

# Town of Lovettsville

## Town Council Minutes of the August 27, 2015 Regular Meeting and Public Hearing

### Call to Order/Pledge of Allegiance

Mayor Robert Zoldos II called the Regular Meeting of the Lovettsville Town Council to order at 7:33 p.m. on August 27, 2015 at the Lovettsville Town Hall, 6 East Pennsylvania Avenue, Lovettsville, VA.

### Council Members Present

- Mayor Robert Zoldos II
- Vice Mayor Michael Senate
- Council Member Kimberly Allar
- Council Member Tiffany Carder
- Council Member Jennifer Jones
- Council Member James McIntyre

### Council Members Absent

- Council Member Rodney Gray

### Staff Present

- Project Manager Karin Fellers
- Zoning Administrator Joshua Bateman
- Town Attorney Elizabeth Whiting

### Pledge of Allegiance

Ethan Smith led those assembled in the Pledge of Allegiance.

### Presentations

There were none.

### Comments from the Public

Mayor Zoldos called for comments from the public. Vice Mayor Senate read the rules for public comment.

**Tim Keena** stated that he is coming before the Council this evening to request that a Joint Public Hearing be held regarding an amendment to the Concept Plan for the Keena property. Mr. Keena noted that he has met with Zoning Administrator Bateman regarding this, and has completed required paperwork. Mr. Keena stated that the property is located between Locust Street and Fry Court. Mr. Keena explained that this project was started several years ago, and that the preliminary plats have been approved. These plats consist of nineteen single-family homes and eight duplexes. Mr. Keena reported that none of the contractors he has contacted are willing to build duplexes; thus, the amendment he is seeking will eliminate those duplexes and replace them with five houses. Additionally, Mr. Keena noted, one building lot will be used for a storm water retention pond. The amendment being sought would also retain the two neo-traditional houses which face Loudoun Street. Mr. Keena explained that the hope is to hold the Joint Public Hearing, if the Council approves it, at the September 17, 2015 Town Council meeting. Zoning Administrator Bateman noted that the September 17 date is the Council's second meeting during the month and is the earliest date for which advertising requirements could be met.

### Community Presentations

#### A. Loudoun County Sheriff's Office

Deputy LoPreto reported that there have been two crimes committed in the Town, a robbery and the theft of a motorcycle or ATV from an open garage. Deputy LoPreto also noted that school will begin soon. He will place a notice on the digital sign and he will be in Town to help with traffic for the first two days or so of the new school year.

B. Lovettsville Volunteer Fire and Rescue Company  
There was no report.

C. Lovettsville Community Center  
There was no report.

D. Lovettsville Library  
Councilman McIntyre reported that the Library is gearing up for Oktoberfest. The book sale will again be held and a clown/balloon artist will provide entertainment.

### **Town Commission and Committee Reports**

A. Lovettsville Planning Commission

Chairman McDonough gave an update on revisions to the Comprehensive Plan and noted that the Economic Development Advisory Committee has completed its work. Mr. McDonough also reported that the Land Use Plan and the Zoning Map for non-residential uses are being amended.

B. Parks Committee

Vice Mayor Senate reported that the Town Information Sign has been completed and installed. He noted that they are waiting for a report from the firm constructing the clock and that they will solicit input from residents and the historical society on the design. Following discussion about adjusting the lighting for the Information Sign, Project Manager Fellers stated she would follow up on this. Ms. Fellers also reported that the Parks Committee will hold a meeting on September 10 and that the designer of the clock/glockenspiel will attend the October meeting.

C. We're In Committee

Councilwoman Carder gave updates on the recent Committee meeting, the summer concert series, the Small Business Breakfast, and the welcome packet for new businesses. She noted that projects to be undertaken by the Committee this year include developing the We're In website, continuing work on the newsletter, and providing a social media presence via the Town's Facebook page. The next meeting will be held on September 2 at which time Zoning Administrator Bateman will present the results of the Economic Development Survey.

