

**NELSON COUNTY PLANNING COMMISSION**  
**MEETING MINUTES**  
**December 17, 2014**

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

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

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

**Approval of Minutes – November 19, 2014:** Chair Proulx asked if there were any further changes to the draft minutes.

Commissioner Russell noted on page 8 – Wayside Stand Permit for Mr. Karnes – 4<sup>th</sup> paragraph: capitalize Wayside Stand Permit (last sentence), not wayside stand activity (first sentence).

**Commissioner Allen made a motion to approve the minutes of the Nelson County Planning Commission of November 19, 2014 as corrected. A second was offered by Commissioner Goad; vote 5-0 with Commissioner Harman abstaining.**

**1. Special Use Permit #2014-008 – “Page’s Palette” Antique, Craft, Gift Shop:**

Mr. Padalino stated that the Planning & Zoning Department received a complete application in November from the applicant, Ms. Kimberly D. Page, seeking approval of a Special Use Permit (SUP) to operate a “antique, craft, or gift shop” retail store within the existing dwelling at 6222 Rockfish Valley Highway, Afton. Mr. Padalino indicated that the proposed use is shown on the Minor Site Plan that is accompanying the application materials drawn by Mr. Morris Foster and dated November 14, 2014. Mr. Padalino noted that since then, the Planning & Zoning Department (P&Z) has received a revised copy of the Site Plan on Monday, December 15, 2014.

Mr. Padalino then began his presentation of the staff report; providing a brief oral report summarizing the location and characteristics of the subject property. Mr. Padalino noted that the requested use, “antique, craft, or gift shop” is not defined in the Zoning Ordinance. The applicant described the proposed use as the display and sales of various items on consignment from local vendors, artists, artisans, and craftsmen; which would be contained to the front two rooms of the residence, totaling approximately six hundred (600) square feet of retail space. He noted that the applicant has been recently operating “Page’s Palette” retail shop from the existing residence, without the required SUP, despite a written determination, in April stating that “ongoing retail sales are not considered a Home Occupation,” and that a SUP would be required to operate a craft or gift shop, or to sell art work by other artists. However, the applicant explained that she was never supplied a copy of that determination as it was originally written for the realtors involved in the transaction.

Mr. Padalino noted that in regards to the unpermitted retail activities that were conducted earlier this fall, he conducted a site visit in October and discussed the Zoning Ordinance regulations and permit requirements with Ms. Page at that time. He noted since that meeting, Ms. Page has been very cooperative and has endeavored to submit all the required application materials; and has also stated that she has suspended the “Page’s Palette” retail operations during this permit application process. She has continued the art studio and art classes because they are a permissible Home Occupations.

Mr. Padalino showed photos taken from the site of the existing dwelling where the proposed shop would be located in the front two rooms. He also provided images of the road frontage along Route 151; the graveled loop driveway (which would not be used as part of the requested use); the entrance leading to the residence; the universally accessible ramp that would connect the parking area to the shop; current signage; turn lane at the

intersection of Greenfield Road; rock wall; and two pine trees. Mr. Padalino noted that a small portion of the rock wall and two large pine trees would be removed, as indicated on the revised site plan, to accommodate the anticipated commercial entrance.

Mr. Padalino then presented a series of slides comparing the original site plan with the updated/revised site plan, and highlighted the following changes:

1. Revised Sheet 2 shows the revised comments for the setback requirements, as noted at the Site Plan Review Committee meeting.
2. Revised Sheet 3 shows the revised entrance; specifically, the gravel drive and parking spaces shown on the original plan will no longer be accessed as part of the proposed use. There is a note on the site plan that stated access will be restricted from the new proposed entrance to the gravel drive.
3. The new commercial entrance is a major difference between the site plans. There will be two spruce trees and a small portion of the rock wall that are proposed to be removed to accommodate Virginia Department of Transportation (VDOT) required turning radius and entrance design specifications.

Mr. Padalino noted that County staff have recently received a couple of letters from County residents regarding the proposed use. Mr. Larry Stopper of Afton opposes the application. Mr. Stopper stated that his, "belief is that issuing the permit would be a bad idea on both a macro and micro level. On the micro level, the location of this house turned store is particularly bad when it comes to parking and sight lines down Rt. 151. It makes turning onto Greenfield Rd. much more dangerous and it has created problems on Rt. 151 itself when folks are trying to pull in and park at the house/store. On the macro level, it continues the painful slow drip of strip development on Rt. 151. The road is already dangerous enough and the number of trucks and other traffic has only increased and will continue to grow." Mr. Stopper's letter asks the Planning Commission to recommend denying the permit.

Mr. Padalino indicated that the second letter was from Mr. Marty Klaif of Afton. Mr. Klaif also noted that the corner of Greenfield Road and Rt. 151 is a high traffic intersection, which required a reconstruction a few years ago in response to hazards and accidents. He further stated that he does not believe that this location is appropriate for a retail business, or any situation which requires turning movements across the road.

Mr. Padalino then noted there are four (4) main criteria for reviewing all applications for Special Use Permits:

1. 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;
2. 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;
3. 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
4. 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.

