

Draft: 01/23/2019

Final: 2/27/2019

**NELSON COUNTY PLANNING COMMISSION
MEETING MINUTES
January 23, 2019**

Present: Chair Mike Harman and Commissioners Mark Stapleton, Chuck Amante, Phil Proulx, Mary Kathryn Allen, and Tommy Harvey

Staff Present: Sandy Shackelford, Director of Planning & Zoning and Emily Hjulstrom, Secretary

Call to Order: Chair Harman called the meeting to order at 7:00 P. M. in the General District Courtroom, County Courthouse, Lovington.

Approval of minutes: December 19, 2018

Ms. Proulx motioned that the minutes from December 19th, 2018 be approved. Ms. Allen seconded the motion. The minutes were approved with a vote of 5-0 with Mr. Harvey abstaining.

Ms. Shackelford presented the following information:

**Nelson County
Planning Commission**

Memo

To: Planning Commission
From: Sandra M. Shackelford, AICP, Director of Planning & Zoning
Date: 1/15/2019
Re: Officer Elections and Meeting Schedule

At our meeting in December we discussed the possibility of adjusting the Planning Commission monthly meeting to the second Wednesday instead of the fourth Wednesday of the month.

I have prepared two schedules for the Planning Commission's consideration. The first would be the schedule if we left the meetings on the current schedule of the fourth Wednesday of the month, and the second would be if we move the meetings to the second Wednesday. Regardless of the change in the meeting schedule, I believe we should keep the February meeting on February 27th to be fair to applicants since they would not have enough time to submit applications to be heard at the February meeting if the date is moved up to the 13th.

If the Planning Commission is amenable to this recommendation, my suggestion would be that these would be the dates for the 2018 Planning Commission meetings:

Fourth Wednesday Schedule:

January 23

February 27

March 27

April 24

May 22

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June 26

July 24

August 28

September 25

October 23

November 20

December 18 – Third Wednesday

Second Wednesday Schedule:

January 23

February 27

March 13

April 10

May 8

June 12

July 10

August 14

September 11

October 9

November 13

December 11

I had also previously introduced the idea of a rotation schedule for the election of officers similar to how the Board of Supervisors currently operates. Trying to take into consideration the terms of the Planning Commission members expiring mid-year, I drafted the following schedule to potentially be implemented last year:

~~2018 – West District Chairman (Mike Harman), South District Vice-Chairman (Mary Kathryn Allen)~~

2019 – South District Chairman (Mary Kathryn Allen), Central District Vice-Chairman (Mark Stapleton)

2020 – Central District Chairman (Mark Stapleton), East District Vice-Chairman (Chuck Amante)

2021 – East District Chairman (Chuck Amante), North District Vice-Chairman (Philippa Proulx)

2022 – North District Chairman (Philippa Proulx), West District Vice-Chairman (Mike Harman)

The Planning Commission chose not to formally adopt this rotational schedule, but did request that I provide the proposed rotation for reference at the 2019 organizational meeting.

You still have the option to formally adopt this rotation schedule as a matter of precedence, but even if you do so, officers would still need to be nominated and elected at the organizational meeting each year. This rotation schedule would provide a guideline to reference when determining who should be elected. Even if the rotation system is adopted, there is always an opportunity for the nominations to change should the person next in the rotation schedule be brand new to the Commission, uncomfortable serving in that role, or there is determination that another Planning Commission member may be better suited to serve as Chairman due to other factors. This is a tool to allow each member of the Planning Commission to fully participate in the decision-making process in a variety of capacities throughout their terms.

I have also verified that there is no conflict with the same person serving as chairman of both the Board of Zoning Appeals and the Planning Commission. Please keep in mind that the first time the BZA meets in 2019, they will also be conducting an organizational meeting and that their officers will also have the opportunity to be rotated.

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– **Officer Elections**

Ms. Proulx noted that an officer rotation could put people that are not experienced enough or not willing into the position of chairman. She said that she is not opposed to a rotation that is unofficial and can be more loosely followed. The Planning Commission decided not to adopt an officer rotation.

Mr. Harman nominated Mary Kathryn Allen to be Chair for 2019. Ms. Proulx seconded the motion. The motion passed 5-0.

Ms. Allen nominated Mark Stapleton to be Vice-Chair for 2019. Ms. Proulx seconded the motion. The motion passed 5-0.

Ms. Proulx nominated Emily Hjulstrom to be Secretary for 2019. Mr. Stapleton seconded the motion. The motion passed 6-0.

– **Discussion of schedule for 2019.**

Mr. Harvey noted that this date has worked for 35 years and that it is rare that the applicant is unable to go to the first Board of Supervisors meeting after the Planning Commission meeting and that he sees no reason for changing it. Mr. Harman noted that the 4th Wednesday works the best for him and that the 2nd Wednesday is possible but harder for him to do and that he would have to be absent for 3 or more meetings. Mr. Stapleton, Mr. Amante, and Ms. Proulx noted that they are flexible. Ms. Allen recommended to keep the schedule as-is so that all members are able to regularly attend. Mr. Harvey noted that the Service Authority has changed their meeting date and that they are now unable to get a quorum on their new schedule. The Planning Commission decided to leave the schedule as-is.

