

NELSON COUNTY BOARD OF ZONING APPEALS
June 6, 2016
MEETING MINUTES

Present: Gifford Childs, Goffrey Miles, Ron Moyer, Mary Kathryn Allen, Carole Saunders and Shelby Bruguiera

Staff: Tim Padalino, Director, Planning & Zoning, and Stormy Hopkins, Secretary

Call to Order: Mr. Childs called the meeting to order at 7:29 P. M. in the General District Courtroom, County Courthouse, Lovingson. There were six members present to establish a quorum.

Approval of Minutes (December 7, 2015): Mr. Childs asked for any corrections or comments on the minutes. No changes were made.

Mrs. Allen made the motion for the December 7, 2015 Nelson County Board of Zoning Appeals meeting minutes be approved. Mr. Miles provided the second; the vote 5-0.

Mr. Childs provided an overview of the meeting procedures for the public.

1. Special Use Permit #2016-02 – Mr. Timothy A. Arnold

Mr. Padalino noted this review is for a Special Use Permit (SUP), and further noted that these types of permits are delegated to the Board of Zoning Appeals (BZA) by the Board of Supervisors (BOS). He showed a slide of the subject property. He noted that it is an undeveloped parcel on Carter Road, which is located in the East District (Schuyler area). It is further identified as Tax Map Parcel #71-8-1 and is zoned Agricultural (A-1) with General Floodplain overlay (FP).

Mr. Padalino explained that the applicant, Mr. Timothy A. Arnold, wishes to develop a small agricultural building/shed (12' x16') within the boundaries of the 100-year floodplain area. He showed additional slides of the property showing a marsh/bog area that is located outside of the floodplain boundary. He noted that, according to the applicant, the proposed building location inside of the floodplain boundary actually provides a drier site year round.

Mr. Padalino also noted that a Site Plan was not submitted for the proposed use as required by Z.O. 10-13-C and Z.O. 12-3-4, due to the fact that he accepted a written request for a "Waiver of Requirements for a Site Plan" (pursuant to Z.O. 13-7-C). He then showed a slide of the written request. He further noted that he accepted the request in reliance upon the following:

- A map which was generated using the County's GIS system and which shows the location of the proposed building and measurements to the property boundaries, depicting its compliance with the minimum setbacks from the front, rear, and side yard.
- Professional exhibits drawn to scale, prepared and stamped by a licensed land surveyor, Mr. Steven L. Key, LS.
- A narrative and Base Flood Elevation (BFE) determination specific to the subject property, provided by Mr. Steven L. Key, LS (see attached).

Mr. Padalino then stated that, as described in the Staff Report, there are certain evaluation criteria (as specified in Z.O. 10-22) that the BZA must use when reviewing any SUP application. Mr. Padalino specifically noted the four that he feels applies to this project as follows:

- *The danger of life and property due to increased flood heights or velocities caused by encroachments. No SUP or Variance shall be granted for any proposed use, development, or activity within any floodway district that will cause any increase in the Base Flood Elevation (BFE).* (Mr. Padalino noted the proposed

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structure is in the floodplain district and it will not increase the BFE as it is elevated 1 foot 9 inches above the BFE; it is constructed using a piling method).

- *The danger that materials may be swept on to other lands or downstream to the injury of others.* (Mr. Padalino believes this to be acceptable because the proposed structure is elevated above the BFE).
- *The susceptibility of the proposed facility and its contents to flood damage and effect of such damage on the individual owners.* (Mr. Padalino believes this to be acceptable because the proposed structure is elevated above the BFE).
- *The availability of alternative locations not subject to flooding for the proposed use.* (Mr. Padalino stated that the area outside of the floodplain is often affected by standing water).

Mr. Padalino then stated that it is Staff's recommendation to approve SUP #2016-02, using all of the above factors.

Mr. Childs noted that he was a bit confused regarding the definition of "finished floor" elevation. Mr. Padalino noted that the Z.O. requires 12 inches or one foot above BFE. He then cited Z.O. Section 10.19 – "*Standards for Approximated Floodplain,*" and read aloud, "*When such base flood elevation data is utilized, the lowest floor shall be elevated to one foot above the base flood evaluation.*" He indicated that one would have to understand and interpret what the "lowest floor" refers too (finished floor/joists). Mr. Padalino added that the applicant may be better able to explain the construction methods and materials.

Mr. Childs asked that the applicant come forward and present. The applicant was sworn in by Mr. Childs before the Board, and asked to sign the oath.

Timothy Allen Arnold: Mr. Arnold noted that under the FEMA guidelines, his proposed structure would be eight-inches above the minimum requirements, as required not only by the County but also by FEMA for insurance purposes. He and his family live in Forest, VA. He grew up on a farm and has always wanted to have land to do "agricultural stuff." He mainly plans to do fruit trees (apples). They also plan to do Christmas trees for family and friends. They will also do quite a bit of gardening (blackberries, raspberries, sunflowers, corn, four different kinds of long-term squash, pumpkins).

Mr. Arnold provided BZA members with photographs of the area where they want to place the proposed structure. He noted that the one thing that gives them the problem of the floodplain also happens to be the biggest selling point, Beaver Creek.

