

MINUTES
PAGE COUNTY PLANNING COMMISSION
April 24, 2018

Members Present

Bernie Miller, District 1	Paul Otto, District 1
Donnie Middleton, District 2	Steve Atkins, District 2
James Turner, District 3	Duane Painter, District 4
Craig Lancto, District 5	Jonathan Comer, Chairman, District 5

Members Absent

Keith Weakley, Vice Chairman, District 3	James Holsinger, Secretary, District 4
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Staff Present

Tracy Clatterbuck

Call to Order

Chairman Comer called the April 24, 2018, Page County Planning Commission work session to order in the Board of Supervisors Room at the Page County Government Center, 103 S Court Street, Luray, Virginia, at 7:00 p.m. The call to order was followed by *The Pledge of Allegiance* and a *Moment of Silence*.

Adoption of Agenda

Mr. Miller made a motion to approve the agenda as presented. The motion was seconded by Mr. Otto. The motion passed unanimously.

Public Hearing

A. Jeremy Baldwin- Special Use Permit Application

Ms. Clatterbuck began by explaining that Jeremy Baldwin had filed an application for a special use permit (SUP) to operate a river outfitter business at 741 Carvell Road (off Rt. 340 N), Rileyville, VA. The parcels are identified by tax map number 4-(A)-21 (130.05 acres) and 4-(A)-21A (37.09 acres). Both properties are zoned as Woodland-Conservation (W-C). A portion of 4-(A)-21 is located in the floodplain as it joins the Shenandoah River. These properties are currently used for a commercial campground and farming. Both properties are improved with numerous accessory buildings.

A SUP is required to operate the river outfitter business pursuant to § 125-9.D.(2) of the Page County Zoning Ordinance which states, "*Commercial outdoor recreation areas and facilities: parks (except amusement parks), playgrounds, picnic grounds, swimming clubs, country clubs, golf courses and driving ranges, miniature golf courses; archery; laser tag; paintball; and other similar uses, all pursuant to § 125-22.*"

Mr. Baldwin currently has a SUP that was granted in 2014 to operate River Run Campground which consists of 45 campsites. The proposed new business would have a separate SUP. The proposed business plans to offer the rental service of tubes, canoes, and kayaks. All rental equipment will be stored inside an existing building located near the check-in station (identified on the attached aerial photo). The business plans to start off with 100 tubes, 10 canoes, and 10 kayaks, and will grow inventory with business needs. There is an existing 12x24 structure on the property that is currently used as the campground office. Customers will check-in at the office where they will be given instructions on use and safety of the equipment. They will then proceed into the campground area where there will be a designated parking area (purple area identified on the attached aerial photo) available for participants. Participants will then access the river through the boat landing and proceed

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into the river for their adventure. Once their adventure is over, Mr. Baldwin will offer a shuttle service to pick up customers at the designated location and return them to the parking area within the campground. The hours of operation for the outfitters will be 8:00 a.m. to 7:00 p.m., Monday through Sunday.

The applicant has submitted his SUP application for review to Nick Black at the Page County Health Department. Mr. Black has returned the following comment: *"This office has no objections to your request for a river outfitters business. Porta Johns will be provided."* Mr. Baldwin has also submitted his application for review to Don Williams at the Page County Building Department. Mr. Williams has returned the following comment: *"No objections."* Finally, Mr. Baldwin has also submitted his application for review to the Virginia Department of Transportation (VDOT). Mr. David Atwood has returned the following comments: *"It is VDOT's understanding that the applicant wishes to operate a river outfitters business, which includes accommodations for tubing, canoeing, and kayaking, along with shuttle services. It is also our understanding that these services are largely intended for the customers of River Run Campground in an effort to provide additional amenities on-site. While the proposed outfitters business will likely draw additional customers that are not patrons of the campground, it is anticipated that the additional traffic generated from the outfitters business will be minimal. The existing entrance configuration should be adequate for the proposed use."* Adjoining property owners were notified pursuant to state code. Staff has not received any written comments back.

This request is consistent with the Page County Comprehensive Plan. Mr. Baldwin is already operating a successful campground. The proposed business will be low impact on existing infrastructure. Page County is a tourist destination for these types of activities along the Shenandoah River, and should encourage small businesses such as this that complement the existing property. Staff recommends approval of this SUP request to the Page County Board of Supervisors.