Ms. Proulx made a motion to move the December 25th meeting to the third Wednesday on December 18th. Mr. Stapleton seconded the motion. The motion passed 6-0.

Public Hearing Items:

Chair Allen read the following:

Nelson County Planning Commission

Public Hearing Guidelines

Adopted 4-25-2018

1. The Presentation by the Petitioner's representative(s) will be limited to fifteen (15) minutes. If it is difficult to fully explain a complex proposal orally within the time limit, it is recommended that the petitioner submit in advance to the Planning and Zoning Office written information that can be mailed to the Planning Commission prior to their respective meetings.
2. Speakers representing a group will be allowed five (5) minutes to speak if their presentation will reduce the number of persons to make a public comment.
3. Subsequent speakers will be allowed a maximum of three (3) minutes each and cannot allocate their time to another individual.
4. Speakers must come to the podium, give their name and address before making their remarks.
5. Speakers will be timed by a staff assistant and given notice when they have one (1) minute left and when their time has expired. Upon notification the speaker shall relinquish the podium and return to their seat.
6. Speakers are asked to not be repetitive and to insure their remarks are relevant to the request at hand.
7. When the public hearing is closed the Planning Commission will deliberate on the agenda item, during which the public may remain present but will not be allowed to speak. Members of the Planning Commission may ask questions of anyone in the audience in order to seek clarification of issues that were brought out at the hearing.
8. Abusive and inappropriate language will not be tolerated.
9. The Chair will fairly enforce the above rules.

– **Special Use Permit #2018-11 – Restaurant**

Ms. Shackelford presented the following:

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Nelson County Planning Commission

To: Planning Commission
From: Sandra M. Shackelford, Director of Planning & Zoning
Date: January 14, 2019
Re: Special Use Permit #2018-11 – Rockfish Valley Highway

BACKGROUND: This is a request for a special use permit to for a restaurant (§4-1-34a) in an existing building on property zoned Agricultural.

Public Hearings Scheduled: P/C – January 23, 2019; Board – February 12, 2019 (tentative)

Location / Election District: 9485 Rockfish Valley Highway / North Election District

Tax Map Number(s) / Total acreage: 6-A-131 / 8.126 acres +/-

Applicant Contact Information: Todd Rath, 161 Wood House Lane, Nellysford, VA 22958; 434-996-7133.

Comments: The applicant would like to use the existing building located at 9485 Rockfish Valley Highway and convert it into a restaurant. This is part of the same use that was previously approved by the Board of Supervisors in August of 2017 and was since determined to have expired. This does not include any of the other uses that were part of that original request.

Since this use was initially considered by the Board of Supervisors, there has been another SUP that was approved that would allow for a three-unit building to be constructed and would permit a restaurant, farm winery remote retail establishment (off-site wine tasting room), and then the third unit would be used for a by-right use not requiring a special use permit.

There has been much debate about the appropriate use for this property. This use would require the renovation of an existing structure that is legally non-conforming; it does not meet the current front set-back requirement. This building was also previously used for commercial purposes.

DISCUSSION:

Land Use / Floodplain: This area is rural in nature. There are no 100-year flood plains on the property.

Access and Traffic: Property is accessed from Rockfish Valley Highway (Route VA-151 – AADT 4,800 trips per day). The proposed development will generate additional traffic along this corridor. As the process has been underway, VDOT has continued to be involved in the review of the project. The entrance alignment has been adjusted upon VDOT's request to be located across from the entrance to Silverback. VDOT will continue to review the requests and make recommendations for road improvements as anticipated traffic counts trigger improvements.

Utilities: Property is served by private well and septic systems.

Conditions: The Planning Commission may recommend, and the Board of Supervisors may impose, reasonable conditions upon the approval of the special use permit. Conditions recommended that were placed on the two currently active special use permits include the following:

1. Outdoor amplified music shall be limited to the hours between 1:00 pm and 6:00 pm on Sundays, and between the hours of noon and 8:00 pm Mondays through Saturdays.
2. All exterior lighting shall be fully-shielded and no light trespass shall be permitted on adjacent properties. All light fixtures shall meet professional standards for fully-shielded, full cut-off fixtures designed to protect the dark night sky. Parking lot light poles shall be limited to 18 feet in height.
3. All businesses shall be limited to operating between 9:00 am and 8:00 pm Sundays through Thursdays, and between 9:00 am and 9:00 pm Fridays and Saturdays.
4. The developer shall construct an 8-foot tall privacy board fence along the entire length of the northern property line abutting tax parcel #6-15-18. The developer shall install a three-board fence with rolled wire along the western property line on the east side of the creek from the northern-most point of the property line extending south to the point where the property becomes marshy, which is approximated at the location of analysis point 2 as shown on page C5.00 of the site plan dated June 25, 2018.
5. The site shall be developed in substantial conformance with the site plan and other plans submitted with the request.

Comprehensive Plan: This property is located in an area designated as rural and farming use based on the current Comprehensive Plan.

RECOMMENDATION: The approval of special use permits should be based on the following factors:

1. The use shall not tend to change the character and established pattern of development of the area or community in which it proposed to locate.
There is much debate over what defines the character and established pattern of development of this area. There are other commercial uses in the near vicinity, but the property is also located in front of an agriculturally-zoned residential subdivision. With the existing uses that have already been permitted on the property, as well as other uses that could potentially be located there by-right, the Planning Commission and Board of Supervisors will need to assess what level of additional development (if any) is consistent with the character of the area.
2. 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.

