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**Nelson County Planning Commission  
Meeting Minutes  
July 22, 2015**

**Present:** Chair Philippa Proulx, Commissioners Linda Russell, Mary Kathryn Allen, Mike Harman, Robert Goad (7:18 p.m.), Larry Saunders (Board of Supervisors Liaison)

**Absent:** Stormy Hopkins, Secretary

**Staff Present:** Tim Padalino, Director of Planning and Zoning, and Anna Birkner, Secretary (substitute)

**Call to Order:** Chair Proulx called the meeting to order at 7:02 p.m. in the General District Courtroom, County Courthouse, Lovington.

**Approval of Minutes; May 27, 2015:** Chair Proulx asked if there were any further changes to the revised May 27<sup>th</sup> meeting minutes. She explained that this needed to be revisited because only two commissioners voted to approve this at last meeting. There were no further questions or comments.

**Commissioner Allen made a motion that the May 27, 2015 meeting minutes of the Planning Commission be approved. Commissioner Russell provided the second. The vote 4-0 with Commissioner Harman abstaining.**

Chair Proulx explained that the June 24, 2015 minutes were not available at this time and would be available at the August meeting.

Chair Proulx requested to change order of agenda and discuss the proposed amendments first, since Commissioner Goad was not present at this time, but was on the way.

## **AGENDA**

### **1. Public Hearing for Proposed Z.O. Amendments: "Brewery" and "Limited Farm Brewery"**

Mr. Padalino explained the definition of *brewery* is currently "a facility for the production of beer." This definition was adopted last year, and it was subsequently brought to the Board's attention that there is an existing brewery company that brews a beverage other than beer. The Board of Supervisors referred these amendments to the Planning Commission on June 9<sup>th</sup>, 2015. The Planning Commission reviewed these amendments on June 24<sup>th</sup> and proposed to change the word beer to brewed beverages in the definitions of *Brewery* and *Limited farm Brewery*.

Chair Proulx opened the public hearing 7:06 p.m.

**Ethan Zuckerman, Afton:** Mr. Zuckerman noted that he and his family would benefit from this amendment. They own a business that brews fermented tea and are looking for a new space within Nelson County. This change to the Zoning Ordinance would allow them to re-locate.

With no further comments Chair Proulx closed the public hearing at 7:07 p.m.

~~Commissioner Russell made the motion for R2015-51 from BOS, and having advertised and conducted a public hearing on July 22, 2015 in accordance to the Code of Virginia, recommends the approval of change to the definition of Brewery and Farm Brewery, Limited in Article 2 of the Nelson County Zoning Ordinance which would read as follows:~~

~~**Brewery:** A facility for the production of brewed beverages, including beer or other fermented beverages.~~

~~**Farm Brewery, Limited:** A brewery that manufactures no more than 15,000 barrels of brewed beverages per calendar year, proved that (i) the brewery is located on a farm owned or leased by such brewery or its owner and (ii) agricultural products, including barley, other grains, hops, or fruit, used by such brewery in the manufacture of its brewed beverages are grown on the farm. The on-premises sale, tasting, or consumption of brewed beverages during regular business hours within the normal course of business of such licensed brewery, the direct sale and shipment of brewed beverages to licensed wholesalers and out-of-state purchasers in accordance with law, the storage and warehousing of brewed beverages, and the sale of limited farm brewery-related items that are incidental to the sale of brewed beverages are permitted.~~

~~Commissioner Harmon provided the second. The vote was unanimous, 6-0 to recommend these changes to the Board of Supervisors.~~

Commissioner Russel made the motion: The Planning Commission, having reviewed Resolution R2015-51 from the Board of Supervisors and having advertised and conducted a public hearing on July 22, 2015 in accordance with the Code of Virginia, recommends the approval of changes to the definition of "Brewery and Farm Brewery, Limited" in article 2 of the Nelson County Zoning Ordinance to read as follows: ~~(definitions are quoted here from the staff report)~~

**Brewery:** A facility for the production of brewed beverages, including beer or other fermented beverages.

**Farm Brewery, Limited:** A brewery that manufactures no more than 15,000 barrels of brewed beverages per calendar year, proved that (i) the brewery is located on a farm owned or leased by such brewery or its owner and (ii) agricultural products, including barley, other grains, hops, or fruit, used by such brewery in the manufacture of its brewed beverages are grown on the farm. The on-premises sale, tasting, or consumption of brewed beverages during regular business hours within the normal course of business of such licensed brewery, the direct sale and shipment of brewed beverages to licensed wholesalers and out-of-state purchasers in accordance with law, the storage and warehousing of brewed beverages, and the sale of limited farm brewery-related items that are incidental to the sale of brewed beverages are permitted.

