



Nelson County Planning Commission Meeting Minutes November 16th, 2022

Present: Chair Mary Kathryn Allen and Commissioners Mike Harman, Phil Proulx, Chuck Amante, Jesse Rutherford and Robin Hauschner

Staff Present: Dylan Bishop, Director and Emily Hjulstrom, Planner/Secretary

Call to Order: Chair Allen called the meeting to order at 7:00 PM in the General District Courtroom, County Courthouse, Lovingston.

October Meeting Minutes

Ms. Proulx noted that on Page 5 “existing trailer” should be corrected to “existing truck trailer storage entrance”.

Mr. Harman made a motion to approve with the noted correction. **Ms. Proulx** seconded the motion.
Yes:

Charles Amante

Mike Harman

Phil Proulx

Jesse Rutherford

Mary Kathryn Allen

Robin Hauschner

Public Hearings

Special Use Permit #762 – Distillery

Ms. Bishop presented the following information:

Nelson County Planning Commission

To: Planning Commission
From: Dylan M. Bishop, Director of Planning & Zoning *DMB*
Date: November 16, 2022
Re: SUP #762 – Three Notch'd Distillery – 2461 Rockfish Valley Hwy

BACKGROUND: This is a request for a special use permit for a distillery use on property zoned B-1 Business.

Public Hearings Scheduled: P/C – November 16; Board – December 13 (tentative)

Location / Election District: 2461 Rockfish Valley Hwy / Central District

Tax Map Number(s) / Total Acreage: 21-A-84, 21-A-85, 21-15-2 / 9.99 +/- total

Applicant Contact Information: Three Notch'd Brewing Company (Scott Roth), 520 2nd Street SE, Charlottesville, VA 22902, 434-956-3141, scott@threenb.com

Owner Contact Information: Nellysford Real Estate, 520 2nd Street SE, Charlottesville, VA 22902, 434-956-3141, george@threenb.com

Comments: This property is currently home to the former Wild Wolf Brewing facilities, including the brewery, restaurant, and associated parking on three separate parcels, and was recently acquired by Three Notch'd Brewing Company. The applicants are proposing to utilize existing buildings on lot #21-15-2 for distillery production, and are not proposing any new structures for this use. They are proposing to produce "ready to drink" or "RTD" cocktails that will be sold on-site, to-go, and for distribution throughout Virginia, and anticipate that 80% of what is produced in the distillery will be removed for off-site purchase. The applicants intend to utilize the remainder of the property as it has been in the past.

DISCUSSION:

Land Use / Floodplain: This area is commercial, residential, and agricultural in nature. Zoning in the vicinity is A-1 Agriculture, R-1 Residential, B-1 Business, and RPC Residential Planned Community (Wintergreen). Businesses adjoining the parcel include an accounting office, insurance agency, and ice cream shop. There are no floodplains located on the property.

Access / Traffic / Parking: The property is accessed by an existing entrance on Rockfish Valley Hwy. Comments from VDOT will be provided at the meeting. There is sufficient parking as outlined in Section 12-7-6a of the Zoning Ordinance.

Utilities: The narrative provided by the applicant indicates that they are in contact with Aqua Virginia regarding an extension of a force main sewer line to accept waste. Comments from Aqua Virginia will be provided at the meeting. The applicant also intends to have production wastewater pumped and hauled, and abandon the current septic fields.

Comprehensive Plan: This property is located in Nellysford, an area designated Neighborhood Mixed Use on the Future Land Use Map in the current Comprehensive Plan. This development model is a "central gathering place able to fulfill the diverse needs and interests of nearby residents and visitors to the county, all within a focused, walkable and identifiable place." One principle is to "direct small-scale commercial and residential development into areas designated... Neighborhood Mixed Use..." Additionally, "parking lots should be placed behind buildings or in other areas where the impact of the lot on the neighborhood is minimized. Dark sky lighting and unobtrusive signage is appropriate for all new development." Appropriate land uses in this model include both single family and multifamily residential, a variety of commercial establishments, professional offices, civic and public uses, and parks or recreation facilities. Some of the preferred uses include a grocery store, restaurants, cultural and entertainment opportunities, a drugstore, doctor and dentist offices, and churches."