Mr. Padalino stated that of those four (4) criteria, the proposed use(s) do create concern with the requirement for a proposed special use to have "adequate service" regarding safe vehicular access and safe connection with the public road system. Particularly, the location of the property creates some concern with regards to road safety and road mobility. Mr. Padalino noted that according to the Route 151 Corridor Study that was conducted by VDOT in 2013, this area has been identified as an intersection of concern with respect to safety, traffic volume, and mobility issues. He believes that the addition of a retail space should be carefully considered with respect to those issues. He noted that in addition to the property location, he stated that he has concerns with the safety and functionality of additional vehicular turning movements, especially at a site that was originally developed for residential use – and not designed to accommodate retail activity. He noted that it is his personal opinion that the property layout does not seem conducive to safe or efficient vehicular access; and it's location in a high-profile, high-volume traffic area compounds those perceived issues.

Therefore, despite a desire to support local small businesses and local artists, Mr. Padalino does not recommend approval for this SUP; but noted that there is no problem with the Home Occupation, as it is a by-right use and does not involve the same turning movements and traffic counts.

Chair Proulx asked if comments had been received from VDOT on the revised entrance. Mr. Padalino noted that comments had been received, and that those comments center around the need for either clarification or additional information. Mr. Padalino noted that Mr. Jeff Kessler of VDOT provided detailed comments stating that, "not all of the entrance related items and vehicle trip documentation were addressed as requested in my email correspondence of December 10<sup>th</sup>" (which was the date of the Site Plan Review Committee meeting). Mr. Kessler cited specifically that "the vehicle trips did not include those for the art class, and did not include the ITE identification numbers with the vehicle trips for the residential and commercial use of the property for VDOT to verify; that it is not clear what sight distance is provided as the graphics and descriptions are incomplete and do not match, and are inconsistent with the minimum distance required by VDOT's Road Design manual." He concluded by saying, "I am returning the documents you provided identifying the items that still require addressing." Mr. Padalino noted that Mr. Kessler also noted that the revised materials needed to be stamped and sealed by a professional with the proper Virginia license; in this case, a land surveyor.

Commissioner Russell stated that she had a question regarding Sheet 3 of the revised Site Plan. She indicated that it was her understanding that the original parking spaces along the gravel loop would be removed, but there are still three (3) lines showing on the revised Site Plan. Commissioner Russell added that the revised Plan notes that the entrance loop will be closed; and if so, she asked how would it be closed from being used by patrons. She noted that she understands that the southern end would be closed because of the entrance; but asked if the northern end would also be closed; or are the three (3) lines indicating that it will be closed part-way into the loop. Mr. Padalino stated that in respect to the comments made during the Site Plan Review meeting, the area around the gravel loop could continue to be used by residents and their guests, but access would be restricted in connection with use of the commercial entrance. He noted that he is unclear as to how the access would be restricted. He also indicated that the labels four ("4") and five ("5") on those parking spaces have been erased. Chair Proulx asked how shop patrons would know not to use those spaces. Commissioners Russell and Commissioner Harman noted that there are no signs to make patrons aware that the space is not for their use.

Chair Proulx asked if the applicant would like to add to Mr. Padalino's presentation.

Kim Page (applicant): Ms. Page stated that they just moved to the residence in June. She indicated that she is proposing a very low-volume retail operation. She noted that the charts that Mr. Morris Foster used were for 1,000 sq. ft. but they are only using 600 sq. ft. in the home. She noted that there were some estimates when it came to the traffic volume; those numbers are showing an average of nine (9) to thirteen (13) vehicles. Ms. Page stated that if there would be two (2) vehicles, that would be considered a lot. She anticipates a very small scale operation, and does not want to cause any traffic issues. Ms. Page noted that she feels her entrance is safer than the two (2) entrances at Ashley's Market. Ms. Page also noted that she does not operate the business past dark; during daylight savings she closes at 6:00 p.m. and now closes at 5:00 p.m.

Chair Proulx noted that during the last few weeks, she has noticed that the sandwich board sign is still out on display; and asked Ms. Page if she was still operating the retail shop. Ms. Page indicated that she was only doing art classes on Tuesday and Thursday nights or by appointment only for private teaching. Ms. Page indicated that she can lay the sign down.

Commissioner Russell asked if the art classes were simultaneously given with the retail hours. Ms. Page indicated they were not. She stated that she teaches from 6:00 to 9:00 p.m. and also noted that the ones taking the art classes are the ones that shop the most.

Commissioner Harman wanted to clarify with Ms. Page that she has an existing business that is an art studio and instruction classes, and that she wants to expand to include a gift shop, antiques and crafts in the other two (2) rooms. Ms. Page stated that was correct. She stated that it was mainly local people wanting to display their art.

Chair Proulx opened the public hearing at 7:21 p.m. for comments.