Commissioner Harman provided the second. The vote was unanimous, 6-0 5-0.

## 2. Public Hearing for Proposed Z.O. Amendments: "Wayside Stands" and "Farmers Markets"

Mr. Padalino listed the amendments and possible changes, and explained that these changes would affect the regulation of the land use as well as the definition of "off-farm retail agricultural sales." He stated in his explanation of the changes that the Wayside Stand would be separated into two different classes based on the type of road the stand is located on as defined by VDOT, known as a "Functional

Classification Code.” He stated that this seems like the most objective and straightforward way to classify the uses. Mr. Padalino suggested that the PC possibly modify the language for one of the requirements for a class A Wayside Stand to “all setbacks” instead of only “front yard setbacks.”

Commissioner Goad entered the meeting and chair Proulx explained reason for change in agenda.

Commissioner Russell questioned the difference in the June report explained as “off-farm agricultural sales” and in the current Powerpoint presentation as “off-farm agricultural retail sales.” Mr. Padalino stated to go with definition as contained in the staff report, as that was used for the Legal Notice advertisement.

Chair Proulx opened public hearing at 7:20 p.m. There were no comments from the public. Chair Proulx closed public hearing at 7:20 p.m.

~~Commissioner Russell made a motion to recommend to the Board of Supervisors approval of the proposed amendments to include the re-definition of Wayside Stand as well as standards to Wayside Stands and Farmers Markets as follows:~~

**Commissioner Russell made a motion: The Planning Commission having reviewed the current Zoning Ordinance as it relates to off-farm agricultural retail sales and having advertised and conducted a public hearing on July 15, 2015 in accordance with the Code of Virginia recommends that the Board of Supervisors approve the proposed amendments which include redefinition of Wayside Stands in Article 2 as well as standards for Wayside Stands and Farmers Markets as follows: ~~(contents of amendments are quoted here)~~**

➤ **Article 2: Definitions**

***Remove the following definition:***

***Wayside stand, roadside stand, wayside market: Any structure or land used for the sale of agriculture or horticultural produce; livestock, or merchandise produced by the owner or his family on their farm.***

***Add the following definitions:***

***Farmers Market: Any structure, assembly of structures, or land used by multiple vendors for the sale of agricultural and/or horticultural products, and/or agriculture-related goods and services; but not to include the sale of merchandise purchased specifically for resale.***

***Wayside Stand: Any use of land, vehicle(s), equipment, or facility(s) for the off-site retail sale of agricultural products, horticultural products, or merchandise which are produced on an agricultural operation owned or controlled by the seller or the seller’s family. Wayside stands are a temporary (non-permanent) land use.***

***Wayside Stand, Class A: A Wayside Stand which is located on a road with a Functional Classification Code of 115 or higher (as defined by the Virginia Department of Transportation).***

***Wayside Stand, Class B: A Wayside Stand which is located on a road with a Functional Classification Code of 114 or lower (as defined by the Virginia Department of Transportation), or located within six-hundred sixty (660) feet of an intersection with any road with a FCC of 114 or lower.***

➤ **Article 4: Agricultural District (A-1)**

**Revise the following provision in Section 4-11 "Administrative Approvals:"**

The Zoning Administrator may administratively approve a zoning permit for the following uses, provided they are in compliance with the provisions of this Article.

**4-11-2 Wayside Stands. Wayside Stand, Class A, which provides one (1) year of approval. An approved Class A Wayside Stand may be renewed annually; no renewal fee or site plan resubmission is required with a request for annual renewal, unless the layout, configuration, operation, vehicular ingress/egress, and/or scale is substantially modified.**

No Class A Wayside Stand permit may be approved unless the Planning and Zoning Director reviews and approves the following operational details regarding the safety and appropriateness of the proposed wayside stand:

- (i) Signed affidavit declaring that any and all products offered for sale have their source from, or are otherwise derived from, an agricultural operation that is owned or controlled by the wayside stand operator
- (ii) Proposed frequency and duration of operations (throughout the day, week, month, or calendar year):
  - a. may not exceed \_\_\_ consecutive days; and/or
  - b. limited to a maximum of \_\_\_ hours per day; and/or
  - c. limited to a maximum of \_\_\_ days per week; and/or
  - d. limited to a maximum of \_\_\_ weeks per year
- (iii) Location and type of proposed wayside stand equipment or facility:
  - a. All wayside stand structures or facilities must be located outside of VDOT right-of-way
  - b. All permanent wayside stand structures must comply with the required front yard setback areas of the applicable zoning district
- (iv) Location and details of proposed signage:
  - a. Maximum of one sign allowed, which may be double-sided
  - b. Maximum of twelve (12) square feet of signage
- (v) Sketch site plan, including accurate locations and dimensions of:
  - a. property boundaries and right-of-way
  - b. proposed location of wayside stand equipment and/or facility(s)
  - c. proposed signage
  - d. proposed layout and provisions for safe vehicular ingress, egress, and parking
  - e. lighting plan and lighting details (for any wayside stand request involving any proposed operation(s) after daylight hours)
- (vi) Review comments from Virginia Department of Transportation:
  - a. VDOT review comments must include a formal "recommendation for approval" by VDOT before a Class A Wayside Stand permit can be approved by the Zoning Administrator

**Add the following provisions to Section 4-1-a "Uses – Permitted by Special Use Permit only:"**

**4-1-46a Wayside Stand, Class B**

**4-1-47a Farmers Market**

➤ **Article 8: Business District (B-1)**

***Add the following provisions to Section 8-1-a "Uses – Permitted by Special Use Permit only:"***

**8-1-13a Farmers Market**

➤ **Article 8A: Business District (B-2)**

***Add the following provisions to Section 8A-1-a "Uses – Permitted by Special Use Permit only:"***

**8A-1-7a Farmers Market**

➤ **Article 8B: Service Enterprise District (SE-1)**

***Add the following provisions to Section 8B-1-a "Uses – Permitted by Special Use Permit only:"***

**8B-1-14a Farmers Market**

**Commissioner Allen provided the second. The vote was unanimous (6-0).**

**3. Conditional Re-zoning #2015-02-Mountain Sports Retail Space/ Mr. Joseph B. "Sepp" Kober**

Mr. Padalino reviewed the application submitted by Joseph B. "Sepp" Kober and showed the location of the subject properties, Tax Map Parcels #22-A-19 and #22-A-18. Mr. Padalino then referenced a slide of the Minor Site Plan and explained that it is an essential tool for planning during the SUP review process, but it is not a final site plan document – and that Mr. Kober would need to submit and get approval for a Major Site Plan before being able to obtain any building permits. Mr. Padalino also showed a concept drawing of the front of the proposed building and photos of the site visit that contained pictures of a few trees that would be removed as well as the historic structure close to Route 151.

Mr. Padalino re-iterated VDOT's previous comments concerning access management, sight distance measurements, future development, and the consideration of a joint commercial entrance that would serve the adjoining parcels as well. Mr. Padalino concluded with the staff evaluation and recommendation for the approval of Conditional Rezoning #2015-02.

Chair Proulx wanted to clarify that the Minor Site Plan was not binding and the applicants don't have to even follow it, and that it could change. Mr. Padalino explained a Minor Site Plan is always required with each rezoning request, and that yes, it could change. Chair Proulx asked the applicant if they have any questions or comments prior to the public hearing.

~~Mr. Kober spoke to Commissioner Harman and apologized for not being prepared at the last meeting, and asked if the commission had any further questions.~~

Commissioner Russell asked about one proffered-away use, which is a gas filling station, noting that one of the requested uses that was kept is "auto and home appliances service" and asked the applicant what he thought that meant. Mr. Kober stated that he was not sure, but he had no desire to work on automobiles and would gladly proffer that away as well. He had no desire to have a gas station or auto

repair garage come to Nellysford. He stated maybe the definition would include home appliance service such as Maytag dishwasher repair, or possibly a retail auto part store such as Fisher's.

Commissioner Russell expressed her concern that spot zoning to Business was frowned upon and found to be discriminatory, and thought this request could be considered a spot zoning if he did not consider VDOT's request of sharing an entrance that would benefit neighbors and allow expansion of Nellysford. Mr. Kober stated he'd be willing to share an entrance and would love to help future businesses, provided it would not deter from his business or move his business onto an awkward position on the property, but he is willing to look into it.

