

**CLARKE COUNTY
PLANNING COMMISSION
Minutes
2008 December 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, December 5.

ATTENDANCE

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

STAFF

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

CALL TO ORDER

Chair McKay called the meeting to order at 9:05 a.m.

SCHOOL CONSTRUCTION

Janet Alger, School Board Chairman, introduced Dr. Murphy, School Superintendent and Philip Embury, School Board member, and each gave brief comments on the proposed high school.

Commissioner Dunning thanked them for coming in and informing the Planning Commission on the status of the proposed high school.

APPROVAL OF AGENDA

The Commission voted unanimously to approve the agenda.

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

No: No one

APPROVAL OF MINUTES

The Commission voted unanimously to approve the briefing minutes of November 4.

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

No: No one

Mr. Johnston stated that Henry Day, the attorney representing the County regarding the proposed Berryville Outfall Line, has requested the Planning Commission not to vote on the minutes of November 7 at this meeting in order to allow him time to review the proposed minutes.

The Commission voted unanimously to postpone action on the November 7 minutes until the next regular meeting of the Commission on January 9.

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

No: No one

SPECIAL USE PERMIT - PUBLIC HEARING

Georgetown University (Agent: Ron Mislowsky, P.E.) requests approval of a Special Use and Site Plan for the Calcagnini Contemplative Center, a student/staff educational and religious facility, located at 18715 Blue Ridge Mountain Road, Tax Map #26-((A))-112 & 113, Battletown Magisterial District, zoned Forestal Open-Space Conservation (FOC). SUP-08-01

Mr. Russell explained this request. He stated that the applicant has verbally stated that use will be limited to 80 students plus staff of Georgetown University for twenty-six weekends a year. Mr. Russell stated he recommends postponing action in order to allow the applicant time to address site plan comments from VIEW Engineers.

Ron Mislowsky, PE, of Patton, Harris, Rust and Associates (agent for the applicant) was present and reviewed a site plan of the proposed request to the Planning Commission. He stated that the proposed plan is not to disturb any more earth than is necessary.

Alan Brangman, Georgetown University Architect, was present and stated that the only full time employee will be the caretaker. He said that other full time employees would not be necessary. He stated that most employees would be part-time day workers. He said that this facility would not be open to the public.

Alan Dynerman, project architect with Dynerman Architects, was present and explained the proposal. He stated that there would be twenty-eight rooms with three beds and full baths. He stated that the entire proposed development would be limited to existing cleared land. He said the whole intention of this proposal is to limit the amount of trees that will be taken down. He said there is natural drainage on the property and they would use the existing drainage as much as possible.

After discussion with staff and the Commission, Chair McKay asked for public comments.

Terry Dunphy, adjacent property owner, read a letter she prepared and distributed to the Planning Commission regarding issues with this proposal.

Richard Marks, property owner in the area, stated his concerns regarding this request. He said he is not happy about this facility coming to the mountain. He has concerns with the demolition of the existing house on the property, which is an historic structure. He also said he is unhappy about the increased traffic that this proposed request may cause. He stated that he would like to see the mountain stay as it is.

Tim Boan, representing Carol Haynes property owner on Eagle Rock Lane, expressed concerns regarding this request. He stated no one has contacted her about this request. Mr. Brangman said there have been several meetings with the public. He said he would be happy to visit her at her home and answer her questions.

Doug Whitehouse, President of the Blue Ridge Homeowners Association, was present and stated there has been several meetings with Georgetown. He asked if this is an appropriate activity to be in a residential/agricultural area. He said this is making a precedent, which could look favorable to other entities. He said the association has 120 members.

Mr. Dunning stated that it is the duty of the Planning Commission to protect the citizens. Mr. Johnston stated that this is a school facility, which is allowed as a special use in this zoning district. He stated that

for profit businesses could not operate this facility. He stated that we could ask Bob Mitchell the County's land use attorney, about these issues.

Judy Whitehouse, resident in the area, stated she is not in favor of this request. She said she has concerns with traffic.

Frank Cefalu, resident in area, is in favor of the facility. He feels the complaints are an initial shock of something moving in. He said that the property is not next to him and he may feel different if he lived close to the area.

John Fisher, resident in area, stated his concerns about the future development of retreats.

Linda Martz, resident on Eagle Rock Lane, expressed her concerns regarding traffic and tearing down the existing house. She would like to see the caretaker live there.

Chair McKay encouraged the public to continue to attend the public hearing meetings.

Commissioner Dunning left the meeting.

There being no further public comments, Chair McKay 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 January 9.