Charlie Weinberg Wineberg, Ennis Mountain Road: Mr. Weinberg stated that he uses the intersections of Route 151 and Route 635 seven hundred (700) or more times a year. He noted that it is dangerous and it has been

improved. He noted that the general public or their behavior cannot be controlled, nor can anyone control how many times they pull into a business when there is an open sign. He also noted that the applicant stated that they ceased the business pending the hearing, but he noted that on Facebook, on Friday, there was advertising for a new box of old vintage Christmas lights. There was also advertising that the business was open from 9 to 5. Mr. Weinberg stated that they have been continuing to do retail business, in spite of what has been attested to today.

Joyce Burton, Wild Orchid Lane (Shannon Farm): Ms. Burton stated that Shannon Farm joins the property for the proposed use. Ms. Burton stated that she does not want to discourage this kind of business, but feels this is a very bad location. She does not want to encourage additional traffic entering or exiting the property. She indicated that she was trying to figure out how to get in to the property coming south on Route 151 to take a photo of the signs, and could not figure out how to make the turn. She noted that she has concerns that tourists that are interested in patronizing an antique store will have an even harder time figuring it out. She stated for classes that are scheduled, it's easier to control. Ms. Burton also stated that she has concerns with there being pending applications for additional retail sales on the property; and it is her understanding that the Wayside Stand Permit will be coming back to the Planning Commission after this determination; and that requested use would ~~exasperate~~ ~~exacerbate~~ the [safety] situation. While she recognizes that a Special Use Permit is not a full rezoning request, she fears that permitting one or more retail operations at that site could further open the door to degradation of the residential and rural character of the area. She indicated that she would like to see that area remain residential and not have more commercial uses, especially given that some of the adjoining properties along Route 151 are owned by single land owners and would be very easy for potential development in the future. She asked that if the Planning Commission decides to approve the permit that they keep the parameters narrow to ensure that any business that does operate at that location have as little impact on the character of the area as possible; to include such things like sign parameters and dark sky lighting so it won't be distracting for vehicles; and that the permit not be transferrable to another owner. She also noted that she would be very sad to see a commercial entrance put there because it is a beautiful property.

Karen Karthiser Kartheiser, Mount Ararat Hill: Ms. Karthiser stated that her biggest concern is coming from the south, the Route 6 area, because there is a blind hill that you can't see over. The proposed use is on the property that is on the crest of the hill, and is concerned that traffic coming up the hill is going to have trouble turning both directions. She noted that she is concerned with safety in that area. She indicated that she seconds some of Ms. Burton's concerns.

Virginia Dontswear Dawnswir, resident of Afton: Ms. Dontswear stated that she travels along Route 151 and Route 635 because she lives in that area. She stated that she has the same concerns in terms of danger. She noted that the improvement has made it a bit safer, but it's a very busy intersection for a place that is rural. She noted that in regards to the overall 151 development, she would like to see intelligent development there and not just ~~pieee-mail~~ ~~piecemeal~~ things. She is worried that it may turn into a strip and doesn't think that will assist in the destination tourism, or tourism, and businesses that people do form. She stated that she loves the idea of a home business and as an artist, has one herself. The idea of a commercial entrance or anything that makes that area more business-like, and the possibility of adjacent places feeling like this is a good site because more people will be coming through, are the types of things that need to be planned for and not just happen-stance because of location. She indicated that she is hoping for an ag-forestral district adjacent to that land and to help preserve the rural nature of Nelson County.

Barbara Strauss, Shannon Farm Lane: Ms. Strauss stated that she also travels the Route 151 and Route 635 intersection. She stated that three (3) of her friends were killed at that intersection; it is already not a safe place. She has a lot of concerns. She does support home businesses but the location is awful; and doesn't want to see something like another Nellysford development. She stated that she agrees that this is a rural area and they knew that when the house was purchased. She noted that she thinks the art classes seems like a different thing but does not know what the technical designation would be. She also requests that if this is approved to not let it go with the house for the next owner.

Amelia Williams, Greenfield area: Ms. Williams stated that she uses that same intersection and that it is particularly difficult to turn left out of Greenfield Road onto Route 151. She noted that it is particularly difficult in

the mornings or in the afternoons when people are coming home from work; although it is zoned for 45 MPH, no one drives 45 MPH there. She indicated that there have been many times that she wished there was a stop light so she could get out of that area because of the long wait. She is concerned that there will be more deaths in that area again. She noted that she is an artist, a poet, and loves the idea of home based businesses; but thinks this particular location is a very bad location for that kind of retail establishment.

John Cunningham, 1088 Shannon Farm Lane: Mr. Cunningham stated that he has been operating a computer software business out of his house for about twenty-five (25) years and is in favor of this kind of thing happening. He noted that VDOT did a good job at widening the road for the turn a few years back; but further down the road, it narrows and would require a lot more widening. He indicated that he too does not like the idea of a strip mall and noted that the traffic is not conducive to that. He likes the idea of people doing this type of business; but retail at that location does not fit with the County's ambiance.

Rebecca Lavay L'Abbe, Greenfield: Ms. Lavay stated that she agrees with the comments from others. She noted that she worked at Veritas for about ten (10) years, and the amount of people drinking and driving along Route 151 is fairly appalling. She commented: no more retail.

