

**NELSON COUNTY PLANNING COMMISSION
MEETING MINUTES
March 23, 2016**

Present: Chair Philippa Proulx, Commissioners Mike Harman, Linda Russell, Mary Kathryn Allen, Robert Goad and Tommy Bruguere (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 7:01 P. M. in the General District Courtroom, County Courthouse, Lovingson.

Approval of Minutes – February 24th (Work Session) & February 24th, 2016:

Commissioner Harman made the following motion:

I move that the meeting minutes and Work Session minutes from the February 24th, 2016 be approved; the vote 5-0 with Commissioner Allen abstaining.

1. Proposed Amendments to Zoning Ordinance Regarding “Uses – Permitted by Special Use Permit Only” in Limited Industrial (M-1) District

Mr. Padalino provided background information regarding the proposed amendments. He noted that the Board of Supervisors (BOS) referred the proposed amendments to the Planning Commission (PC) for review for a public hearing and recommendation. He concluded by identifying the two (2) Sections that would be amended 18-3-1 and 18-3-10 (as noted in the Staff Report dated March 14, 2016 – see attached).

Chair Proulx opened the public hearing at 7:05PM. No comments were given, the public hearing was closed.

The Commissioners and Staff discussed the use and provided the following questions/comments/concerns:

- Commissioner Russell questioned why a “contractors’ yard” is not permissible by-right as it is in Industrial M-2 District? Chair Proulx noted that “yard” indicates an outdoor use, and the “Statement of intent” for the M-1 District includes the following: “It is expected that uses in this district be to be operated from within a building.”
- Chair Proulx noted that the word “outside” could be added to “equipment yard” for clarity.
- Commissioner Goad indicated that the SUP (18-3-10) is for equipment only. He suggested that the proposed amendments be modified to include “materials.”
- Mr. Bruguere stated that he believes “storage yard” needs to be defined, including listing all the types of materials that would be allowed in a storage yard.
- Commissioner Allen felt that it does not need to be defined, because it may be difficult to proactively determine all appropriate uses, and because that issue could be addressed on a case-by-case basis during the Special Use Permit review process.

The Commissioners recommended modifications to the proposed amendments as follows:

1. Amend Section 18-3 (“Uses – Permitted by Special Use Permit only.”) as follows:

18-3-10: Replace (proposed) “Contractors’ equipment storage yard” with “Contractors’ outside equipment yard, which may include storage of materials.”

Commissioner Goad made the following motion:

I move to recommend approval of the proposed amendments 18-3-10 to include (“Contractors’ outside equipment yard, which may include storage of materials”), and 18-3-1 as advertised in the public hearing. Commissioner Allen provided the second; the vote 4-2 with Commissioner Russell and Mr. Brugiére voting against the motion.

Other Agenda Items:

**1. Proposed Amendments to Zoning Ordinance Article 10 - (General Floodplain District FP):
(referral made at 12/8/2015 BOS meeting; PC review continued from 2/24/2016 PC meeting)**

Mr. Padalino noted this is a continued meeting of the referred amendments regarding Article 10 – (General Floodplain District FP). He further noted that Mr. Charley Banks, National Floodplain Insurance Program (NFIP) Coordinator for Virginia Department of Conservation & Recreation (DCR), was in attendance for the purpose of assisting the PC review process.

Mr. Padalino then explained that the existence of Nelson County’s Floodplain Ordinance is a function of Nelson County being a voluntary participant in the NFIP. Participating localities in the NFIP must codify floodplain management regulations into the zoning ordinance (and similar regulations exist in the building code, and are administered and enforced by the Building Official). He also noted that, although the NFIP is a federal program, it has always been set up to be administered and enforced through local zoning ordinances; and that this arrangement continues to this day.

Mr. Padalino then noted that County staff reviewed the Ordinance with the assistance of the Virginia DCR, including an “audit” by DCR staff as requested by the County Administrator. Based on that audit, DCR staff provided a set of recommendations which can be grouped into two (2) general categories (as noted in the Staff Report dated March 14, 2016 – see attached): “regular standards” or minimum requirements, and “higher standards.” In total, DCR staff recommended twelve (12) new standards to be included in Nelson County’s Floodplain Ordinance. Mr. Padalino stated that Nelson County staff initially drafted proposed amendments which contain six (6) of DCR’s twelve (12) recommendations.

