

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 18, 2014

Subject: Public Hearing on proposed amendments to Zoning Ordinance §4-2 “Area Regulations” concerning two-family detached dwellings (“duplexes”)

On February 12th, 2014, the Department of Planning & Zoning received a referral from the Board of Supervisors (BOS) containing “suggested text” to amend Article 4 (“Agricultural District A-1”), Section 3 (“Lots Allowed and Area Regulations”) as it pertains to regulations for “two-family detached dwellings,” or duplexes.

Specifically, the proposed amendments would reduce the minimum acreage required for a duplex in the A-1 District from 4 acres (minimum) to 2 acres (minimum). The full text of the proposed amendment is as follows:

*4-2-1a The minimum lot area shall be two (2) acres (87,120 sq.ft.) or more per dwelling unit **for single and two-family detached dwellings**. For family subdivisions lots the minimum lot area shall be one (1) acre (43,560 square feet) per dwelling unit.*

Please note that the proposed amendments, as written, would not necessarily achieve the intended effect of reducing the minimum acreage requirements from 4 acres to 2 acres for a duplex. As written, the proposed amendments still require, “two (2) acres or more per dwelling unit...for two-family detached dwellings.” Using a straightforward interpretation and application of the Zoning Ordinance definitions, this would still require two acres for each of the two dwelling units contained in the duplex, i.e. a requirement for a minimum of 4 acres for a duplex.

Therefore, in order to achieve the Board’s referred objective of reducing the required minimum acreage from 4 acres (minimum) to 2 acres (minimum) for all duplexes in the A-1 District, County staff recommend that the phrase “per dwelling unit” be removed and the proposed amendments be re-written as follows:

*4-2-1a The minimum lot area shall be two (2) acres (87,120 sq.ft.) or more ~~per dwelling unit~~ **for single-family detached dwellings and two-family detached dwellings**. For family subdivisions lots the minimum lot area shall be one (1) acre (43,560 square feet) per dwelling unit.*

Review of Amendment Process To-Date

Please recall that the BOS originally referred the following proposed amendments, as detailed in the March 20th staff report:

- 4-2-1a: The minimum lot area shall be two (2) acres (87,120 sq. ft.) or more **per single-family detached dwelling or two-family detached dwelling containing a total of four (4) or fewer bedrooms and two (2) or fewer bathrooms**. For family subdivision lots the minimum lot area shall be one (1) acre (43,560 sq. ft.) per dwelling unit.
- 4-2-2: For permitted uses utilizing individual sewage disposal systems, **the Health Department shall review and approve** the required area for any such use ~~shall be approved by the health official~~ **in consideration of the average daily water usage, as calculated by the number and size of bedrooms and bathrooms**. The administrator may require a greater area if considered necessary by the health official.

(Note: As explained in the referral memo from Mr. Carter, the Commission was invited to consider the proposed changes to 4-2-2 at their discretion; but the BOS did not discuss these specific amendments or formally refer them to the Commission.)

After reviewing this issue in March and April, the Planning Commission acted at the April 23rd meeting to have Chair Proulx provide a formal recommendation to the Board of Supervisors (BOS), recommending that the BOS not proceed with the proposed amendments as referred; but to instead explore an alternative policy approach that would potentially modify (reduce) minimum acreage requirements for duplexes only when being developed by the Nelson County Community Development Foundation (NCCDF).

This alternative approach was formally recommended to the BOS for two general reasons. The first reason is because the PC identified several questions and concerns at their February 26th Work Session, summarized as follows:

- Concern that the Health Department has not reviewed and endorsed this proposed policy amendment;
- Concern about residential density and concern about possible future “relaxations” of similar density requirements;
- Concern that too many uses are being suggested for the A-1 District;
- Concern that the proposed amendments are too broad in scope – that they could work well for NCCDF but may not be appropriate for all other scenarios;
- Concern that this type of “limited duplex” could be easily expanded or renovated to eventually include more than the proposed restrictions for a maximum total of four (4) bedrooms and two (2) bathrooms; and
- Concern that the proposed amendments are not enforceable.

The second reason for this recommended alternative approach is that the PC felt that a more narrow set of amendments, pertaining specifically (and only) to the NCCDF, would be a more appropriate solution. Upon consultation with County Attorney Phil Payne, this recommended alternative was determined to be a legally-defensible approach. That is because NCCDF duplexes are developed in conjunction with the Foundation’s mission to provide affordable housing

opportunities for low- and moderate-income residents, elderly residents, and residents with disabilities; and such affordable housing efforts are considered a legitimate expression of the locality's "police power" and a legitimate promotion of the County's public health, safety, and/or welfare.

The PC's formal recommendation was provided to County staff by Chair Proulx on May 7th. At the subsequent May 13th BOS meeting, the Board reviewed the PC recommendation before moving to authorize and advertise a Public Hearing at the June 10th BOS meeting for consideration of proposed amendments as they were composed in the original BOS referral from February (i.e. proposed amendments that would reduce the minimum required acreage for all duplexes in the A-1 District from 4 acres to 2 acres).

After the June 10th public hearing was scheduled and advertised, the BOS then postponed that hearing, and have since re-scheduled a BOS public hearing for July 8th. The purpose of that postponement and re-scheduling was to ensure that the Planning Commission properly conducted a Public Hearing at their regularly-scheduled June 25th meeting, before the BOS could legally conduct their own public hearing (and/or take any legislative action on the proposed amendments).

Summary & Staff Recommendation

In conclusion, County staff recommend that the Planning Commission consider the proposed amendments as follows, with the phrase "per dwelling unit" removed and re-written as follows:

*4-2-1a The minimum lot area shall be two (2) acres (87,120 sq.ft.) or more ~~per dwelling unit~~ **for single-family detached dwellings and two-family detached dwellings.** For family subdivisions lots the minimum lot area shall be one (1) acre (43,560 square feet) per dwelling unit.*

The PC public hearing for this item was advertised in the Nelson County Times on June 5th and June 12th, in accordance with State Code provisions contained in §15.2-2204.

Thank you for your attention to this ongoing amendment proposal; and please contact me if you have any questions or require any assistance regarding this matter.