Chairman Comer opened the public hearing at 7:07 p.m.

Tammy Racer- Ms. Racer noted she currently resides on Carvell Road. Although VDOT has looked at his entrance, Carvell Road itself needs to be addressed. She recommended mirrors or even a reduction in the speed limit. She thinks there needs to be signage reflecting hidden driveways. She asked how many trips were being planned in and out per day for the proposed outfitter business. Mr. Baldwin stated he could not provide numbers as he would be arriving late into the season depending on how long the permit takes to obtain. He does not expect that much business this year. He is hoping next year things would pick up. He also stated he has to make his trips worth it so he would not be picking up single persons. It would be 5+ people to make it worth his time and expenses. Ms. Racer noted that this year it may not be a big impact to the roads, but next year it could. She understands that his entrance is fine but his business does bring more traffic to the road. She concluded by stating again she would like to see VDOT address the speed limit, signs, etc. for Carvell Road.

Chairman Comer closed the public hearing at 7:13 p.m.

Chairman Comer explained that concerns over speeding, signage, etc., are totally in VDOT's hands. The county does have a six year plan that they work with VDOT on related to roads of concerns, but the county has no control over what is done to the roads. He suggested she reach out to VDOT to express her concerns. Mr. Miller recommended she get the whole neighborhood involved to petition VDOT with their concerns. He stated he was concerned if there was ever an emergency evacuation if there would be a safe plan to get people out. Ms. Clatterbuck reminded him that during the campground permit process, the fire

department had already deemed that there was adequate space for emergency evacuation. Staff proceeded to review the site plan/aerial photo provided by the applicant.

Mr. Otto asked if Mr. Baldwin intended to offer a shuttle service for delivery and/or pickup, and Mr. Baldwin confirmed. Mr. Middleton stated he felt that people tried to blame Mr. Baldwin's campground for all of the traffic; however, other outfitters along with citizens use that road doing the same thing Mr. Baldwin is proposing in his outfitter business.

Mr. Lancto made a motion to recommend approval of the SUP with attached conditions to the Board of Supervisors (BOS). The motion was seconded by Mr. Painter. The motion passed unanimously by roll call vote of 8-0.

B. Zoning Ordinance Amendment § 125-10 (Agriculture)

Ms. Clatterback began by noting that staff was notified earlier this year by our county attorney that our current zoning ordinance, specifically Section 125-10 (Agriculture), needs to be amended as it is not consistent with the Virginia Code. Virginia follows the Dillon Rule which states that a municipal corporation has only those powers which are: a) expressly granted to it by charter or other state legislation; (b) implied or necessarily incident to the express powers; and (c) essential and indispensable to the declared objects and purposes of the corporation.

Currently, under § 125-10 (Agriculture) of the Page County Zoning Ordinance, farmers markets, greenhouses, breweries, and wineries are only permitted by Special Use Permit in the Agriculture zoning district.

Section 15.2-2288.3 (Effective January 15, 2018) Licensed farm wineries, local regulation of certain activities and § 15.2-2288.3:1 (Effective January 15, 2018) Limited brewery license; local regulation of certain activities of the Virginia Code specifies several areas in which a locality is either limited in or precluded from exercising its zoning power over farm wineries and breweries licensed by the Virginia Alcoholic Beverage Control Board.

Section 15.2-2288 Localities may not require a special use permit for certain agricultural activities of the Virginia Code also states that a zoning ordinance shall not require a special use permit for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification. Section 15.2-2288.6., Agricultural operations; local regulation of certain activities of the Virginia Code, states that no locality shall regulate the carrying out of any of the following activities at an agricultural operation, as defined in § 3.2-300, unless there is a substantial impact on the health, safety, or general welfare of the public. Copies of the Virginia Code are attached for further review.

In view of the above referenced material, staff recommends that § 125-10 (Agriculture) of the Page County Zoning Ordinance be amended to permit farmers markets, greenhouse retail sales, breweries, and wineries by-right rather than by special use permit. The proposed amendments have been reviewed and approved by legal for adoption.

Mr. Otto asked if this section also applies to the Woodland-Conservation (W-C) district. Ms. Clatterback replied that she had reached out to our county attorney with the same concern. There was an opinion issued by an attorney general that says that the section only applies to Agriculture zoned property (not in other districts where agriculture is permitted by-right).