D. Wild on the Green

Councilwoman Allar reported that the event was very well attended. She thanked Mayor Zoldos, and his family members, for preparing the field for kickball, noting that it was meticulously done. She also thanked the Mayor, Council Members Jones and Carder, and Planning Commission members McDonough, Fontaine, and Ciolkosz for their attendance. She reported that the cost for the 2015 event was \$281.55, which was a savings of \$121.70 over the previous year. Councilwoman Allar thanked the Lions Club for assisting with the food, with special thanks going to Yvonne Smith, who did the shopping for this year's event. She noted that the additions to this year's event included free pony rides (with thanks to Val Hoke for offering her services) and sprinklers that the children could play (with thanks to Henry Pearson for set up). There was also an opportunity for the children to paint a horse, which was done with a patriotic theme. She also thanked Mayfest for the use of games and toys.

E. Patriot Day Ceremony

Mayor Zoldos reported on upcoming plans for this year's ceremony. He also noted that several local women are coordinating separate fundraising events in Town over the weekend and that proceeds will be donated to the Coalition to Salute America's Heroes.

F. Oktoberfest Committee

Council Member McIntyre gave updates on the recent safety and security meeting, sponsorships, trolley service, and posters and rack cards. He noted that volunteer positions are now being filled, with many returning volunteers assisting again this year; however, additional volunteers for the information booth are needed.

G. Information Flow Committee

Mayor Zoldos reported that an Information Flow Committee has been established to work with the Town Manager on the redesign of the Town's website. The members of the committee include Council Member McIntyre, who will serve as the chair, and Council Members Allar and Carder.

**Additions/Deletions/Modifications to the Agenda**

Mayor Zoldos noted that Staff Reports, Item E, will not be presented, due to Town Manager Palko's absence this evening.

**Minutes**

A. December 11, 2014 Regular Meeting

There were no changes/amendments to these minutes.

**Motion:** I move to accept the minutes of the December 11, 2014 Regular Meeting.

**By:** Council Member Carder

**Second:** Council Member McIntyre

**Aye:** Council Members Allar, Carder, Jones, McIntyre, and Senate

**Nay:** None

**Abstain:** None

**Absent:** Council Member Gray

B. December 15, 2014 Special Meeting

There were no changes/amendments to these minutes.

**Motion:** I move to accept the December 15, 2014 Special Meeting minutes.

**By:** Council Member McIntyre

**Second:** Council Member Carder

**Aye:** Council Members Allar, Carder, Jones, McIntyre, and Senate

**Nay:** None

**Abstain:** None

**Absent:** Council Member Gray

C. December 18, 2014 Regular Meeting

There were no changes/amendments to these minutes.

**Motion:** I move to accept the minutes for the December 18, 2014 Regular Meeting.

**By:** Council Member McIntyre

**Second:** Council Member Senate

**Aye:** Council Members Allar, Carder, Jones, McIntyre, and Senate

**Nay:** None

**Abstain:** None

**Absent:** Council Member Gray

**Monthly Financial Report**

There was no report.

**Staff Reports**

A. Report from the Project Manager

Mayor Zoldos stated that a Staff Report from Project Manager Fellers is included in Council Members' packets, and, as she is enroute to a water emergency, asked that questions be tabled until her return to the meeting.

B. Report from the Zoning Administrator

Mayor Zoldos stated that the Zoning Administrator's Report is also included in Council Members' packets. Zoning Administrator Bateman provided the following updates:

- A meeting was held on August 26 with representatives of the 7-Eleven. They want to move forward with expanding on the existing site, which includes the grassy area adjacent to the site. Zoning Administrator Bateman explained to the representatives the process to be followed in order to move ahead with these plans. Mr. Bateman stated that, currently, Lovettsville's Zoning Ordinance does not define convenience stores, even though it is listed as a conditional use in the C-2 district. This would be similar to the process followed in the changes made to the Community Center, as an application to amend the Zoning Ordinance to include the use would be required. Additionally, this applicant would need to put forth a definition, which would require debate and public hearings at both the Planning Commission and Town Council levels. After a decision is made regarding the definition, the developers of the 7-Eleven could apply for a conditional use permit. Zoning Administrator Bateman explained that the entire process would take approximately four months, although holding a joint public hearing could possibly help to make the process faster. Mr. Bateman reported that the 7-Eleven representatives indicated an interest in setting up a booth at Oktoberfest to provide architectural designs and to inform residents that they are open to holding public meetings regarding this project. Zoning Administrator Bateman stated that the Zoning Amendment process would focus more on the concept, and the CUP would be more about the details of the design.
- Mr. Keena has filed a rezoning concept plan amendment, for the concept plan approved approximately 2004, which rezoned the parcel to PIDD. Zoning Administrator Bateman noted that Mr. Keena explained the reasons for this amendment in his presentation to the Council this evening. Mr. Bateman explained that he has sent a letter to the applicant asking for clarification on a number of points and listing the application as incomplete due to one piece of information which was missing. The applicant has responded to the letter and provided the needed information. Zoning Administrator Bateman explained that the next step will be to return to the Council at its September 10 meeting, at which time a decision could be made regarding if a joint public hearing will be held and setting a possible date for that hearing (likely October), or if Council would prefer Planning Commission review with separate public hearings to be held.

Council Member McIntyre asked if there is one agency which will guarantee that the Town's wells would not all be compromised, if a failure of the gasoline confinement system at this site occurred. Zoning Administrator Bateman reported that he spoke at length with the representatives of 7-Eleven regarding this issue, and that he and Project Manager Fellers have met with the engineering firm for the project and 7-Eleven representatives to discuss wellhead protection issues, lining requirements, alarming, and other similar issues surrounding the project. Mr. Bateman referenced the history in Lovettsville regarding leaks at underground storage sites, but explained that the requirements have changed greatly and now provide for multiple safeguards. It was noted that this will be a topic of discussion, certainly at the CUP phase. Zoning Administrator Bateman and Project Manager Fellers also reminded Council that the Town does have a grant from VDH (Virginia Department of Health) for wellhead protection work. This will include assistance with drafting requirements for these types of facilities, as well as determining where facilities should not be located. Ms. Fellers noted that the Town's engineer is presently working on this issue, and information regarding the types and locations of facilities desired by the Town, as well as facilities the Town would not want, will be available as the process moves forward. Mr. Bateman noted that the Town may wish to include recommendations made by the engineer as conditions of the conditional use permit, if the Town decides to approve that permit.

Zoning Administrator Bateman reported that he anticipates the applicant for the Town Center project will provide the site plan to him tomorrow. Mr. Bateman noted that he already has the application for the zoning permit, and will issue that tomorrow, as well. These actions will provide Town zoning approval for construction to begin. The developer already has obtained the County-issued grading permit, and are awaiting zoning approval for the building permit.

Zoning Administrator Bateman responded to questions from the Council regarding the proposed 7-Eleven expansion. He explained that the concept drawing for the 7-Eleven places the new building closer to the intersection of North Church Street and East Broadway, and would place the new canopy in the location of the existing building. Two entrances to the facility, one off of each street, are included as well. Mr. Bateman also reported that the developer is aware of deficiencies of North Church Street which prohibit

VDOT maintenance, and understand improvements they would need to make there. He also stated that the proposed plan represents a complete redesign of the store.

Zoning Administrator Bateman provided an update on the status of improvements for the bike path, including installation of the final course of asphalt, repair to broken curb, gutter pans and sidewalks, and installation of street lights.

As Project Manager Fellers had returned to the meeting, her report was discussed at this time.

A. Report from the Project Manager (continued)

Project Manager Fellers reported on items not included in her written submission, including a recent water leak, bids for the drainage project, and the water lines for the Broad Way and Bike Path projects.

Ms. Fellers responded to questions from the Council regarding the drainage project bids and schedule, complaints regarding traffic on East Broad Way due to the construction and the work that was done at night, and the status of work on the Community Center.

C. Report from the Town Attorney

There was no report.

D. Report from the Town Manager

Town Manager Palko's written report was included in Council Member's packets.

