

**CLARKE COUNTY
PLANNING COMMISSION
Minutes
2008 September 5 – 9:00 a.m.
Board of Supervisors Meeting Room**

A regular meeting of the Planning Commission of Clarke County, Virginia, was held at the County Circuit Courthouse, Berryville, Virginia, on Friday, September 5.

ATTENDANCE

Beverly McKay, Chair; George Ohrstrom, Vice Chair; Jay Arnold; Barbara Batterton; Anne Caldwell; A.R. Dunning, Jr.; Pat McKelvy; Cliff Nelson; Kathy Smart; Chip Steinmetz; and Bob Wade;

STAFF

Charles Johnston, AICP, Planning Director; Jesse Russell, Zoning Administrator; Alison Teetor, Natural Resource Planner; and Debbie Bean, Recording Secretary.

CALL TO ORDER

Chair McKay called the meeting to order at 9:04 a.m.

APPROVAL OF AGENDA

The Commission voted unanimously to approve the agenda.

Yes: Arnold, Batterton, Caldwell, McKay, McKelvy, Nelson (seconded), Ohrstrom (moved), Smart, Steinmetz, and Wade

No: No one

Absent: Dunning

APPROVAL OF MINUTES

The Commission voted unanimously to approve the briefing minutes of July 8.

Yes: Arnold, Batterton, Caldwell (moved), McKay, McKelvy, Nelson (seconded), Ohrstrom, Smart, Steinmetz, and Wade

No: No one

Absent: Dunning

The Commission voted unanimously to approve the regular minutes of July 11.

Yes: Arnold, Batterton, Caldwell, McKay, McKelvy (seconded), Nelson, Ohrstrom, Smart, Steinmetz, and Wade (moved)

No: No one

Absent: Dunning

Commissioner Dunning entered the meeting.

SCHOOL CONSTRUCTION

The Chair asked Robina Rich Bouffault, Chair of the Clarke County School Board, to give a brief report on the progress of the High School project. She stated that the School Board has closed on the Ketoctin land site for the proposed high school. She said that the School Board has approved Gannett Fleming as construction manager for this project. She stated that selection of an architect should be completed by early October.

SPECIAL USE PERMIT / SITE PLAN – PUBLIC HEARING

The Town of Berryville requests approval of a Special Use and Site Plan for a Public Utility Facility (outfall line for treated sewage) located generally on the south side of the public right of way for Harry Byrd Highway (Virginia Route 7) from the Berryville Waste Water Treatment Plant (362 Parshall Road) to the Shenandoah River (approximately 800 feet south of the Robert W. Smalley Sr. Bridge at Castleman's Ferry, [Route 7 bridge]), through Tax Map Parcels 15-((A))-8, 11, 13, 17C, 18, 20, 21; 15-((3))-8; 16-((A))-33, 36, 36A, 39, all located in Battletown Magisterial District, zoned Agricultural-Open-Space-Conservation (AOC). SUP-08-02 (aka SUP-04-01)

Mr. Johnston explained this request. He stated that the Virginia Department of Environmental Quality and the US Environmental Protection Agency has mandated the Town of Berryville to upgrade the existing conveyance pipe for its treated sewage effluent because of the existing pipe's age and size.

Dean Westman with Whitman, Requardt & Associates, LLP, consultants for the Town of Berryville on this proposed request was present and gave a presentation explaining the general description of this project. He stated that preparation of erosion and control plans, an archeological report, an environmental assessment addressing wetlands and soils as well as negotiations with property owners are underway. He stated that they hope to have bid offers and be ready to start work in January 2009 with the project completed in 2010.

After discussion with staff and the Commission, Chair McKay opened the public hearing. There being no public comments, Chair McKay closed the public hearing and called for a motion.

The Commission voted unanimously to recommend approval of this request to the Board of Supervisors.
Yes: Arnold, Batterton, Caldwell, Dunning, McKay, McKelvy (seconded), Nelson, Ohrstrom, Smart (moved), Steinmetz, and Wade
No: No one

REZONING AND SITE PLAN – SET PUBLIC HEARING

a. 7-Eleven, Inc. (Agent: Jason Azar, Huron Consulting) requests the amendment of the County Zoning Map to rezone a 1.5137 acre portion of Tax Map Parcel 7-((A))-37 from the Agricultural-Open Space-Conservation (AOC) District to the Highway Commercial (CH) District and Historic Access Corridor Overlay District (HC), located at 10929 Harry Byrd Highway, Longmarsh Magisterial District. RZ-08-01

b. 7-Eleven, Inc. (Agent: Jason Azar, Huron Consulting) requests approval of a Site Plan for a 3,132 square foot convenience store with six fuel pumps located at 10929 Harry Byrd Highway, Tax Map #7-((A))-37, Longmarsh Magisterial District, zoned Agricultural Open-Space Conservation (AOC) (Highway Commercial and Historic Access Corridor Overlay zoning requested). SP-08-02

Mr. Johnston explained this request. He stated that this request consists of two items: First, the rezoning request in which the applicant is proposing to rezone approximately 1.5 acres of land from AOC to Highway Commercial and second, the site plan request for a 3,132 square foot convenience store with six fuel pumps.

