

Clarke County

Planning Commission Regular Meeting Minutes September 6, 2013



A regular meeting of the Planning Commission of Clarke County, Virginia, was held at the Berryville/Clarke County Government Center, Berryville, Virginia, on Friday, September 6, 2013.

ATTENDANCE

George L. Ohrstrom, II, Chair; Anne Caldwell, Vice Chair; Robina Bouffault, Scott Kreider, Tom McFillen, Cliff Nelson, John Staelin, Chip Steinmetz, and Jon Turkel.

ABSENT

Clay Brumback and Doug Kruhm

STAFF

Brandon Stidham, Planning Director; Jesse Russell, Zoning Administrator; Alison Teetor, Natural Resource Planner and Debbie Bean, Recording Secretary.

CALLED TO ORDER

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

APPROVAL OF AGENDA

The Commission voted to approve the agenda.

Yes: Bouffault, Caldwell, Kreider, McFillen, Nelson (moved), Ohrstrom, Staelin, Steinmetz and Turkel (seconded)

No: No one

Absent: Brumback and Kruhm

APPROVAL OF MINUTES

The Commission voted to approve the regular meeting minutes of June 7, 2013.

Yes: Bouffault (moved), Caldwell (seconded), Kreider, McFillen, Nelson, Staelin, Steinmetz and Turkel

No: No one

Absent: Brumback and Kruhm

Abstain: Ohrstrom

The Commission voted to approve the briefing meeting minutes of July 9, 2013.

Yes: Bouffault (moved), Caldwell, Kreider, Nelson (seconded), Ohrstrom, Staelin, Steinmetz and Turkel

No: No one

Absent: Brumback and Kruhm

Abstain: McFillen

The Commission voted to approve the regular meeting minutes of July 12, 2013 with corrections.

Yes: Bouffault, Caldwell (moved), Nelson (seconded), Ohrstrom and Steinmetz

No: No one

Absent: Brumback and Kruhm

Abstained: Kreider, McFillen, Staelin and Turkel

Schedule Public Hearing Items

SPECIAL USE / SITE PLAN (SUP-13-02/SP-13-08) – SET PUBLIC HEARING

Gina Schaecher (Happy Tails Development, LLC) requests approval of a Special Use and Site Plan for constructing a kennel for boarding and training dogs for private individuals. The property is identified as Tax Map #20-2-9, located in the 300 block of Bellevue Lane in the White Post Election District and is zoned Agricultural Open-Space Conservation (AOC).

Mr. Russell explained this request. He stated that the subject property is zoned AOC which allows for kennels as a special use. He said that the property is located approximately 2 miles west of Boyce on Rt. 723 and is accessed through Bellevue Lane. He stated that Bellevue Lane was previously approved by VDOT and constructed to minor commercial entrance standards. He said that no further review is required by VDOT. He stated that the proposed kennel will be totally enclosed in a structure that mimics typical agricultural structures and will cover approximately 3,200 sq. ft. of floor area. He said that the kennel will contain 20 dog runs with the possibility of having 2 dogs per run. He said that the applicant trains dogs for clients and houses the dogs for a 30 day training period. He stated that the dogs will be exercised outdoors with a handler but the dogs will not have independent access to the outdoors. Mr. Russell said that the outdoor areas will consist of 4 training paddocks, a covered play area, a rear yard and two paddocks for farm animals. He said that zoning requires that indoor kennels be a minimum of 200 feet from property lines. He said that the applicant is proposing a second story 1-bedroom apartment over the kennel which will be used for a kennel employee. He said that the property is held in conservation easement with the Virginia Outdoor Foundation (VOF).

Mr. Russell said that at the briefing meeting on Tuesday the Commission had questions on a number of items. He said that he and Mr. Stidham sat down and made a list of these questions and that he is now prepared to go over them at this time.

