

Virginia:

AT A CONTINUED MEETING of the Nelson County Board of Supervisors at 5:00 p.m. in the former Board Room 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
Candice W. McGarry, County Administrator
Amanda B. Spivey, Administrative Assistant/Deputy Clerk
Grace E. Mawyer, Director of Finance and Human Resources
Dylan M. Bishop, Director of Planning and Zoning
Cody Barker, Planner
Michael Harman, West District Planning Commissioner
William Smith, East District Planning Commissioner
Philippa Proulx, North District Planning Commissioner

Absent: Thomas D. Harvey, North District Supervisor
Gary Scott, South District Planning Commissioner
Richard Averitt, Central District Planning Commissioner

I. CALL TO ORDER

Mr. Reed convened the Board of Supervisors meeting at 5:00 p.m. with four (4) Supervisors present to establish a quorum. Mr. Harvey was absent.

Mr. Harman convened the Planning Commission meeting at 5:00 p.m. with three (3) voting Commissioners present to establish a quorum. Mr. Averitt and Mr. Scott were absent.

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

Ms. Bishop stated that the Berkeley Group was not present for this work session but would be included in one coming up in December to do a review of the full ordinance draft, with the option to schedule more in between if needed. She said for today, the Berkeley Group provided the Route 151 corridor overlay added to the scope of work, as well as lot size minimums and short-term rentals. She noted that there had been a work session with the Planning Commission a few weeks ago for the PC to give some guidance, and they would be reviewing those recommendations.

Ms. Bishop stated that she would review the purpose and intent for the primary districts—rural districts, C-1 conservation, and A-1 agriculture, noting that everyone had agreed with the intent sections. Ms. Bishop stated that the minimum area requirement originally recommended by the Berkeley Group was 10 acres for the A-1 agriculture district; the Planning Commission had discussed this a few weeks ago and thought that aligning the requirement with the land use taxation program would be more appropriate. She said she had spoken to the Commissioner of Revenue’s office, which indicated that the requirement is five acres plus one additional acre for the homesite, so they simplify this for the public by saying “six acres.”

Ms. Bishop stated that reducing the front setback from the center of the road would clear up many nonconformities by using 50 feet instead of 75 feet, and the discussion also included minimum lot width. She stated that she had Glen Yi and the IT department prepare a map with zoom function, which shows blue parcels as less than 10 acres. Ms. Bishop said this is all currently A-1 zoned property, with green lots being over 10 acres and blue lots under 10 acres. She said the intent was to consider what areas should be rezoned or slated for residential development, in the context of the future zoning map to be updated along with the comprehensive plan. Ms. Bishop stated that the map is not an exact blueprint of future zoning maps but gives an idea of where existing residential development under 10 acres exists in the A-1 zone.

Mr. Rutherford commented that 10 acres is “pretty crazy,” and they are in an awkward spot of defining something when they don’t really know what the future land use/rezoning map would look like. He said that doing six-acre minimum lot sizes can destroy ecosystems, and he confirmed that he was advocating for lot sizes that were lower than 10 acres. He explained that they currently have a sliding scale with one two-acre zoning right, one two-acre subdivision right, then it scales to five or six—so they already have a less intensive use, yet the population has still continued to decline.

Ms. Bishop stated that the idea is that to be consistent with the future land use map, noting the green areas representing high-conservation value rural areas and currently protected landscape. She mentioned the village hub status, with Lovington and Colleen identified for additional residential development. Ms. Bishop read from the planning guidelines from the comp plan: “Alterations and retrofits to existing low-density single-family subdivisions is appropriate and encouraged; however, expanded or new subdivisions is not the primary intent of this planning area.” She noted the existence of cluster development standards and mentioned the finite number of allowable lots as another method to ensure the rural nature of those areas is protected by increasing the lot size but also increasing the amount of residential zoning and then retrofitting existing developments.

Mr. Reed said it was great in concept, but he agreed that not having a map actually reflecting it makes it difficult to compare it to anything else and see what areas it would apply to. He added that residential zoning is a good idea, and using the small parcels of ag/forestal makes a lot of sense.

Mr. Rutherford commented that he agrees they need more R1, but it will be interesting where they locate that and how they work it into specific villages and what water/sewer capacities may exist within those.

Ms. Bishop acknowledged that the water/sewer was another important piece and said she understood that the service authority has been slowly working on mapping their systems, which would be important when they do the zoning map. She emphasized that they are just breaking down the categories now; when they get to the map development phase, that’s when all the lot sizes, water/sewer, etc. would come into play in determining what areas should be rezoned.

