

Clarke County Planning Commission

MINUTES – Work Session

Tuesday, May 30, 2023 – 3:00PM

Berryville/Clarke County Government Center – Main Meeting Room

ATTENDANCE:			
George L. Ohrstrom, II (Chair/Russell)	X	Ronnie “Ron” King (Buckmarsh)	✓
Randy Buckley (Vice-Chair/White Post)	✓	Scott Kreider (Buckmarsh)	✓
Terri Catlett (Board of Supervisors)	✓	Frank Lee (Berryville)	✓
Buster Dunning (White Post)	✓	Gwendolyn Malone (Berryville)	✓
Robert Glover (Millwood)	✓ ^E	John Staelin (Millwood)	✓
Pearce Hunt (Russell)	✓	Doug Lawrence (BOS alternate)	X

^E – Denotes electronic participation

STAFF PRESENT: Brandon Stidham (Director of Planning), Kristina Maddox (Office Manager / Zoning Officer), Lorien Lemmon (Preservation Planner / GIS Coordinator), Chris Boies (County Administrator)

OTHERS PRESENT: John Foote (Walsh Colucci Lubeley & Walsh PC)

CALL TO ORDER: By Vice Chair Buckley at 3:00PM.

1. Approval of Agenda

The Commission had no additions to the agenda as presented by Staff.

2. Review of June 2 Business Meeting Agenda Items

A. Agenda Review

Mr. Stidham said there are two sets of meeting minutes to review and noted minor typographical corrections in the Work Session minutes on page 10 and page 12. A copy of the corrections was provided by Staff.

Mr. Stidham said there is a public hearing scheduled for the Business Meeting regarding campground regulations and noted that Watermelon Park indicated they wish to expand the number of RV sites. He said they would not be able to amend their current special use permit should the text amendment be adopted before their application is submitted. He said if the amendment is adopted as proposed, it would ban all new commercial campgrounds from being developed and would limit expansion of existing campgrounds as non-conforming uses.

Commissioner Staelin noted that pending applications impacted by proposed text amendments have been treated in two ways with one being to allow in-process applications to comply with the previous regulations. He said the County has followed the second approach in the past to apply newly adopted text amendment regulations to pending applications, adding that this was used previously in the Salvation Army subdivision case. He said he thinks we need a written policy so we have a clear understanding of which method to use. He noted that he does not have a preference but said that some

would prefer the option of being able to change the ordinance if something is applied for that was not previously contemplated. He also said that whichever policy is chosen should be applied consistently every time. Mr. Stidham said the matter could be reviewed by the Ordinances Committee or the Policy & Transportation Committee. There were no further comments or feedback from the Commission.

Mr. Stidham reviewed the Staff Report on minor subdivision and maximum lot size exception of MS-23-06/MLSE-23-02, Belinda Burwell & James Klenkar. He noted that the Health Department did not provide comments since septic approval is not required given the new lot is over 40 acres in size. He continued that the maximum lot size exception is based on the fact that the property is under Virginia Outdoor Foundation (VOF) conservation easement. VOF staff has revised the application and recommended revisions to which the applicant has agreed. He said that the application meets all requirements and that Staff recommends approval. There were no questions or comments from the Commission.

Mr. Stidham reviewed the Staff Report on the conditional rezoning application submitted by Rappahannock Electric Cooperative (REC)/Virginia Port Authority. He said this property was designated by the Virginia General Assembly for economic development purposes through the State's ownership in cooperation with Clarke County. He said the applicant is proposing to rezone the property to Highway Commercial and Highway Access Corridor Overlay District subject to property conditions. He added that the purpose would be to develop a new regional office for REC and the use would be a public utility facility per Section 5.2 of the Facility Ordinance.

Mr. Stidham said conditional zoning is a tool that is operated and authorized by the Code of Virginia that allows a locality to rezone a property from one zoning district to another subject to certain conditions that are proffered voluntarily by the applicant. He said these are conditions that are for the protection of the community and are not generally applicable to land similarly zoned and are unique to the property. He said that with conditional zoning the applicant has to provide proffers voluntarily and explained that the Code of Virginia has limitations on what can be proffered by an applicant and also on what the locality can accept from the applicant.

Mr. Stidham said the rezoning itself must give rise to the need for the conditions and has to bear some sort of relationship to the impacts of the proposed rezoning and should not include a cash contribution to the locality unless the locality is authorized to accept cash proffers. Mr. Stidham said that Clarke County is authorized to accept cash proffers as they have met their threshold of at least 5% population growth from the 2010 to the 2020 census.

