

Virginia:

AT A CONTINUED MEETING of the Nelson County Board of Supervisors at 6:00 p.m. in the General District Courtroom located on the third floor of the Nelson County Courthouse, in Lovingston, Virginia.

Present: J. David Parr, West District Supervisor – Chair
Ernie Q. Reed, Central District Supervisor – Vice Chair
Jesse N. Rutherford, East District Supervisor
Dr. Jessica L. Ligon, South District Supervisor
Amanda B. Spivey, Assistant County Administrator/Deputy Clerk
Dylan M. Bishop, Director of Planning and Zoning

Michael Harman, West District Planning Commissioner
Gary Scott, South District Planning Commissioner
Richard Averitt, Central District Planning Commissioner
William Smith, East District Planning Commissioner

Absent: Thomas D. Harvey, North District Supervisor
Philippa Proulx, North District Planning Commissioner

I. CALL TO ORDER

Mr. Reed convened the Board of Supervisors meeting at 6:00 p.m. with four (4) Supervisors present to establish a quorum. Mr. Harvey was absent.

Mr. Harman convened the Planning Commission meeting at 6:00 p.m. with four (4) voting Commissioners present to establish a quorum. Ms. Proulx was absent.

Attendees introduced themselves.

II. JOINT WORKSESSION WITH PLANNING COMMISSION ON ZONING AND SUBDIVISION ORDINANCE UPDATES.

Chris Musso of the Berkeley Group stated that he and his colleague, Cecille Gaines, have been working with the County for approximately the last six months to update their zoning and subdivision ordinances.

Mr. Musso stated that the project involves a two-year effort to update the zoning and subdivision ordinance, divided into three phases: investigation, development, and adoption. He said the investigation phase was complete, noting that they began with a diagnostic of the existing subdivision and zoning ordinance. Mr. Musso said they analyzed how the current ordinance aligns with state code and the new comprehensive plan, identifying areas needing updates to comply with state law and plan objectives. He stated this diagnostic is available on the project website, nelson2042.com, in the document library, or can be obtained from staff.

Mr. Musso explained that after completing the diagnostic, they initiated the zoning ordinance update with County staff, holding a joint session with the Planning Commission and Board of Supervisors to gather direction. He said they launched community engagement in the fall, conducting five focus group sessions and two public workshops, one in the north and one at the Nelson Center, after modifying the original plan for a single workshop.

Mr. Musso stated that following engagement, they drafted a table of contents crosswalk—a matrix showing the proposed new ordinance structure compared to the existing one—which is included as Attachment H. He explained that the crosswalk details the current section numbers, their proposed placement, and the final location in the draft, noting that these may change as drafting progresses. Mr. Musso said the crosswalk is not fully completed yet, as it only covers drafted sections for the four articles presented that night, but he will continue to update it as more sections are completed.

Mr. Musso reported that the last work session was held on December 18, when the team reviewed the table of contents crosswalk and gathered input from public engagement. He stated that this session marked the beginning of five ordinance drafting work sessions, with a total of six joint sessions planned. Mr. Musso explained that the drafting phase would culminate in a public open house, allowing the community to review and provide feedback on the ordinance. He said that any public input would be brought back to the room for consideration, and adjustments could be made before proceeding to public hearings in winter 2025–2026.

He stated that the session would begin with a review of the ordinance's structure and table of contents, noting that bolded articles would be discussed, with definitions addressed at every session until complete. Mr. Musso said Article 1 covers general provisions, Article 2 addresses administration, Article 3 pertains to permits and applications, and Article 9 concerns nonconformities; he would explain each as the session progressed. He said much of the ordinance is driven by state code and structural requirements, with Article 3 offering the most flexibility. Mr. Musso explained that the drafting process follows the Code of Virginia, including references to relevant sections to ensure future compliance and simplify updates.

Mr. Musso explained that the ordinance is being reorganized to improve readability and make it easier for contractors, lawyers, and County residents to find regulations, updating provisions to reflect community input, and drafts include footnotes to highlight major changes and questions with yellow highlighting to flag section references or effective dates for later revision. He stated that review of Article 1 would begin next, outlining its four divisions: Division 1, covering enactment and authority, including the ordinance's title and purpose; Division 2, on interpretation; Division 3, establishing the official zoning map and its interpretation; and Division 4, specifying the ordinance's effective date, adoption date, and transition provisions.