Mr. Rutherford responded that they would have R1 in both the water and sewer context—conventional as well as County—because the stretch of areas such as Schuyler were very limited.

Ms. Proulx commented that going back to the chart showing minimum lot size in agricultural, and there may be a transition period where it doesn’t make sense in all the places it will five years from now when there will possibly be a new zoning map. She noted that the Planning Commission had talked about the six acres aligning with what could be done with agriculture, including getting tax credit for it.

Mr. Rutherford said he wants to know where A1 is going to be, and someone in Williamstown or Wingina with an eight-acre parcel who wants to sell off an acre or two, they would not have that ability; it would be a nonconforming ag parcel at that point, and it’s hard and expensive to rezone in those particular areas.

Ms. Proulx asked what he would do in the meantime.

He said in the meantime, they have a two-acre allowed by right and a sliding scale—so they have more opportunity today with A-1 than if they were to go into this more restrictive approach.

Ms. Proulx commented that she would have to do some math to determine whether a six-acre minimum is really more restrictive than the larger than 10-acre parcels when the “sliding scale” is applied.

Ms. Bishop provided a hypothetical example of someone who owns a 60-acre lot; with a six-acre lot minimum, they could create 10 lots out of that, and if they wanted more than that, they could apply to rezone it to residential, which drops it down to a one-acre lot minimum. She noted that the Berkley Group recommended two acres, but the Planning Commission felt one was appropriate. She emphasized that when you are giving in one area, you are taking in another.

Mr. Rutherford commented that rezonings were subject to whatever Board existed in the future. He said he is supportive of having agriculture in areas that make more sense, but there will be a weird lull period with the A1 that is not a lot of fun for a lot of people.

Ms. Bishop pointed out that in the meantime, while they’re developing the map and people come forward with potential projects, the market is identifying where they should go—and they then come to the Board to demonstrate that they meet minimum water and soil requirements.

Mr. Rutherford said in his opinion, they should have to prove percability anyway, because it doesn’t do anyone any good to have five acres that hasn’t been perc tested. He added that some localities require percability proof before subdividing, and to prove water feasibility to equal the three-bedroom household standard.

Mr. Rutherford clarified that he is supporting having A1 be what it is today, because it is going to be more restrictive—and he would prefer to stay at the current sliding scale if they’re going to make it more restrictive.

Mr. Reed stated that they are trying to create more R1 and protect rural character.

Mr. Rutheford said they've done a great job in protecting rural character over the last 20 years.

Dr. Ligon noted that this objective is in their comp plan.

Mr. Reed said this proposal does that, as it allows for rezoning when situations come up, and that is a perfectly viable way to get additional housing as well. He asked Mr. Rutherford what his concerns are.

Mr. Rutherford explained that they are putting this into effect but don't know what the map looks like, and they could be making scenarios in more rural contexts where it's going to be very hard to get those rezonings.

Ms. Proulx said once they do the map, they don't to rezone residential.

Mr. Rutherford emphasized that there would be a lot of rural families who are out of luck with this.

Mr. Reed said a rezoning is not difficult and allows the County to weigh it in terms of whether it's good or not.

Mr. Rutherford pointed out that they have never successfully done this in a residential before. He clarified that only one has come forward, with a potential second one from someone who wanted to do cluster housing.

Ms. Bishop asked if there was any consensus on any number.

Mr. Rutherford said no.

Dr. Ligon said she liked what they had talked about.

Ms. Proulx said aside from the difficulty of tracking, she likes the model they have at the moment but could also move to six acres.

Mr. Rutherford stated that they will have the same amount of public participation as they did in the early 2000s when they considered a lot size minimum of 20 acres.

Dr. Ligon suggested that they hear from the public.

Ms. Bishop said they had to start somewhere and can always modify it later on.

Dr. Ligon noted that they could get feedback during the public engagement process before it goes to public hearing.

Ms. Proulx commented that she would not want to see the two acres without a sliding scale.

Ms. Bishop stated that the residential districts are R1, R2, and R3, the latter of which is a new district. She said part of what the Planning Commission discussed by making A1 six acres was dropping R1 down to one acre. She said a 35-foot setback from the center line of the road would involve nonconformities, and they would also want to address reducing the road frontage requirements.