Adjoining property owners have actively opposed this, and other requests by the applicant, on the grounds that the proposed commercial uses will adversely affect the use of neighboring property. Should the Planning Commission and Board of Supervisors choose to approve this request, special consideration should be made to conditions that would protect the neighboring property owners from some of these adverse impacts.

3. The proposed use shall be adequately served by essential public or private water and sewer facilities.
The applicant has had a test well dug and approved by the Health Department and completed a draw down test. Appropriate septic systems will continue to be a condition of final approval of any development on the site.
4. The proposed use shall not result in the destruction, loss or damage or any feature determined to be of significant ecological, scenic or historical importance.
There do not appear to be significant ecological, scenic or historical features that would be impacted by the proposed use.

Ms. Proulx noted that the building was previously a store and Mr. Harvey noted that most recently it had been a gun shop. Mr. Harvey asked what the applicant was doing by-right. Ms. Shackelford noted that the applicant has discussed that he might do some by-right uses on the property in the future but has not specified anything.

Mr. Rath of 161 Wood House Ln is the applicant for the project. He noted that the smaller garage building will be converted into storage space. He noted that this application is for the building that used to be a convenience store and that he hopes to turn it into a restaurant. He noted that the retail units will likely be a winery, a cidery, and an ice-cream shop. He also noted that the building between the retail spaces and the restaurant would hopefully be a grocer. He explained that he is trying to build something both to help the community and to support tourism. He noted that the only full service restaurant in Afton is Blue Mountain Brewery. He also noted that having a restaurant would avoid him having food trucks to support the other businesses.

Mr. Rath noted that VDOT is down to two bullet points that they are discussing with his engineer. Mr. Rath noted that the well tested well and that all the engineering is done on the septic. He also noted that they have great dirt and sand under the ground.

Mr. Harman asked about the status of the first Special Use Permit he applied for. Mr. Rath confirmed that the original application was for Blue Toad Cidery and a restaurant and it had expired. He explained that they filed an appeal of the expiration to the Board of Zoning Appeals.

Ms. Proulx asked how big the deck would be on the proposed restaurant. Mr. Rath noted that it would be 400 sqft.

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Ms. Proulx noted that she wanted to see the entire plan with everything that Mr. Rath intends to build on it. Mr. Rath confirmed that this plan is everything he plans to do on the property.

Mr. Stapleton asked if the restaurant would be large enough. Mr. Rath explained that it will be 1400 sqft and the busiest times are when people are sitting outside. Mr. Rath noted that when Blue Toad was fully operational their seating was only 1000 sqft.

Ms. Proulx asked what ex. Ff=506.13 means. Ms. Shackelford explained that it stands for existing square footage and that the applicant will be able to build up to 50% of the existing square footage.

Ms. Proulx noted that the applicant had just stated a much larger addition than 50% of the original square footage.

Mr. Harvey noted that if you look at 11-1-3 in the Zoning Ordinance then nothing can go into the building. Ms. Shackelford noted that this is a nonconforming structure and not a nonconforming use and that the only way a non-conforming building ceases to be in operation is if the building is removed. She also explained that any conforming use can be used in a nonconforming structure. Mr. Harvey read the following from 11-1-3 "If any nonconforming use (structures or activity) is discontinued for a period exceeding two (2) years after the enactment of this ordinance, it shall conform to the requirements of this ordinance..." Mr. Harvey noted that nothing has been in the building for a very long time (longer than two years). Mr. Rath noted that people have lived in it. Ms. Shackelford noted that she had discussed her interpretation with Phil Payne and she explained that this is the same situation as a previous rezoning application from Justin Shimp. Ms. Proulx noted that it might be best to have a written opinion from Mr. Payne that states that.

Mr. Rath asked that if the Planning Commission does ask for an opinion from Mr. Payne, that they do it while Mr. Rath is waiting to go to the Board of Supervisors hearing and not to delay the Planning Commission hearing.

Chair Allen then opened the public hearing at 7:34 PM:

Margaret Flather of 507 Rockfish Orchard Dr. she is representing the Rockfish Orchard Home Owner's Association. She asked the Planning Commission to follow the rules laid out in the Zoning Ordinance. She also presented the following information:

Margaret Flather
1-23-2019

APPENDIX A - ZONING

ARTICLE 15. VIOLATION AND PENALTY

- 15-1 All departments, officials, and public employees of this jurisdiction which are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this ordinance. They shall issue permits for uses, buildings, or purposes only when they are in harmony with the provisions of this ordinance. Any such permit, if issued in conflict with the provisions of this ordinance, shall be null and void. ✱
- 15-2 Any person, firm, or corporation, whether as principal, agent, employed or otherwise, violating, causing, or permitting the violation of any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof, may be fined not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00). If the violation is uncollected at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance with the Zoning Ordinance within a time period established by the court. Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00), and any such failure during any succeeding thirty (30) day period shall constitute a separate misdemeanor offense for each ten (10) day period punishable by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand, five hundred dollars (\$1,500.00).