Mr. Musso said the official zoning map must have an original copy filed in the zoning administrator's office, updated as needed, though online versions could be considered if appropriate for the County. He stated that provisions now allow outstanding development permits or plats to continue under the new ordinance unless approvals expire or are revoked, requiring conformity with new rules. He noted that Article 1 is concise and largely guided by state code.

Mr. Reed referenced the third page of Article 1 and asked if it was necessary to have a definition for what a condition is, when talking about conditions imposed.

Mr. Musso responded that it is entirely up to the County, but his opinion is that you can never have too many definitions. He added that if there isn't a definition provided, the *Webster's Dictionary* definition will prevail and serve as a default, and they should include their own if that is not a definition they want to use.

Mr. Rutherford commented that most County definitions wouldn't contradict what state statute calls for, and he asked how much they are pulling from state definitions.

Mr. Musso agreed, stating that the Code of Virginia definitions are included but are not an exhaustive list. He stated that "condition" is definitely not defined in the state code. He said where applicable, they will include state code definitions—and their ordinance will match state code definitions unless they stipulate otherwise.

Mr. Musso stated that Article 2 addresses the administration of the ordinance, specifying roles and responsibilities. He said Division 1 establishes the powers and duties of the zoning administrator and subdivision agent, but going forward, both would be referred to simply as "administrator" in the zoning ordinance, unless a provision applies specifically to the subdivision agent. Mr. Musso stated this change is intended to improve clarity and ease of reading, and "administrator" will refer to the planning and zoning director, zoning administrator, subdivision agent, or their designee.

He said Division 2 covers the appointment, terms, membership, meetings, powers, and duties of the Planning Commission. Mr. Musso stated that current regulations for the Planning Commission are in Chapter 9 of the County Code, but he recommended repealing those provisions and moving them into the zoning ordinance for best planning practice. He said this consolidation ensures that all Planning Commission matters are organized within the zoning ordinance.

Mr. Musso stated that some sections in Division 2 refer directly to state code, as there were no existing provisions, and said that the Commission could request more explicit language if desired. He stated the major change was transferring all Planning Commission regulations into the zoning ordinance.

Mr. Musso said it was previously unclear whether the Board of Supervisors representative on the Planning Commission was a voting member. He stated that, based on his interpretation, the ordinance had implied voting authority, which he found extremely uncommon and has since revised. Mr. Musso said it is standard practice for a Board member to serve as a representative and liaison to the Planning Commission but not as a voting member, as dual voting creates conflicts and the potential for tie votes. He stated that, in this ordinance, the voting power for the Board representative has been removed.

Mr. Reed pointed out that Section C says each member is appointed for a four-year term, but the Board representative is appointed yearly.

Mr. Parr said that technically, that person is a liaison and not a voting member.

Mr. Harman noted that it was clarified in Section B where it stipulates five voting members and one non-voting representative.

Mr. Averitt said if it was being suggested that the administrator is the subdivision agent, they would be using the word “administrator” to reference everyone—but the way the definition is drafted, it says “zoning administrator.” He stated that they may want to clarify that this is applying to anybody in that capacity, no matter what their official role is.

Mr. Musso stated that Article 2 addresses the administration of the ordinance, outlining responsibilities and procedures. Mr. Musso said Division 1 establishes the powers and duties of the zoning administrator and subdivision agent, generally referred to as the administrator in the ordinance. He stated that the term “administrator” again includes the planning and zoning director, zoning administrator, subdivision agent, or their designee, with the authority to delegate responsibilities.

Mr. Musso said Division 2 covers the appointment, terms, membership, meetings, powers, and duties of the Planning Commission. He stated that all current provisions for the Planning Commission, located in Chapter 9 of the County Code, are recommended to be repealed and moved into the zoning ordinance for clarity and consistency. Mr. Musso said that references to state code are included in this division, and if the Commission wishes to specify any powers or duties explicitly, adjustments can be made. He stated that the only substantive change is relocating all regulations to the zoning ordinance.

Mr. Musso said that previously, the Board of Supervisors representative on the Planning Commission appeared to have voting authority, which he stated is uncommon and has been removed to prevent double voting and potential ties. Mr. Musso said Division 3 addresses similar provisions for the Board of Zoning Appeals, noting that these are primarily governed by state code. He stated that Division 4 regulates enforcement, including violations, and Division 5 discusses relevant fees for the ordinance.