**Action/Discussion Items**

A. Modification to Retaining Wall on East Broadway

Project Manager Fellers presented this item, noting that the original advice received from VDOT regarding the three types of finish allowed for this wall has been changed. VDOT has advised that the Town may use any finish it wishes, with the understanding that, if VDOT is required to make repairs in the future, a smooth finish will be used. Following further discussion, the Council reached consensus to move forward with the concrete construction. Town Attorney Whiting recommended that a vote be taken, as a vote was taken in the original selection of the brick finish for this project.

**Motion:** I move that the Town change the retaining wall rustication selection for the Broad Way Improvements Project from the brick option to the Springcreek Stone brushed finish.

**By:** Council Member McIntyre

**Second:** Council Member Senate

**Aye:** Council Members Allar, Carder, Jones, McIntyre, and Senate

**Nay:** None

**Abstain:** None

**Absent:** Council Member Gray

B. Public Hearing: LVZA 2015-0002: Zoning Ordinance Amendment to Clarify Requirements Applicable to Non-Conforming Uses, Buildings, and Lots

Mayor Zoldos suspended the regular meeting at 8:42 p.m. and opened the public hearing for LVZA 2015-0002: Zoning Ordinance Amendment to Clarify Requirements Applicable to Non-Conforming Uses, Buildings, and Lots.

Mayor Zoldos called for comments from the public. There were none. The Mayor closed the public hearing at 8:42 p.m.

Zoning Administrator Bateman then explained that the amendment before the Council is to amend the Zoning Ordinance requirements applicable to Non-Conforming Uses, Buildings and Lots. Mr. Bateman further explained that this did not arise out of any particular case, situation or question which arose, but rather is being done proactively in order to make corrections and clarifications in our Zoning Ordinance. The purpose of this amendment is to make the Town's Ordinance more consistent with what is authorized by the Code of Virginia. Zoning Administrator Bateman noted his concern with language currently in the Zoning Ordinance which restricts a property owner, whose building is destroyed by 50% or more of its

value by an act of God, in rebuilding on the existing footprint that the non-conforming building previously occupied. State Code allows for rebuilding on the existing footprint, under certain conditions; the construction must be undertaken within two years, and be diligently pursued until completion. Zoning Administrator Bateman explained that he and Town Attorney Whiting collaborated on this amendment, which makes the Town's Zoning Ordinance much more consistent with state law and with surrounding localities. The amendment also addresses conditional uses in a zoning district and the treatment of properties which existed in the zoning district prior to the conditional use requirement. An additional clarification is in regards to variances - if a subject property obtains a variance, the non-conforming status of the building does not change. Mr. Bateman also noted that, on the whole, the effect of this amendment is mostly neutral (more stringent in some areas, less in others), and does provide clear direction to both property owners and the Town.

Mayor Zoldos asked if the Planning Commission had any particular thoughts on this amendment. Planning Commission Chair McDonough stated that the Commission has sought to work with Zoning Administrator Bateman in order to be proactive on issues such as this, and that the Planning Commission was very happy with his presentation on this matter. Chairman McDonough also noted that this was debated during two to three meetings and was passed unanimously by the Planning Commission.

Zoning Administrator Bateman summed up the discussion by stating that a lot which is made non-conforming by an action of the Town does not render the property owner responsible for the resulting non-conforming status. Discussion of this issue in relation to the East Broadway project ensued, as did discussion of non-conforming residences and the issue of what is, and what is not, a detrimental non-conforming use. Zoning Administrator Bateman also discussed uses which are non-conforming, but are vested, noting that an expansion of that non-conforming use may not be allowed. Mr. Bateman noted that there are few such instances in Lovettsville.

There was no further discussion.

**Motion:** I move to adopt Ordinance No. 2015-08-0001 approving the attached zoning ordinance amendment pertaining to non-conforming uses, buildings and lots (Case No. LVZA 2015-0002) as presented by staff.

