to a time on that same day without re-advertisement and notification. The motion of

DRAFT Revisions: June 10, 2015

adjournment shall state the hour at which the adjourned meeting is to be reconvened.

C. Minutes of Meetings

1. The Commission may correct approved minutes only upon a clear showing that a clerical or administrative mistake was made.
2. Copies of draft, unapproved minutes shall be sent to Commissioners for approval. Draft minutes shall be clearly marked as such.

D. Quorum

A quorum of the Commission shall consist of **four (4) of the six (6)** ~~three (3) of the five (5)~~ members of the Commission. A quorum must be present at all meetings to transact any official business and, unless otherwise required by law or these Bylaws, no action of the Commission is valid unless authorized by a majority vote of those present and voting. An abstention, although not a vote in favor or against the motion, shall be counted as a vote for the purpose of determining a quorum. Provided, however, if a Commissioner is disqualified in accordance with the State and Local Government Conflict of Interests Act, Virginia Code § 2.2-3100 et seq., and this results in less than the number required by law to act, the remaining member or members shall have authority to act for the Commission by majority vote, unless a unanimous vote of all members is required by law, in which case authority to act shall require a unanimous vote of the remaining members.

If a quorum is not present at any meeting, items on the agenda requiring action shall be moved to the agenda of the next regular meeting of the Commission or to the agenda of a special meeting of the Commission, if one is called for that purpose.

E. Tie Vote

A tie vote on any motion means the defeat of the motion for lack of a majority vote, and if the item requires Board action, the item will be forwarded to the Board with a report of the tie vote.

F. Order of Agenda for a Regular Meeting

To the extent necessary to consider items requiring Commission action, the order of the agenda for a regular Commission meeting shall be as

DRAFT Revisions: June 10, 2015

follows, unless amended by majority vote and the Commission shall confine discussions to the matters contained on the agenda:

1. Call to Order and determination of quorum
2. Approval of minutes, if applicable
3. Requests to postpone action, additions or changes in the order of presentation
4. Review of meeting procedures
5. Public hearing items
6. Non-public hearing items
7. Other business – committee reports, unfinished business, new business
- 8. Report from Board member**
9. Adjournment to a designated place and time

G. Order of Individual Items

The procedure for consideration of an individual item at any meeting shall be as follows, unless amended by majority vote:

1. The Chair or the Secretary shall call and describe the item.
2. Comments and recommendations of the Planning staff (if necessary)
3. Applicant's presentation (if necessary)
4. Interested citizens' presentation in opposition/support (if necessary)
5. Applicant's rebuttal (if necessary)
6. Staff response (if necessary)
7. Commission close of public hearing, discussion, questions, and action

DRAFT Revisions: June 10, 2015

H. Rules of Order

Unless covered herein or established by Commission procedure or practice, parliamentary procedure in Commission meetings shall be the most recent edition of *Robert's Rules of Order*. Any questions involving interpretation or application of Robert's Rule shall be addressed to the County Attorney who shall be the designated Parliamentarian representing the Commission.

I. Work Program

Annually, the Commission may recommend to the Board a work program of major projects (i.e., plan amendments and major ordinance amendments) having priorities for the ensuing year.

ARTICLE VI

Amendment and Suspension of Bylaws

With the exception of statutory requirements, the Commission may suspend the application of any of its Bylaws by a unanimous vote of all the members present at the time.

These Bylaws may be amended by a majority vote at any meeting of the Commission after not less than seven (7) days notice has been given to all members of the Commission and a copy of the proposed amendment sent with the notice.