1) **Conservation Easement conflict:** The conservation deed of easement restrictions on the property in question prohibits all commercial activities other than “agriculture, viticulture, aquaculture, silviculture, horticulture and equine activities. The Code of Virginia Title 3.2 states that dogs are not considered “agriculture animals” but “companion animals” (3.2-6500). A commercial dog training kennel is not considered an agricultural activity, and should therefore not be allowed on this property. Has the current owner made the applicant aware of this restriction? Mr. Russell stated that the property is under easement with the Virginia Outdoors Foundation and he is expecting a letter from the organization stating that a kennel operation is allowed under the easement.

2) **Septic System:** The septic system approval is for residential only, for a maximum of 5 people (1 live-in employee plus 4 trainers). The septic system does not appear to be approved for the additional people it would normally have in addition to the 4 trainers. A commercial dog kennel would normally have additional people. Wouldn't a commercial septic permit normally be required to encompass more people? Gina Schaecher, the applicant, was present and stated that they plan to hook up to a pump and haul.

3) **Drainfields:** The County Zoning Ordinance (section 3 page 59) states that: “A breeding kennel or Commercial Boarding Kennel is allowed only as an accessory use to a single family detached dwelling.” He said that the applicant will presumably be building a home in addition to the kennel. He stated that there may be only one perk site location suitable for a drainfield that had been identified (one plus reserve) by a former owner. Has the applicant already identified another drainfield (plus reserve) for the main house, and if so, can it be identified on the site plan? Ms. Schaecher stated that she does not intend to build a home on the property at this time. Mr. Russell stated that the apartment is considered a single family dwelling because the ordinance defines “attached” housing as residential dwellings sharing a common wall. He said the single development right for the property would allow for a dwelling to be constructed at a later date as long as the apartment above the kennel has 600 square feet or less of space. He stated that he would obtain an opinion from the County attorney on that interpretation.

4) **Distances:** The County Zoning Ordinance 3-C-2-kk pt.3 states that “areas of confinement not fully enclosed (such as dog runs) shall be at least 500 ft. from any property line.” Mr. Russell stated that the kennel will be located on 91.35 acres and approximately 501 feet from the northeastern property line, 596 feet from the northwestern property line, 1111 feet from the southeastern property line, 900 feet from the eastern property line and over 1300 feet from Rt. 723.

5) **Water Well:** The existing water well is shown as being located alongside the outside yard areas containing not only dogs, but sheep and chickens as well. Wouldn't the close proximity to animal waste be considered as a contaminating factor for a commercial use well? Alison Teetor, Natural Resource Planner was present and stated that there is nothing in the State Ordinance nor the County Ordinance that states there is a setback for wells from animal pens. Mr. Russell stated that the area of concern is the paddock areas and since this is a special use permit it would have conditions with approval.

6) **Additional Dogs:** The applicant currently possesses a number of personal dogs. Would they be in addition to the 40 kennel dogs, and would they have the run of the property? Ms. Schaecher stated that her personal dogs will be at home and not the facility. She said when the dogs are outside in the pens they are never left alone for any length of time. She said the dogs will always be with an attendant.

Mr. Russell stated that according to the Zoning Ordinance the hours of operation for kennels and shelters shall not be earlier than 7:00 a.m. or later than 9:00 p.m. He said that in all cases companion animals shall be confined in an enclosed building from 9:00 p.m. until 6:00 a.m.

Ms. Schaecher stated that she would like to have a place in the facility to sell craft items made by local artists which will be animal themed. She said if this presents a problem with the Special Use Permit/Site Plan approval she would not do it. Ms. Schaecher said there will be a resident manager that will be living in the apartment. She said that she would like to retain the right to build a house if she would want to at a later date. She stated that she is planning to have a get together with adjoining property owners so she can answer any questions they may have about this request.

Commissioner Bouffault stated she would prefer to wait before setting the public hearing until such time that all the questions can be answered.

After discussion with staff and the Commission, Chair Ohrstrom called for a motion.