Mr. Padalino further noted that the County should be actively considering how any amendments to the Floodplain Ordinance could provide the added benefit of improving the County’s ability to participate in what is called the Community Rating System (CRS). He then briefly explained that the CRS is a voluntary program that rewards localities that have floodplain management regulations, and that one of the primary rewards is a reduction in flood insurance premiums for property owners Countywide. He further explained that the CRS provides higher rewards for those localities with more stringent protections for the floodplains and other special flood hazard areas. Mr. Padalino then shared additional details contained in a June 10th email from Mr. Charles Kline, former DCR Floodplain Planner (as noted in the Staff Report dated March 14, 2016 – see attached).

Mr. Padalino concluded his staff report by providing an updated overview of amendments by issue and by affected sections (as detailed in the Staff Report dated March 14, 2016 – see attached):

- Amendments intended to bring existing ordinance into compliance with model ordinance;
- Increase freeboard from existing 12” requirement to 18” requirement;
- Define “critical facilities” and prohibit them in all Special Flood Hazard Areas (SFHA);
- Restrict “hazardous materials” and fuels in all Special Flood Hazard Areas;

- Limit land uses in the Floodway to only non-structural uses;
- Modify the requirements for when the Base Flood Evaluation needs to be identified and included on subdivision plats; and
- Restrict the placement of fill in all Special Flood Hazard Area (SFHA).

Planning Commissioners, County Staff, and Mr. Banks then discussed the proposed floodplain amendments and provided the following questions/comments/concerns:

1. Mr. Bruguere noted that the SFHA is also in the floodplain and structures are currently prohibited. Mr. Padalino noted that was incorrect; and he explained that structures are not entirely prohibited and that a Special Use Permit (SUP) could potentially be issued by the Board of Zoning Appeals (BZA) for such structures. Mr. Padalino added that the proposed amendment would entirely prohibit structures from being constructed within any Floodway, which is a high-risk area designated within certain floodplains.
2. Commissioner Russell asked if the SFHA is identified on the FEMA maps. Mr. Padalino noted that it is, and that the SFHA is a general designation which contains multiple subcategories such as floodplain, floodway, and others.
3. Commissioner Goad asked how extensive the cost savings would be for property owners with flood insurance policies if the six (6) proposed recommendations are adopted. Mr. Padalino and Mr. Banks referred to the CRS program materials; and **disclaimed** stated that the CRS program benefits are calculated by multiple factors, and not just by the number of higher standards contained in the Floodplain Ordinance.
4. Mr. Bruguere noted that he feels only the minimum requirements need to be done, and that the volume of proposed amendments is ridiculous. In response to comments about the large amount of proposed new text, Mr. Padalino estimated that about 85% of the proposed amendments (shown in colored ink in the staff report) are necessary in order to be compliant with the minimum requirements contained in the “model ordinance,” and were explicitly identified by DCR staff. He clarified that the proposed “higher standards” represent only a small portion of the proposed new text.
5. Commissioner Russell asked if subdivision lots being treated different than individual lot; and if so, why isn't a lot in a subdivision subject to the same regulations? Mr. Padalino noted that perhaps it is because a subdivision inherently suggests a concentration of structures, improvements, and land uses – and thereby represents more potential risk to flood damage, which thereby creates a greater need for analysis and floodplain management.

Commissioner Russell then noted that the BZA is the board that one goes to if they have a floodplain issue or appeals a floodplain decision by Mr. Padalino in Nelson County. She asked Mr. Charley Banks if this is the standard practice in the state, and who decides what board is the final appeal for a floodplain issue. Mr. Banks indicated that, in his work assisting localities across the Commonwealth, he does see BZA the most. He added that the County is the one that would specify which board hears those decisions. He further noted that the use of the term Special Use Permit is not a common practice, and that it is typically known as a Variance. Mr. Padalino added that the County's Ordinance closely reflects the state model ordinance, except that both terms “SUP” and “Variance” are used. He identified Section 10-22 from the Ordinance as a useful reference. The Commissioners agreed that having both terms is confusing, and that staff should evaluate options for modifying the language to more closely reflect the model ordinance terminology.

Mr. Charley Banks: Mr. Banks noted that he enjoys going out to communities that participate in the NFIP. He indicated that there are 290 Virginia communities participating. He congratulated Nelson County on working on

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their floodplain ordinance. He further noted that Mr. Charles Kline was the DCR staff member who initially worked with Mr. Padalino to make suggestions for amending the ordinance.