Jason Azar, agent for 7-11, was present and gave a brief discussion regarding the water and septic. He stated that 7-11 has worked with the Health Department in regard to adequate water and septic needs as well as VDOT for improved access.

Robin Weaning, adjoining property owner, stated she and her husband came to the meeting today for information on this request. She had concerns regarding the buffer between adjoining property owners and the proposed request.

After discussion with staff and the Commission, Chair McKay opened the public hearing. There being no public comments, Chair McKay called for a motion.

The Commission voted unanimously to set public hearing on this request for the next regular meeting of the Commission on October 3.

Yes: Arnold, Batterton, Caldwell (moved), Dunning, McKay, McKelvy (seconded), Nelson, Ohrstrom, Smart, Steinmetz, and Wade

No: No one

MAJOR SUBDIVISION – PUBLIC HEARING

WRN Enterprises, Inc. requests approval for a four-lot subdivision for Tax Map #32-A-41 located at 2459 Frogtown Road, Chapel Magisterial District, zoned Forestal-Open Space-Conservation (FOC). S-08-02

Mr. Russell explained this request. He stated that the applicant is requesting approval of preliminary and final plat for a four-lot subdivision. The Health Department has reviewed and approved the proposed septic and well sites, although the plat shows an arbitrary 50-foot radius around each proposed well site. He stated that if a radius is shown, then it should be shown as 100 feet. He said the applicant will have to revise the plats accordingly before the Health Department and Zoning Administrator sign the survey plats. He stated that VDOT has approved the proposed private access easement to serve Lots 1,2 and 3 on condition of removing vegetation and sloping the banks on either side of the easement access. He stated that a bond should be posted with VDOT for the entirety of work needed to meet the submitted construction plan.

After discussion with staff and the Commission, Chair McKay opened the public hearing. There being no public comments, Chair McKay closed the public hearing and called for a motion.

The Commission voted unanimously to postpone action and continue the public hearing until the next regular meeting of the Commission on October 3 in order to allow the applicant time to prepare the documents reflecting the changes to be made and shown on the plat.

Yes: Arnold, Batterton, Caldwell, Dunning, McKay, McKelvy (seconded), Nelson, Ohrstrom (moved), Smart, Steinmetz, and Wade

No: No one

MINOR SUBDIVISION

William F. Mackintosh, Jr., requests approval for a two-lot subdivision and maximum lot size exception for Tax Map 7-((A))-5, located at 202 Rock Dale Lane, Longmarsh Magisterial District, zoned Agricultural-Open Space-Conservation (AOC). MS-08-08; BLA-08-10; MLSE-08-03

Mr. Russell explained this request. He stated that the applicant has found all new primary and reserve drain fields for the existing tenant houses and has been approved by the Health Department. After discussion with staff and the Commission, Chair McKay called for a motion.

The Commission voted unanimously to approve this request.

Yes: Arnold, Batterton, Caldwell, Dunning (moved), McKay, McKelvy, Nelson, Ohrstrom, Smart (seconded), Steinmetz, and Wade

No: No one

MINOR SUBDIVISION

Richard Dimmel, requests approval for a two-lot subdivision for Tax Map #29-((A))-18 located at approximately 300 Rose Airy Lane, Greenway Magisterial District, zoned Agricultural-Open Space-Conservation (AOC). MS-08-11

Mr. Russell explained this request. He stated that VDOT has approved this request and that the Health Department has approved the septic and well sites. Several Planning Commissioners stated they would like to visit the site. After discussion with staff and the Commission, Chair McKay called for a motion.

The Commission voted unanimously to postpone action on this request in order to allow time for the Planning Commission to visit the site.

Yes: Arnold, Batterton, Caldwell, Dunning, McKay, McKelvy, Nelson, Ohrstrom, Smart (moved), Steinmetz (seconded), and Wade

No: No one

TEXT AMENDMENT – PUBLIC HEARING

The Clarke County Planning Commission will consider the amendment of the County Zoning Ordinance so as to amend:

Section 9-B-165, Definition of the term: “Structure”, so as to change the definition to read: “Any man-made object having a stationary location on a parcel, whether or not it is permanently affixed to the ground. All buildings are structures. Structures shall include, without limitation, chimneys, cupolas, flagpoles, monuments, smokestacks, spires, and towers.”

