



To: Chairman and Members, Nelson County Planning Commission

From: Tim Padalino | Director | Department of Planning & Zoning

Date: March 20, 2014

Subject: Update on Proposed Amendments to Zoning Ordinance pertaining to “two-family detached dwellings”

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

That BOS referral, provided by Mr. Steve Carter, Nelson County Administrator (a copy of which is provided with this report), asks the Planning Commission to, “consider this amendment and present it[s] recommendations to the Board as expeditiously as possible.” Please note that the BOS referral makes reference to the applicable requirements of Code of Virginia §15.2-2285, and Nelson County Zoning Ordinance §16-1-2, which require that a public hearing be conducted.

Subsequently, the Planning Commission conducted a review of these proposed amendments at the Work Session held on February 26th. The following report provides a review of the proposed amendments, as well as a summary of the Commission’s Feb 26th discussion:

Existing Regulations and Provisions:

Article 2. Definitions.

- *Dwelling*: Any building which is designed for residential purposes (except apartment houses, boardinghouses, dormitories, hotels and motels.)
- *Dwelling unit*: A single unit providing complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation.
- *Dwelling, two-family detached*: A building arranged or designed to contain two (2) dwelling units.

Article 4. Agricultural District (A-1), Section 2. “Lots Allowed and Area Regulations”

- §4-2-1a: The minimum lot area shall be two (2) acres (87,120 sq. ft) or more per dwelling unit. For family subdivision lots the minimum lot area shall be one (1) acre (43,560 sq. ft.) per dwelling unit.
 - *(Note): Based on the definitions in Article 2 and listed above, the correct interpretation of §4-2-1a currently requires 4 acres for a duplex (at 2 acres per dwelling unit).*

Proposed Text Amendment(s):

The proposed text amendments for your review and consideration include:

Article 4. Agricultural District (A-1), Section 2. "Lots Allowed and Area Regulations"

- §4-2-1a: The minimum lot area shall be two (2) acres (87,120 sq. ft) or more per single-family detached dwelling or two-family detached dwelling containing a total of four (4) or fewer bedrooms and two (2) or fewer bathrooms. For family subdivision lots the minimum lot area shall be one (1) acre (43,560 sq. ft.) per dwelling unit.
- §4-2-2: For permitted uses utilizing individual sewage disposal systems, the Health Department shall review and approve the required area for any such use ~~shall be approved by the health official~~ in consideration of the average daily water usage, as calculated by the number and size of bedrooms and bathrooms. The administrator may require a greater area if considered necessary by the health official.
 - *(Note): As explained in the referral memo from Mr. Carter, the Commission is welcome to consider these proposed changes to §4-2-2 at their discretion; but the BOS did not discuss these specific amendments or formally refer them to the Commission.*

In speaking with Mr. George Krieger, Director of Nelson County Community Development Foundation (NCCDF) and originator for these proposed amendments, he indicated that these proposed amendments would be very beneficial for NCCDF's efforts to provide rental housing to senior citizens and other low- to moderate-income residents who qualify for subsidized housing.

Additionally, because the proposed amendments would limit which duplexes are eligible for the 2-acre density requirement based on the number of bedrooms and bathrooms, it does not appear that the amendments would create issues with public health or sanitation. As Mr. Krieger has noted, a 4 bedroom, 2 bathroom duplex would represent comparable average daily water usage as a single family home of the same size. If the dwellings – whether they contain one unit or two units – contain the same (or similar) number of bedrooms and bathrooms, and thus have comparable average daily water usage and septic requirements, then it should be acceptable for a duplex to be subject to the same 2-acre area regulation as a single-family dwelling. The proposed amendments to §4-2-2 would provide further assurance that a 2-acre site would provide adequate area for septic systems, drainfields, and reserve drainfields by directly requiring Health Department approval.

Please reference the second and third pages of the referral memo, which contain materials submitted by Mr. Krieger and which contain supplemental information about why these proposed amendments are beneficial, and why he believes they are not problematic and not in conflict with Zoning Ordinance and Comp Plan policies.

Summary of Planning Commission Discussion at February 26th Work Session:

The Planning Commission received the staff report and presentation on this topic, and then subsequently discussed the proposed amendments (summarized below).

Chair Proulx asked to receive copies of the Board of Supervisors' Resolutions on the two-family dwellings, and Commissioner Russell added that she would like to also get a copy of the meeting minutes from the Board of Supervisors. An excerpt of the (draft) meeting minutes from the Board's February 11th meeting are attached to this report. However, no formal resolution was ever established. Deputy Clerk Candy McGarry explained on March 18th that, "There was no resolution passed regarding the referral on this; it was done by motion, second, and vote."

Chair Proulx stated she does not think all of these proposed uses need to be accommodated for in the A-1 district. She continued, stating that with regards to the proposed increased density, such projects may be better suited for being rezoned to Residential (R-1 or R-2); or may be better located in other areas of the County that are already zoned for higher-intensity residential uses.

Chair Proulx stated she is also concerned with how the number of people, rooms, and baths would be limited – and how those limitations would be enforced. She and Commissioner Harman recommended maintaining the current acreage requirements for duplexes in the A-1 District.

Commissioner Russell stated she would like to know from the Health Department as to how they determine the soil type class and the space that is needed for a septic and reserve field.