**By:** Council Member Senate

**Second:** Council Member Jones

**Aye:** Council Members Allar, Carder, Jones, McIntyre, and Senate

**Nay:** None

**Abstain:** None

**Absent:** Council Member Gray

#### C. Town Center Commercial Bond Approval

Zoning Administrator Bateman presented this item, explaining that the Performance Bond for the Town Center project was delivered yesterday. It has been reviewed by the Town Attorney, and is before Council this evening. Mr. Bateman explained that the dates on the Performance Agreement before Council are incorrect and must match the date of the Letter of Credit. A new Performance Agreement, containing the correct date, will be provided to the Town tomorrow and will be available for the Mayor to sign. Zoning Administrator Bateman stated that the Resolution before Council this evening is dated correctly, and covers the contingency. It was noted that the correct date is August 20, 2015. Discussion ensued regarding the correct wording of the motion, in order to reflect this date. There was no further discussion.

**Motion:** I move to approve Resolution 2015-08-0001, as attached, to accept the performance agreement, to be dated as of August 20, 2015, and bond for the Lovettsville Square Site Plan Amendment.  
**By:** Council Member Jones  
**Second:** Council Member Allar  
**Aye:** Council Members Allar, Carder, Jones, McIntyre, and Senate  
**Nay:** None  
**Abstain:** None  
**Absent:** Council Member Gray

D. I&I Loan Refinancing

Mayor Zoldos presented this item, in Town Manager Palko's absence, noting that Council has previously seen this. The proposed refinancing of this loan, recommended by the Town Manager, would save the Town approximately \$14,000. Mayor Zoldos asked if there were any questions. There were none.

**Motion:** I move that the Mayor sign all bond refunding closing documents in order to refinance the 2009 VRA Loan for I&I work to take advantage of reduced interest rates from VRA.  
**By:** Council Member Senate  
**Second:** Council Member McIntyre

Mayor Zoldos extended thanks to Town Manager Palko for his work in finding savings such as this for the Town on several occasions.

**Aye:** Council Members Allar, Carder, Jones, McIntyre, and Senate  
**Nay:** None  
**Abstain:** None  
**Absent:** Council Member Gray

E. Updated Employee Policy Manual

Mayor Zoldos stated that this item will be taken up when Town Manager Palko is present.

Information Items

There were no Information Items.

Comments from the Mayor and Town Council

Council Member McIntyre announced that his son went off to college this past weekend and he discussed volunteer opportunities at the information booth.

Vice Mayor Senate thanked all involved in work on the Town Information sign, stating that the sign turned out beautifully. He also mentioned the increased traffic in Loudoun County, and the difficulty in travel due to that traffic, noting specifically a recent emergency call made more difficult by the traffic congestion.

Councilwoman Carder thanked everyone for their assistance with Wild on the Green. She also reminded everyone that school begins next week, and wished teachers, staff and students a happy beginning to the school year.

Councilwoman Jones noted that she had fun at Wild on the Green, and stated that everyone involved did a great job. She also noted that she is excited about all the different improvements taking place in Town, and thanked the staff for all their hard work and dedication.

Mayor Zoldos reported on the following:

- He thanked Council for their tolerance during the absence of the Town Manager. Mayor Zoldos noted that he is not sure when the Town Manager will be back in the office; however, Mr. Palko is monitoring the work of the Town and is staying in touch.

- The first stage of the Comprehensive Plan update process has been completed. He thanked those involved for their good work and reminded the Town Council that they will have the opportunity to provide input into the update.
- He thanked the Parks Committee for their work on the Town information sign.
- The job advertisement for the Economic Development Coordinator has been placed and closes on September 1. Several candidates have already applied.
- Wild on the Green was a lot of fun and he thanked those involved.
- He is looking forward to Patriot Day.
- The U.S. Navy Sea Chanters will be featured at Music on the Green on September 5.

**Adjournment**

The meeting was adjourned at by Mayor Zoldos at 9:12 p.m.