Section 4-H-3, Height Regulations, so as to allow the height of freestanding flagpoles to exceed height limits by 50% and add flagpoles to the list of structural elements that may be added on to a structure and exceed height limits.

Section 9-B-166, Definition of the term: “Structure, Portable” so as to change the term to “Structure, Temporary, and to change the definition of the term to read: “A structure, not permanently affixed to the ground, intended to be located on a parcel for not more than 90 days in any 12 month period of time.”

Section 4-B-4, Portable Structure, so as to change the term “portable structure” to “temporary structure” wherever it appears in this section. TA-08-03

Mr. Johnston explained this request. He stated that at the June meeting, the Commission voted to postpone consideration of this amendment so that Commissioners could consult with Robert Mitchell, the county’s land use attorney, regarding the proposed definition of “Structure” Mr. Mitchell has rewritten the definition of “Structure” and recommended the term “Portable Structure” be changed to “Temporary Structure”. After discussion with staff and the Commission, Chair McKay asked for public comments.

Barbara Byrd, Board of Supervisors’ member, was present and asked if a windmill would be considered a structure. Mr. Johnston stated windmills would be addressed in a separate text amendment.

Richard Dimmel, property owner in the area, had questions regarding height structures.

There being no further public comments, Chair McKay called for a motion.

The Commission voted unanimously to recommend approval of this amendment to the Board of Supervisors.

Yes: Arnold, Batterton (seconded), Caldwell, Dunning, McKay, McKelvy, Nelson, Ohrstrom, Smart, Steinmetz, and Wade (moved)

No: No one

TEXT AMENDMENT – SET PUBLIC HEARING

The Clarke County Planning Commission will consider the amendment of the County Zoning Ordinance:

Section 3-A-1, Agricultural-Open Space-Conservation District – (AOC) so as to:

- 1. amend the list of Accessory Uses to delete the acreage requirement for Tenant Houses;**
- 2. amend the list of Special Uses to change “Processing of Fruit and Vegetables” to “Processing of Agricultural Products not produced in Clarke County”;**

Section 3-A-2, Forestal-Open Space-Conservation District – (FOC) so as to:

- 1. amend the list of Accessory Uses to delete the acreage requirement for Tenant Houses;**
- 2. amend the list of Special Uses to change “Processing of Fruit and Vegetables” to “Processing of Agricultural Products not produced in Clarke County”;**

Section 3-C, Supplementary Regulations, so as to:

- 1. establish a regulation for: Processing of Agricultural Products produced on-site: A proposal for the Processing of Agricultural Products produced in Clarke County shall submit a site plan, per Section 6 of this Ordinance, subject to administrative approval by the Zoning Administrator. Any facilities used for such processing shall be set back at least 500 feet from incorporated town limits, the Berryville Annexation Area, the Rural Residential Zoning District, and parcels less than six acres in area;**

Section 4-K-6, Nonconforming Lots, Uses and Structures, Uses Eligible for Special Use Permits Not Nonconforming Uses, so as to clarify the status of nonconforming uses that becoming conforming uses after a text amendment;

Section 5, Special Use Permits, so as to require the approval by the Planning Commission of a Site Plan for Special Uses that have ceased operation for more than 24 months before such uses can be restarted.

Section 9-B, Definitions, so as to:

- 1. amend the definition of the term “Agriculture”: The use of land devoted to the production of agricultural products and the processing of such agricultural products that are produced in Clarke County.” TA-08-06**

Mr. Johnston explained this request. He stated that at its August 19 meeting, the Board of Supervisors considered the Commission’s recommendation on the proposed amendments to uses in the AOC and FOC Zoning Districts. He said based on these concerns this amendment would require a special use permit for the processing of agricultural products that do not come from Clarke County, changing the term “Processing of Fruit and Vegetables” to “Processing of Agricultural Products not produced in Clarke County”. He stated that the Board also requested that the Planning Commission consider the amendment of the regulations regarding Tenant Houses to delete the acreage requirements for such houses, thereby allowing the number of Tenant Houses that could be constructed based only on the number of dwelling unit rights on a property. He said the Board asked that provisions be added to ensure such tenant houses are located so that they could be subdivided at a future date. He said an additional change relates to Special Uses that have ceased operation: if a Special Use ceases operation for more than two years, that a

Site Plan that complies with all current government standards must be approved by the Planning Commission. After discussion with staff and the Commission, Chair McKay called for a motion.

The Commission voted unanimously to set public hearing on this request for the next regular meeting of the Commission on October 3.

