

Mr. Griffin called the October 15, 2014 meeting of the Botetourt County Planning Commission to order at 6:00 PM, in Meeting Room 102 of the Old District Courthouse in Fincastle, Virginia.

PRESENT: Mr. John Griffin, Chairman  
Mr. Hiawatha Nicely, Jr., Vice-Chairman  
Mr. Steven L. Kidd, Member  
Mr. Sam Foster, Member  
Mr. William Thurman, Member  
Mrs. Theresa Fontana, County Attorney  
Mrs. Nicole Pendleton, Planning Manager/Zoning Administrator  
Mr. Jeffrey Busby, Planner  
Mrs. Laura Goad, Administrative Assistant

ABSENT: Dr. Mac Scothorn, Ex-Officio Member

ALSO PRESENT: Mr. Cody Sexton, Information Specialist

Mr. Griffin opened the Planning Commission meeting and welcomed those in attendance. He introduced Staff and Planning Commission members, and then read the procedures for the public hearings. Mr. Griffin stated the Board of Supervisors would hear this request on October 28, 2014 at 6:00 PM at the Greenfield Education Training Center.

Mr. Griffin asked if there were any discussions regarding the September 8, 2014 minutes and requested a motion.

Mr. Kidd motioned to approve the September 8, 2014 Planning Commission minutes as written. Mr. Foster and Mr. Thurman seconded the motion, which was approved 5:0:0:0 with the following recorded vote:

YES: Mr. Thurman, Mr. Nicely, Mr. Griffin, Mr. Kidd, Mr. Foster  
NO: None  
ABSTAIN: None  
ABSENT: None

Mr. Griffin stated noted the Planning Commission would meet in the Kroger parking lot for the field review on Thursday, November 6, 2014 at 3:15 PM.

### **Public hearing**

**Blue Ridge Magisterial District: Gary B. & Karen L. Kappesser with Linda H. Thompson West, in accordance with Sections 15.2-2272(2) and 15.2-2274 of the Code of Virginia of 1950, as amended, and Sec. 25-576. Commission Permit of the Botetourt County Zoning Ordinance request to vacate an existing 50' wide street right-of-way as recorded in Plat Book 10, Page 56, and establish a new property line between Tax Map 109C(6)BK4-39 and Tax Map 109C(6)BK9-6; combine and convey 0.089 acres to Gary B. & Karen L. Kappesser; combine and convey 0.088 acres to Linda H. Thompson West; vacate a portion of a 15' public utility easement; and create a new 15' public utility easement. The parcels are located on 514 and 480 Scalybark Drive northeast of the intersection with Oak Leaf Drive (State Route 1538) and Scalybark Drive (State Route 1534), identified on the Real Property Identification Maps of**

**Botetourt County as Section 109C(6), Block 4, Parcel 39 and Section 109C(6), Block 9, Parcel 6.**

Mr. Busby read the request aloud as he displayed the zoning map on PowerPoint. He stated that Scalybark Drive was in the Stratford Place subdivision and the paper street was an existing 50' right-of-way, unimproved, upslope from Scalybark Drive, and previously used as a farm road. Mr. Busby further stated that when dev proposed, there were several paper streets. He then displayed a GIS map depicting six possible connection points to adjoining vacant properties that could possibly be developed. Mr. Busby indicated that the reason for the connection points was due to the Botetourt County Subdivision Ordinance Section 21-134(b) that requires connections where possible where streets shall be coordinated with adjoining vacant parcels. Mr. Busby mentioned Mr. Dale Foster's property as an approved subdivision, and mentioned property owned by Mrs. Jennifer DeHaven and Mr. and Mrs. Brian Blake that could be affected by this proposed closure. He stated that the Kappassers and Wests feel closing the right-of-way and relocating the public utility easement would reduce other property owners' ability to develop and therefore want this vacated. Mr. Busby further stated it was standard practice to show connections to adjoining parcels, that VDOT had connectivity requirements based on density and traffic volume, as he noted that the picture from Oak Leaf Drive showed the general location of right-of-way. He said the plat displayed how the property lines would be adjusted, with a single-family dwelling on each lot. Mr. Busby said if vacated, the Kappessers and the Wests wanted the public utility easement relocated to clean things up and maintain easement.

Mr. Kidd asked about the acreage of the connecting large tracts.

Mr. Busby replied that the Blakes owned 17 acres and the DeHavens owned 24.5 acres.

Mr. Foster stated that he would recuse himself, due to having half ownership in both pieces of property at one time.

Mr. and Mrs. Gary Kappesser and Mr. and Mrs. William West were present. Mr. Gary Kappesser spoke on their behalf and said that Mr. Busby had covered their request well. Mr. Kappesser said that when all of this started, there was uncertainty about properties behind them, but had since had the opportunity to communicate with Mr. Blake and Mr. Chad DeHaven. Mr. Kappesser mentioned that people were concerned about loss of access from their property to Blue Ridge Springs Road, especially in a large storm event. He further mentioned that he has offered them the use of his paved driveway on an emergency basis, if they wanted to cut the fence, drive across the yard and onto his paved driveway until they could re-establish their access to Blue Ridge Springs Road. He said if one of the houses was on fire, there was a fire hydrant on Scalybark, the fire department could use that hydrant as source of water. Mr. Kappesser then offered his professional experience as retired hydrologist with the U. S. Forest Service with designing their driveways, if they desired.

Mr. Griffin asked if the fence was on Mr. Blake's property, and not on his own property.

Mr. Kappesser said the fence was on Mr. Blake's property.

When Mr. Nicely confirmed ownership of the fence, Mr. Kappesser said the fence belonged to both Mr. Blake and the DeHavens.