After explaining that there would be no more opportunity for public comment once the public hearing was closed, Chair Proulx paused, waited, and then closed the public hearing at 7:57 p.m.

Chair Proulx asked Ms. Page if she would like to come back and address the Planning Commission. Ms. Page stated that she wanted to address the safety issues coming north on Route 151. She understands there is concern in that area; but that VDOT has put out the implication that there is a required stopping distance of 360 feet and they exceed that. They looked at that issue; addressed it, measured it; and have the appropriate footage to maintain that stopping sight distance. Regarding the other issue of people drinking and driving on the roadways, she stated that she feels businesses should not be penalized because of what other businesses are promoting. She indicated that her husband was born in the County and they are not looking to change the ambiance; that is why the Site Plan was submitted as it was; and explained that the proposed widening of the entrance and removal of two (2) spruce trees was the recommendation of the committee; and paving will only be where one would pull in. She stated that this is a home first and a business second. She noted this is not the typical retail atmosphere; and what's on the outside does not match what's on the inside.

Chair Proulx asked if Ms. Page could explain the loop and closing off the end of it. Ms. Page indicated that she is not sure, and that it was a part of VDOT's comments; and she will need to clarify with them what needs to happen and will do what is required.

Commissioner Harman asked Mr. Padalino if there was still a long list of items from VDOT that needs to be accomplished. Mr. Padalino stated that it seems to be more of a need for clarification than an outstanding requirement. Commissioner Harman asked if the commercial entrance redesign and the sight distance are alright with VDOT.

Commissioner Russell stated that according to the edited Site Plan that was received by Mr. Jeff Kessler, the number of trips for the art students are not included in the trips per day. She noted a low volume commercial entrance will handle up to 50 vehicle trips per day; they are currently at 35 vehicles without the art students. If there are over 50 vehicles per day, a different entrance may be needed. Commissioner Russell also indicated that VDOT seems to have some questions about the numbers for the stopping sight distances. She also stated that she has serious issues with the traffic, but is willing to wait until VDOT has made a final recommendation as to whether the applicant can meet the requirements for sight distance and for vehicle trips, which would determine the type of entrance that would be needed. She feels that it is very unfortunate that at least two (2) real estate agents in this County consulted with Planning staff, and were told that there were serious issues about what Ms. Page would like to do with the property; and yet, according to the applicant, she was unaware of this and has bought the property and finds herself in this unfortunate situation.

Chair Proulx indicated that she does not have a problem with waiting for the information from VDOT and would like clarification. She then stated that she personally feels that this is a “change in character” issue for the area. The only retail that is there is Ashley’s and that is grandfathered; it is a residential and agricultural area; and it adjoins properties that are 500 acres that are strictly in residential and agriculture use. Chair Proulx also stated that the safety aspect is a concern; not just the road and the intersection, but because that particular property’s form of entrance. Chair Proulx noted that the home business is a by-right use, if it is contained inside and does not have signage outside. Commissioner Harman stated that he would like clarity on what is and is not permissible by-right. Chair Proulx read the definition of a Home Occupations, Class A from the Zoning Ordinance. Chair Proulx also noted that what is important is that there is no outside display and the limitation of signs.

Commissioner Russell asked if the request for this SUP is turned down and Ms. Page continues with her classes, she will not need a commercial entrance as shown. Mr. Padalino stated that was correct.

**Commissioner Russell made a motion that the Planning Commission defer a decision for Special Use Permit for Kim Page #2014-008 until the Planning Commission has a final recommendation from VDOT regarding the traffic issues connected with this application. A second was offered by Commissioner Allen; the vote 5-1, with Supervisor Saunders against the motion.**

Chair Proulx stated that the application will be deferred until the next regular meeting after which VDOT’s issues are resolved.

Commissioner Goad asked Mr. Padalino since this has now been deferred, if after 100 days, will this application automatically go to the Board of Supervisors with a recommendation for approval. Mr. Padalino indicated that such a “shot clock” rule would be in effect, since a public hearing had been held and it is a complete application. Commissioner Goad then asked if the Planning Commission wanted to take action on this, would it have to be done within 100 days from today. Chair Proulx stated Commissioner Goad was correct about that timing. She also asked Mr. Padalino if this was truly a complete application when there is no recommendation from VDOT. Mr. Padalino stated that was a technical question and he would have to look at the Minor Site Plan checklist, which is the County’s criteria for determining completeness. If VDOT is stating that it is incomplete or needs clarification then that may be something that is subject to their criteria, as opposed to the County ordinance. Commissioner Goad stated that if that is truly the case, then he would prefer to defer the application until the January meeting.

Chair Proulx asked for a second motion to amend the first motion.

