

**NELSON COUNTY PLANNING COMMISSION
MEETING MINUTES
August 24, 2016**

Present: Chair Philippa Proulx, Commissioners Mike Harman, Linda Russell, Mary Kathryn Allen and Tommy Bruguere (Board of Supervisors Liaison)

Absent: Commissioner Robert Goad

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 – July 27, 2016:

Commissioner Harman made the following motion:

I move that the meeting minutes of July 27, 2016 be approved; the vote 4-0 with Commissioner Allen abstaining.

Public Hearing Items:

1. Special Use Permit #2016-03 – Mr. John Bradshaw, Jr.:

Mr. Padalino showed a slide that contained information regarding the subject property's location, characteristics, and other information. He explained that the County's records show that the property is located in the Lovingson Historic District at 652 Front Street, and is further identified as Tax Map Parcel #58B-3-32; but he noted that he believes the real estate records are incorrect. He noted that the Bradshaw Building is addressed as 605, 607, 609, and 611 Front Street; and exists across three (3) contiguous tax map parcels. He then noted that the Special Use Permit (SUP) request is specific to Tax Map Parcel #58B-3-32, which is the center multi-story portion of the Bradshaw Building.

Commissioner Russell asked if the building "hangs over into" Tax Map #58B-3-32B. Mr. Padalino indicated that he was not sure. He further noted that such information is typically contained on the Minor Site Plan that is 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. This is an existing building;
2. There are no exterior development plans, and no new additions being proposed; and
3. The subject property is almost entirely built-out to the property boundary.

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 August 15, 2016-see attached); and recommended approval of Special Use Permit #2016-03 to authorize the requested dwelling land use in the Business (B-1) District on Tax Map Parcel #58B-3-32, as specified in the application materials.

Commissioner Russell asked a question about the source of one of the maps contained in the meeting materials packet. Mr. Padalino explained that the source of the map came from the County's online GIS mapping service,

and that Mrs. Stormy Hopkins (Secretary, Planning & Zoning) added additional information to the map, such as the list of adjoining property owners.

Mr. John Bradshaw, Jr.: Mr. Bradshaw stated that he appreciates the Commissioner's Commissioners time tonight. Regarding the Bradshaw Building, he noted that, "it was currently being used prior to this [time] as that same use, so I'm just asking that the same use continue."

Chair Proulx asked where the access was to the second floor apartment. Mr. Bradshaw noted that it was the concrete steps at the front and it also has steps on the back of the building. She asked if the main floor was a commercial area. He indicated that it was. He proceeded to show a photo from the 1920's to the Commissioners² and provided details about the building's history.

Mr. Bruguere asked if he had ever considered combining the parcels into one. Mr. Bradshaw noted that right now, he was just trying to get the roof fixed. He also noted that he would like to eventually resurvey everything, in order to get the tax maps fixed.

Mr. Bruguere also noted that since this is in a Historic District, Mr. Bradshaw could apply to get tax credits to help with fixing up the building. Mr. Bradshaw indicated that he has the paperwork, but has not applied.

Chair Proulx then opened a public hearing at 7:12 p.m. No comments were made and the public hearing was closed.

Commissioner Russell asked if this was a request for a SUP to use the top floor of the building for residential use. Mr. Bradshaw indicated that he is requesting to continue the use that it had.

Commissioner Russell made the following motion:

The Planning Commission has received a request for a Special Use Permit #2016-03 for property owned by the John J. Bradshaw Irrevocable Trust, located on Front Street, Tax Map #58B-3-32 in order to permit the top floor of the structure to be used for residential purposes. The Planning Commission recommends approval of this request to the Board of Supervisor. Commissioner Allen provided the second; and the Commissioners voted 5-0 in favor of the motion.

Commissioner Russell added that the Planning Office asked the Nelson County Times to publish a Legal Notice on August 11th and August 18th regarding the public hearing. The newspaper failed to do so on August 11th but it was subsequently published in the Daily Progress, which met the legal requirements contained in the Zoning Ordinance and in the Code of Virginia.

2. Conditional Rezoning #2016-01 – Old Hickory Buildings, LLC:

Mr. Padalino began his staff report by showing slides that contained information regarding the subject property's location, characteristics, and other information. He explained that the property is located in Colleen on Route 29, and is zoned Business (B-1). There are two primary existing structures, addressed as 3907 and 3965 Thomas Nelson Hwy; the property is served by the Nelson County Service Authority's water and sewer utilities. Mr. Padalino noted that the County's GIS data for parcels do not accurately depict the property boundaries in this vicinity; but the Minor Site Plan that was prepared by Acres of Virginia shows the correct property boundaries.

