

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

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

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

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

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

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 meeting) for the **Averitt's Averitts'** application for a remote farm winery/tasting room has been withdrawn and will not be discussed tonight.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Commissioner Russell made the following motion:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Commissioners provided the following comments:

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

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

**Commission Russell made the following motion:**

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

**Other Agenda Items:**

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

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

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

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

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

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

The following questions were asked by the Commissioners:

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

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

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

**Commissioner Russell made the following motion:**

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

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

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

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

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

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

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

Staff Updates:

Mr. Padalino reported on the following:

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

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

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

**Adjournment:**

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

Respectfully submitted,

Stormy V. Hopkins  
Secretary, Planning & Zoning