Mr. Brian Blake of Blue Ridge said the he had recently purchased his property. He said he was

made aware of the right-of-way and that he could potentially use it. Mr. Blake said his family intended to use their property only as their home, for personal use, and that he agreed with Mr. Kappesser, he fully agreed with removing the right-of-way, and he only wanted to cross the Kappesser property in case of emergency.

Mrs. Jennifer DeHaven, and her father, Mr. Kenneth Entsminger of Roanoke in Botetourt County, spoke of their plan to build at least three houses on their property. Mrs. DeHaven mentioned their plan to remove their portion of the fence in event of an emergency, and brought up another concern of using the easement area if they developed their property because it would be the easiest way in and out. She said that from the Blue Ridge Springs Road side there was a steep grade, and the easiest access to where they would build their house would be on top of the property near the backside near the right-of-way in question, and that section would be the easiest access for their access should they decide to develop it and for their emergency use.

Mr. Griffin wanted to know if the DeHaven property could be further developed, and asked about road frontage.

Mr. Busby replied that the DeHaven property could be further developed. He noted that for a family subdivision, a 20' access easement would be required for each lot, but state frontage would not be a requirement, but if they wanted to put in a 50' right-of-way from Blue Ridge Springs Drive to divide more parcels, then they could do that.

Mrs. DeHaven said she was aware that if they did use that right-of-way as an entrance, they would have to build it to VDOT standards, and they were willing to do that.

Mr. Entsminger noted that his house would be closest to this right-of-way.

Mr. Griffin asked if he intended ions to use this right-of-way.

Mr. Entsminger responded that the access was there and he wanted to keep it there.

Mr. Kappesser said the exact location of their foundations were determined on part by the 50' right-of-way, and as long as right-of-way was there, he and the Wests would be prohibited from expanding their houses into setbacks. He mentioned dying trees on property, that the trees were county property and he would have to get permission from the Board of Supervisors to cut the trees, which were increasing a hazard to their properties.

***There being no one else to speak, Mr. Griffin closed the public hearing.***

Mr. Kidd said he sympathized with the property owners. He stated that when he started on Planning Commission, all major subdivisions came to us for review. Mr. Kidd further stated that the purpose for that street has not left, that when property changed hands, the purpose for that street was still there. He remarked that the street was there when all owners purchased their property. Mr. Kidd stated that as a Planning Commissioner, it would be very poor planning to give up this easement. He further stated that while it might never be used, but it was available if there was a need for emergency vehicles for a new subdivision, and then there's another access in. Mr. Kidd commented that the access points were not lightly thought about, that they were put in when the subdivision was made, and this request sounded like buyer's remorse. Mr. Kidd stated the easement was there, and it had a purpose, and it would be extremely wrong as Planning Commissioners to remove the easement.

Mr. Griffin asked if the property line went down center of easement.

Mr. Busby said there was 25' on either side of the easement, based on the survey.

Mr. Griffin wanted to know if the DeHavens had a clean entrance.

Mr. Busby replied that the current minimum VDOT standard was 40'.

Mr. Kidd said he was not thinking about just now, and questioned what would happen if someone purchased the two tracts and combined them.

Mr. Griffin wondered how the DeHavens wanted to use their property and other possibilities.

Mr. Kidd responded that he did not want to take away that possibility from them if they wanted to develop. He further responded that they could negotiate right-of-way, but it would be a horrible mistake to close it off because there was a lot of land to possibly develop there.

Mr. Thurman said no comment.

Mr. Nicely discussed the family development mentioned by the DeHavens. He asked Mrs. DeHaven if more development was possible.

Mrs. DeHaven answered that more development was probable.

Mr. Griffin stated this was hard, but he agreed with Mr. Kidd, and noted the DeHavens would have a hard time for access.

Mr. Kidd said they could work something out with Mr. Blake if they needed to for the 40' access to their property, noting that he was thinking of future use possibilities.

Mr. Kidd questioned if a vote was needed for the Commission Permit.

Mr. Busby indicated that a vote was not needed.

Mrs. Fontana confirmed Mr. Busby's response.

Regarding the request to vacate the 50' right-of-way and to relocate the public utility easement, Mr. Kidd motioned to deny the applicants' request, as Mr. Griffin stated "that the applicant had not satisfactorily demonstrated that no 'owner of any lot shown on the plat will be irreparably damaged' by the vacation of the alley and that inconvenience will result to individual property owners or to the public by permanently vacating, discontinuing and closing such public right-of-way (paper alley) and vacating said interior lot lines. The proposed vacation presents adverse effects upon the community or other properties in the vicinity of the proposed action and the proposal does not serve the public necessity, convenience, and general welfare and/or does not demonstrate good zoning practice."

Mr. Nicely seconded, which was approved 4:0:1:0, with the following recorded vote:

YES:	Mr. Thurman, Mr. Nicely, Mr. Griffin, Mr. Kidd
NO:	None

ABSTAIN: Mr. Foster  
ABSENT: None

**Other Business**

Mrs. Pendleton announced that Staff was in the process of preparing background information for a utility wind ordinance, along with a timeline to individually address all scales of wind energy beginning in January.

Mr. Kidd wanted to know how close the draft was to being ready.

Mrs. Pendleton that Staff had a good draft in place, but she was looking at other adopted ordinances to frame our discussion.

**Adjournment**

There being no other business, on motion by Mr. Kidd at 6:35 PM, and seconded by Mr. Foster, the Planning Commission adjourned with the following recorded vote:

YES: Mr. Thurman, Mr. Nicely, Mr. Griffin, Mr. Foster, Mr. Kidd  
NO: None  
ABSTAIN: None  
ABSENT: None