Mr. Padalino explained that the conditional rezoning request is to go from Business (B-1) to Limited Industrial (M-1) with conditions. Mr. Padalino cited the Comprehensive Plan, noting that the Future Land Use Plan designates this area as "Light Industrial / Mixed Commercial," which is "the highest level of commercial activity permitted." He also noted that the subject property has a long history of commercial and quasi-industrial uses, such as the former Mays Farmers Services store and the fuel storage tanks.

Commissioner Harman asked for clarification if the tire shop and the new specialty store (on the left/south) is included in this parcel, and if the tire shop will continue its operation. Mr. Padalino indicated that the tire shop is contained on the subject property, but the specialty shop is not; it is a separate parcel. He further noted that the subject property is listed as Tax Map #76-A-1 and is 7.8-acres; zoned Business (B-1). Mr. Padalino added that the future of the tire shop was discussed during the Site Plan Review Committee meeting (July 13th), and at that time the plan was for the tire shop to not continue and instead be taken over by the manufacturer (Old Hickory Buildings, LLC).

Mr. Padalino noted that the application was submitted by the contract purchaser, Mr. Brian Berryman of Old Hickory Buildings, LLC. The applicant is seeking County approval to utilize the subject property to, “allow for the manufacturing, storage, and display for the storage buildings for sale to the general public.” He further noted that the application includes an authorization letter from the owners of Tax Map Parcel #76-A-1, Mr. Marshall A. Mays, Jr. and Ms. Marlene M. Fitzgerald; an authorization letter from the applicant (Mr. Berryman) designating Mr. Tom Berry, Esq., and Acres of Virginia (represented by Mr. Tommy Brooks, Jr., Land Surveyor) to act as the agents for this application; and proffers (dated July 20th and signed July 22nd), which voluntarily offer to limit the use of the subject property to, “outside storage, display, and manufacturing of storage buildings for sale to the general public” and “any new or additional lighting will be glare-shielded” and “the underground storage tanks shown on the plan will be removed.” Mr. Padalino clarified that the underground storage tanks that are referenced in the proffers do not exist – they are above ground storage tanks, and they have been previously remediated, and will be removed by the contract purchaser as proffered.

Commissioner Russell asked about the storage tanks. Commissioner Harman noted that there are three pumps that are still there. Mr. Brooks stated that those were gravity fed from the above ground storage tanks.

Mr. Padalino concluded by discussing the Site Plan Review Committee Comments (as described in the Staff Report, dated August 15, 2016 – see attached), and by providing his recommendation. He noted that the conditional rezoning request seems appropriate with respect to the applicant’s proffered conditions; to adjacent zoning districts and land uses; and to the area’s designation as a “Light Industrial / Mixed Commercial” area in the future land use plan. He concluded by recommending approval of Conditional Rezoning #2016-01.

The Commissioners’ had the following questions/comments/concerns:

1. *If approved, will the applicant be required to submit a new Site Plan showing how the entrances will be closed, signage, and outside display?* Mr. Padalino noted a Major Site Plan would not be required unless the scope of the project was modified (increased).
2. *In the Notes section of the Site Plan, the Nelson County (NCSA) Service Authority indicated there may be a need for an easement regarding water and sewer involving Parcel 1A.* Mr. Padalino noted that on July 13th, Mr. George Miller of NCSA thought that the water line crossed the edge of 1A as it went from the main over to the old building, but that status is apparently up for debate. He deferred to Mr. Brooks, Jr. who prepare the Site Plan, and who has coordinated directly with Mr. Miller.
3. *Commissioner Russell noted that there is a lot on the Site Plan, but most of it is “this is what we are going to do” and there is no date for when those improvements would be implemented; she expressed her concern about providing approval without County control over the implementation of the Site Plan.* Mr. Padalino noted that he thinks it’s implicit that the terms and details on an approved Site Plan must be met by the owner or developer. He also noted that the “key County mechanism” to enforce Site Plan compliance would be to withhold the issuance of the Certificate of Occupancy, or to not sign the required Building Permit for the proposed renovations or rehab to the farmer’s service store.
4. *What is limited Business (B-1) district?* Mr. Padalino noted that there is no Limited Business District; the Minor Site Plan is incorrect in that regard. The adjoining property is actually zoned Business (B-1) District. The original Site Plan submission listed that same property as Business (B-2), and that was also incorrect.

Thomas Brooks, Jr.: Mr. Brooks noted that he is a Land Surveyor with Acres of Virginia, Inc. and is representing the project. Mr. Brooks addressed the storage tanks. He indicated that on the Site Plan, there are lines coming from the tanks, into the building and to the pumps. Those are all underground lines that were gravity fed into the

pumps from the above ground tanks. He further noted that there are no underground storage tanks. He added that the storage tanks site has been properly remediated.