4-2-1c For a two-family detached dwelling unit on a single lot utilizing the Nelson County public sewage disposal system, the required area for such use shall be thirty thousand (30,000) sq. ft. **O2009-13**

4-2-2 For permitted uses utilizing individual sewage disposal systems, the required area for any such use shall be approved by the health official. The administrator may require a greater area if considered necessary by the health official.

4-3 Setback regulations.

4-3-1a Front yard:

Minimum of seventy-five (75) feet from the center of the road or fifty (50) feet from the edge of the right-of-way, whichever is the greater distance. ★

4-3-1b Internal lot without road frontage:

Minimum of fifty (50) feet from the property line designated as the front yard.

4-3-2 Side yard:

Lots 1 to 5 acres in size: Minimum of ten (10) feet from the property line and the total width of the required side yards shall be twenty five (25) feet or more.

Lots greater than 5 acres in size: Minimum of twenty (20) feet from the property line and total width of the required side yards shall be fifty (50) feet or more.

4-3-3 Rear yard:

Lots 1 to 5 acres in size: Minimum of twenty-five (25) feet from the rear property line.

Lots greater than 5 acres in size: Minimum of fifty (50) feet from the rear property line.

4-3-4 Accessory structure:

Minimum of fifteen (15) feet from property line, except no accessory building shall be located within the required front yard setback.

4-3-5 Road frontage:

Minimum of one hundred twenty-five (125) feet fronting on a public or private road built to State or County road standards.

4-4 *Special provisions for corner lots.*

APPENDIX A - ZONING

ARTICLE 11. NONCONFORMING USES

11-1 *Continuation.*

11-1-1 If at the time of enactment of this ordinance, any legal activity which is being pursued, or any lot or structure legally utilized in a manner or for a purpose which does not conform to the provisions of this ordinance, such manner of use or purpose may be continued as herein provided.

11-1-2 If any change in title of possession or renewal of a lease of any such lot or structure occurs, the use existing may be continued.

11-1-3 If any nonconforming use (structures or activity) is discontinued for a period exceeding two (2) years after the enactment of this ordinance, it shall conform to the requirements of this ordinance, except that, when a written notice of intent to continue the use of said structure or activity after the expiration of the two (2) year period shall be submitted by the owner of the property before the two (2) year discontinuance period shall expire, which notice shall state that the use will be continued within the next two-year period, the nonconforming activity may continue for an additional two years. The additional two-year discontinuance period permitted by this subsection may neither be extended nor renewed.

★ 11-1-4 Whenever a nonconforming structure, lot or activity has been changed to a more limited nonconforming use, such use may not return to the previous nonconforming use but may only be changed to an even more limited use.

11-2 *Permits.*

TRADING POST → vacant greater than 2 years → Greater impact from restaurant

11-2-1 All nonconforming uses shall obtain a certificate of occupancy. Such permits shall be issued promptly upon the written request of the owner or operator of a nonconforming use.

11-2-2 The construction or use of a nonconforming building or land area for which a permit was issued legally prior to the adoption of this ordinance may proceed, provided such building is completed within one (1) year, or such use of land established within thirty (30) days after the effective date of this ordinance.

11-3 *Changes in district boundaries.* Whenever the boundaries of a district are changed, any uses of land or buildings, which become nonconforming as a result of such change shall become subject to the provisions of this article.

11-4 *Expansion or enlargement.*

11-4-1 A nonconforming use or structure to be expanded or enlarged more than fifty (50) percent of the area occupied by such use or structure at the time of passage of this ordinance, shall conform with the provisions of this ordinance, except that any expansion of use or structure shall conform to Article 13 of this ordinance.

APPENDIX A - ZONING

- 11-4-2 A nonconforming activity may be extended throughout any part of a structure, which was arranged or designed for such activity at the time of enactment of this ordinance.
- 11-5 *Nonconforming lots.* Any lot of record at the time of the adoption of this ordinance which is less in area or width than the minimum required by this ordinance may be used when the requirements of the Nelson County Zoning Ordinance regarding front setback, side and rear yards are met.
- 11-6 *Restoration or replacement.*
- 11-6-1 Where a conforming structure devoted to a nonconforming activity or where a nonconforming structure is damaged, either may be repaired or restored, provided any such repair or restoration is started within twelve (12) months and completed within twenty-four (24) months from the date of damage or destruction.
- 11-7 *Mobile home park compliance with ordinance.* That all persons operating, using, or maintaining any mobile home lot or camp in Nelson County in existence as of January 1, 1971, shall comply with all restrictions of this ordinance and of the local and State Building Code by January 1, 1979.

APPENDIX A - ZONING

ARTICLE 13. SITE DEVELOPMENT PLAN

13-1 *Categories and Applicability of Site Plans.* This Article provides the requirements and applicability of the following site plans:

- a. Major Site Plan
- b. Minor Site Plan

Site Plans for Residential Planned Communities shall be governed by the provisions of Article 7 of this ordinance. **O2010-5**

13-1-1 *Requirements for site plans.*

A site plan shall be required for any development on any site, in all zoning districts, in any case in which construction or a change in use of the existing site increases the number of on-site parking spaces or anything that causes a visible change in the site. A "visible change" includes grading, removal of vegetation in preparation for future development of the site, mining, digging, and riverbank removal, addition to a building that changes the traffic circulation on the site, or any other change which the Planning and Zoning Director determines to cause a significant impact to the public health, safety and welfare of the citizens of the County.