Ms. Bishop reported that the village overlays identified were Piney River, Gladstone, Schuyler, Shipman, Faber, and Arrington. She stated that goals for the Route 29 corridor were to promote high-quality commercial development, tourism-friendly businesses, etc., and she referenced a map showing the corridor at 500 feet on each side for the length of the County. She noted that some higher standards in the plan for Route 29 were access management, signage (no pole-mounted signage), and other parameters.

Mr. Rutherford asked if they had already addressed sign sizes.

Ms. Bishop responded that Article 8–Community Design Standards addresses landscaping, lighting, parking, and signage.

Ms. Bishop stated that the Route 151 overlay intent is, "To preserve the rural and scenic character of the Gateway Corridor to protect its role as an outdoor rural tourism destination. This district promotes safe and efficient travel by preventing traffic congestion along the corridor, design standards, including those related to landscaping, signage, and site aesthetics, ensure new businesses and services, enhance and support the preservation and promotion of the county's natural beauty, and promote a Gateway Corridor that reflects the values of the county. Growth within the corridor should complement the county's tourism economy and rural identity, supporting both economic vitality and long-term preservation of the corridor's unique character."

Ms. Bishop clarified that this corridor goes from the County line down to Rhue Hollow, anything in the corridor requires an access plan, so landowners must show all access points within 400 feet of their property lines and must submit a traffic impact analysis and any improvements to mitigate negative impacts to traffic circulation, as well as a landscape plan.

Ms. Proulx asked if the access plan had to be approved by someone or some entity.

Ms. Bishop responded that it depends on the proposal, and if it's a permitted use, it would just be reviewed administratively; if it was something requiring a special use permit, the whole package would go to the Planning Commission and the Board. She said it could be thought of as another zoning district layer, so all the provisions in an A1 district, for example, are administratively confirmed to be met. Regarding the access plan, Ms. Bishop said there are sections on vehicular access and circulation, including that, "Any partial subdivision or cluster development having frontage along Route 151 or a roadway within the corridor will be allowed only one direct access to that roadway," and that "Additional access points must provide access to adjacent parcels," and "No direct access on the 151 from out parcels which are part of a larger coordinated development."

Ms. Bishop mentioned that on pages 42–43, the plan includes guidance on what she would be reviewing as planning director. She said that she and Cody Barker would be continuing to go through it and look at the regulatory aspects of it. She also stated that this joint meeting was a higher-level overview, and they would have more work sessions and Planning Commission meetings to delve into the details.

Mr. Reed asked if there was any place where it specifies the responsibilities the HOA has to maintain other things besides the open space.

Ms. Bishop responded that this is likely covered under Article 8 as well, which has a whole section on open space, but she would need to spend more time with the HOA part of it.

Ms. Proulx commented that she wasn't sure they wanted bicycles on 151, as the road was hazardous.

Mr. Harman said that issue had come up previously, and his understanding was that they were going to create some sort of space on the side—but he did not understand how that was going to work either.

Mr. Reed said there is mention of the connectivity between things, that is either actually done or has space allocated for it.

Ms. Bishop explained that regarding bicycle parking, the draft ordinance says, "Any commercial development within the Route 151 corridor overlay district that requires 10 or more vehicle parking spaces." She noted that she is not as familiar with people who are doing it internally as opposed to people doing it along Route 151, and she asked if they wanted to address it at all.

Ms. Proulx said she did not feel a need to address it.

Mr. Reed said if they don't do something about it and don't mention parking, it doesn't preclude that there won't be any; it was the connectivity that would create parking, and businesses would want to provide that anyway regardless of it being obligatory.

Ms. Bishop agreed that requiring it implied supporting it, and she received consensus from the PC and Board that they should just remove those requirements from the ordinance.

Ms. Bishop stated that "EV Charging Station" was by-right across the board in the use matrix, which aligns with what they have already, and she asked if they wanted it as a special use permit (SUP).

The Board and Commission agreed that it should not warrant an SUP since it's already by-right.

Ms. Bishop stated that storage shed businesses are prohibited except in B-1.

Mr. Reed said one of the prohibited uses is solar energy utility scale, which infers an industrial component, and he wondered if they could add data centers to prohibited uses.

Ms. Bishop responded that they are permitted by SUP in the heavy industrial district.

Ms. Bishop reviewed other uses in the matrix and asked for input. She said all the sections have additional use standards that go with them in Article 7. She said that for the residential districts, the primary points since they last discussed this was whether they want by right or special use in the overlay districts, which the Planning Commission went through and made recommendations on, such as SUP and 151.