The Commissioners had the following questions/comments/concerns:

1. *Does the State control the removal of the storage tanks?* Mr. Brooks noted that the State does control it but that the Department of Environmental Quality (DEQ) is also involved.
2. *Will the gas pumps be removed?* The underground lines will not be removed but the gas pumps will be taken off of the concrete pads.
3. *Is there a need for a right-of-way for the water lines?* Mr. Padalino noted that Mr. George Miller raised that issue at the Site Plan Review Committee meeting but did not specify that it was a requirement. He was concerned that the water line crossed parcel 1A. Mr. Brooks noted that he had spoken to Mr. Miller in detail about the issue. He further noted that once a utility line leaves a right-of-way, it becomes a private line and the Nelson County Service Authority has no control over where the lines are located after the line leaves the right-of-way and enters on to private property. Mr. Miller does not know where the water lines are, but he was going to try and figure that out. He assured the owner (contract purchaser) wants to get the issue properly resolved.
4. *Is the existing grass and gravel entrance from Stage Road going to stay open?* Mr. Brooks noted that it was going to remain open. It will be used for access through the property from front to back. It will not be used as a main entrance. No trucks will be coming in on the Stage Road entrance. He noted that he had talked with Mr. Jeff Kessler (VDOT) and there was no mention of any required changes on Stage Road; VDOT was concerned about the front entrance.

Mr. Brooks noted that in regards to the question related to the concern of *"how is this controlled and how do you make them do what's on the Site Plan and how are they going to be made to do this."* He then noted that, "this is a waiver that they have to apply for and VDOT actually controls that, so if these conditions are not met, then the final Site Plan approval cannot happen. And VDOT will go to Tim and say, you know what, before you can sign off on the Site Plan this has got to be done. Matter of fact, they will even put an injunction against them if they try to use those entrances after they've applied for the waiver. So, VDOT is going to be very strict and stringent concerning those entrances."

5. *There had been talk about VDOT, over the next several years doing new entrance permits to the buildings, closing off some of them from the Dairy Isle down to this point. Since the middle entrance is going to be closed, is this in VDOT's long-range plans or for just this property?* Mr. Brooks noted that VDOT's access management regulations come in to effect when a property owner makes an application. He added that, conversely, "as long as the Dairy Isle or nobody does any changes to their stuff and they don't come to you to ask anything, VDOT can't require it." He then noted that if someone came before the Commission for something, then VDOT would look at the access management regulations. He added that it was possible that VDOT could get involved at some point in the future.
6. *Is there a 25' easement built into this for the future?* Mr. Brooks noted that VDOT wants the applicant to provide access to the parcel located to the west. He explained that VDOT does not intend to issue any entrance permits for that parcel in question; the parcel cannot directly access Route 29 and cannot meet entrance spacing requirements on Cooperative Way. So VDOT is forcing the applicant to put an access easement on that side. **They are VDOT** is also forcing **them** the applicant to put an additional access easement on the north side. VDOT is requiring all access easements to be put into a deed.
7. *Is there access off of Cooperative Ways?* They do not have the ability to put a new entrance on Cooperative Way.

Chair Proulx then opened a public hearing at 7:44 p.m. No comments were made and the public hearing was closed.

Commissioner Russell indicated that proffer #3 is incorrect due to the fact that there are no underground storage tanks. Mr. Padalino noted that was correct. She would like to have proffer #3 deleted or corrected. Mr. Padalino suggested leaving the proffer as-is and request that the applicant provide a clarification letter.

Commissioner Russell made the following motion:

“In the matter of the application by Old Hickory Buildings for Conditional Rezoning #2016-01 for property located at 3907 and 3965 Thomas Nelson Highway in Colleen, Tax Map #76-A-1: the request is to rezone property from B-1 to M-1 Conditional, subject to three proffers dated July 22, 2016, which the Planning Commission recommends that the Board of Supervisors approve.” Commissioner Harman provided the second; and the Commissioners voted 5-0 in favor of the motion.

Other Agenda Items:

Continued Review of Class C Communication Tower Permit Application #2016-08 (Shentel):

Mr. Padalino provided information regarding the subject property’s location and characteristics. Mr. Padalino showed maps of the subject property, identified as Tax Map Parcel #45-A-40, which is zoned Agricultural (A-1). He stated it is an existing tower site known as “CV221” which contains two (2) communication towers.

Mr. Padalino noted that the request from Shentel is to replace an existing 97.5’ wood tower with a proposed 130’ Class C steel monopole; and the purposes of the request are to achieve better coverage, to address a drop call area (south of site), and to have better structural integrity to accommodate new/larger equipment.

