

**CLARKE COUNTY  
PLANNING COMMISSION  
MINUTES  
7 April 2006**

A regular meeting of the Planning Commission of Clarke County, Virginia was held at the County Circuit Courthouse, Berryville, Virginia, on Friday, the 7th day of April 2006.

**ATTENDANCE**

Beverly McKay, Chair; George L. Ohrstrom, II, Vice Chair; Jay Arnold, Barbara Batterton, Anne Caldwell, Mary Daniel, Pat McKelvy, Cliff Nelson, and Kathy Smart.

**ABSENT**

A. R. Dunning, Jr. and Robert Wade

**STAFF**

Charles Johnston, Planning Administrator; Jesse Russell, Zoning Administrator; Alison Teetor, Natural Resource Planner; Nancy Olin, Enforcement Officer; Debbie Bean, Recording Secretary.

**CALL TO ORDER**

Chair McKay called the meeting to order at 9:06 a.m.

**APPROVAL OF AGENDA**

The agenda for 7 April 2006 was unanimously approved.

**Yes:** Arnold, Batterton, Caldwell, Daniel, McKay, McKelvy, Nelson, Ohrstrom (moved), and Smart (seconded).

**No:** No one

**Absent:** Dunning and Wade

**APPROVAL OF MINUTES**

The briefing minutes for 28 February 2006 were unanimously approved.

**Yes:** Arnold, Batterton, Caldwell (moved), Daniel, McKay, McKelvy (seconded), Nelson, Ohrstrom, and Smart.

**No:** No one

**Absent:** Dunning and Wade

The regular minutes for 3 March 2006 were unanimously approved with an amendment to the motion made on the Double TT Minor Subdivision for an additional condition of a 75 foot vegetated buffer along the property lines with the Appalachian Trail.

**Yes:** Arnold, Batterton, Caldwell (seconded), Daniel, McKay, McKelvy (moved), Nelson, Ohrstrom, and Smart.

**No:** No one

**Absent:** Dunning and Wade

**TEXT AMENDMENT - CONT'D PUBLIC HEARING**

**The Clarke County Planning Commission will consider the amendment of the County Zoning Ordinance: Section 3, Supplementary Regulations, so as to limit the number of occupants of a dwelling to not more than two people per number of bedrooms of permitted drain-field capacity. TA-06-05**

Mr. Johnston explained this request. He stated that at the last 3 March 2006 Planning Commission meeting, the Commission voted unanimously to postpone action and continue the public hearing on this amendment in order to allow time for the Commission to review the text of the amendment. He stated the Chair appointed a committee of three citizens, two Planning Commissioners, a member of the Board of Septic and Well Appeals, and himself to review this amendment. The committee met two times and Robert Mitchell, the county's land use attorney, reviewed versions of the text while the committee was meeting. After the second committee meeting, additional comments as to wording were received from Mr. Mitchell and this amended text is before the Commission. After discussion with staff and the Commission, Chair McKay re-opened the public hearing.

Mr. Dunning entered the meeting during this discussion.

Tom Nolan, area resident, questioned the text of the amendment.

Gem Bingol, Field Officer with Piedmont Environmental Council, stated she feels the Commission is moving in the right direction with this amendment.

The Commissioners agreed that the language in this amendment should reference permanent full-time occupants more than once. The Commissioners also agreed that the effective date of this ordinance would be six months from its adoption date as opposed to one year.

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

The Commission voted unanimously to recommend to the Board of Supervisors approval of the proposed Zoning Ordinance, Section 3, regarding Supplementary Regulations as amended.

**Yes:** Arnold, Batterton, Caldwell, Daniel, Dunning, McKay, McKelvy (seconded), Nelson, Ohrstrom (moved), and Smart.

**No:** No one

**Absent:** Wade

**TEXT AMENDMENT - CONT'D PUBLIC HEARING**

**The Clarke County Planning Commission will consider the amendment of the County Zoning Ordinance, Section 3, so as to add an Additional Regulation to the Rural Residential Zoning District, to state that 'Accessory Structures larger than 150 square feet shall not be located in the front yard of a single-family dwelling.' TA-06-04**

Mr. Johnston explained this request. He stated that at the 3 March 2006 Planning Commission meeting, the Commission voted unanimously to postpone action and continue the public hearing on this amendment until the 7 April 2006 Planning Commission meeting in order to allow time for the

Commission to revise the text of this amendment. After discussion with staff and the Commission, Chair McKay asked for public comments.