**Commissioner Goad moved to defer the application until the January Planning Commission meeting pending review of VDOT’s response. A second was offered by Commissioner Russell; the vote 6-0.**

### Other Business:

**Review Agricultural-Forestal District (AFD) application procedures:** Mr. Padalino stated that there have been a number of inquiries about the Nelson County Agricultural-Forestal District (AFD) program. He noted that many of those inquiries have resulted in applications being submitted to the Planning & Zoning Department; which in turn have posed a lot of questions from both the applicants as well from staff. Mr. Padalino stated that at the previous meeting, staff and commissioners discussed the AFD program and identified a need to ~~review the procedures that are found in the County Code, which are not contained in the Zoning Ordinance; and to also see how those procedures are affected by any discrepancies that may be in the State Code~~ review procedures in the County Code with reference to State Code language. Mr. Padalino stated that he did not believe there are major discrepancies between the County Code and the State Code, and that the two Codes are basically verbatim; however, he noted that there are a few changes that were adopted statewide in 2011 that were not enacted or adopted locally here in Nelson County at that time.

To better understand this topic, Mr. Padalino invited members of the AFD Advisory Committee to present information to the Planning Commission.

Susan McSwain: Ms. McSwain stated that she is on the AFD Advisory Committee as well as a member of the Dutch Creek AFD, which was the 1<sup>st</sup> AFD formed. She noted that Mr. Andy Wright is the person who brought the AFD ordinance to the attention of the County. Ms. McSwain provided background on the AFD; noting it was added to the State Code in 1977; and is a voluntary program created by landowners. There are two purposes stated to the Act: one is economic, to promote the development and improvement of agriculture and forestry; and the second is environmental, involving such issues as clean air, watershed protection, wildlife habitat, aesthetic quality, and others.

Ms. McSwain also provided a history of the Nelson County AFD program. She stated that in 2002 the Comprehensive Plan identified AFD's as one (1) of four (4) methods to protect rural heritage. The other three (3) were land use taxation, purchase of development rights, and conservation easements. She noted that AFD's can only be created in localities that have created and adopted a local ordinance, which Nelson County accomplished in early 2003. Later that year, the Dutch Creek AFD became the first district created in Nelson County, and it remains the largest AFD with thirty-two (32) parcels totaling nearly 3,000 acres. In 2004, the second AFD, Finley Mountain, was created, which is around 600 acres. In 2005, the third AFD, Davis Creek, was created, which contains about 800 acres.

Ms. McSwain also provided information as to why AFD's are important to people inside AFD's and to the County overall. She stated that AFD's provide stronger protection than regular agricultural zoning because some agriculture zoning can enable low-density residential sprawl. In an AFD, uses that are not compatible with agriculture and forestry and open space are highly discouraged. Ms. McSwain also noted that on the Virginia Department of Agriculture and Consumer Services (VDACS) website there is a list of about twenty (20) benefits to localities and landowners. From that list, she chose two (2) benefits to highlight. The first benefit is that AFD's discourages the abuse of the land-use-value taxation. To remove a parcel from the AFD, one has to meet certain specifications. If those specifications are not met, the Board of Supervisors may determine one has to wait until the end of the review period. The review period, as stated in the State Code is four (4) to ten (10) years. In Nelson County, all three (3) existing AFD's have a review period of five (5) years. The second benefit is that AFD's contribute to a sense of community as well as rural appeal and character. Ms. McSwain stated that there truly is a sense of community in an AFD; it's a wonderful feeling of belonging to a neighborhood with a common vision.

Ms. McSwain provided information about the Program Administrator. She stated that she hopes Mr. Padalino will be appointed to be the Program Administrator. The Program Administrator refers applications to the Advisory Committee; they verify the application's adherence to the requirements as set forth in the ordinance; and that includes a site visit. She noted that site visits are not done for single additions of property; but when an AFD is created, a site visit is done. The Committee then makes a recommendation to the Planning Commission. The Planning Commission notifies adjoining land owners; holds a public hearing; and makes a recommendation to the Board of Supervisors; and the Board of Supervisors holds another public hearing. Ms. McSwain noted that the same process is followed for withdrawals. She also noted that this includes an application processing fee, unless it is waived at the time of review.

Mr. Padalino noted that since the County does not currently have a Program Administrator and it hasn't adopted the new State Code model of 2011, the current procedure would be for interested applicants to submit an AFD application anytime between January 1<sup>st</sup> and June 1<sup>st</sup> of any calendar year. The applications would go to the Planning Commission; they would accept it after reviewing it at a regular scheduled meeting; then send it to the Advisory Committee; and the same process would apply after that point. Mr. Padalino noted that the different procedure, as described by Mrs. McSwain, would establish a Program Administrator as the first step in the review process, instead of the Planning Commission. Ms. McSwain stated if there was a Program Administrator, the process could be shortened by a month; because if an application comes in January, the Advisory Committee has to wait until the Planning Commission meets to say we accept the application and refer it to the Advisory Committee; after that, Mr. Padalino would contact the Advisory Committee. Whereas, if Mr. Padalino is the Program Administrator, when an application comes in, he could pass it on directly to the Advisory Committee.