Mr. Padalino noted that during the last Planning Commission (PC) meeting, there were several follow up items that were identified: providing information regarding potential co-location (as required by ordinance); evaluating the possibility of tower redesign to a lower overall height which would accommodate coverage objectives but not accommodate co-location for future providers; and revising the “Tree Survey” to identify which trees would be removed or “adversely impacted.” In response, on August 15th, the following materials were received: a revised “Tree Survey,” and revised coverage maps corresponding with multiple co-location scenarios. He stated that the applicant’s letter indicates there is concern about the feasibility of co-locating in this area, and there **is** no **feasibility** resources to create a new tower site between CV221 and Lovingson. Mr. Padalino then summarized the propagation maps and reviewed those in detail (as described in the Staff Report dated August 15, 2016).

Jessie Wilmer, Shentel: Ms. Wilmer noted that she has Mr. Jamey Dennis, Radio Frequency Engineer with Shentel with her this evening. Mr. Dennis does the design and technical work for the tower sites. Ms. Wilmer noted that they would like to propose the higher height tower at 130’. It provides continuous coverage along Route 29 and it would eliminate the drop call area. Ms. Wilmer then reviewed the propagation maps for the Commissioners.

Ms. Wilmer noted they did look into which site would be better visually if they raised the height at CV221, or if they increased the tower height at site at CV150 (in Lovingson) – and they chose to pursue a taller height at CV221 because they believed it was visually less obtrusive. Ms. Wilmer added that Shentel must replace the existing pole at CV221 because the twenty (20) year old wood pole failed structurally. She also characterized the co-location alternative as a net-addition of a site for Shentel, with associated costs; and the big costs are the base station equipment, the utilities, and the ground rent. Ms. Wilmer further noted that they probably wouldn’t be able to co-locate on the existing Verizon or AT&T towers in the vicinity because of the trees.

The Commissioners had the following questions/concerns/comments:

1. *Where did the coverage generation maps come from for the tower that would give them the 94’ height?* Ms. Wilmer noted that those were computer models.
2. *Is co-location possible with other providers?* Ms. Wilmer indicated co-location is possible but it is not in the budget. She also noted they would have to investigate further if co-location would be available at one of the existing poles, or if they would need to add a new pole
3. *Are they interested in co-locating at the 94’ tower?* Ms. Wilmer indicated that they were not interested, but submitted the information because it is a requirement of the Zoning Ordinance.
4. *Plan D indicates a replacement of the current tower at the same height, is that correct?* Ms. Wilmer indicated that Plan D is to raise the tower in Lovingson.

5. *Commissioner Allen asked how tall the other towers in Lovington are.* Commissioner Russell indicated that 120' is the highest of the cell towers but does not know how tall the television towers are; she added that it's a "tower farm." Ms. Wilmer indicated that the tower heights are 120', 90', and 75'.
6. *Commissioner Harman indicated that he would prefer to see them replace CV150 to a 120' tower.* Ms. Wilmer noted that they were not planning to replace the tower at CV150 site; it is to remain as a wooden pole.
7. *How old is the wood tower at the CV150 site?* Ms. Wilmer said it was about the same age as the others, but it is structurally sound.
8. *Does the rescue and emergency services depend on private cell phone service?* Mr. Bruguiere noted that from his experience, they would call in using a cell phone. Commissioner Allen noted that they all have radios but the problem is they have different equipment that is used in the back of an ambulance to transfer information, which uses cell phone service.

Commissioner Russell made the following motion:

The Planning Commission has received an application from Shentel for Class C Commission Tower permit #2016-08 to install a 130' tower on west side of Route 29 in Lovington on Tax Map Parcel #45-A-40. The Planning Commission recommends that the Board of Supervisors deny this application for several reasons. The Planning Commission feels a more appropriate location to maximize cell phone service along 29 would be to replace the existing CV221 tower at its existing height and to raise the CV150 tower from 75' to 120', which would accomplish the desires of the applicant. The reasons for denial of the application is that the Commission wishes to retain the rural character of the area where the proposed tower would be, which would be approximately 40' above the tree line and feels that the goal of the applicant can be accomplished by two (2) shorter towers. Commissioner Harman provided the second; the vote 3-2 in favor of the motion with Commissioner Allen and Mr. Bruguiere voting against the motion.

Other Business:

Mr. Padalino did not have any other business to discuss.

Board of Supervisors Report: Mr. Bruguiere noted the following:

1. The Board did not take any action on the Planning Commission's recommendations for the (proposed) amendments to the Floodplain Ordinance.
2. The Board has authorized a public hearing for their September meeting on the (proposed) amendments for "Temporary Events."
3. The Board has authorized a public hearing for their September meeting on the (proposed) addition to the existing Greenfield Ag-Forestal District.

Adjournment:

Commissioner Allen made a motion to adjourn at 8:34 pm; vote 5-0.

Respectfully submitted,


Stormy V. Hopkins
Secretary, Planning & Zoning