Mr. Musso stated that civil penalties have been added as an optional provision from state code, allowing the County to fine ordinance violators up to \$5,000 before criminal penalties are applied. He said this provision offers a less punitive alternative to criminal misdemeanors and allows incremental fines for unresolved violations. Mr. Musso stated that a countywide fee schedule is recommended as best practice. He said the schedule would list all County fees, initially covering zoning and subdivision, and would be adopted annually by the Board of Supervisors, typically during budget season. He stated that this change streamlines fee updates and eliminates the need for public hearings and text amendments for adjustments, ensuring fees remain current and reasonable.

Mr. Musso stated that the ordinance specifies adoption by the Board annually, though this schedule can be modified to biannual or triennial adoption if preferred. He said he included the annual adoption as a best practice, but affirmed that if no changes are needed, the Board can simply approve the existing version. Mr. Musso said the ordinance also allows the County to charge applicants for professional review services. He stated that since Nelson County does not employ a professional engineer, the County may need to hire external experts for complex development reviews, which can involve significant costs. He explained that passing these fees to the applicant is permitted, and emphasized this applies to any professional review service, with engineering reviews being the most typical.

Mr. Musso stated that Article 3, Permits and Applications, encompasses all zoning action permits or applications. He said that Division 1 addresses general provisions for zoning or subdivision permits, while Division 2 details procedures for rezonings and text amendments. Mr. Musso stated that Division 3 establishes standards for proffers in rezonings, and Division 4 outlines standards for Special-Use Permits. He said Division 5 provides standards for variances, mostly dictated by state code.

Mr. Musso noted that Division 6 covers both concept and site plans, merging concept plans with site plans, and retaining both minor and major categories. He explained that Division 7 describes the procedure for obtaining a zoning permit, and Division 8 introduces temporary use permits, allowing flexibility for the County to create more as needed. He said that Division 9 outlines the administrator’s written determinations on zoning matters. Mr. Musso stated Division 10 details all appeal procedures, including appeals of administrator, Commission, Board, and BZA decisions. He added that Division 11 provides legal guidelines for public hearings, notice to property owners, and public posting.

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Mr. Musso stated that the revisions span two pages, divided for clarity. Mr. Musso added that new provisions include pre-application and community meetings. He explained that a pre-application meeting allows an applicant to consult with the zoning administrator before submitting an application, helping address issues in advance. Mr. Musso said that while community meetings are encouraged for substantial applications, staff are not required to organize and hold them, but applicants are encouraged to do so, with guidelines provided.

Mr. Reed asked what a site plan review committee is.

Mr. Musso responded that he saw a few mentions of that committee in the Nelson County Zoning Ordinance, and his question for the Board and Commission is whether that actually still exists and functions.

Ms. Bishop explained that it existed before COVID but then became virtual, with everyone realizing it was easier and more streamlined to do that virtually—so there is no set committee or meeting schedule. She added that some representatives are in Albemarle, Lynchburg, Appomattox, etc.

Mr. Musso agreed to remove all mentions of a site plan review committee from the ordinance.

Mr. Averitt asked about the impact of pre-application meetings and any risks if there is non-binding guidance that ends up conflicting with actual decisions.

Ms. Bishop said they also have a pre-application meeting, which isn't anything formal, and that's done before an applicant submits a formal application. She emphasized that there is never a "soft green light" because staff are not the authoritative decisionmakers; they are simply stating that an application is complete and can be moved through the process. She added that staff can guide them based on the comprehensive plan and recommend that they speak to their elected and appointed officials.

Mr. Musso reported that minimum submission standards represent the essential requirements for an application to be considered complete, as outlined in the ordinance and now moved to administrative determination. He said that these standards are maintained by the zoning administrator—such as Ms. Bishop—in the office or, ideally, on the County website for public access and timely updates without requiring a zoning text amendment. Mr. Musso stated that if the Planning Commission or Board of Supervisors wished to see more detail in applications, the zoning administrator could revise the standards, and the changes would be reflected in future submissions.

Mr. Musso said there were no objections or questions following this explanation. Mr. Musso stated that ownership disclosure is included as a provision from the Code of Virginia, requiring Planning Commission and Board members to submit an ownership disclosure if they hold a vested interest in a property subject to a zoning application. He said that conversely, a notarized oath is required for rezoning, variance, and special use permit applications. He stated that this practice is common and easily fulfilled if a notary is present in the planning and zoning office when applications are submitted. He said the notarized oath affirms the truthfulness of all information on the application, and he wanted to confirm that both requirements were appropriate for inclusion in the zoning ordinance.