Mr. Arnold then noted that FEMA requires a minimum of one-foot of clearance between the finished floor and the base flood elevation. The floor system under the finished floor will be 2x8 treated lumber. Under the treated floor will be one-foot freeboard. He indicated that he is building this above the required codes. This will be a shed/agricultural building. He has no interest in having a place to live at this location. He likes the fact that there is no development and wants to keep it "woodland" for agricultural purposes; they do not want to change the use of the land.

Mr. Arnold further noted that he intends "to keep it open piling system, very simple product that is going to be three-foot completely into the ground with concrete around, and are also going to put tar on the pilings for protection." He noted that there is a clearing into the woodlands (as seen in the photographs) where the structure will be placed so it is out of sight. He concluded by stating that he loves Nelson County. He has been working on Wintergreen with R. M. Gant Construction for 16-years.

Mrs. Saunders asked why Steve Key put "cabin" instead of "shed" in his narrative. Mr. Arnold explained that he came to the Planning & Zoning department when he first started the process and he was calling it an "accessory building" but was informed that one cannot have an "accessory structure" prior to a primary dwelling. He was then asked by a Building Inspector if he was able to put in a bathroom and kitchen sink in the structure; if so it could be considered a dwelling/residence. He indicated that he did want to do that and did not want to have to put

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in a complete septic system. He was then directed to check with the Health Department for a septic system. When Mr. Key came to the property to do the evaluation, it was considered a cabin. Mr. Arnold noted that he only referenced this as a building and not as a cabin, and has no interest in doing a residence. In the end he was told by the Health Department to consider it as an agricultural building and they would not have to get involved.

Mrs. Saunders then asked if the land was perked for a house or if it has ever been perked? Mr. Arnold indicated that he believes that due to the 100-year floodplain it has never been done for development purposes, and that he does not intend to do it. He also noted that even though it is in the floodplain, the land is very sandy and dries quickly.

Mr. Childs noted that this seems like the best use for the land and perhaps a residence there may not work. He also noted that in the past there have been instances where places like this have become cabins and have been rented. Mr. Arnold noted that if the property is sold, he will leave the building empty, other than perhaps a work bench.

Mr. Moyer asked if the area in which the building is to be placed has ever flooded. Mr. Arnold stated that he has never seen the area flooded and indicated that it is the highest point within the designated floodplain area.

Mr. Padalino added that Mr. Key's letter which referenced this as a cabin was written on May 11th. It was on May 18th that Mr. Arnold came to the Building Inspections Department and signed the affidavit for a farm structure exemption and specified that it is only for agricultural use and no other use; the form was notarized the same day.

Mr. Arnold concluded by stating that, "I really feel that even though the area out of the floodplain is accepted by the County as far as building something like this, I really feel like more water control drainage and stuff is done on that side more than this side. Because, if you've ever walked that property, you have hills and mountains all the way around it and then they drop right down." He referenced the photos that Mr. Padalino showed during some of the slides and noted that there are three (3) different ponds throughout the area that control the water that comes from those hills and creeks. He feels that area is the most dangerous to place a building.

Mr. Childs opened the public hearing at 7:59 p.m. No comments were given; the public hearing was closed.

Mrs. Allen made a motion that the Board of Zoning Appeals approve Special Use Permit #2016-02 for flood development pursuant to Z.O. 10-13 and Z.O. 10-22 for Timothy A. Arnold of 1104 Maple Street, Forest, Virginia for Tax Map Parcel #71-8-1 to build a small agricultural building/shed (12x16) as described in the submitted application materials. Mr. Miles provided the second; the vote 5-0.

Other Business:

Election of Officers: It was discussed and unanimously voted (5-0) that Mr. Childs would continue his role as Chair and Mrs. Allen would be the Vice-Chair to the Board of Zoning Appeals.

Annual Reports (2014 and 2015): The reports were viewed and accepted.

Mrs. Allen made a motion to approve the Annual Reports for 2014 and 2015. Mr. Moyers provided the second; the vote 5-0.

2016 Schedule: It was discussed and unanimously voted (5-0) that the regular meeting of the Board on Monday, July 4, 2016 is rescheduled to Tuesday, July 5, 2016 and that the regular meeting of the Board on Monday, September 5, 2016 is rescheduled to Tuesday, September 6, 2016.

Bylaws: The Bylaws were discussed and some changes were made to the December 30, 2015 (draft) as follows:

1. The meeting time of the Board of Zoning Appeals will be changed from 7:30pm to 7:00pm.
2. The reference to "Robert's Rules of Order" will now include "Roberts Rules of Order – Simplified".

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Mrs. Allen made a motion that the Board of Zoning Appeals meetings be moved from 7:30pm to 7:00pm. Mr. Moyer provided the second; the vote 5-0.

Mrs. Allen made a motion that we approved the Board of Zoning Appeals Bylaws, with a draft dated December 30, 2015 with a change of Roberts Rules to "Roberts Rules of Order – Simplified". Mrs. Saunders provided the second; the vote 5-0.

Adjournment:

Mr. Childs adjourned the meeting at 8:19 P.M.

Respectfully submitted,

A handwritten signature in blue ink that reads "Stormy V. Hopkins". The signature is written in a cursive style with a large, stylized 'S'.

Stormy V. Hopkins
Secretary