Ms. McSwain then highlighted (3) of the 2011 simplifications to the State Code that would make a difference here in Nelson County, if the County Code were to be amended to incorporate those new provisions from the State

Code. One possible amendment would be to add the definition of Program Administrator, which will simplify the review process for the County, the applicants, and the Planning Commission; a second possible amendment would modify the requirements for creating and submitting maps as part of the application; and the third possible amendment would add flexibility for including outlying parcels to an existing 200-acre (minimum) core. Regarding the third possible amendment, Mrs. McSwain then explained that in order to create an AFD under the present County Code, you have to have a 200 acre core of parcels, which can be one parcel or several adjoining parcels. In the original State Code, an outlying parcel's nearest edge had to be one-mile or less from the core, or adjoin a property that was one-mile or less from the core. The new State Code stipulates that outlying parcels of significance can be added if they are located slightly more than one-mile from the existing core.

Andy Wright: Mr. Wright stated that the AFD adds a couple of protections to landowners. One is that it protects against nuisance ordinances that might limit customary farming. The other is protection against condemnation of the land. Mr. Wright stated that the only objection that he's encountered toward the AFD is that it is described as "not having any teeth" because the government stated that the local governing body must take into consideration the existence and purpose of an AFD when making land use decisions.

Robert McSwain, Dutch Creek Lane: Mr. McSwain noted that Dutch Creek Estates was one of their community actions. He stated that the subdivision was reduced from eighty-six (86) lots to nineteen (19) lots. He noted that an AFD is more than just a land thing, it's about the people and how they see their area.

Mr. Padalino thanked each of the AFD Advisory Committee members for the information and the presentation. Regarding the review process for pending AFD application, he stated that based on his understating of the current County Code, applications may only be received on or after January 1<sup>st</sup> up until June 1<sup>st</sup>. He noted that some pending AFD applications have been received in November and December. He feels that those applicants should come in and re-date the applications to sometime after January 1<sup>st</sup> since no review action has taken place and the applications have not gone before the Planning Commission. After being re-dated to comply with the procedural requirements outlined in the County Code, the applications can be put on the Planning Commission's January agenda to begin the process of the PC accepting the application, and referring it to the Advisory Committee. Mr. Padalino noted that this process would apply to AFD applications seeking to add property(s) to existing AFD's as well as applications for creating new AFD's.

Chair Proulx asked Mr. Padalino about initiating amendments to the Code for future applications; and if this would need to start with the Board of Supervisors (BOS). Mr. Padalino stated that is his understanding that amendments to the County Code would start with the BOS. Commissioner Russell asked if the Planning Commission could recommend that the BOS ask Staff to update the County's AFD to reflect the changes in the State Code from 2011. Mr. Padalino stated that approach would be possible; and suggested that the AFD Advisory Committee come up with a set of recommended amendments. Chair Proulx asked the AFD members if they had discussed how to proceed on reviewing the County Code with respect to the 2011 changes to the State Code. Mr. Wright stated they had not; but would be willing to assist with this, so that new applicants might have the opportunity to operate under the new requirements. Chair Proulx stated that perhaps it would be best if the AFD Advisory Committee members went before the BOS with their recommendations.

Chair Proulx noted that in the State Code, it made reference to the locality being able to set the date anywhere up to November 1<sup>st</sup> or any other calendar date they chose. Ms. McSwain stated that was used as an example in the State Code and the reason being, is that once the application has been submitted, the County has 180 days to complete the process. She noted that since most people operate on a calendar year, it made sense to them to use the June 1<sup>st</sup> date when the original AFD ordinance was written, which would guarantee the process could be completed that same calendar year, even with 180 days passing. Commissioner Russell asked that if a request for a new district is received in January, could the process start before the 1<sup>st</sup> of June or does the County have to wait until after the 1<sup>st</sup> of June. Mr. Padalino stated that Commissioner Russell is correct and that the process can start at any time, and that those dates are used for determining when applications can be submitted by applicants.

Supervisor Saunders asked if any applications have been submitted. Mr. Padalino stated that there were three (3) or four (4) submitted for additions and one (1) for a new district. Commissioner Russell asked if the submitted

applications come under the existing regulations, is there a way to modify those after the regulations have been updated so they could qualify under the more flexible plans. Mr. Padalino stated that the only benefit that he could see would be the flexibility for outlying applicants; because those who have already applied or have pending applications under the current regulations, they have already complied with the original procedural requirements, including completing the maps.

**Review draft recommendations for possible ordinance amendments re: “artists community”:** Mr. Padalino stated that at the November meeting, Mr. Greg Smith of the Virginia Center for the Creative Arts (VCCA) gave an introduction to the organization; and the concept of potentially having an interest in the Nelson County Agricultural District. At the conclusion of that meeting, the Planning Commission requested that Staff provide some preliminary language that could be considered for a possible Zoning Ordinance amendment.

Mr. Padalino explained that these recommendations attempt to address the fact that “artists community” is a land use that is currently not provided for in the County’s ordinance. Mr. Padalino noted that with the assistance of Mr. Smith, he prepared a staff report containing a proposal to add a definition for “artists community” along with two (2) additional definitions which would be required to clarify the main “artists community” definition. He noted that there is one (1) recommended addition to the “Uses – Permitted by Special Use Permit only” section of the Agricultural District in Article 4, for “artists community” which contained criteria for eligibility, such as minimum property size, maximum number of residences at one time, maximum duration of residencies, and others.