Mr. Rutherford stated that it seemed unnecessary to get things notarized, and he asked if this was a state statute requirement.

Mr. Musso responded that it was not, and both were optional provisions in state code. He added that a lot of communities are getting away from it because they have digital applications; they just submit it all online.

Mr. Harman asked if they would still be operating under the old ordinance until this was adopted in 2026.

Mr. Musso confirmed that they would be, noting that these articles are not set in stone and can continue to be discussed and revisited up until ordinance adoption.

Ms. Bishop mentioned that there is a declaration on the County's current application that says the information is true to the best of the applicant's knowledge.

The Board and Commission agreed that this was sufficient, and they hoped there would be an increasing shift to digital and away from paper.

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Mr. Musso reported that public hearings require the posting of signs, particularly for zoning actions, as requested during public engagement. He said that a zoning action pending sign is common in Virginia, often placed on properties involved in special use permits, variances, or other zoning actions, and typically includes the planning and zoning office number and action details. Mr. Musso added that the Planning Commission currently operates with a two-person staff. He stated that each time an application requiring a public hearing is received, staff must install a sign on the property, which demands additional effort, but this process is effective in keeping the Board and County residents informed.

Mr. Musso said they could modify it to say that the applicant must post the sign on the property in question, but that comes with a lot of other potential problems.

Ms. Gaines mentioned that for another locality, they are stipulating that the County will provide the sign, but the applicant has to post it.

Mr. Musso stated that the sign cannot be placed on a state roadway and must be posted on the subject property at least 15 years prior to the hearing, and it must be “clearly visible from the frontage road of the subject property,” which means the front of the parcel where the driveway goes. He added that they could revise the language to clarify what is meant by “frontage.”

Mr. Bishop commented that she is fine with staff handling the signs because it is a really good practice to visit the site ahead of time anyway.

Mr. Musso commented that they should consider how much manpower will go into policing this and administrating the ordinance, especially during budget season.

Mr. Parr asked if they had skipped over modified provisions for including expiration time limits on SUPs.

Mr. Musso responded that he had missed it, and the Code of Virginia was recently updated last year to allow this provision. He said that Nelson was already doing this or has codified that they can do this, and they’ve retained that provision because it’s now legal and was a gray area before.

Mr. Musso presented a slide for concept and site plans, stating that a concept plan is a rough-drawn schematic plan, usually one or two pages instead of 20 pages and a lot less difficult to put together than a site plan. He stated that they are currently requiring a concept plan for almost every zoning action—with the caveat that the zoning administrator at any time they determine a site plan is needed can ask for a site plan to be submitted. He said they still have minor and major site plans; a minor site plan is any development of buildings and improvements, increased parking, land disturbance, change in traffic patterns, or at the administrator’s discretion; a major site plan is when the land disturbance exceeds one acre, it’s a commercial or industrial use, it’s three or more buildings on one lot, or if the building is more than 5,000 square feet. He noted that they don’t need site plans for single-family dwellings, two or less dwellings on a single parcel, accessory structures, agricultural activities, or temporary uses.

Mr. Musso said there is a long list of required elements that must be on every minor site plan—but for major site plans, it says “whatever the administrator determines.” He noted that this provides flexibility, and they can direct Ms. Bishop on items they want to see with a minor site plan. Conversely, he said, if they’re getting too much information or putting too much burden on citizens, they can adjust in the other direction.

Mr. Rutherford stated that the new Commissioners have not had the chance to really see this unless it was in their personal capacities. He noted that the Board has voted on special use permits that were drawn on a napkin, because it wasn’t complicated and there was no reason to ask them to do anything too egregious. But as it relates to a major site plan, he said the last large one was the solar facility and before that the retirement community on 151. He noted that the largest mechanisms involved are health department requirements, VDOT design, general elevation, and some topo maps. He expressed caution about requiring an applicant to spend thousands of dollars on drawings for something that may be uncertain for approval, such as converting a barn. Mr. Rutherford emphasized that most of the applications that come before them aren’t done by major corporations and big-money people.

Mr. Musso agreed and said that was the idea behind the concept plans for everything, and Ms. Bishop can ask for more if she needs it.