Tom Nolan, area resident, had concerns with the language in this amendment.

The Commissioners agreed the language in this amendment should be revised for clarity and to add a provision placing a limit of 12 feet in height to any accessory structure in a rural residential zoning district.

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

The Commission voted unanimously to postpone action on this amendment indefinitely.

**Yes:** Arnold, Batterton, Caldwell, Daniel, Dunning (seconded), McKay, McKelvy, Nelson, Ohrstrom, and Smart (moved).

**No:** No one

**Absent:** Wade

#### **REZONING – SET PUBLIC HEARING**

**Bobby T. Hudnall, Life in the Word Church of Jesus Christ, Inc. (William Thompson, Jr., Owner) requests a Rezoning from the Agricultural-Open Space-Conservation (AOC) to Rural Residential (RR) Zoning District, of a 1.5182 acres portion of TM# 28-A-27, 14401 Lord Fairfax Highway, Greenway Magisterial District. RZ-06-01**

Mr. Russell explained this request. He stated that on 17 June 2003, the Board of Supervisors approved a Special Use Permit and Site Plan on this property on condition that the site plan be revised to show access to the cemetery lot and to rezone land that was to be gifted to the Church from William Thompson, Jr. from AOC to RR zoning. He said the land requested for rezoning was approved on the 2003 Site Plan for parking and a drain-field. He said if this request is approved the applicant will merge the rezoned area with the existing church lot. After discussion with staff and the Commission, Chair McKay called for a motion.

The Commission voted unanimously to set public hearing for the next regular meeting of the Planning Commission on 5 May 2006.

**Yes:** Arnold, Batterton, Caldwell, Daniel, Dunning (moved), McKay, McKelvy, Nelson, Ohrstrom, and Smart (seconded).

**No:** No one

**Absent:** Wade

#### **MINOR SUBDIVISION**

**Thomas and Katherine Walker request approval of a one-lot subdivision for Tax Map 6-((A))-38, located in the 12000 block of Harry Byrd Highway, Longmarsh Magisterial District, zoned Agricultural-Open Space-Conservation (AOC). MS-06-01**

Mr. Russell explained this request. He stated the property is located at the intersection of Pierce Road and Route 7. He said lot 1 proposes access from Pierce Road via a private access easement. The entrance to the proposed access easement has been approved by VDOT. The Health Department has

approved the septic and well sites. He stated Commissioners Ohrstrom and Nelson, visited the site. Mr. Dunning said the lot does not meet the County's Zoning Ordinance for design guidelines. Commission members stated the request should be revised to comply with the County's Zoning Ordinance. After discussion with staff and the Commission, Chair McKay called for a motion.

The Commission voted unanimously to postpone action on this request until the 5 May 2006 regular Planning Commission meeting, in order to allow time for Commissioners Ohrstrom and Nelson to review the area for a better access site.

**Yes:** Arnold (seconded), Batterton, Caldwell, Daniel, Dunning (moved), McKay, McKelvy, Nelson, Ohrstrom, and Smart.

**No:** No one

**Absent:** Wade

### **MINOR SUBDIVISION – Amendment of Conditions**

**Thomas F. Nolan, IV (Meg Roque, Agent), request approval for a one-lot subdivision for Tax Map 10-((A))-5C located at 320 Chestnut Lane, Battletown Magisterial District, zoned Agricultural-Open Space-Conservation (AOC). MS-05-19**

Mr. Russell explained this request. He stated in December 2005, the Planning Commission approved a one-lot subdivision for Thomas Nolan with one of the conditions of approval being that the applicant records a waiver of liability. He said the County's land use attorney, Robert Mitchell, recommended to amend the conditions of the subdivision approval so as not to include the waiver of liability. The Commission provided a copy of the letter from Mr. Mitchell to the applicant. After discussion with staff and the Commission, Chair McKay called for a motion.