Chair Proulx made a comment on the last sentence of the “artist community” definition, where it reads, “typically a not-for-profit,” and stated that she doesn’t believe that needs to be in the definition. She wanted to know if there would be an objection if one wanted an “artists community” run as a for-profit entity, and if that would affect anything. Mr. Padalino stated that it is his understanding that virtually all “artists communities” are not-for-profit; but that it doesn’t mean that it has to be defined as such in the ordinance. Chair Proulx also noted that in the definition for “Artists”, the sentence where it states, “regardless of whether they can make their living by it”, she would like to remove the word “can.” She also commented that she believes the definition for “Artists Community Residencies” seems to be too narrowly defined and limiting.

Commissioner Russell asked if there were public events held, would they require a Special Events Permit. Mr. Padalino indicated that they would. Commissioner Goad and Commissioner Russell stated they do not have an issue with the “not-for-profit” in the definition because it does not exclude “for-profit” entities. Regarding the “Artists Community Residencies”, Commissioner Allen stated that she feels that a number of days should be added to the limiting factors. Commissioner Goad indicated that he had an issue with it possibly being a commercial enterprise, and that if the County were to allow an artists community to operate as a for-profit enterprise, it might create issues with other land uses that are already being provided for in the ordinance, such as campground or hotel.

Chair Proulx asked Mr. Smith if he would like to comment.

Greg Smith, Executive Director, Virginia Center for the Creative Arts (VCCA), Amherst, VA: Commissioner Allen asked Mr. Smith how the applicants are selected and if it was through an application process. Mr. Smith stated that it seems as though the selection/application process referenced in the proposed definitions may not fit into the Planning Commissioner’s typical thinking. He noted that if the County has concerns about the quality of the artists and the quality of the output of endeavor of the County, then the selection process is an important qualitative factor. He noted that VCCA currently has an application selection process, and anyone can apply. He indicated that the applications are read by two (2) peer review panelists who are professionals in the fields. The applications allow VCCA to look at the highest quality and give them the opportunity to come to the VCCA for residencies; and those with lesser qualities are turned down but typically encouraged to reapply.

Mr. Smith noted that he requested information from the Alliance for Artists Communities regarding the breakdown of the legal status of Artists Communities that are members of the Alliance. He indicated that the numbers (under IRS Section 501C3) are approximately 60% non-profits; 15-20% are private foundations; 75-80%

are what we typically think of as non-profits; and there is a small percentage that are LLC's. He indicated that the non-profit or the for-profit status in organizations does not correlate to the issue of whether artists pay or not; it has to do with the goal of the organization. He also noted that the VCCA asked artists to help support their endeavor by contributing. Mr. Smith stated that he would be concerned that the goal of a for-profit organization is to make money.

Chair Proulx stated that she does not think there is anywhere in the Zoning Ordinance where the County tries to effect the quality, and is bothered by the Planning Commission looking at it in such a way; and wonder if we are stepping outside of the land use boundaries. Mr. Padalino stated that he sees a nexus between the selection process and the VCCA's mission, and how that creates "quality control" which could help minimize some potential nuisance issues that could be associated with the proposed land use. He also stated that if the County were to allow artists communities as a for-profit commercial enterprise, there would be some concern with the issue of circumventing the ordinance, noting that it would likely be difficult to determine what is an artists community, and what is a campground, hotel, or other land use already being provided for by the ordinance.

Chair Proulx asked if Mr. Phillip Payne had reviewed the proposed amendments. Mr. Padalino stated he had not. Commissioner Russell and Commissioner Allen both agreed the more specific the proposed amendments, the better. Mr. Padalino noted that this would be a BOS consideration; whether any proposed amendment would happen or not; and they have to consider the whole list of concerns with such amendments. Chair Proulx stated that she would like to know Mr. Payne's comments on what is and what is not permissible and revisit the topic.

**Review "Wayside Stand Permit" application and review procedures:** Mr. Padalino gave an overview of the Staff Report dated November 12, 2014; which was prepared in response to comments made at the October meeting. Mr. Padalino noted that since the recent Wayside Stand Permit applications have been received, its proven that they are more complicated land uses than what the Zoning Ordinance describes. He noted that more clarity and a better process is needed for these types of applications.

Mr. Padalino explained that the November staff report contains specific recommendations about how the ordinance could require different types of information for Wayside Stand Permit applications, and could have improved review procedures. He indicated the report also contains information about how to address Farmers Market, which is a land use that is not currently provided for. He stated that there is currently the Nellysford Farmers Market; which is permissible due to the fact that it is located in the Residential Planned Community (RPC) district; and they have a wide variety of possible land uses.