Mr. Musso stated that page 23, section 368C, contains standards and improvements related to site plan infrastructure. He said the list is exhaustive and not intended for an immediate answer. Mr. Musso stated that

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they should review the section and consider which items are necessary and which may be overly restrictive for County citizens. He explained that while he did not wish to remove existing items from the County's zoning ordinance, he had included a few additional points that were previously missing. Mr. Musso said that if members identify any items that should be revised or removed, they should forward their suggestions to Ms. Bishop. He emphasized the importance of this section and wanted to ensure it received appropriate attention from the Planning Commission and the Board of Supervisors.

Mr. Reed asked about Page 22, under Waiver of Requirements, it states the waiver won't have an adverse effect on preservation of agriculture, forestry, and conservation lands. He said he is totally in favor of that but is wondering if that would also apply to something that comes up later, on Page 29, under Amendments of a Major Site Plan, ag and forestry districts are important in the County, even though they aren't binding. He suggested that for consistency's sake, they should perhaps add that this is something to always be considered. He said when talking about adequate fire hydrants, it would also be good to mention the service authority because that body ensures that is done and meets with their specifications, as well as when addressing water connections and disconnections.

Mr. Rutherford pointed out the language that says, "No alley on a site plan should have a right of way of less than 20 feet," as he didn't know of many alleys other than in Lovington, and they're all less than 20 feet.

Mr. Musso noted that going forward, they are encouraging bigger development around Lovington in their comp plan, so they may run into that.

Mr. Musso presented two examples of nonconformities and said the setback is basically non-existent. He said the building shown clearly does not fit in with the urban appeal as it stands because it's a historic building and has been preserved. He explained that nonconformity is basically something that was legal under an older ordinance or an older law but has since become illegal because we've updated the law, not because they've done anything wrong. He said it's a legal nonconforming status that gets applied to them, and all of these are very regulated through the Code of Virginia.

Mr. Musso stated that the current ordinance contains a provision allowing nonconforming uses to apply for rezoning or a special use permit without the usual application fee. He said that this consideration has now been extended to buildings, structures, and lots. Mr. Musso explained that this change encourages property owners to update or rezone their properties to achieve compliance, emphasizing that the fee is waived in these cases. He noted that the previous provision only permitted a nonconforming use to occupy 50% of a building, but now this applies to any preexisting building. Mr. Musso said that if a nonconforming use exists in one room of a building, it is now considered nonconforming throughout the building.

Mr. Musso clarified that expansion of the building itself is not permitted. He stated that the standard for nonconforming uses remains that, after two years of inactivity, the use may not resume.

Mr. Musso said the current ordinance allowed owners of nonconforming uses to apply for an extension to the two-year requirement, but this has been removed to align with state code and best practices. He concluded that if a nonconforming use ceases for two years, it cannot be reinstated.

Mr. Rutherford said he had issues with that because Lovington is a great example of nonconforming uses—and some of these buildings sit there for years and had an original purpose, with 95% of Lovington being nonconforming. He said there's got to be some opportunity for them to get an extension of a use instead of going through the whole special use permit process.

Ms. Bishop said what Mr. Musso is referencing is a nonconforming use, and then it stops for two years.

Mr. Rutherford said they need for them to be able to ask for extension, and it's worth studying further.

Mr. Musso said the last topic concerned meeting front setbacks and the use of parcels, specifically nonconforming lots and parcels. He stated that if a parcel is unusually shaped or has mountainous terrain making it difficult to meet the front setback, the average front setback of the adjoining properties may be used. Mr. Musso said that as long as the appearance matches neighboring properties, the approach is acceptable. He stated that his only question relates to the difficulty of applying this method in large rural counties, where parcels may span 15 or 20 acres. He asked if they want this to apply countywide or just to residential zones or commercial zones.

Mr. Rutherford responded definitely for R1, as they have very limited R1 stock at this time. He said A1 has a lot more accessible stock, so that is up for discussion.

Mr. Reed suggested picking up Article 9 again at their next meeting on this.

Mr. Musso said they would pick up where they left off next time and in the meantime, he would upload all these articles online to the website.

Mr. Harman made a motion to continue their meeting.

Mr. Smith seconded the motion, which passed unanimously (4-0).

III. OTHER BUSINESS AS PRESENTED

There was none.

IV. ADJOURNMENT

At 7:00 p.m. Mr. Rutherford moved to adjourn the Board of Supervisors meeting and Dr. Ligon seconded the motion. There being no further discussion, Supervisors unanimously approved the motion and the meeting adjourned.