Respectfully submitted,



Harriet West, Town Clerk

Date Approved: June 2, 2016

Attachments:

1. Ordinance No. 2015-08-0001: Amend the Zoning Ordinance Provisions Pertaining to Nonconforming Uses, Buildings, and Lots
2. Resolution 2015-08-0001: Approving Bond Securing Public Improvements for the Lovettsville Square Site Plan Amendment

# Town of Lovettsville

## Ordinance No. 2015-08-0001: AMEND THE ZONING ORDINANCE PROVISIONS PERTAINING TO NONCONFORMING USES, BUILDINGS AND LOTS

**MOTION:** Senate

**SECOND:** Jones

**WHEREAS**, Article II, Division 2 of the Zoning Ordinance contains provisions governing how nonconforming uses, buildings and lots may be continued, improved, expanded, enlarged, abandoned, relocated, or otherwise changed by a property owner, and Article I, Section 42-2 contains definitions applicable to the aforementioned provisions pertaining to nonconformities; and

**WHEREAS**, the Planning Commission at their meeting on April 15, 2015 initiated an amendment to the Zoning Ordinance in order to correct deficiencies identified by staff in the provisions pertaining to nonconformities, and directed staff to prepare a draft amendment of the Zoning Ordinance and bring the draft amendment back to the Commission for consideration following consultation with and review of the draft amendment by the Town Attorney; and

**WHEREAS**, the Planning Commission reviewed the draft amendment prepared by staff and reviewed by the Town Attorney at their meeting on July 1, 2015 and authorized a public hearing on the amendment to be held on August 5, 2015; and

**WHEREAS**, following public hearing on August 5, 2015, pursuant to public notice given in accordance with Va. Code Section 15.2-2204, the Planning Commission unanimously recommended approval of the proposed zoning ordinance amendment, Case No. LVZA 2015-0002, to the Town Council; and

**WHEREAS**, the Lovettsville Town Council conducted a public hearing on the proposed zoning ordinance amendment on August 27, 2015, pursuant to notice given in accordance with Va. Code Section 15.2-2204, and has determined that adoption of the proposed amendment will promote the health, safety and welfare of the citizens of the Town and is consistent with the public necessity, convenience, general welfare, and good zoning practices generally.

**NOW, THEREFORE, BE IT ORDAINED** that Article II, Division 2 and Article I, Section 42-2 of the Zoning Ordinance of the Town of Lovettsville be amended as set forth in the attachment hereto.

**BE IT FURTHER ORDAINED** that the Zoning Administrator and Town Attorney are hereby authorized to make corrections of misnumberings or misspellings found in the said attachment without further action by the Council.

*The German Settlement*

**VOTE:**

**Ayes:** Allar, Carder, Jones, McIntyre, and Senate

**Nays:** None

**Abstentions:** None

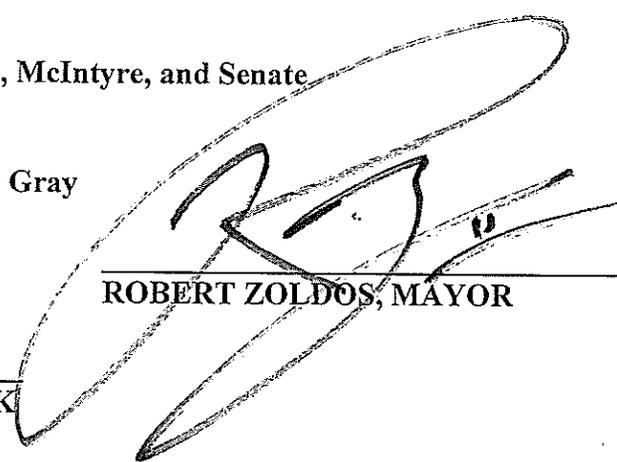
**Absent for Vote:** Gray

**Approved:** August 27, 2015

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HARRIET WEST, TOWN CLERK

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ROBERT ZOLDOS, MAYOR

**Sec. 42-2. Definitions and rules of construction.**

- (b) *Definitions.* The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Building line* means the line parallel to the street right-of-way line or front lot line and touching the part of the building closest to the street.

*Nonconforming structure or building* means an otherwise legal structure or building that does not conform with the lot area, yard, height, lot coverage or other area regulations of this chapter for the district in which it is located, either at the effective date of this ordinance from which this chapter is derived or as a result of subsequent amendments to said ordinance.

*Setback* means the minimum or maximum distance by which any building or structure must be separated from any lot line.

*Setback line* means the line which establishes the required setback area and the area of the lot within which a building or structure may be erected or placed.