Mr. Banks stated that, around 2010, FEMA was quite adamant that Virginia's model ordinance be brought up to their [federal] standard. He noted that Virginia's model ordinance didn't contain absolutely all of the federal requirements at that time – but after going through that revision process with FEMA, Virginia now has a model floodplain ordinance that contains everything required by FEMA. He added that the Virginia model ordinance is actually “a little bit better” than what FEMA requires. Mr. Banks then explained that the model ordinance is provided to Virginia localities with the hope that the communities will have ordinances that are improved. He further noted that the minimum regulations contained in the model ordinance are required in order for FEMA to approve a local floodplain ordinance – and enacting an ordinance that goes above and beyond that would make it safer for the community.

Mr. Banks then discussed conducting a workshop on the floodplain program and offering maps and other information to those that live in the floodplain area(s), which could include: what to do if one is in the SFHA and do not believe they are; what steps to take to get an elevation certificate and letter of map amendment from FEMA (if it qualifies); and ways to determine the approximate BFE's for the A Zones. Mr. Banks concluded by discussing the CRS details.

The ~~Commissioner~~ Commissioners had the following questions/concerns/comments:

1. Are the savings only on new construction or on all buildings? Mr. Banks noted that the potential savings on insurance premiums would be for all policy holders within a locality participating in the CRS.
2. If all the amendments were adopted (outlined in the Staff Report, dated March 14, 2016 – see attached) how would Nelson County rank in the CRS? Mr. Banks noted that would have to be evaluated by a CRS representative, and that the contents of the floodplain ordinance are one of multiple ways to earn points and improve a community's rating.
3. Chair Proulx indicated that she likes the idea of having a workshop. Mr. Banks noted that he would be happy to work with the County if they are interested.
4. Commissioner Russell noted that currently the Zoning Ordinance allows the BZA to seek outside advice, but it does not specify who pays for it. She believes the Telecommunications Ordinance does specify that the cost will be shared between the County and the applicant. She would like that to be considered as an addition to the Ordinance.

Mr. Padalino noted that he would follow up with Mr. Banks and the County Attorney to see what issues (if any) there would be to remove SUP from the BZA language.

The Commissioners decided to continue the discussion of the proposed floodplain amendments at next month's meeting. They thanked Mr. Banks for his time.

2. Class C Tower Permit Applications (Equipment Upgrades) / nTelos Wireless:

- Comm. Tower Permit #2016-01 / 5029 Rockfish Valley Hwy (CV821) / TM Parcel #22-A-60
- Comm. Tower Permit #2016-02 / 266 Hearthstone Lane (CV822) / TM Parcel #WPOA Open Space

Mr. Padalino stated that these are two Class C Communication Tower Permits. He noted that these are not new facilities, but are existing tower facilities; and due to the details of the proposed equipment upgrade, they are not eligible for administrative review/approval.

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Mr. Padalino noted that Comm. Tower Permit #2016-01 is a facility called CV821: Greenfield. He showed maps of the subject property's location and characteristics. The parcel is identified as Tax Map Parcel #22-A-60C1, and is zoned Agricultural (A-1). It contains a 50' x 50' lease area. Mr. Padalino showed photos of the site. He noted that this application involves a proposed height addition to the existing tower: it would go from 120' (current approval height) to 132' (proposed height), or a 12' increase or 10% increase. He added that under the County's Tower Ordinance, that proposed additional height is considered a non-substantial increase. He then showed excerpts from the Site Plan provided by the applicant.

Mr. Padalino noted that Comm. Tower Permit #2016-02 is a facility that is called CV822: Lodebar in Stoney Creek. He showed maps and photos of the subject property's location and characteristics. He showed excerpts from the Site Plan provided by the applicant.

Mr. Padalino concluded by discussing the various aspects of these applications such as the Class C Tower Permit process vs. (administrative) Tower Permit Amendments process; balloon test and photo simulations; and Planning Commission review procedures and responsibilities (as noted in the Staff Report dated March 14, 2016 – see attached).