Commission Russell stated that she had a couple of concerns. One concern is the issue of whether the Planning Commission wants to include in "Wayside Stand" the ability for a farmer to locate off of his farm; what percentage (if less than 100%) of his sales can be from other farmers' farms; and does it include value-added products. Mr. Padalino stated that in regards to location, Wayside Stands are by definition intended to be for the off-site sales of agricultural products. Regarding the percentage of products that can be produced off the farm, Mr. Padalino stated that the way the ordinance is written, 100% of Wayside Stand products are to be produced on the farm owned or controlled by the Wayside Stand operator.

Commissioner Russell stated the other issue is with a sketch for a site plan. She stated as a Planning Commissioner, she is very happy with a sketch; but noted that VDOT may not be. Mr. Padalino noted there has been ongoing discussion with Mr. Jeff Kessler, VDOT, as to what information would be needed by VDOT to make a recommendation about an application's safety and appropriateness with respect to the public road system.

Commissioner Allen stated that she is confused on some of the issues. She stated if a farmer stated he was going to sell 75% of his products; but his neighbor wanted him to sell 25% of his products; what is the issue with that. Chair Proulx and Commissioner Russell stated the way the ordinance is written, that is not permissible as a Wayside Stand but would be more along the lines of a Farmers Market. To address Commissioner Allen's comments, Mr. Padalino stated he believes the ordinance is so narrowly written in order to provide for a very simple permitting process, but one which would only be eligible if people are simply trying to sell their own agricultural products. He noted that if off-farm sales were to expand beyond what was produced on-the-farm, then

it gets more complicated and harder to enforce if permitted as a “wayside stand.” As a result, off-farm retail operations that include products produced on other farms are excluded from “wayside stands” in order to keep the “wayside stands” provision simple for people requesting permission to do simple operations.

Chair Proulx stated this topic would be deferred until the next meeting.

Supervisor Saunders then indicated that the staff reports being discussed from previous months should have been included in the meeting packets. Mr. Padalino stated that was an oversight, apologized, and noted that all background information and previous staff reports would be included in the next meeting materials packet. Mr. Padalino then noted that postponing the discussion until next month’s meeting would give all the Commissioner time to review the materials again.

**Notification of ongoing Amended Site Plan administrative reviews:**

**#2007-003 – “The Village at Glen Mary” – Mosby Run, Roseland / Mr. Steve Crandall:** Mr. Padalino stated an Amended Site Plan had been received in connection with a proposed new beer garden and a distillery. He noted that this application was initially received prior to the “Ag-Operations” set of amendments that were adopted by the Board of Supervisors in October, and which resulted in “distillery” being provided for as a special use only.

**#2010-001 – “Virginia Distillery Co.” – Eades Hollow, Lovington / Mr. Jim Taggart:** Mr. Padalino stated an Amended Site Plan had been received seeking approval for a modified and slightly reduced development plan. He noted that the applicants have proposed removing the Event Center, and reconfigured some of the buildings.

He noted both of these amended Site Plans **quality** qualify for administrative review; but wanted to make the Planning Commission aware of what is occurring. Commissioner Russell asked if the Virginia Distillery Co. was active. Mr. Padalino stated they are not distilling but the distillery is partially constructed.

**Update on Rockfish Valley Area Plan:** Mr. Padalino provided the same handouts to the Planning Commissioners that were given out during the October 28<sup>th</sup> “Project Intro” meeting conducted at Rockfish River Elementary School. He noted that the handout contains the web address for the project page, which is a more interactive resource that includes maps and other materials. He also noted that there are public participation materials that can be downloaded from the site; but at this time there is no interactive online survey. Mr. Padalino noted the idea of mailing the surveys out to residents within the study area (in addition to doing an online survey) is still considered an important component of the project, but that no decision has been made on that issue.

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

Commissioner Russell stated that she sent a summary of AT&T’s request to build a tower on Sunset Drive last year. She noted that in January, Mr. Lloyd, the attorney for AT&T, asked for a deferral; and, against the advice of the Planning Director, the Planning Commission granted an indefinite deferral and asked for a status report within three (3) months, which was received. As of April, the attorney stated they were still evaluating; and since then, nothing more has been heard from them. Commissioner Russell stated that she would like to know more.

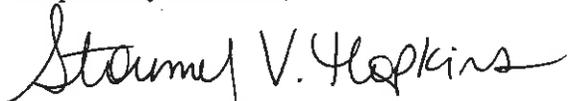
**Commissioner Russell suggested that the Planning Commission ask staff to advise the applicant that the Planning Commission will consider termination of this deferral at the February 26, 2015 meeting of the Planning Commission or first subsequent meeting if no February meeting occurs. This would give AT&T two months to decide whether they are going to go forward with a new site; or at least let the Planning Commission know what is happening, so the Planning Commission can decide what to do. A second was offered by Commission Harman; the vote 6-0.**

Commissioner Russell noted that the Planning Commission doesn’t normally defer these types of site approvals; but there was so much opposition to this tower when the public hearing was held.

**Adjournment:**

At 9:12 P.M. Commissioner Harman motioned to adjourn.

Respectfully submitted,

A handwritten signature in black ink that reads "Stormy V. Hopkins". The signature is written in a cursive style with a large initial 'S'.

Stormy V. Hopkins  
Secretary, Planning & Zoning