South of Nellysford is designated Rural Residential, which would allow low density residential and compatible non-residential uses in rural areas where agriculture is not the predominant use.

Conditions: Should Planning Commission recommend approval of SUP #762 for a distillery, staff would recommend the following conditions:

1. Property shall be served by sewer through Aqua Virginia, and the existing septic fields shall be abandoned.
2. No less than 80% of what is produced in the distillery shall be removed for off-site purchase.

All applications for Special Use Permits shall be reviewed using the following criteria:

- a. 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;
- b. 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;
- c. 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
- d. 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.

Attachments:
Application
Narrative
Site Plan
Zoning

She added that there is an existing commercial entrance and they will not be required to change it or add any parking.

Mr. Amante asked if the existing septic system was not sufficient. Ms. Bishop noted that the facility was already due for upgrades before ownership changed hands.

Mr. Scott Roth of 1215 Harold Circle in Charlottesville is the applicant and one of the owners and founders of Three Notch'd. He explained that they will continue to have a brewery in the existing facility and then the distillery will be in two outbuildings. He explained that Aqua would not be able to accept the brewery waste but that they would have a main for all of the domestic waste to go to Aqua and for the brewery effluent to be pump and haul. He added that the pump station will be conveyed to Aqua after the project is done. Mr. Harman asked where the 80% rule came from. Mr. Roth explained that he was asked how much would be removed for off-site consumption. He added that cocktails in a can are the new thing and that they would also have small bourbon line for sale. He added that there is no legal requirement from ABC to enforce the amount consumed via off site consumption. Ms. Bishop added that it was information that staff requested and that it was not required to be a condition. Mr. Roth explained that they will still be operating a restaurant with or without the distillery.

Mr. Amante asked what happens to an abandoned drain field. Mr. Roth explained that they will use the tanks that are already underground for domestic waste to go to the pump and haul but that everything else would be left abandoned in place and it has been dry for the last year. He added that there are no ground water issues.

Chair Allen opened the public hearing at 7:14 PM.

Chair Allen closed the public hearing at 7:14 PM.

Mr. Hauschner recommended either modifying the second recommended condition to add "or consumption" or removing it entirely.

Mr. Hauschner made a motion to recommend approval of SUP #762 for a distillery with the condition that the property shall be served by sewer through Aqua Virginia, and the existing septic fields shall be abandoned.

Ms. Proulx seconded the motion.

Yes:

Charles Amante

Mike Harman

Phil Proulx

Jesse Rutherford

Mary Kathryn Allen

Robin Hauschner

Special Use Permit #763 – Campground

Ms. Bishop presented the following information:



To: Planning Commission
From: Dylan M. Bishop, Director of Planning & Zoning *DMB*
Date: November 16, 2022
Re: SUP #762 – Campground (2 sites) – 1939 Sleepy Hollow Road

BACKGROUND: This is a request for a special use permit for a campground use on property zoned A-1 Agriculture.

Public Hearings Scheduled: P/C – November 16; Board – December 13 (tentative)

Location / Election District: 1939 Sleepy Hollow Rd. / West District

Tax Map Number(s) / Total Acreage: 65-1-1A / 6.7 +/- total

Applicant/Owner Contact Information: Kyle & Krystal Hawke, 8201 Shelley Road, Richmond, VA 23229, 404-988-6936, kylehawke@gmail.com

Comments: This property currently contains a single-family dwelling that is utilized as a vacation house, which is a by-right use. The owners also converted two school buses into units to be utilized as short-term rentals, which requires a Special Use Permit for a campground. The owners were sent a Notice of Violation from our office, indicating that they needed to cease renting out these units, apply for an SUP, and receive approval to continue the requested use. Since then, the applicants have been working with the Health Department and VDOT towards a plan for compliance.

DISCUSSION:

Land Use / Floodplain: This area is residential and agricultural in nature. Zoning in the vicinity is A-1 Agriculture. There are no floodplains located on the property.

Access / Traffic / Parking: The property is accessed by two entrances on Sleepy Hollow Road. One is an existing private driveway that accesses the dwelling. The applicant is currently working with VDOT regarding permitting of the second entrance. Comments from VDOT will be provided at the meeting.

Utilities: The applicant has been in contact with the Health Department, and intends to install a septic system as required by VDH. Any additional comments from VDH will be provided at the meeting.