Commissioner Russell noted that the County's Zoning Ordinance only allows towers up to 130' and defines tower height to include the lightning rod. She then noted that the ordinance does allow for a 10% increase, but she does not believe the increase should go over the maximum tower height that is permissible by definition. She believes this "violates the spirit of the ordinance." She also noted that she is unhappy with the photo simulations of the tower that is located across the Rockfish Presbyterian Church. In comparing the two pictures, "it does not look as though one is ten feet taller than the other one when you look at the foliage." She added that the location of this facility is very prominent and on a highly travelled tourist area on Route 151. She further noted that Mr. Padalino stated that in the BOS minutes, the tower was approved as a "stealth facility" and she is not clear what that is and does not believe it is a "stealth facility." She concluded by noting she does not have an issue with the tower on Hearthstone Lane [CV822], but does have an issue with the Greenfield tower [CV821]. She noted that the Greenfield tower is a very prominent location from one part of Route 151, and that another ten feet of height will make a big difference. She noted that she would personally like to have a public hearing, which would allow people to know this proposal is before the County.

Chair Proulx asked the applicant to address the Commission's questions, including questions about whether or not the proposed height could be reduced to 130'.

Debbie Balsler: Ms. Balsler stated that she is the Site Acquisitions Manager at NTELOS located in Waynesboro. She noted that, "one of the reasons or the main reasons we cannot go any lower is that the owner of the tower (APEX) has leased the space below us to Verizon. They have contracted with them to put their antennas below us." She further noted that the LTE antennas are longer than the existing antennas (about 8'), so they cannot go into Verizon's lease space, which is why they are requesting to go higher.

Commissioner Russell asked if it would be possible for them to accommodate 130' instead of 132'. Ms. Balsler noted that she does not know, but that she could go back to the engineers to see if it could be decreased. She indicated that, "with the LTE upgrade, other additional things that we are adding to the tower that we didn't have to add to the tower before are remote radio heads. So with the high speed data, they are actually putting the radio heads at the top of the tower." She further explained that this allows for faster high speed data and better in-building coverage for cell phones. Ms. Balsler noted that there are seven (7) remote radio heads that go in between the antennas and the microwave dish.

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Ms. Balsler then noted that, “with LTE’s we can no longer use the telephone line, we have to have fiber to every site in order to do that. We cannot get fiber to the Lodebar site on Hearthstone [CV822], so we have to microwave from CV821 on 151 to Hearthstone [CV822] to get fiber. That’s the only way the LTE will work – if we have fiber. We have existing fiber today on 151; and we’ll just microwave back to the Lodebar site.”

The **Commissioner** Commissioners and Staff noted that there are two (2) issues: the height (132’ versus 130’), and whether or not to hold a public hearing. Mr. Padalino noted that it is at the discretion of the Commission if they wanted to hold a public hearing (referenced Section 20-13, Item B). Commissioner Russell noted that she is more concerned with the profile with a 10’ increase. She is more interested in the public being aware of this and having an opportunity to speak about the increase. Mr. Padalino stated that, “it is my understanding that maximum height is for new facilities, and we don’t have local control over these non-substantial increases.”

Mr. Bruguere asked if the lightning rod is included in the total height. Ms. Balsler noted that 2’ of the height is the lightning rod. Mr. Bruguere asked if the lightning rod could be reduced to be in compliance. Ms. Balsler stated that the lightning rod could be reduced.

Commissioner Russell made the following motion:

I make a motion that the Planning Commission recommend to the Board of Supervisors approve application for a communication tower permit #2016-01 by NTELOS to modify an existing tower at location CV821 located at 5029 Rockfish Valley Highway with the stipulation that the tower must be a maximum of 130’ including all antennas and lightening rod. Commissioner Goad provided the second; the vote 6-0.

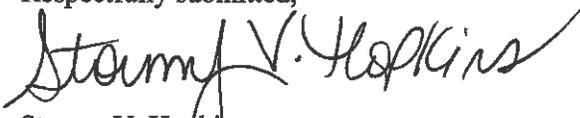
Commissioner Russell made the following motion:

I make a motion that the Planning Commission recommend that the Board of Supervisors approve communication tower permit #2016-02 made by NTELOS for a existing tower CV822 accessible at 266 Hearthstone Lane in Nellysford to modify an existing tower. Commissioner Harman provided the second; the vote 6-0.

Adjournment:

Commissioner Allen made a motion to adjourn at 9:26pm; vote 6-0.

Respectfully submitted,


Stormy V. Hopkins
Secretary, Planning & Zoning