Commissioner Russell stated that they are only here to determine if Conditional B-1 zoning is right for this property, but he could build ~~property~~ right up against the right of way like the current building is. The minor site plan does not represent that, but wants to know if he would be willing to commit in writing to build seventy (70) feet away from the road before the commission recommends this to the Board of Supervisors. Mr. Kober stated he could not make that decision before speaking to an architect and before seeing the drawings and plans for shared entrance. Chair Proulx noted that currently there is no one to share the entrance with, and wasn't sure how the plan would look, and suggested Mr. Kober talk to his architect.

Commissioner Russell stated the entrance could not be built without the current building being torn down. Mr. Kober stated they will be tearing the house down unless someone presented to him that ~~is it~~ was a historic landmark. He said he knew it was old, but did not think it was officially designated as historic. They may look at the building to see if anything was reusable in the new development, or could be re-claimed for use in his proposed new building.

Chair Proulx opened the public hearing at 7:50 p.m.

Julia Rogers: Stated she is a business owner in Nellysford as well as the president of the Nelson County Chamber of Commerce. She stated the chamber board has been discussing this issue and passed resolution in support of Mountain Sports Retail at 2950 Rockfish Valley Highway; she read the resolution which stated (in part) that "It fits with the Nellysford plan of mixed use development." She went on to thank the Planning Commission for the assistance provided to Mr. Kober.

Joe Lee McClellan: Owns the shopping center across from street from proposed property as well as a house a few blocks down. Stated this would benefit the community and believed ~~the current building~~ he used to ~~provide~~ deliver posters ~~delivered to~~ for his father ~~for~~ who had the theater. This property used to be a retail establishment and should have been zoned for retail when zoning originally began in Nelson County. He then stated that a lot of property in Nelson is incorrectly zoned. He stated the commission is trying to micro-manage a respectable business owner.

Herbert Forest: Stated his mother, who owned parcel #22-A-19, passed away on February 21, 2010. He stated this property has been on the market for the last five years. He then explained the several different businesses that this property has housed over the years. He further stated that his mother would be proud to see it turned into a sporting store, and he would like to see it bring revenue to the community.

Chair Proulx closed the public hearing at 7:58 p.m.

Chair Proulx asked if there was any further discussion.

Commissioner Russell stated she lives in the area where the study and comp[rehensive] plan was done, and thinks the majority would like to see development in the community. She further stated she was in favor of this, and thinks it is an excellent use of the property as long as it doesn't deter from other properties and future development.

Chair Proulx stated she **appreciated** appreciates that **this is** the applicant recognized the need for making this a conditional rezoning request, **and not a straight rezoning request, and thinks**, and thought the plans are consistent with the **image comp[rehensive] plan vision** of Nellysford.

~~Commissioner Russell made a motion to approve the application submitted by Mr. Joseph "Sepp" Kober for the conditional re-zoning of Tax Map Parcels #22-A-18 and #22-A-19 from R-1 Residential to B-1 Conditional. The Commission supports the staff report from July 15<sup>th</sup> and recommends approval by Board of Supervisors to rezone Tax Map Parcels #22-A-18 and #22-A-19 from R-1 Residential to B-1 conditional zoning, which would limit by right uses to:~~

~~**8-1-2** Retail drugstores, feed and seed stores, food sales and restaurants, wearing apparel shops, auto and home appliance services, banks, barber and beauty shops, hardware stores, offices and personal and professional services. Wholesale and processing activities that would be objectionable because of noise, fumes, or dust are excluded.~~

~~**8-1-13** Off street parking as required by this ordinance~~

~~**8-1-16** Business signs advertising for sale or rent of premises only, up to fifty (50) square feet in total area~~

~~**8-1-17** Business signs, up to one hundred fifty (150) square feet in total area. One sign less than five (5) feet beyond building.~~

~~**8-1-18** Directional signs, up to two (2) square feet in total area~~

~~**8-1-19** Location signs, up to one hundred fifty (150) square feet in total area~~

~~Also the Planning Commission directs the Planning and Zoning Director to assume the lead in the correction of all county records with the correct positioning of these two properties regardless of final disposition of this application. Also we recommend the Board of Supervisors look at the current development of the east side of Route 151 as well as the comp plans of future development of the area so that it may consider if a joint commercial entrance for this property and a required front yard setback would enhanced future development in this area. Commissioner Harman provided the second. Vote (5-0) with Commissioner Saunders abstaining.~~