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

No: No one

Absent: Dunning

MINOR SUBDIVISION - EXTENTION

Estate of Savannah M. McDonald (Deloris M. Hausenfluck, Agent) is requesting an extension of the recording time for a two-lot subdivision for Tax Map 7-((A))-57, located at 268 Triple J Road, Longmarsh Magisterial District, zoned Agricultural-Open Space-Conservation (AOC). MS-08-07

Mr. Russell explained this request. He stated that this request was approved on May 2 by the Planning Commission on condition that an old private access easement be shown in its proper location. He said due to a disagreement among the heirs of the estate regarding the easement, a court date has been set for January 2009. He stated that due to the unresolved issues the approved plat has not been recorded. He said that the estate of Savannah M. McDonald (Deloris M. Hausenfluck, Agent) is requesting an extension of time to record the survey plat. After discussion with staff and the Commission, Chair McKay called for a motion.

The Commission voted unanimously to extend the recording time of the survey plat until 2009 May 1.

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

No: No one

Absent: Dunning

TEXT AMENDMENT – PUBLIC HEARING

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

1. Section 3-A-1, Schedule of District Regulations of the AOC Zoning District, so as to establish as a Special Use: “Minor Commercial Public Assemblies” for up to 149 people conducted more than six times in a calendar year by a Business Licensed entity;
2. Section 3-A-2, Schedule of District Regulations of the FOC Zoning District, so as to establish as a Special Use: “Minor Commercial Public Assemblies” for up to 149 people conducted more than six times in a calendar year by a Business Licensed entity;
3. Section 3-C-2, Supplementary Regulations, so as to establish regulations for:
 - A. “Public Assemblies” stating: *“The minimum area for a Public Assembly is a parcel, or multiple adjoining parcels of land under the same ownership, of at least six acres, and*
 - B. “Accessory Structures” stating: *“An accessory building (except for agricultural structures and pool houses) shall not contain more than one sink or more than one toilet and no bathing facilities;”*
4. Section 9-B, Definitions, so as to:
 - A. establish a definition for the use: “Minor Commercial Public Assemblies”;
 - B. amend the definition of “Country Inns” so as to increase from 99 to 149 the number of people that could be allowed at a public assembly associated with a Country Inn and;
5. Section 3-D, Allocation of Dwelling Unit Rights as so to insert a new section 3-D-5, “Errors in 1980 Tax Map” that states that the allocation of dwelling unit rights based on the number and size of parcels shown in the 1980 Tax Maps may be changed based on more accurate information recorded with the Clerk of the Circuit Court or surveys of parcels.
6. Section 6-G, Site Plan Contents, and Section 6-H, Site Plan Improvements and Minimum Standards, so as to specify that development activities associated with Site Plans that involve the use of explosives conform to Clarke County Code Chapter 86, Explosives and to encourage xeriscape landscaping practices (use of native plant materials and landscape materials that have low water and nutrient requirements), and to require permanent irrigation systems to use rain catchment systems as their water source. TA-08-08

Mr. Johnston explained this request. Commissioner Steinmetz had concerns about Section 3-C-2, Number 2, regarding accessory structures and what the definition of a bathing facility is. Mr. Johnston stated he would consult with Bob Mitchell and the building official. He stated that this item might be done as a separate amendment. Several Commissioners expressed concerns with Section 6-G regarding xeriscape landscaping practices. The Commissioners were concerned that mandating the exclusive use of rainwater collection systems for irrigation might create an undue hardship that would be a conflict with no watering restrictions during a drought, and that there would be a problem enforcing the replacement of plant material that die as a result of drought.

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

Commissioner McKelvy left the meeting.

The Planning Commission voted unanimously to recommend approval to the Board of Supervisors of items 1, 2, 3A, 4, and 5 above (specifically not including item 3B).

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

No: No one

Absent: Dunning and McKelvy

The Planning Commission voted to recommend approval to the Board of Supervisors of item 6.

Yes: Batterton, Nelson, Smart (moved), Steinmetz, and Wade (seconded)

No: Arnold, Caldwell, McKay, and Ohrstrom

Absent: Dunning and McKelvy

TEXT AMENDMENT – SET PUBLIC HEARING

The Clarke County Planning Commission recommends the amendment of:

the County Zoning Ordinance:

Section 4-K-4-b-5, Change to Another Nonconforming Use, so as to replace the Board of Zoning Appeals with the Board of Supervisors as the entity that decides whether a nonconforming use can be replaced with another nonconforming use;

Section 4-K-6, Uses Eligible for Special Use Permits Not Nonconforming Uses, so as to delete this section;

Section 5-B, Special Use Permit Procedures, so as to state: “A property shall be deemed to have been granted a special use permit for a use if, at the time of the adoption of the ordinance provision permitting that use in the zoning district as a special use, the use was either a permitted use in the district or a legal nonconforming use.”