Chairman Comer opened the public hearing at 7:23 p.m. The public hearing was closed at 7:23 p.m. as there were no speakers.

Mr. Miller made a motion to approve the amendment as presented to the Board of Supervisors. The motion was seconded by Mr. Otto. The motion passed unanimously by a roll call vote of 8-0.

C. Zoning Ordinance Amendment to § 125-63 (Violations), add § 125.63.1 (Enforcement), add § 125-63.2 (Civil Penalties), add § 125-63.3 (Criminal Penalties), add § 125-63.4 (Injunctive Relief and Other Remedies), and delete § 125-49.C. (Notice of Violations)

Ms. Clatterbuck explained that staff was notified by our county attorney that our current zoning ordinance, specifically Section 125-63 (Violations and Penalties), needs to be amended as it is not consistent with the Virginia Code.

Currently, § 125-63 of the Page County Zoning Ordinance states: Any person, firm or corporation, whether as principal, agent, employee or otherwise, violating, causing or permitting the violation of any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, may be fined up to \$2,500 or imprisoned for up to 12 months, or both. Such person, firm or corporation shall be deemed to be guilty of a separate offense for each and every day during which any portion of any violation of this chapter is committed, continued or permitted by such persons, firm or corporation and shall be punishable as herein provided.

At a minimum, the county code must be amended pursuant to § 15.2-2286.A.5. of the Virginia Code which states: For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any such violation shall be a misdemeanor punishable by a fine of not less than \$10 nor more than \$1,000. If the violation is uncorrected 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 \$10 nor more than \$1,000, and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of not less than \$100 nor more than \$1,500.

It was also recommended by legal counsel that the county consider adopting civil penalties for zoning violations. The advantage of adopting civil penalties is that the county would not need to incur additional legal fees to pursue the matter in court unless there is personal injury or the fees are greater than \$5,000. By adopting civil penalties, this will reduce the legal expenses for the county. Another benefit to adopting civil penalties is that that penalties would be paid to Page County. When pursued criminally through the general district court, the penalty fees enforced by the judge are retained by the court. When the county has to pursue someone criminally, not only are we not retaining any of those fees assessed by the court, but it is costing the county in legal expenses.

The proposed amendments have been reviewed and approved by legal for adoption. Staff recommends approval of the proposed draft amendment labeled "Option 1" which consists of adopting civil and criminal penalties.

Chairman Comer opened the public hearing at 7:27 p.m. The public hearing was closed at 7:27 p.m. as there were no speakers.

Chairman Comer pointed out there were two proposed drafts in front of the commission. The first one (labeled Option 1) to include adopting civil and criminal penalties, and the second one (labeled Option 2) to include adopting criminal penalties only. He asked if anyone had concerns or comments about the criminal penalties only. Mr. Turner asked staff if they even had a choice on the criminal section only. Ms. Clatterbuck explained that at a minimum the criminal penalties had to be updated to be consistent with state code. Mr.

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Miller asked who determined the amount of the criminal fine. Ms. Clatterbuck replied that the judge would set the penalty fee but the amount had to stay within state code guidelines.

Chairman Comer then asked how the commission felt about adopting civil penalties. Mr. Lancto stated that including the civil penalties was more expeditious and less costly. The person being cited would still have the option to take the legal route if he chooses, and he didn't see any reason to not include civil penalties. Mr. Turner noted that staff had abated a lot of discontent with this during discussions. Mr. Painter asked how many had been pursued criminally. Ms. Clatterbuck replied that within the last five years there were two that she was aware of.

Mr. Otto made a motion to recommend approval of "Option 1" (to include the adoption of criminal and civil penalties). The motion was seconded by Mr. Lancto. The motion passed by a roll call vote of 7-1 (Middleton: yes; Painter: no; Otto: yes; Atkins: yes; Miller: yes; Turner: yes; Lancto: yes; Comer: yes).

Citizen Comments on Agenda Items

None

New Business

A. Adoption of Minutes- March 27, 2018 & April 10, 2018

Mr. Miller made a motion to approve the March 27, 2018 and April 10, 2018, minutes as presented. The motion was seconded by Mr. Atkins. The motion passed unanimously.