**Commissioner Russell made a motion: The applicant Joseph Kober is requesting a rezoning of property designated as Tax Map #18 and 19 located on the east side of route 151 in Nellysford. The property consists of approximately 6 acres which would be rezoned from R-1 with Floodplain area to B-1 Conditional. The Planning Commission supports the staff report of July 15, 2015 and recommends approval by the Board of Supervisors to rezone Tax Map #22-A-19 and 22-A-18 from R-1 to B-1 Conditional rezoning which would limit by right uses to Section 8-1-2, 8-1-13, 8-1-16, 8-1-17, 8-1-18, 8-1-19. Also the Planning Commission directs the Planning and Zoning Director to assume the lead in the correction of all county records with respect to the correct positioning of these 2 properties regardless of the final disposition of this application. However, the Planning Commission asks that the Board of Supervisors look at the current development along the east side of 151 as well as the Comp**

**Plan's position on future development of the area so that it may consider whether a joint commercial entrance for this property and a required 70' front yard setback would enhance future commercial development in the area.**

**Commissioner Harman provided the second. The vote was (5-0) with Commissioner Saunders abstaining.**

Saunders stated this will be presented at the 8/11 Board of Supervisors meeting and Mr. Saunders left at 8:02 p.m.

**Other Agenda Items:**

Mr. Padalino presented Agricultural and Forestal District applications #2015-05: addition to the existing Davis Creek AFD and #2015-06: addition to the existing Greenfield AFD. He noted that the AFD Advisory Committee already reviewed these applications, and recommends that they be approved by the Planning Commission.

Mr. Padalino clarified that no PC action is required tonight, and that the AFD Committee is requesting acknowledgement of receipt of applications.

Chair Proulx stated she would like the commission to receive applications separately and she will excuse herself from second application since her property is included in the application.

Chair Proulx asked AFD Advisory Committee Chair Andy Wright if he had anything further to add; he did not.

The Commission acknowledged receipt of both applications, with the following motion being made and voted on:

**Commissioner Harman motioned for acceptance of AFD Application #2015-06 and to advertise for public hearing. Commissioner Allen provided the second. Commission voted unanimously 5-0.**

**Commissioner Harman retracted the previous stated motion as acceptance of #2015-06 and changed it to acceptance of AFD Application #2015-05, citing a mix-up in the application numbers and Chair Proulx's previously statement that she did not want to vote for application #2015-06. Commissioner Allen provided the second. Commission voted unanimously 5-0 to accept AFD Application # 2015-05 and advertise for public hearing.**

**Commissioner Goad motioned for acceptance of AFD Application #2015-06 and to advertise for public hearing. Commissioner Allen provided the second. Commission voted unanimously 4-0 with Chair Proulx abstaining.**

**Other Business:**

Chair Proulx stated there was no Board of Supervisors report since Mr. Saunders had to leave. She suggested to review commission bylaws, and asked if there were any questions.

Commissioner Harman asked if the Board of Supervisor representative was supposed to vote or not. Mr. Padalino stated he didn't think the code specifically addresses that issue. Commissioner Russell stated that the code doesn't specify if there's an option to have supervisor representative or not.

Commissioner Allen stated the Supervisor has the full right to vote if they wish.



~~Commissioner Goad stated there needed to be 4 members present for quorum but there doesn't have to be 4 members voting. Commissioner Harman stated they could be here for the quorum but they could abstain. Mr. Padalino stated he has the same understanding, as long as there were enough votes as to not result in a tie.~~

Commissioner Goad asked what would happen if there were only three (3) members present and one (1) of those was Mr. Saunders, would that mean there wouldn't be enough for a quorum. Chair Proulx noted that it was her understanding that there needs to be four (4) members present but not necessarily four (4) members voting. Commissioner Harman stated they could be here for the quorum but they could abstain. Mr. Padalino indicated he has the same understanding, as long as there are a majority voting members, as to not result in a tie.

~~Chair Proulx and Commissioner Russell agreed they need to look over quorum and voting rules to understand for any future situations that may arise.~~ Chair Proulx stated she will ~~look over~~ check Roberts Rules.

Commissioner Russell motioned Draft Revision ~~to~~ of the Bylaws for the Nelson County Planning Commission presented June 10, 2015 be adopted. Commissioner Harman provided the second. Vote was unanimous 5-0.

Chair Proulx asked if there was anything else to add.

Mr. Padalino stated he just got back from an APA-Virginia annual conference in Norfolk, and that is was very informative.

**Adjournment:**

At 8:15 p.m. Commissioner Allen made a motion to adjourn, Vote was unanimous 5-0.