Section 5-D, Special Use Permit Amendment, so as to state: “A property which has been granted a special use permit for a use, or a property which is deemed to have been granted a special use permit for a use pursuant to section 5-B-5, shall be required to apply for an amended special use permit in the event the use is enlarged or expanded;” and “The procedures for applying for an amended special use permit shall be the same procedures as for special use permit applications as set forth in Section 5-B;”

Section 6-E, Site Plan Procedures, so as to state in part: “A Site Plan shall become null and void if it is not submitted, in a form complying with all conditions established by the Planning Commission, to the Planning Commission Chair and Zoning Administrator for signature within six months from the date of approval by the Planning Commission...;” and to state in part that “An approved final site plan shall be valid for not more than five years, if a final certificate of occupancy has not been issued for the structures shown on the Site Plan...;”

the County Subdivision Ordinance:

Section 1-C-1, Recordation of Plats, so as to add to the section that now says: “A Record Plat shall become null and void if it is not submitted to the Clerk of the Circuit Court of Clarke County for recordation within six months from the date evidencing approval by the Planning Commission.”

the following: “The Commission may approve a longer period before recordation is required.

The owner of the property being subdivided must submit a written request to the Zoning Administrator for such longer period within six months of the date of the Commission’s original approval.” TA-08-09

Mr. Johnston explained this request. He stated that the proposed amendment addresses issues with Nonconforming Uses, Special Uses, and time limits on the approvals of Site Plans, and Subdivisions. After discussion with staff and the Commission, Chair McKay called for a motion.

The Commission voted to set public hearing for this amendment for January 9.

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

No: No one

Absent: Dunning, and McKelvy

REQUEST FOR COMMENTS / DISCUSSION

Long term Plan for Clermont Farm – Robert Steig, Executive Director, Clermont Farm Trust

Mr. Steig stated that due to the length of the meeting today, he would like to return on the January 9 Planning Commission meeting to discuss the long-term plan for Clermont Farm. Chair McKay stated that due to his patience today, he would put him at the top of the agenda for the January 9 meeting.

Commissioner Ohrstrom left the meeting.

REPORTS

Board of Supervisors – **Pete Dunning**

Mr. Johnston stated that the Board approved the text amendment Sections 3-A-1-a, 3-A-2-a, 3-A-3-a, 3-A-12-a, and 3-A-13-a regarding 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 an Accessory Use and such turbines taller than 100 feet as a Special Use and also Section 9-B-2, Definitions, so as to add the definitions for Small Wind Energy Systems and Wind Turbines at the Board meeting on November 18.

Sanitary Authority – **Pete Dunning**

Nothing to report.

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

Ms. Teetor stated that there was a meeting held on November 19 regarding an appeal of the Natural Resource Planner's determination regarding a setback between a well and a building foundation on property owned by Irvin F. Barb. She stated that the request was denied.

Board of Zoning Appeals – **Anne Caldwell**

Nothing to report.

Historic Preservation Commission – **Cliff Nelson**

Commissioner Nelson stated that the Commission met at Clermont Farm on November 25. He said that Maral Kalbian reported that inclusion of the Bear's Den Rural Historic Register on the National Register of Historic Places is anticipated in the near future. He said the next meeting of the Commission is scheduled for January 27.

Conservation Easement Authority – **Pat McKelvy**

Nothing to report.

Natural Resource Activities – **Alison Teetor and Jesse Russell**

Ms. Teetor stated that the amendment of the Clarke County Code, Chapter 148, Soil Erosion and Sedimentation Control, so as to update this section and bring it into conformance with the Code of Virginia will go to the Board of Supervisors for a public hearing on December 16.

Enforcement Officer – **Nancy Olin**

Ms. Olin's progress reports for October 30 thru December 1 were reviewed. Commissioner Wade complimented Ms. Olin on reducing the amount of violations in the County.

Other

Mr. Johnston stated that PATH is proposing to put a transmission line in the northern most tip of the County. He stated that this line would cross the county by approximately 1000 feet affecting two property owners in Clarke County. He said this transmission line is proposed to run from Charleston, West Virginia to a southern County in Maryland.

There being no further discussion to come before the Planning Commission, the meeting was adjourned at 12:14 p.m. until the next regular meeting of the Commission on January 9.

Beverly B. McKay, Chair

Charles Johnston, Clerk to the Commission

Minutes prepared by
Debra L. Bean, Recording Secretary