Mr. Rutherford asked if someone could do a by-right multifamily dwelling if it only had four units.

Ms. Bishop responded that under suggested residential, there's dwelling townhouse, dwelling triplex, or quadplex, and those are by-right in the Village Overlay District.

Regarding home occupations, Ms. Bishop stated that Class A is by-right, with no more than one person employed other than members of the family; Class B is also by-right, but with no more than four persons employed other than members of the family.

Mr. Rutherford commented that Village Overlay should definitely have Class B, and he thinks of something like Ralph Turpin's office.

Dr. Ligon asked if this would be for the Route 29 Corridor too.

Mr. Rutherford said he felt home occupations should also be in the Route 29 Corridor, and he asked if A-1 in the corridor, it would not be by-right.

Ms. Bishop responded that the overlay governs. She also stated that mixed-use is by-right in the Village Overlay and 29 Corridor Overlay, and she asked if they also wanted that by-right or by permit for 151.

Ms. Proulx said the default is always SUP if they're not sure about by-right, so they could have it as SUP there.

Ms. Bishop clarified that accessory dwelling is by-right in Village, C-1, A-1, R-1, R-2, and Service Enterprise.

Regarding short-term rentals, Ms. Bishop said the Planning Commission deliberated these a few weeks ago. She said what is proposed is 30 days or less, transient stays—a homestay, owner-occupied, permitted by right, and a single-family dwelling, which is something that state code per this past legislative session mandated. She said the other use is a hosted stay—with a primary resident or designated resident manager onsite (not necessarily the owner). She said rental of one additional dwelling, such as an ADU, on the same lot is permitted; if someone lives on a property and owns an adjoining property, they can rent that out because it adjoins. She noted that this would be in the A-1 and R-1 districts but can be considered in other districts such as overlays and service enterprise districts.

Ms. Bishop reported that two forms of verification of primary residence would be required; with five acres or less, only two rentals are allowed on one lot; more than five acres is a maximum of three; number of occupants can be limited based on health department regulations (septic) by number of bedrooms; fire extinguisher is required; no amplified music or sound from 10 p.m. to 7 a.m. She said the owner must submit a property management plan including a point of contact for complaints, number of permitted guests, parking information, location of fire extinguisher and smoke alarm, and trash management; there is prohibition of events that include attendees who are not guests at the short-term rental; RVs, buses, travel trailers, or non-permanent structures; and there must be written consent allowing County inspections as needed, requested, or upon a complaint.

Ms. Bishop stated that while not certain of the legality or enforceability of this, there is a stipulation that upon change of ownership, the new owner must comply with these provisions. She said there was also consideration of an annual fee, and the County is procuring a software to track and monitor short-term rentals.

Ms. Bishop said there was some interest in restricting short-term rentals to only residents of Nelson County, but she has learned that would not be a legal pathway in zoning because it's a land use consideration, so there's a state code section: "All zoning regulations shall be uniform for each class or kind of buildings and uses throughout each district, but the regulations in one district may differ from those in other districts." Ms. Bishop said they must separate the Nelson County ownership resident aspect from the land use issue.

Ms. Proulx commented that they could have a resident manager addresses that consideration.

Ms. Bishop pointed out that the current language does not allow absentee owners and asked if everyone is okay with that, as it would be possible for them to ask for an SUP. She also clarified that state code says once a use is legally vested, it can continue with that use and would not lose that right until two years without being used for that purpose. She said the Virginia Attorney General released an opinion that will be codified that says if the parcel is zoned agriculture and is engaged in bona fide agricultural productions, short-term rentals are by-right on that farm as part of agritourism.

Mr. Parr asked about a scenario under which an owner rented out their primary residence for a week or so during a special event in the County.

Ms. Bishop responded that it wouldn't fit under either scenario under short-term rental.

Mr. Barker said if they were to stipulate an established residency of at least six months every year, it could qualify for short-term rental; then you're allowed to rent it for 180 days.

Ms. Bishop asked if they should consider absentee owner SUP requests, noting that this would trigger input from neighboring residences. She reminded the Board and Commission of the criteria for review for an SUP: "Shall not tend to change the character and established pattern of development of the area or community, be in harmony with uses permitted by right and not affect adversely use of neighboring property, adequately serve by public or private services, and result in destruction, loss of any ecological, scenic, or historic importance."

Mr. Rutherford commented that he felt they could find "no" in there if warranted.

Ms. Proulx disagreed.