Major Site Plan. A Major Site Plan shall be required when the project:

1. exceeds one acre of land-disturbed area and is commercial or industrial in nature, or is a mobile home park, or contains three (3) or more dwelling units on one lot, or is an Intentional Community; or
2. entails the erection of a structure or structures exceeding a total of 5000 square feet, excluding agricultural and single family residential construction, on a single parcel.

Minor Site Plan. A Minor Site Plan must accompany zoning permit applications in those undertakings which do not fall within the categories specified for Major Site Plans. A Minor Site Plan must also accompany the initial application for a Special Use Permit and for a rezoning request. For the purposes of this Article, the phrase "special use" shall mean either Conditional Use or Special Use, as the case may be. **O2010-5**

13-1-2 *Site plan exemptions.*

The foregoing notwithstanding, no site plan shall be required for the following:

- a. Construction of, or addition to, a single family dwelling on an individual lot.
- b. Construction of, or addition to, a two-family dwelling on an individual lot.
- c. Accessory structures to single-family dwellings (not meant for commercial use).

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She noted that the request is for a restaurant in an agricultural zone in a building that is nonconforming. She noted that the whole legislative intent of Article 11 is to gradually remove nonconforming structures. She noted that she has lived in her house since 1995 and that the building has not been used for years. She also noted that there is no distinction between structures and activities. She then read "11-1-4". She noted that now that the building is vacant it cannot be increased in use to a restaurant that would have even more impact. She also read "11-4" and noted that Article 13 requires a Major Site Plan. She requested that the Planning Commission should not only deny this but that they should send it back to Planning and Zoning for a more rigorous assessment.

Jeri Lloyd lives at 9322 Rockfish Valley Hwy. She noted that she agrees with Ms. Flather. She noted that she is also speaking for the Fox's. She noted that they are very opposed to the entire project including the new SUP for the restaurant. She noted that there has already been approval for three other businesses for the property and that it is already turning into a large commercial business development in an agricultural zone. She noted that Article 4 clearly states that commercial use is discouraged. She asked how they could trust that Mr. Rath would build and maintain as is anticipated. She noted that she does not believe he will do this. She noted that Mr. Rath stated he would build the lodging by-right in a recent interview with the Nelson County Times but she does not see how he can do this. She noted that they are also against any possible Conditional Use Permits. She also noted that Mr. Rath plans on building 14 cabins and not just the 6 he initially applied for. She noted that he wants to build them by-right. She also noted that Mr. Rath stated that the only time he would be before a board again is for the restaurant or a possible future grocery store. She noted that the majority of the neighbors do not want this in their neighborhood. She also noted that Mr. Rath has never contacted her, her husband, or Mr. and Mrs. Fox regarding their concerns. She noted that he uses intimidation, threat and whining to get what he wants. She quoted him saying "I don't get approval so I'm going to do it by-right". She asked that the Planning Commission deny the request.

Philip DeJong lives at 305 Falling Springs Dr. He presented the following:

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Philip DeJong
1-23-2019

Planning Commission

Regarding: AFTON DEPOT Development SUP for Asian Fusan Restaurant
January 23, 2019

Comments by Philip De Jong
305 Falling Springs Drive
Afton, VA 22920
434-531-2255

Members of the Planning Commission,

My Name is Philip De Jong, my wife Christine and I live at 305 Falling Springs Drive, Afton, VA and our property adjoins the Rockfish Valley Events property to the West and to the South, sharing approximately 1600 feet of property line with the applicant.

It feels like we're all in the movie Ground Hog Day. Coincidentally, one of Bill Murray's famous quotes in that movie is, "I'm not going to live by their rules anymore!" The applicant has recently stated publicly, "The only time you will see me in front of any board again is for (this) restaurant and a possible future grocery store."

And now, here we are once again, watching the applicant throw anything and everything against the Nelson County Wall... to see - what - sticks.

A year ago before this commission I stated that the essence of what was being proposed is nothing short of a STRIP MALL. If this SUP is approved we will be faced with:

presumably

Bed & Breakfast

14 cabins by-right (masquerading as a B&B),

a farm winery,

a nano-brewery,

an Asian fusion restaurant,

a possible grocery store and

a storage garage.

What else can you call this but a STRIP MALL.

All within an Agricultural-Residential-Neighborhood.

Supervisor Reed issued an apology at the last BOS meeting regarding the applicant's last SUP request. I quote Mr. Reed,

"I apologize to the planning department, I apologize to the (applicant), I apologize to everybody who has had to go through this... to me, this is simple: This is the wrong thing, in the wrong place and it should never have gotten past first base.

I echo Supervisor Reed's sentiment.

Please stop this nonsense!

Thank you!