Comprehensive Plan: This property is located in an area designated Rural and Farming in the current Comprehensive Plan, which would promote agricultural uses and compatible open space uses but discourage large scale residential development and commercial development that would conflict with agricultural uses. It would permit small scale industrial and service uses that complement agriculture and protection of usable farmland shall be encouraged.

Conditions: Should Planning Commission recommend approval of SUP #763 for a campground, staff would recommend the following conditions:

1. There shall be no more than 2 sites, and the 2 units shall be provided by the property owner.
2. The porta potty shall be removed and septic system installed as required by Virginia Department of Health.
3. The rental units and any associated structures shall be moved or placed in a location compliant with setback requirements.

All applications for Special Use Permits shall be reviewed using the following criteria:

- a. 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;
- b. 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;
- c. 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
- d. 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.

Attachments:
Application
Minor Site Plan
Narrative
Zoning

Ms. Bishop added that VDH would require a sewage disposal system to serve both buses.

Ms. Proulx asked if they were currently meeting setbacks. Ms. Bishop noted that there is an accessory structure being used as a kids play house that is believed to be within the setback.

Mr. Kyle Hawke of 1939 Sleepy Hollow Rd in Roseland is the applicant. He added that he is respectful of his neighbors' perspectives and would like to find a solution that works for everyone. He explained that the buses currently have compost toilets but would also have to tie in to septic. He noted that he would also have to address the driveway if he was approved. Ms. Proulx asked if there was anyone living on site or any supervision on the property. Mr. Hawke explained that his primary residence is in Richmond. He explained that he has a caretaker in town that cleans and maintains the property and would be there in case of issue. He added that he hasn't heard real time feedback of any issues but he has heard from the neighbors during this application process that there is a noise issue.

Chair Allen opened the public hearing at 7:22 PM.

Ms. Barbara Adams and her husband live at 1809 Sleepy Hollow Rd and share a border with the property. She noted that they have significant concerns. She explained that the applicant failed to mention that they have been advertising and operating a glamping campground since they purchased the property in December of 2021. She explained that half of the property is available for camping. She said that applicants also failed to mention that the 2200 sq ft farm house and barn are used as a year round vacation rental. She added that the owners' descriptions on AirBnB and VRBO include several amenities that are within several hundred feet of her front porch. She explained that it is solidly booked for much of the year. She added that the applicants have made no attempts to reach out to neighbors. She included that the owners live in Richmond and not on the property in question. She recounted an incident in which a semi-automatic rifle was used by one of the guests in the direction of her land. She added that the approval of the SUP for glamping would allow for 12 guests in addition to the 14 that can rent the house. She worries that it will set a precedent to allow even more commercial development in the area. She questioned whether the well and septic systems on the property were adequate. She added that she is not averse to the AirBnB but that she feels strongly that the number of guests should be suitable to the size of the property and that 26 guests is extreme.

Don Woodsmall of 1340 Mosbys Reach in Charlottesville and owns the property immediately adjacent to the subject parcel and another parcel to the south. He explained that never in his career did he see people go ahead with their business without first receiving permits. He explained that he was very surprised to see the owner, who is a sophisticated business man, open up the site without acquiring the proper permits. He explained that there is loud noise after 10 and that the guests tend to party late at night. He added that if you live in a city you are going to party when you go out to camp out in the country. He explained that he hopes for his children to build a home one day on the parcel that he owns when there is a glamping facility 75 feet away where people party around the campfire at night. Mr. Woodsmall thinks that someone asking for forgiveness instead of permission should have the bar higher not lower. He explained that in the memo that all SUPs should be reviewed during the following criteria. He added that subset b is that the use shall be in harmony with uses permitted by right in the zoning district and shall not affect adversely the use of the neighboring property. He believes that approval of this SUP would violate that criteria.

Ruthie McDonald and Angela Campbell live at 1938 Sleepy Hollow Rd and are directly across from the property. She explained that she saw the buses appear one day with no warning. She noted that she doesn't mean him any disrespect but that he should have received permits first. She explained that they haven't had problems with the owner but they have with the people that camp there. She explained that they have people walking on their land at night and trash on the road. She added that she knows and trusts her neighbors but that she's now scared at night.