Yes: Arnold, Batterton, Caldwell (moved), Dunning, McKay, McKelvy, Nelson, Ohrstrom, Smart, Steinmetz, and Wade (seconded)

No: No one

TEXT AMENDMENT – SET PUBLIC HEARING

The Clarke County Planning Commission will consider an amendment of the County Zoning Ordinance:

Sections 3-A-1-a, 3-A-2-a, 3-A-3-a, 3-A-12-a, and 3-A-13-a, Permitted and Special Uses and Structures in the AOC, FOC, Rural Residential, Neighborhood Commercial, and Highway Commercial Zoning Districts so as to add Small Wind Turbines that are 100 feet or less in height as a Accessory Use and such turbines taller than 100 feet as a Special Use;

Section 3-C-2, Supplementary Regulations, so as to add regulations for Small Wind Energy Systems; and

Section 9-B-2, Definitions, so as to add the definitions for Small Wind Energy Systems and Wind Turbines. TA-08-07

Mr. Johnston explained this request. He stated that a committee (Dunning, Ohrstrom, Smart) was appointed by Chair McKay to study wind energy systems at the April 4 Planning Commission meeting. He said based on the information the committee compiled it was determined that the ordinance should limit turbine use to small units for on-site power generation. He stated that the height limit of 100 feet was determined to be the optimum for this area to maximize wind energy production. He said based on site visits, the committee found the turbines did not detract from the aesthetics of a property. After discussion with staff and the Commission, Chair McKay called for a motion.

The Commission voted unanimously to set public hearing on this request for the next regular meeting of the Commission on October 3.

Yes: Arnold, Batterton, Caldwell, Dunning (moved), McKay, McKelvy, Nelson, Ohrstrom, Smart, Steinmetz, and Wade (seconded)

No: No one

REPORTS

Board of Supervisors – Pete Dunning

Mr. Johnston stated that at its July 11 meeting, the Commission unanimously recommended to the Board a series of amendments to the list of uses in the AOC and FOC Zoning Districts. On August 19, the Board approved amendments to the list of uses in the AOC and FOC Zoning Districts that did not include the deletion of the uses “Livestock Auction Markets” in the AOC District, “Retail Sales” in the AOC and FOC Zoning Districts, and “Sawmills” in the FOC Zoning District. When taking action on August 19, the Board requested the Commission consider Supplemental Regulations for these uses if it felt such additional regulations were warranted.

The Commission voted to recommend that the Board reconsider the original recommendation of the Commission to delete the use “Livestock Auction Markets” because the Commission believes there is no

appropriate location for such use in the rural areas of the County and that it does not believe that any Supplemental Regulations would be adequate in regulating such use.

Yes: Arnold, Batterton, Caldwell, Dunning (seconded), McKelvy, Nelson, Ohrstrom, Smart (moved), Steinmetz, and Wade

No: McKay

The Commission voted unanimously to recommend that the Board reconsider its original recommendation to delete the uses “Retail Stores and Shops” and “Sawmills” because:

1. there is no appropriate location for commercial-scale sawmills in the rural areas of the County given the noise, truck traffic, and hours of operation associated with such a facility,
2. retail uses in the rural areas of the County would be the equivalent of spot zoning, which is not good planning practice, and that the place for retail uses is in the towns and the commercially zoned areas of the County, and

any degree of Supplemental Regulations would not adequately regulate such uses in the rural areas of the County.

Yes: Arnold, Batterton, Caldwell (moved), Dunning, McKay McKelvy, Nelson, Ohrstrom, Smart, Steinmetz (seconded), and Wade

No: No one

Sanitary Authority – **Pete Dunning**

Commissioner Dunning stated that the next meeting is scheduled for September 22.

Board of Septic & Well Appeals – **Pete Dunning**

Commissioner Dunning stated that the next meeting is scheduled for September 18.

Board of Zoning Appeals – **Anne Caldwell**

Commissioner Caldwell stated that the next meeting is scheduled for September 18.

Historic Preservation Commission – **Cliff Nelson**

Commissioner Nelson stated that the next meeting is scheduled for September 23.

Conservation Easement Authority – **Pat McKelvy**

Commissioner McKelvy stated that the next meeting is scheduled for September 17.

Natural Resource Activities – **Alison Teetor** Stormwater Ordinance update

– **Jesse Russell** E & S Control Ord. Update

Ms. Teetor stated that she is doing a lot of work with the Green Committee trying to save time and energy for the County.

Enforcement Officer – **Nancy Olin**

Ms. Olin’s progress reports for June 30 thru August 27 were reviewed.

There being no further discussion to come before the Planning Commission, the meeting was adjourned at 11:35 a.m. until the next regular meeting of the Commission on October 3.

Beverly B. McKay, Chair

Charles Johnston, Clerk to the Commission

Minutes prepared by
Debra L. Bean, Recording Secretary