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Ms. Allen closed the public hearing at 7:47

Mr. Rath noted that there is no nano-brewery that is going in on the property and that it is one of the compromises he made. He also noted that he is building \$20,000 fences down the north side and \$15,000 down the west side among other compromises. He noted that he has not contacted every neighbor directly but that he has met with the heads of the Rockfish Orchard subdivision and Philip DeJong. He noted that he gets disturbed when people say that he is not a good neighbor. He noted that he and Mr. Fox were cordial with each other when they were neighbors and that they might have had two run-ins in three years. He also noted that he owns Wintergreen Winery and the Rockfish Valley Inn and that no one has contacted those neighbors to see how he is as a neighbor.

Mr. Rath confirmed that he did talk to the paper and say that he would build lodging by-right because it is allowed in the ordinance. He noted that some people have a different definition of rural and that Afton is not rural. He noted that the southern part of the county has the stereotypical features of being rural. He noted that Afton rezoned parcels to M-1 to try to get more industry to move into the county. He explained that you do not put a subdivision in a rural area and that he is right next to the Rockfish Orchard subdivision. He also noted that people that are buying homes and that live in Nelson County need to know where to buy land to live on and develop. He explained that the County needs to adopt a plan that shows where development is encouraged. He noted that he bought that land because it was close to Silverback and another brewery. He also brought up a large subdivision advertised as going in nearby and stated that it is not rural either.

Ms. Proulx noted that they need to solve the issue of it being a nonconforming structure before doing anything else and that she would like to see something in writing from Phil Payne. Ms. Shackelford noted that the building is nonconforming because it is about 62 feet from the center of the road and not the required 75. Mr. Amante noted that this comes back to his concern of having a turn lane that would widen the road. He recommended that they should strongly suggest that an applicant put in a turn lane when they get within 10% of the amount of traffic that requires a turn lane from VDOT. He also noted that he agrees with Ms. Proulx about needing to know whether the building is nonconforming or not. Ms. Shackelford noted that she will request a written opinion from Phil Payne. Ms. Allen noted that she believes Ms. Shackelford is right in her interpretation but that the ordinance is not written well and that it can be construed either way.

Ms. Proulx noted that the last time she spoke to Jeff Kessler from VDOT, he noted that he wished he knew the entire plan before he worked on it. She noted that he was concerned about the applicant needing a turn lane in the future.

Mr. Harvey noted that when you go to article 11-1-4 it says "Whenever a nonconforming structure, lot or activity has been changed to a more limited nonconforming use...". He noted that when the ordinance came out there could have been stores that were non-conforming but that this article exists to remove non-conforming uses over time and that the use can only be more limited over time. He noted that structures and activities are identical.

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Ms. Proulx made a motion that the Planning Commission request Sandra Shackelford to obtain an opinion from the County Attorney on the application of Section 11 in reference to non-conforming structures. Ms. Allen seconded the motion.

Mr. Stapleton then asked that Ms. Shackelford provide a written request for input to the County Attorney before he provides his input. Ms. Allen noted that she did not think this is necessary because this came up with a previous applicant before. Ms. Proulx noted that it will need to be noted that this decision be not confidential. Mr. Stapleton asked how this request would be passed on to the County Attorney. Ms. Proulx noted that Ms. Shackelford could do it in a letter. Mr. Amante noted that he would also like to know if the county can direct the applicant to demolish the buildings if they are non-conforming. Ms. Proulx noted that it needed to be asked if a more limited use was needed as well.

Ms. Flather asked if the public hearing could be continued if more information was coming in. Ms. Allen noted that the public hearing had already been closed. Ms. Proulx noted that the state code notes that there needs to be "at least one" public hearing. She noted that she is not advocating for that now but she wanted people to know there is that option.

Mr. Rath asked what the difference between Anderson's Grocery and this request is. Ms. Proulx noted that the Anderson's Grocery request was a rezoning with a concurrent Special Use Permit and that the Special Use Permit had nothing to do with the non-conforming building. Ms. Allen also noted that Mr. Rath's request involves the possibility of a turn lane.

Yes:

Ms. Proulx

Mr. Stapleton

Mr. Amante

Mr. Harman

Ms. Allen

Mr. Harvey

No:

The motion passed 6-0.

Ms. Proulx motioned that they postpone any recommendation until they are in receipt of an opinion from the County Attorney. Mr. Amante second the motion.

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Yes:

Ms. Proulx

Mr. Stapleton

Mr. Amante

Mr. Harman

Ms. Allen

Mr. Harvey

No:

The motion passed 6-0.

- **Rezoning #2018-04 with concurrent Special Use Permit #2018-12 – Bed and Breakfast, Class A**

Ms. Shackelford presented the following information:

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Nelson County Planning Commission

To: Planning Commission
From: Sandra M. Shackelford, Director of Planning & Zoning
Date: January 14, 2019
Re: Rezoning #2018-04 & Special Use Permit #2018-12 – Rockfish River Road

BACKGROUND: This is a request to rezone property from Business, B-1 to Residential, R-2 with a concurrent special use permit to construct and operate a Bed and Breakfast, Class A (§6-1-4a).

Public Hearings Scheduled: P/C – January 23, 2019; Board – February 12, 2019 (tentative)

Location / Election District: Rockfish River Rd, directly across from 6485 Rockfish River Road / East Election District

Tax Map Number(s) / Total acreage: 62-A-3 / 7.482 acres +/- total

Applicant Contact Information: Carole Ann Johnson, 2700 Boonville Road, Ukiah, CA 95482; 707-513-5953.