The Commission voted unanimously to approve the amendment of the condition of the one lot minor subdivision for Thomas F. Nolan so as not to include the waiver of liability.

**Yes:** Arnold, Batterton (moved), Caldwell, Daniel, Dunning, McKay, McKelvy (seconded), Nelson, Ohrstrom, and Smart.

**No:** No one

**Absent:** Wade

### **TEXT AMENDMENT – SET PUBLIC HEARING**

**The Clarke County Planning Commission will consider the amendment of the County Subdivision Ordinance so as to delete section 10-D-4 which states: “No more than one Boundary Line Adjustment application, may be approved for any parcel during a two-year period” as a more specific provision addressing this situation was added to the Zoning Ordinance in 2005. TA-06-06**

Mr. Johnston explained this request. He stated that in 1992, section 10-D-4 of the Subdivision Ordinance was added so as to address concerns that property owners were shifting dwelling unit rights in relative large numbers. He said that in 2005, the County adopted changes to the Zoning Ordinance that more specifically limited the transfer of dwelling unit rights and added section 10-D-5 in the Subdivision Ordinance. He stated that due to the addition of section 10-D-5, the previously added section 10-D-4 is no longer necessary. He said the County's land use attorney, Robert Mitchell,

recommended the deletion of section 10-D-4 from the Subdivision Ordinance. After discussion with staff and the Commission, Chair McKay called for a motion.

The Commission voted unanimously to set public hearing for the next regular meeting of the Planning Commission on 5 May 2006.

**Yes:** Arnold, Batterton, Caldwell (seconded), Daniel, Dunning (moved), McKay, McKelvy, Nelson, Ohrstrom, and Smart.

**No:** No one

**Absent:** Wade

**TEXT AMENDMENT – SET PUBLIC HEARING**

**The Clarke County Planning Commission will consider the amendment of the County Zoning Ordinance, Sections 3-A-1-b-(1), Lot Requirements for Single Family Detached Dwellings in the Agricultural-Open Space-Conservation (AOC) Zoning District and 3-D-10, Lot Size in the AOC Zoning District with Single Family Detached Dwellings so as to recodify and move the text [with no change] of 3-D-10 to 3-A-1-b-(1). TA-06-07**

Mr. Johnston explained this request. He stated that the adopted recommendations of the Mountain Land Plan included changes to the lot size requirements for the Forestal-Open Space-Conservation Zoning District. He said that Robert Mitchell, the County's land use attorney, was reviewing these changes and noted that the lot size requirement for the Agricultural-Open Space-Conservation Zoning District were not in the AOC section of the Zoning Ordinance but in Section 3-D, which is the section addressing the allocation of dwelling unit rights in the AOC and FOC Zoning Districts. Mr. Mitchell recommended that the AOC lot size provisions be shifted to the AOC section of the Ordinance so as to be consistent with all other zoning districts. After discussion with staff and the Commission, Chair McKay called for a motion.

The Commission voted unanimously to set public hearing for the next regular Planning Commission meeting on 5 May 2006.

**Yes:** Arnold, Batterton, Caldwell, Daniel, Dunning (moved), McKay, McKelvy, Nelson, Ohrstrom, and Smart (seconded).

**No:** No one

**Absent:** Wade

**TEXT AMENDMENT – SET PUBLIC HEARING**

**The Clarke County Planning Commission will consider the amendment of the County Zoning Ordinance, 3-C-2, Supplementary Regulations for Uses in Various Districts, so as to add the specific regulations for Home Occupations currently listed in the Definitions section of the Zoning Ordinance, clarify these regulations, and to**

- a. limit the number of people at public assembly to 12 for parcels less than 20 acres and 24 for parcels of 20 acres or more;**
- b. require all equipment associated with a home occupation be used and stored within a totally enclosed structure;**
- c. specify that the limits of area and number of employee for home occupations shall not be exceeded regardless of whether there is one or multiple home occupations conducted in the residence; and**
- d. not allow vehicle repair or vehicle towing as a home occupation;**

**and to amend section 9-B, Definitions so as to delete the specific regulations of Home Occupations to shift these regulations to the Supplementary Regulations sections and to specifically state that a home occupation must be conducted by the resident of the home.**  
**TA-06-08**

Mr. Johnston explained this request. He stated a series of issues have developed regarding the enforcement and implementation of home occupation regulations. He said the proposed amendments would shift the extensive regulations for home occupations from the definition section of the ordinance to the supplementary regulations and revises the regulations as described above. The Commissioners agreed to amend the language in Item a to allow up to two non-resident employees regardless of property size and in Item b to limit the number of people at public assembly to 12 and it may be increased to 24 if structure used for public assembly is located 300 feet or more from any property line.