Chair Allen closed the public hearing at 7:31 PM.

Ms. Proulx noted that there is a fair amount of concern from the neighbors over what is going on. She explained that the campground is not removed from a residential area like some of the campgrounds that they have seen. She added that the neighbors concern sounds valid to her. Mr. Hauschner added that without a full time caretaker it doesn't feel like it's appropriate for the area. He explained that they

can't have people wandering around at night and shooting guns without anyone there to control the situation. Ms. Proulx explained that they are usually unable to know for sure how an application will affect an area but that in this case they are able to see how it is affecting the neighbors. Mr. Hauschner asked what options they have for adding a condition that there be a full time care taker. Ms. Bishop noted that requiring a full time care taker could be a condition but that she is unsure how it would be regulated.

Ms. Bishop noted that the Vacation House on the property is a by right use and that this SUP is for the buses. She added that the Planning Commission could limit the number of guests, impose a noise cut off time, and impose screening or marking of property boundaries. Ms. Proulx explained that her inclination is to recommend denial. Ms. Bishop asked if they would like to see a full time caretaker on the property or in the vicinity. Ms. Proulx explained that she would like to see someone on the property. Ms. Proulx added that this campground is much closer to neighbors and that they now have the experience of previously reviewed campgrounds. Mr. Hauschner added that this is a presentation of adverse impact on the neighboring properties. Ms. Bishop explained that Albemarle requires that someone be accessible within 30 minutes at all times with their short term rental applications.

Mr. Amante noted that the issues do overlap with the vacation house issues. Mr. Rutherford explained that his reservations are with them not meeting the front setbacks and that it is in a more residential area. He explained that the septic issue would need to be taken care of with VDH.

Chair Allen asked why the buses are so close to the road and not at the back of the property. Mr. Hawke explained that there is a view there and it is separate from the house. Ms. Allen asked if the people renting the buses were allowed to use the pool at the house. Mr. Hawke noted that they were not. Chair Allen asked how he could enforce people not using the pool. He explained that it is not mentioned to them and not visible from the buses.

Mr. Hawke explained that he respects his neighbors. He added that he has done an analysis of the total amount of guests and that they never got to 26 people in one night. Chair Allen asked which 90 days were included in the analysis. Mr. Hawke explained that it was June, July, and August typically on Friday and Saturday nights. Mr. Hawke explained that in the issue with the gun, police were called and showed up. He added that the offending guests apologized and that they were at the house and not in the buses. He noted that he appreciates Mr. Woodsmall's point and that there isn't a house there currently. He explained that he would be on board with a condition that allows his Special Use Permit only until Mr. Woodsmall's lot is developed. He added there is technology to monitor noise and allow him to engage with guests if noise reaches a certain level. He added that he does not know if the reported person walking on a neighbors property was one of the guests or not. He noted that the caretaker for the property lives on Route 29 in Shipman.

Ms. Proulx made a motion to recommend denial of SUP 763 for a campground. Mr. Hauschner seconded the motion.

Yes:

Charles Amante

Mike Harman

Phil Proulx

Jesse Rutherford

Mary Kathryn Allen

Robin Hauschner

The motion passed with a vote of 5-0.

Special Use Permit #764 – Campground

Ms. Bishop presented the following information:

Nelson County Planning Commission

To: Planning Commission
From: Dylan M. Bishop, Director of Planning & Zoning *DMB*
Date: November 16, 2022
Re: SUP #764 – Campground (2 sites) – Crabtree Falls Hwy (Tyro)

BACKGROUND: This is a request for a special use permit for a campground use on property zoned A-1 Agriculture.

Public Hearings Scheduled: P/C – November 16; Board – December 13 (tentative)

Location / Election District: Crabtree Falls Hwy / West District

Tax Map Number(s) / Total Acreage: 41-A-32 / 1.68 +/- total

Applicant/Owner Contact Information: John H. Jr. and Roberta Fitzgerald, 266 Big Rock Road, Tyro, VA 22976, 434-941-8082 / 434-277-8044, thinpine@aol.com / rhfitz9701@aol.com

Comments: This property is currently vacant and located within the Regulatory Floodway. The owners currently use the lot for tent camping and fishing, and are proposing to rent out two portable tiny homes on wheels for short-term lodging. Section 10-13(D)2 of the Floodplain Ordinance allows public and private recreational uses and activities in the Floodway.