There was brief discussion about the possibility of modifying or "narrowing" these proposed amendments so that they would be specifically limited to the Community Development Foundation. Staff noted that there can be only one (1) designated Housing Authority per locality, and perhaps that designated authority could be the only "developer" or property owner that is eligible for these proposed 2-acre requirements. Commissioner Russell stated she can see issues with this because one may view this as favoritism.

Commissioner Harman stated there are other ways that they can accomplish their goals rather than revising the current regulations to allow for increased the density. He suggested they look at other areas in the County that are suitable to these types of homes. If the desired areas are zoned A-1, the applicant(s) may be able to rezone the area and cluster the homes in certain areas in the County versus distributing the projects across the whole County.

To summarize the concerns that were voiced by Commissioners at the February 26th Work Session:

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

- Concern that the proposed amendments are not enforceable.

Staff noted the concerns are all valid and should be addressed by Mr. Krieger, presumably at the March 26th Planning Commission meeting. Commissioner Russell stated she would like to wait a month to be able to speak with Tom Eick. Chair Proulx then continued the Work Session review of this issue to the March meeting, and clarified that the Commission is not ready for Public Hearing.

Please note that George Krieger has indicated he plans to attend the March 26th Work Session to discuss these proposed amendments and to answer any questions the Commissioners may have. And please contact me with any questions you may have concerning this item. Thank you.

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Upon reconvening in open session, Mr. Hale moved that the Nelson County Board of Supervisors certify that, in the closed session just concluded, nothing was discussed except the matter or matters (1) specifically identified in the motion to convene in closed session and (2) lawfully permitted to be discussed under the provisions of the Virginia Freedom of Information act cited in that motion.

Mr. Hale seconded the motion and there being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

Introduced: Part Time employee funding request by Circuit Court Clerk

Mr. Bruguire noted that Ms. Smythers had requested funding for more part time help and this was not included in the budget amendment and he understood she needed someone immediately.

Mr. Harvey then moved to let Mr. Carter work with Ms. Smythers to get her additional staffing worked out immediately. Mr. Bruguire seconded the motion and there being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

Introduced: Zoning Ordinance issue related to Duplexes

Mr. Hale noted that a problem relating to Duplexes and the Zoning Ordinance had been brought to his attention. He noted that he thought that a two family detached dwelling (duplex) was permitted by right in A-1 Districts; however one could not build a duplex on the same lot size that a single family dwelling could be built on. He added that the issue had been brought up by George Krieger through their housing issues in Shipman. He noted that currently, if a person wanted to build a duplex in an A-1 zone, they had to have four (4) acres and he would like to suggest that the allowable lot area should be two (2) acres for single. He noted that a change to one line in the current Ordinance would fix this.

Mr. Hale further explained that as it stood now, a person could build a huge house on a two (2) acre lot and would have to meet approvals by the Health Department etc. He added that the reason that this should be in the Ordinance was to permit a duplex on a two (2) acre lot in an A-1 District. He then noted that another reason to adjust this was to fulfill a housing need that should be available as it would provide affordable housing for some and having to purchase additional acreage would add to the cost and thus making it less affordable.

Mr. Carter advised that the suggested change must be referred to the Planning Commission and Mr. Hale noted that he would urge them to take action this month. He reiterated that the problem was with the acreage restriction.

Ms. Brennan confirmed with Mr. Hale that one could have up to four (4) bedrooms in a duplex also on that acreage.

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Mr. Hale then moved to send a recommendation to the Planning Commission to look into this with the objective to make it possible to build a duplex on a two (2) acre lot in an A-1 district.

Mr. Bruguiere seconded the motion and Mr. Harvey noted he would like to get confirmation from Mr. Payne on the process of referral etc. Mr. Carter advised that he thought it had to go to the Planning Commission. There being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

Introduced: Sheriff's Department funding Request dated 2/10/14

Mr. Carter noted that the Sheriff had met with him on this request the previous day; however staff had not had time to thoroughly review it. He noted that everyone in the Department had a vehicle assigned to them presently and that funding the request was dependent on the status of the fines and forfeitures revenues of January. He added that according to analysis, the new deputies had cars also. Mr. Harvey noted that he thought the issue was there were no back up vehicles.

Mr. Carter then reported that they would be about \$29,000 short of the projected revenues. He noted that he did not think the radar officer had been decommissioned.

Mr. Harvey then noted that he thought that the requested radios have been covered and he suggested that they would remove \$3,000 from the request. He added that new radios would go in the new cars and he noted that funds had just been approved for two new ones the other day.

Mr. Harvey then moved to allow the purchase of two (2) police utility vehicles and equipment that could not be removed from the older cars, with County staff to order the vehicles and work out pricing. He added that the Sheriff's Department is to try to pull back forfeiture money to help with this.

Mr. Hale seconded the motion but noted that he thought they would have to start looking at budget things before spending more money. Mr. Harvey then noted that the County could not get off cycle with vehicle purchases.

There being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

It was noted by staff that this funding would come out of the current year's budget.

Ms. Brennan noted that it was unclear looking at the car list provided by the Sheriff and she would like to see a chart of vehicles for budgetary purposes.

VII. Reports, Appointments, Directives, and Correspondence

A. Reports

1. County Administrator's Report