The Commission voted to postpone action on this request until such time that all outstanding questions can be resolved.

Yes: Bouffault (moved), Caldwell, Kreider (seconded), McFillen, Nelson, Ohrstrom, Staelin, Steinmetz and Turkel

No: No one

Absent: Brumback and Kruhm

ZONING ORDINANCE TEXT AMENDMENT (TA-13-01) – SET PUBLIC HEARING

Proposed text amendment to amend section, §3-A-1-b-(3), Maximum Lot Size Exception Criteria of the Clarke County Zoning Ordinance. This section of the ordinance provides for a maximum lot size exception if the parcel has been placed in conservation easement. The purpose of the text amendment is to require a property owner to retire at least one (1) dwelling unit right (DUR) if the property is being placed in easement in order to qualify for a maximum lot size exception.

Mr. Stidham explained this item. He said that the proposed text amendment is being forwarded to the Planning Commission at the request of the Conservation Easement Authority (CEA). He stated that at their May 15, 2013 meeting the CEA expressed interest in strengthening the requirements allowing maximum lot size exceptions (MLSE) for properties in easement. He said that the members were concerned that property owners could subdivide their property without retiring any dwelling unit rights (DUR), thereby circumventing the intent of the ordinance to maintain large residual lots for agricultural purposes. He stated that to address the CEA's concerns, Planning Staff drafted the proposed text amendment to require retirement of at least 1 DUR for properties being placed in easement with the County for the purpose of qualifying for a MLSE. He said if adopted, the new provision would apply to all properties placed in conservation easement with the CEA after the adoption date. He stated that this amendment would not apply to other entities holding easements in the County. Mr. Stidham said that Bob Mitchell, County attorney has reviewed the proposed amendment and has no concerns with its adoption. He said that the CEA reviewed the text amendment at their meeting on July 17, 2013 and voted unanimously to recommend the Planning Commission to consider the proposed amendment. After discussion with staff and the Commission, Chair Ohrstrom called for a motion.

The Commission voted unanimously to set public hearing on this request for the October 4, 2013 Planning Commission meeting.

Yes: Bouffault, Caldwell (moved), Kreider, McFillen, Nelson (seconded), Ohrstrom, Staelin, Steinmetz and Turkel

No: No one

Absent: Brumback and Kruhm

2013 Clarke County Comprehensive Plan and 2013 Clarke County Transportation Plan – SET PUBLIC HEARING

Mr. Stidham stated that at the briefing meeting on Tuesday, staff and the Commission reviewed the Draft 2013 Clarke County Comprehensive Plan and the 2013 Draft Clarke County Transportation Plan. He said that at the meeting they considered several dates for setting the public hearing. Mr. Stidham said that two public hearings will be held because there are two items to consider. Chair Ohrstrom and Vice Chair Caldwell thanked Mr. Stidham for his hard work and commitment on this project. After discussion with staff and the Commission, Chair Ohrstrom called for a motion.

The Planning Commission voted unanimously to set public hearing on this request for October 17, 2013 at 7:00 p.m.

Yes: Bouffault, Caldwell (moved), Kreider, McFillen (seconded), Nelson, Ohrstrom, Staelin, Steinmetz and Turkel

No: No one

Absent: Brumback and Kruhm

Board/Committee Reports

Board of Supervisors (John Staelin)

Commissioner Staelin stated that the public hearing for the Blue Ridge Wildlife Center is scheduled for the next BOS meeting on September 18, 2013.

Sanitary Authority (John Staelin)

Commissioner Staelin stated that in reference to the proposed subdivision in Boyce the water and sewer line easements would go through the Boyce Elementary School property. He stated that the BOS as owners of the property would have to approve these easements.

Board of Septic & Well Appeals (John Staelin)

Ms. Teetor stated that she is expecting two variance applications to be submitted this month.