DIVISION 2. NONCONFORMING USES

**Sec. 42-60. Construction of division.**

The provisions of this division are intended to guide the zoning administrator, town officials and the board of zoning appeals in resolving issues involving vested rights and nonconforming situations consistent with Code of Virginia, § 15.2-2307 and controlling legal authority.

**Sec. 42-61. Continuation of nonconforming use.**

If, at the time of enactment of the ordinance from which this chapter is derived or at the time of a subsequent amendment of this chapter, any legal activity is being pursued, or any lot or structure is being legally utilized, in a manner or for a purpose which does not conform to the provisions of this chapter, such use may be continued only as provided in this division:

- (1) Except as otherwise provided herein, the lawful use of land or buildings existing at the effective date of this ordinance may be continued although such use does not conform to the provisions hereof only so long as the then existing or a more restricted use continues and such use is not discontinued for more than two years, and so long as the buildings or structures are maintained in their then structural condition. Except as provided in this article, such nonconforming use may not be enlarged, extended, reconstructed, moved or structurally altered except in compliance with the provisions of this ordinance.
- (2) If any change in title or possession, tenancy, management, or renewal of a lease of any such lot or structure occurs, the existing nonconforming use may be continued.
- (3) If any nonconforming use is discontinued for a period exceeding two years after the enactment of the ordinance from which this chapter is derived or at the time of a subsequent amendment of this chapter, it shall be deemed abandoned and any subsequent use shall conform to the requirements of this chapter. Notwithstanding the foregoing, any building that requires repair, rebuilding or replacement due to an Act of God, within the meaning of Va. Code section 15.2-

2307 may be afforded additional time in which to complete such repair, rebuilding or replacement in accordance with the terms of that statute and section 42-67.

- (4) A nonconforming use may be changed to any use that is allowed in the zoning district in which it is located, subject to the all applicable standards and requirements applicable to the new use. Once a nonconforming use is converted to a conforming use, it may not be changed back to a nonconforming use.
- (5) A nonconforming use that has been changed to a more restricted use may not thereafter be resumed except in compliance with the provisions of this ordinance.
- (6) Temporary seasonal nonconforming uses that have been in continual operation for a period to two consecutive years or more prior to the effective date of the ordinance from which this chapter is derived shall be considered nonconforming uses for purposes of this division.

#### **Sec. 42-62. Permits.**

- (a) The construction or use of a nonconforming building or land area for which a zoning permit was properly issued prior to the effective date of the ordinance from which this chapter is derived, or subsequent amendment thereto, may proceed provided construction of such building, or establishment of such use of land, is undertaken within two years after the date the permit was issued and diligently carried on to completion.
- (b) Any use that was legally established at a time when no special form of approval or permit was required for the subject use (e.g. conditional use permit approval) shall not be deemed nonconforming merely as a result of not having obtained such approval. Any change, enlargement or expansion of such use shall be subject to the procedures and standards in effect at the time of such change, enlargement or expansion.

#### **Sec. 42-63. Repairs and maintenance.**

Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be unsafe by any Town or County official charged with protecting the public safety, nor prevent any such building or structure from being brought in compliance with the Uniform Statewide Building Code, upon order of such official.

#### **Sec. 42-64. 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 division.

**Sec. 42-65. Expansion.**

A nonconforming use may be extended throughout any part of a structure which was arranged or designed for such activity at the time of enactment of the ordinance from which this chapter is derived or subsequent amendment thereto. However, no such use shall be extended to additional buildings or to land outside the original building.

**Sec. 42-66. Nonconforming lots.**

Any lot of record at the time of the adoption of the ordinance from which this chapter is derived, which is less in area or width than the minimum required by this chapter, may be used when all other applicable requirements of the zoning ordinance, are met. A lot of record or structure which, solely as a result of an eminent domain proceeding, or conveyance under threat of condemnation, no longer conforms to the requirements of these regulations and restrictions as to area, frontage, and dimensions of lots or yards, shall not be deemed a nonconforming lot or structure for the purpose of this ordinance.