Unfinished Business

A. Above Ground Pool Discussion

Chairman Comer wanted to bring the matter back up to receive input from the commission again. Staff brought an amendment to the commission a few weeks back to allow above ground pools to extend five feet into the setback just as decks and porches are currently allowed. At the time, the commission was not supportive of that amendment. If that position has not changed, that is fine, we just need to make sure all are in agreement of that. There has been some discussion at the BOS level that they may want to explore that option to amend that section of the code. The BOS can't do anything until we do something. The PC can recommend to the BOS that they don't want to do anything which then allows them to take the change upon themselves. If we want to sit tight and not do anything then we can wait for the BOS to send a formal request to us.

Ms. Clatterbuck pointed out that Mrs. Denise Burns is present as she is one of the landowners that was sent a notice of violation by the building official. She came in to apply for her permits. Staff did her zoning inspection and the pool does not meet the minimum required setbacks. Her pool has been in the same location since approximately 2002. She is here to voice her support of the proposed amendment that was presented previously to the commission.

Mr. Turner stated he felt it was something the commission should take into consideration as it has caused a lot of heartache in the county. Above ground pools are not considered a permanent structure; therefore, the setbacks shouldn't be as stringent. He would have the energy to discuss this matter again.

Mr. Otto stated that it was his understanding from previous discussion that above ground pools are considered structures according to the building department. Ms. Clatterbuck reminded them that this change had nothing to do with the building department as they are regulated by the Uniform Statewide Building Code. Chairman Comer reminded the commission how the pool issue came up.

Ms. Clatterbuck stated she still stood by her previous statement that currently, decks and porches can extend five feet into any setback. A porch typically has a roof, footers, slab, etc. Why would we allow a

permanent porch to extend into the setback and not allow an above ground pool that can be more easily dismantled?

Mr. Turner and Mr. Painter stated they agreed and were willing to look at a possible amendment. Mr. Otto asked if staff knew why the code was previously changed to allow deck and porches to extend into the setback. Ms. Clatterbuck stated she was not sure but noted the change was completed in 2010. Mr. Miller asked if the five-foot change would solve the setback issues on these denied zoning permits, and Ms. Clatterbuck confirmed.

Chairman Comer requested staff talk with Mrs. Moler so that she can speak to the BOS to see if they even want the commission to consider this amendment. Mr. Phenix (BOS Chairman), explained that the BOS were told that the commission was not in favor of dealing with this issue but would be if the BOS directed the commission to do it. His understanding is that this is the Commission's job to bring proposed amendments to the BOS. The BOS will then take it up and 99% of the time will probably stand behind the PC recommendation. No one on the BOS said they didn't like the idea, what was said was that they weren't comfortable with it because the PC was not comfortable with it. Chairman Comer requested staff bring this back to the commission at the next meeting for discussion. Also, they would like to see any documentation that can be found as to why amendment was made in 2010 to allow decks and porches to extend into the setback.

B. Comp Plan Committee Report

Mr. Otto explained that at the last committee meeting there was low attendance. The exhibits will be discussed when more participants are present. The next meeting is May 2, 2018 at 3:00 p.m.

C. Subdivision Committee Report

Mr. Turner stated they were still working on some wording in the code.

D. Sign Ordinance Committee Report

Mr. Lancto stated the committee had met again today and was making good progress. The next meeting is scheduled for May 8, 2018 at 10:00 a.m.

Open Citizen Comment Period

Denise Burns- She explained she has had her pool for over 15 years. No one has ever complained about the pool or the deck around the pool. They did not know they needed a permit for the pool. They do not understand why this is being made an issue now.

Morgan Phenix- Mr. Phenix stated he appreciated how the commission walked themselves through the various issues. The ordinances should be bouncing off the Comprehensive Plan. The problem with the pools, speaking from personal experience, is that people don't know this requirement exists. We need to do a better job of getting these code requirements out there available to the public. There has to be enforcement and common sense.

Chairman's Report

None


Clerk's Report

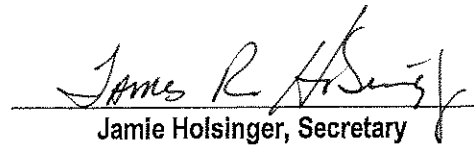
None

Adjourn

Chairman Comer adjourned the meeting at 8:08 p.m.

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Jonathan Comer, Chairman


Jamie Holsinger, Secretary