Board of Zoning Appeals (Anne Caldwell)

Vice Chair Caldwell stated that James Corbalis, III filed an application appealing the Zoning Administrator's determination that an exemption (dwelling) did not exist on the property located at 1531 Springbury Road as of October 17, 1980. She said that the BZA held a public hearing on July 30, 2013 and the BZA upheld the Zoning Administrator's determination.

Historic Preservation Commission (Douglas Kruhm)

No report.

Conservation Easement Authority (George Ohrstrom, II)

Ms. Teetor stated that the CEA will be happy that the Planning Commission set the public hearing today on the Text Amendment regarding the maximum lot size exception criteria of the Zoning Ordinance.

Other Business

Discussion, Regulating Berms (Earthen Embankments)

Mr. Stidham stated that this is a continued discussion of establishing design criteria for the construction of berms/earthen embankments. He said this item was last discussed at the Commission's April 5th meeting. He stated that at the last meeting one issue raised by Staff and discussed by the Commissioners was the desire to provide design flexibility in the draft regulations. He stated that flexibility would be necessary in the event that a taller berm or one located outside the setback line was necessary for storm-water management purposes, or if adjoining property owners agreed to the design standard deviation. He said that one approach that was discussed was a process that would allow the Commission to waive certain design criteria, or allow the criteria to be reduced in conjunction with the Commission's review of a site plan or subdivision plat. Staff was concerned about whether a waiver/deviation process could

be legally established as it is very similar to a variance which, per the Code of Virginia, can only be granted by a Board of Zoning Appeals or the Zoning Administrator based on a standard of "strict hardship." Staff consulted with County Attorney Bob Mitchell on this issue and he stated that recent case law indicates that Planning Commissions cannot be delegated this authority through a Zoning Ordinance provision. After discussion with staff and the Commission concluded that there is no need to move further with this item.

Discussion, Height of Telecommunications Towers

Mr. Russell stated that the Planning Department has had 3 separate inquiries regarding installation of monopoles. Two of these inquiries were from Verizon and one was from AT&T. He said that AT&T had no objection to our 100 ft. maximum height limitation. He stated that Verizon has been exploring possible sites off of Rt. 340 and along Rt. 7. He said that in both of the Verizon sites, Verizon had stated that they could not work within our maximum height limits for monopoles and would require a minimum of a 130' telecommunication structure. He stated that Verizon has not provided the engineering to show coverage for a 100 ft. monopole versus a 130 ft. monopole, yet they have been adamant that a minimum of 130 ft. would be necessary to provide the coverage needed. He said that the Planning Department is not an expert in telecommunication engineering, but we may need to get expert advice in what is occurring today, what we can expect for tomorrow and is there a need to revise our ordinance to keep up with the growing demand of coverage that is needed by individuals using handheld devices. He stated that staff recommends that the Planning Commission create a special telecommunications committee to study the current telecommunication science as it relates to telecommunication transmission structures and our current County ordinance.

Mr. Russell stated that Nader Nawab, consultant for Verizon Wireless is present today to talk to the Planning Commission. Mr. Nawab told the Commission that a federal mandate requires carriers to provide a mechanism for triangulating E-911 calls. He stated with that issue and the current crowding of airwaves due to the proliferation of hand-held devices means towers must be taller, or more numerous. He said that Verizon is considering erecting four more towers in Clarke County and they want to see the County allow 130 to 150 foot towers.

Chair Ohrstrom discussed with the Planning Commission the idea of selecting a telecommunication committee to review the concerns regarding the height of monopoles. The Commission selected Jon Turkel, John Staelin, Richard Thuss and Frank Sterns to be on the committee.

There being no further discussion, the meeting was adjourned at 10:35 a.m. until the next regular meeting of the Commission on October 4, 2013.



George L. Ohrstrom, II, Chair



Brandon Stidham, Director of Planning

Minutes prepared by Debbie Bean, Recording Secretary