DISCUSSION:

Land Use / Floodplain: This area is residential and agricultural in nature. Zoning in the vicinity is A-1 Agriculture. The property is entirely located within the Floodway.

Access / Traffic / Parking: The property is accessed by an existing entrance on Crabtree Falls Hwy. Any comments from VDOT will be provided at the meeting.

Utilities: The applicant has existing electric service to the property and existing septic permitted by VDH. Any additional comments will be provided at the meeting.

Comprehensive Plan: This property is located in an area designated Rural and Farming in the current Comprehensive Plan, which would promote agricultural uses and compatible open space uses but discourage large scale residential development and commercial development that would conflict with agricultural uses. It would permit small scale industrial and service uses that complement agriculture and protection of usable farmland shall be encouraged.

Conditions: Should Planning Commission recommend approval of SUP #764 for a campground, staff would recommend the following conditions:

1. There shall be no more than 2 sites, and the 2 units shall be provided by the property owner.

All applications for Special Use Permits shall be reviewed using the following criteria:

- a. 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;
- b. 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;
- c. 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
- d. 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.

Attachments:
Application
Narrative
Site Plan
Zoning and Floodplain

Mr. Amante asked if they could have a drainfield on a slope that steep by the river and on a smaller lot. Ms. Bishop noted that it is already permitted and installed.

Mr. J. H. Fitzgerald of 266 Big Rock Rd is the applicant for the project. He added that the steep slope is across the street from the camp sites.

Chair Allen opened the public hearing at 7:51 PM.

Chair Allen closed the public hearing at 7:51 PM.

Mr. Hauschner asked what the plan was if the area flooded. Mr. Fitzgerald noted that nothing is permanent and everything is portable and on hitchers and that he would just have to move them to the house. He added that they monitor the river regularly for family that still lives in the flood zone. Ms. Bishop noted that it is a flood ordinance requirement that the trailers be road ready.

Mr. Hauschner asked about the removal of renters in the case of flood. Mr. Fitzgerald explained that they would vacate the property in case of flood. He added that people would be willing to leave if there was a flood and he doesn't see that being an issue. He added that he lives across the road and will be

able to monitor the site. He added that there is camping across the road and several camp sites up and down the road that are permanent.

Mr. Harman made a motion to recommend approval of SUP #764 Campground with the condition that there shall be no more than 2 sites, and the 2 units shall be provided by the property owner.

Mr. Amante seconded the motion.

Yes:

Charles Amante

Mike Harman

Phil Proulx

Jesse Rutherford

Mary Kathryn Allen

Robin Hauschner

Ms. Bishop added that for the SUP 763 Campground recommendation for denial that she wanted to confirm the PC's reason for their recommendation. The Planning Commission confirmed that it was due to feedback from the neighbors and noncompliance with Section 12-3-2(b) of the SUP review criteria.

Other Business:

Ms. Bishop noted that a new member was appointed to the Board of Zoning Appeals, Jerry Samford in place of Gifford Childs. She added that there will be a review of the cluster housing development ordinance at the next Planning Commission meeting. She explained that they have a request from a developer that is proposing to construct work force housing in Lovington on lots smaller than what is currently allowed. She added that the Board of Supervisors has added that they would like to have extra joint sessions facilitated by staff to review specific topics in the Comprehensive Plan update. She added that SUP 717 for Belties restaurant was delayed until the Board of Supervisor's December meeting.

Board of Supervisors Report:

Mr. Rutherford added that targeting some specific issues like Economic Development and Housing is the right thing to do. He added that all the topics are serious but that some need to have an independent discussion. He explained that they delayed SUP 717 due to Mr. Harvey not being in attendance. He added that they are having a meeting with stakeholders and staff regarding short term rentals.

Ms. Proulx made a motion to adjourn the meeting at 8:04 PM. Ms. Allen seconded the motion.

Yes:

Jesse Rutherford

Charles Amante

Mike Harman

Phil Proulx

Robin Hauschner

The meeting adjourned at 8:15 PM

Respectfully submitted,

A handwritten signature in black ink that reads "Emily Hjulstrom". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Emily Hjulstrom

Planner/Secretary, Planning & Zoning