Comments: The applicants are requesting the rezoning with the concurrent SUP because the zoning ordinance does not currently permit a bed and breakfast to operate in the B-1 district unless there is already an existing, non-conforming dwelling on the property that can be utilized. Because the structure is new, the applicants need to rezone the property before requesting the SUP. The R-2 zoning district is consistent with the zoning on other parcels in the vicinity. A portion of the property also appears to already be zoned R-2, so this would create a consistent, uniform zoning district for the entire parcel.

This property is directly across Rockfish River Road from the existing Walton's Mountain Museum, and it is planned to be a replica of the house used in the Walton television series.

DISCUSSION:

Land Use / Floodplain: This area is residential in nature. Zoning in the vicinity is R-2 and B-1. There are no 100-year floodplains on this property.

Access and Traffic: Property is accessed from Rockfish River Road (Route 62-617 – AADT 140 trips per day). VDOT has reviewed the request and has stated that the existing entrance

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location meets the minimum stopping sight distance. The type of entrance that is required (low volume commercial or commercial) will depend on whether more than 50 vehicle trips per day is generated by the use.

Utilities: The property will be served with public water and sewer systems.

Proffers/Conditions: No proffers have been submitted with this request.

The Planning Commission may recommend, and the Board of Supervisors may impose, reasonable conditions upon the approval of the special use permit portion of this request. Conditions recommended by staff are that the property be constructed in conformance to the site plan that was submitted with the request.

Comprehensive Plan: This property is located in an area designated rural village in the Comprehensive Plan, which is defined as A center of rural activity, smaller than a small town, surrounded by sparsely developed, or sparsely populated rural or agricultural land. The area may contain residential, commercial, civic, institutional, or industrial uses.

RECOMMENDATION: The approval of requests should be based on one or more of the following factors:

1. Good Zoning Practice
2. Public Necessity
3. General Welfare
4. Convenience

This request is generally consistent with the Comprehensive Plan, and could be considered an expansion of the existing use of the Walton Mountain Museum.

Ms. Proulx asked when there is a Rezoning with a concurrent Special Use Permit if they can receive two separate applications. Ms. Shackelford confirmed that this was possible and would be done in the future.

Ms. Carole Ann Johnson owns the property at 128 Treetop Loop in Schuyler. She noted that she purchased the house about 1.5 years ago and that she wishes to continue Earl Hamner Jr's legacy. She noted that they currently do tours and events but that there is nowhere for the cast members of the Walton's TV show or for tourists to stay when they come to the area. She noted that their goal is to have a replica of the Walton's house that will have 5 bedrooms and 6 bathrooms and that her main tour guide will be staying in one of the bedrooms with her husband and will act as a full-time innkeeper.

She noted that most guests are from ages 50-80 and that they don't expect any noise complaints. She noted that there will hopefully be a grand opening in October and the cast members will hopefully be coming as well. She explained that there won't be any large signs or obtrusive lighting. She noted that a neighbor, Ms. Emily Hunt, noted that she is concerned about an old grave yard on the property. Ms. Johnson explained that they would put a white fence around the graveyard to prevent people from going there. She also noted that Ms. Hunt is the only neighbor to come to her with concerns.

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Ms. Proulx noted that in the narrative it says that the museum will bring additional tourism to Schuyler but that it also says later on that it will not affect traffic patterns. Ms. Johnson noted that there will be 5 rooms that would equate to about 5 additional cars and that it would not change traffic that much. She confirmed that there would be a guide that lives in the house full time. She also noted that she is supporting local services and goods.

Ms. Allen asked how many people are drawn to the cast events. Ms. Johnson noted that when they had Richard Thomas, 3500 people show up and that when they were able to have 15 cast members around 5000 people show up. She noted that usually there are around 3 cast members and that they sold 60 tickets the last time they had that.

Chair Allen then opened the public hearing at 8:19 PM.

Chair Allen then closed the public hearing at 8:19 PM.

Ms. Proulx noted that she received a call from Ms. Emily Hunt today and that she has had bad experiences with a nearby store and that she would appreciate conditions being placed on this property in the case that it be sold. Ms. Shackelford noted she would need to look into events to see if they would be considered a standard accessory use or not. Ms. Proulx noted that events were likely to be based at the museum across the street and not the house.

Ms. Allen asked who the closest property owner was. Ms. Proulx noted that she believed it was the museum and Ms. Hunt.

Mr. Harvey asked why it had been rezoned to Business in the first place. Ms. Shackelford noted that she wasn't sure. Mr. Amante asked why it had to be rezoned to R-2 from B-1. Ms. Shackelford noted that a Bed and Breakfast can only exist in B-1 if it is in an existing house. Ms. Proulx asked if she could have a by-right boarding house or hotel/motel. Ms. Shackelford noted that someone wouldn't be able to live on the property full time. Ms. Proulx noted that she's not sure that someone couldn't live there. Ms. Shackelford referenced that it specifically says a hotel is not a residence and read the definition for motel in the ordinance. Ms. Allen asked if that meant that a guest could not use it as a residence and that it isn't in reference to a caretaker using it as a residence. Ms. Shackelford noted that because they have separate definitions for these uses in the ordinance then they need to use the use that most closely matches the proposal. Mr. Stapleton asked if this made a difference in the number or type of events that they could have. Ms. Shackelford noted that B-1 allowed category 1 and 2 events.