Mr. Rutherford said if someone comes to this community, finds a very old farmhouse, and says they're willing to save a farmhouse—and the only economics that can justify doing this is a short-term rental, he feels that is a net positive for the culture of Nelson County and potential economic development.

Ms. Bishop said if they wanted to consider SUPs for the absentee-owner short-term rentals, they could exclude specific overlays or corridors, and she asked where they would allow someone to pursue an SUP.

Mr. Harman said the Route 29 Corridor.

Mr. Rutherford said the Village Overlay District.

Ms. Bishop read the intent of the Village: "Preserve and enhance traditional village character by promoting walkable mixed-use development. Integrates residential, office, commercial, and public. Small-scale businesses, housing, essential services. Supports rehab of older structures and fill. Infrastructure improvements to reinforce the village as a rural community hub."

Mr. Rutherford pointed out the language regarding supporting the rehabilitation of older structures and said this supported the SUP and the absentee short-term rental owner.

Ms. Proulx said the community aspects were interrupted by having vacation rentals.

Mr. Rutherford said they already had vacation rentals in Lovington.

Dr. Ligon said just to be devil's advocate, since they don't have a lot of hotels but have all these events and are a tourism community, if they're too restrictive, no one's going to stay here and spend money here—and that's the County's main income. She said eventually, you are stealing money from infrastructure.

Mr. Reed asked if that should be first priority for residents, to be able to benefit from all those things.

Dr. Ligon emphasized that they have to fund the government somehow, and right now, it's on the backs of property owners and short-term rentals.

After further discussion, the Board and Commission agreed to have the short-term rental SUP request provision for the 29 Corridor and Village Overlay districts.

Mr. Rutherford asked how they quantified amplified music or sound.

Ms. Bishop responded that they may want to consider updating the noise ordinance.

Mr. Reed asked if they could require, as they do with fire extinguishers and smoke detectors, posting of the business license in the short-term rental so people know they're in a modified regulated short-term rental.

Ms. Bishop stated that Ms. McGarry had suggested having an affidavit for applicants to certify that they're meeting all requirements, as there is no way the County will be able to go inspect them all.

Mr. Rutherford asked if they are asking owners to meet Virginia IRC standards for smoke alarms and fire extinguishers.

Ms. Bishop responded yes, as she had looked at other ordinances and would work with Jeremy Marrs on how the language should be worded.

Mr. Parr said whether it's related to short-term rentals or other initiatives, he wants to ensure that they incentivize or not de-incentivize the renovation of older structures—and perhaps they can accomplish part of that with the short-term rental ordinance. He commented that there was outrage over tearing down the house where Belties is now, yet no one said a word about the house across from the Dollar General in Nellysford. He said it would improve the community to have residences like that turned into either residences or short-term rentals. He confirmed that he would like to see financial incentives for primary residences, and he did not want to see de-incentivizing of potential short-term rental properties.

Ms. Bishop said there are provisions in this update that, through zoning laws, are trying to do that with lot sizes and other financial incentive programs. She said she is not sure how much of that could be incorporated into the zoning ordinance, but the Board can look into other incentivizes or perhaps a vacant property registry.

Ms. Bishop presented language for adaptive reuse of an existing structure as a short-term rental: conversion of an existing building, regardless of its original structure is retained or substantially reused, rather than demolished and replaced; can be fully residential or mixed use with both commercial and residential. She clarified that you get a permit to do an adaptive reuse project, and you've got dwelling units—in Village Overlay, for example—then it could be by-right to rehab the building and put dwelling units and commercial space there. She said the short-term rental aspect could be incorporated into this definition, and if the structure is rehabbed, they can use it as a short-term rental. She asked if it should be by-right everywhere.

The Board and Commission said it would make sense in R-1 and other districts but not industrial.

Ms. Bishop urged them to take time to go through this over the next week, noting that they had to get their comments back to the Berkeley Group by the following Friday.

Mr. Parr asked where addressing data centers might fit into this work.

Ms. Bishop responded that her understanding is that Nelson County is not interested in data centers, and currently they are only mentioned under heavy industrial.

Ms. Bishop revisited the timeline for future work sessions, public input, and a final draft for public hearing.

III. OTHER BUSINESS AS PRESENTED

There was none.

IV. ADJOURNMENT

At 6:40 p.m., Ms. Proulx moved to adjourn the Planning Commission meeting and Mr. Smith seconded the motion. The Planning Commission voted unanimously to approve the motion and the meeting adjourned.

Mr. Reed adjourned the Board of Supervisors meeting.