**Sec. 42-67. Nonconforming buildings and structures.**

- (a) If a variance is approved from otherwise applicable zoning district dimensional standards for a nonconforming building or structure, the subject structure shall still be deemed nonconforming.
- (b) A nonconforming structure may be improved, enlarged or expanded without a variance if the expansion does not increase the extent of the nonconformity. With regard to building setbacks, an improvement, enlargement or expansion shall be deemed to increase the extent of the nonconformity if it:
  - 1) Increases the footprint area of the portion of the structure encroaching into the required minimum setback area; or
  - 2) Increases the distance between the building line and the maximum required setback line, where applicable.
- (c) A nonconforming structure may be moved if the movement or relocation eliminates or reduces the extent of the nonconformity.
- (d) If a nonconforming structure is destroyed by a natural disaster or other act of God, the owner may replace such structure without obtaining a variance for the nonconforming features in accordance with the provisions of § 15.2-2307 of the Code of Virginia, as amended, provided (i) there is no increase in the extent of the nonconformity, and (ii) that the repairs or reconstruction shall be undertaken within 2 years of the date of destruction and diligently carried on to completion.

**Secs. 42-68—42-92. Reserved.**

# Town of Lovettsville

## Resolution: 2015-08-0001: APPROVING BOND SECURING PUBLIC IMPROVEMENTS FOR THE LOVETTSVILLE SQUARE SITE PLAN AMENDMENT

**MOTION:** Jones

**SECOND:** Allar

**WHEREAS**, Lovettsville Square, LLC has submitted a request for an amendment to the approved site plan for the Lovettsville Town Center Commercial Core Area, also referred to as Lovettsville Square and referenced as Case No. LVSP 2015-0001, to the Town of Lovettsville for approval and desires to commence construction of site improvements; and

**WHEREAS**, the Town's engineering consultant, Christopher Consultants, Ltd., has reviewed the site plan amendment and bond estimate forms prepared by the applicant's engineer and agrees that the amount of the bond securing proper installation of the public improvements is \$741,584.00 provided that the appropriate performance agreement is entered setting a completion date not later than 24 months from August 20, 2015 and secured by surety acceptable to the Town.

**NOW, THEREFORE, BE IT RESOLVED** that the Lovettsville Town Council hereby accepts the recommendation of the Town's engineer and approves the performance bond for the project referenced above, and authorizes the Mayor and Town Attorney to sign the performance agreement and bond as appropriate when tendered in a form approved by the Town Attorney.

**VOTE:**

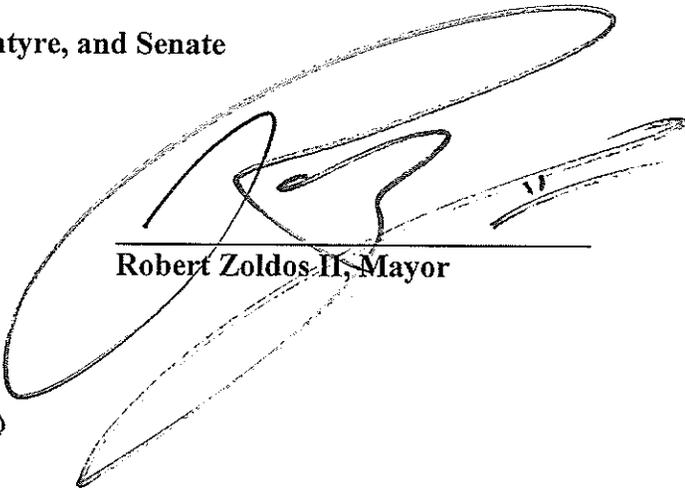
**Ayes:** Allar, Carder, Jones, McIntyre, and Senate

**Nays:** None

**Abstentions:** None

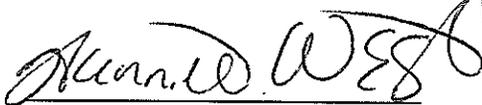
**Absent for Vote:** Gray

**APPROVED:** August 27, 2015



Robert Zoldos II, Mayor

**CERTIFIED:**



Harriet West, Town Clerk

*The German Settlement*