Ms. Allen asked what the building code says for commercial vs. residential. Ms. Shackelford noted that it is based on the number of rooms.

Carlton Ballowe lives at 19218 Thomas Nelson Highway in Faber. He noted the plans are currently to build it as a single family residence with 5 rooms and that if they were to make it commercial then it would be prohibitively expensive to build it to those standards.

Ms. Shackelford noted that if someone would be living there the whole time and it would be considered a single family dwelling then it would need to be classified as a bed and breakfast.

Mr. Harman made a motion to recommend approval of Rezoning 2018-04. Mr. Amante seconded the motion.

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Yes:

Ms. Proulx

Mr. Stapleton

Mr. Amante

Mr. Harman

Ms. Allen

Mr. Harvey

No:

The motion passed 6-0.

Ms. Proulx asked if the applicant would have a problem with there being no outdoor amplified music allowed. Ms. Johnson said there would be no issue. Ms. Proulx asked what the law was for graveyards. Ms. Shackelford noted that it can't be disturbed. Mr. Harvey noted that there has to be access available to family members.

Ms. Proulx made a motion to recommend approval of Special Use Permit #2018-12 to the Board of Supervisors with the following conditions:

- **That there be no outdoor amplified music.**
- **That all exterior lighting be fully shielded and no light trespass will be permitted on adjacent properties. All light fixtures will meet professional standards for fully shielded, full cut-off fixtures designed to protect the dark night sky. Parking lot light poles shall be limited to 18' in height.**
- **And that the site plan be developed in substantial conformance with the site plan and other plans submitted with this request.**

Mr. Harman seconded the motion.

Yes:

Ms. Proulx

Mr. Stapleton

Mr. Amante

Mr. Harman

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Ms. Allen

Mr. Harvey

No:

The motion passed 6-0.

Other Business:

– **Major Site Plan #2018-02 – Rockfish Valley Events**

Ms. Shackelford noted that this request is for the three-unit building that has already been approved by Special Use Permit. She noted that there would need to be a few edits before she is able to give it final approval but that it is up to the Planning Commission to decide if they would like to approve it with conditions. She noted that the following would need to be added:

- Signature lines for agency approvals.
- Adding Shirley McGatha's information as an adjoining property owner.
- Adding a note or showing the proposed fence on the western property line.
- Location of signs.
- Landscaping being shown on the E&S plans.
- For the building that was going to be the Blue Toad, it needs to be renamed as 'Existing Building'.
- A note added that makes it clear that the 'Proposed future development building will not be approved with the approval of the site plan.
- The cabins would need to be removed.
- The letter of approval with conditions would need to be added.

Mr. Harvey noted that they should not vote on a document unless it's the final document. Ms. Proulx agreed because the site plan shows extra things. Ms. Shackelford asked if the Planning Commission would like the applicant to resubmit with these revisions. Mr. Harman noted that he is lost as to what they are voting on with the site plan as it is. Mr. Amante noted that they should make sure that it is up to DEQ standards first. He also noted that if there is intent to add another structure whether it is by-right or not that it be represented on the site plan. Ms. Allen noted that she understands that everything needs to be on the site plan for VDOT and DEQ approvals. Ms. Shackelford confirmed that the site plan needed to include E&S so that the E&S manager can approve it.

Mr. Todd Rath is the applicant, he lives at 121 Wood House Ln. He noted that a cover sheet might help to make everything clearer. He noted that he needed to include all the extra information for other agencies to approve it. Mr. Amante asked if Mr. Rath is now considering a Bed and Breakfast and that the cabins would not suit that. Mr. Rath noted that the cabins could classify as a Bed and Breakfast type B and does not specify that the residence needs to be a single family dwelling. Ms. Proulx quoted from the ordinance for Bed and Breakfast, Class B "transient lodging provided within a single family dwelling and/or one or more structures that are clearly subordinate and incidental to the single family dwelling, having not more than ten (10) guest rooms in the aggregate". Mr. Amante

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quoted the following definition from the Zoning Ordinance for a detached single family dwelling “A building arranged or designed to contain one (1) dwelling unit”.

Mr. Harvey asked if there was a limit for the amount of structures that can be built on a parcel. Ms. Shackelford noted that there is a limit to the number of dwelling units but that she is not sure that there is a limit to the amount of structures.

Ms. Proulx asked if the applicant still needed to merge two of the parcels. Ms. Shackelford noted that this would need to be done before she gave final approval to the site plan.

Ms. Proulx asked what was referenced as the ‘southern lot’. Mr. Rath noted that the ‘southern lot’ is the southern parcel of the two parcels involved in the request.

Mr. Harvey asked if they reboundried the land at one point. Mr. Rath noted that they did cut into the land to before he bought it for some reason related to entrances.

Board of Supervisors Report:

Mr. Harvey noted that he had nothing to report.

Adjournment:

Ms. Proulx made a motion to adjourn the meeting at 8:57 pm. Mr. Amante seconded the motion. The motion was passed with a vote of 6-0.

Respectfully submitted,



Emily Hjulstrom
Secretary, Planning & Zoning