The Planning Commission voted unanimously to recommend to the Clarke County Board of Supervisors the proposed amendments to the following sections of the Clarke County Zoning Ordinance, 3-C-2, Supplementary Regulations for Uses in Various Districts, and 9-B Definitions as amended.

**Yes:** Arnold, Batterton, Caldwell, Daniel, Dunning, McKay, McKelvy, Nelson, Ohrstrom (seconded), and Smart (moved).

**No:** No one

**Absent:** Wade

#### **DISCUSSION OF INACCURATE FINANCIAL DISCLOSURE FOR PLANNING COMMISSIONERS**

Chair McKay stated that the Financial Disclosure statements that were published in the Winchester Star on 2 March 2006 had inaccurate information in them. He stated that the County has the correct information.

#### **VIRGINIA CERTIFIED PLANNING COMMISSIONERS PROGRAM – George Ohrstrom**

Mr. Ohrstrom stated that the course was excellent. He stated he received a book entitled “The Job of the Planning Commissioner” by Albert Solnit which is a great guide for Planning Commissioners. He said he has suggested to staff to order this book for the Commission. He told the Commissioners he highly recommends that they take this course.

#### **REPORTS**

##### **◆Board of Supervisors – Pete Dunning**

Commissioner Dunning discussed briefly the Salvation Army and new High School site issue and that the Board of Supervisors are ready to move on as soon as the Board gets a clear title. He also stated the Board set public hearing for the text amendment regarding the definition of family and also the text amendment regarding dwellings with less than 600 square feet in the AOC and FOC Zoning Districts for the next meeting of the Board on 18 April 2006.

##### **◆Conservation Easement Authority – Pat McKelvy**

Commissioner McKelvy stated Ms. Teetor is working very hard for grant money.

##### **◆Historic Preservation Comm. (third Thursdays of odd months, 9:00 a.m.) – Cliff Nelson**

Commissioner Nelson distributed notices to the Commissioners regarding a reception at the

Clarke County Historical Association Museum, 32 E. Main Street, Berryville, VA on Sunday 23 April 2006 from 3-5 p.m. for a new publication on Civil War markers. He also stated that the next meeting is scheduled for 18 May 2006.

◆Natural Resource Activities – **Alison Teetor**

Ms. Teetor stated that Dave Nelms with United States Geological Survey is coming to the briefing meeting on 2 May 2006 for a ground water study presentation and the Board of Supervisors are invited to attend.

◆Sanitary Authority (second Tuesdays, 10:30 a.m.) - **Alison Teetor**

Nothing to report.

◆Board of Septic & Well Appeals – **Alison Teetor**

Nothing to report.

◆Board of Zoning Appeals - **Jesse Russell**

Mr. Russell stated the next meeting is scheduled for 13 April 2006. He stated there are two public hearings scheduled, one is a variance for a boundary line adjustment and the other one is an appeal of the Zoning Administrators determination that a flagpole is a structure as defined in the Clarke County Zoning Ordinance.

◆Enforcement Officer – **Nancy Olin**

Ms. Olin's progress reports for 1 March thru 31 March 2006 were reviewed. She stated she went to Court yesterday and there was a visiting Judge in attendance that reviewed her files. She said he was very thorough and imposed fines of \$500.00 on junk cars.

There being no further discussion, the meeting was adjourned at 11:04 a.m. until 5 May 2006 at 9:00 a.m.

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**Beverly McKay, Chair**

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**Charles Johnston, Clerk**

Minutes prepared by  
Debra L. Bean  
Recording Secretary