Mr. Stidham said the Commission's review must be based on the potential impacts that would be generated by the proposed development and the degree to which the applicant chose to address the impacts through the proffer conditions. He said the proffers must be submitted in writing prior to the advertised public hearing and in accordance with Zoning Ordinance submission deadlines. He added that conditional zoning applications do not require submission of a site development plan but are required to submit a survey of the property that shows which portion of the property is going to be rezoned and in this particular case the applicant wishes to rezone the entire 65 acres. He said the applicant has included a concept development plan and has proffered that it would govern the overall development of the property. He added that if the conditional zoning is approved, the applicant will then file the application for the site development approval and also go through the Historic Preservation Commission to obtain a certificate of appropriateness.

Mr. Stidham reviewed the uses of the facility, proffered conditions submitted by the applicant, and the availability of public water and sewer by Frederick County. He said the applicant's projected plan timeline for development is approximately five-to-seven years which allows plenty of time as the county and Frederick County are in the process of working on those details. He said their proffer language states that they are prepared to potentially use a well and septic system should public water and sewer not be available.

Mr. Stidham said the application was deemed complete when it was submitted on May 5, 2023 and has sufficient information that would warrant scheduling a public hearing in the July Business Meeting. There were no questions or comments from the Commission.

John Foote (Walsh Colucci Lubeley & Walsh PC) presented on behalf of the applicant. He reviewed the layout of the facility to include an auditorium to be used for training purposes and assemblies solely for REC, the parking areas, stormwater management pond, indoor vehicle storage, a mobile substation, a wash area bay, communication tower, above-ground fuel storage tanks, and a lay down area to have a place to put the coils of wire and poles. He said conditional zoning is not simply a question of mitigation of impact, but also a method of securing what the use will be. He continued that while there may be some site plan obligations, that if REC has any major deviations from the current plans that they will have to come before the Commission and Board of Supervisors to make those modifications. He continued that REC is coming before the Commission and Board of Supervisors now during the site plan stage as a lot of final decision-making has to be made at this time.

Mr. Foote said they are aware of the agreement made between the county and Frederick County in April of last year and that they are also aware that how they will get water and sewer to the location is yet to be determined. He said fortunately there are five to seven years to figure that out and noted a provision in the proffers to consider an alternative system for well and septic. He said they also proposed an alternative to have the opportunity to enter into an agreement with other residents in the area who are also in need of the sewer and water extension to share the cost.

Mr. Foote said he received Maral Kalbian's comments a few days prior but noted that REC will work with an appropriate architect regarding her concerns and comments.

Mr. Foote said the double-wall fuel tanks will be located at the filling station and will be above ground as REC believes they are superior to and safer than buried tanks.

Mr. Foote said the sixty-foot tall monopole will be as unobtrusive as possible and that Staff concludes that it is an accessory use to the facility.

Commissioner Staelin asked if the vehicles and machinery would be registered in the county. Mr. Foote replied that the vehicles would be registered in Clarke but he would have to double-check on the machinery. Commissioner Staelin asked if they were aware of the rules regarding the waste water from the wash area. Mr. Foote replied that oil separators were added to the process. Commissioner Staelin asked about the standards for fuel tank safety to which Mr. Foote replied that it would be a secure and fenced-in facility.

Commissioner Lee noted that the initial VDOT recommendation was that the entrance be located on a different road and asked if that would be a problem if required. Mr. Foote said they are willing to do

whatever VDOT requires. Commissioner Lee asked about the visual appeal of the materials and storage to which Mr. Foote replied he would talk to their team about that.

B. Status of Deferred Applications

Mr. Stidham reviewed the status of deferred applications including the Horus Virginia solar power plant application which was previously deferred however the applicant believes it will move forward in July.

Mr. Stidham commented that the applicants of the Bullard campground special use permit application are trying to decide whether they want to move forward with the application and may withdraw their application.

Mr. Stidham added there is another minor subdivision with a maximum lot size exception application on Pyletown Road.

3. Old Business – None Scheduled

4. New Business

A. Component Plan 5 Year Review Resolutions

a. Historic Resources Plan

b. Water Resources Plan

Mr. Stidham said the Commission reviews the component plans every five years to determine whether it is advisable to initiate an update of those plans or whether the Commission is comfortable with the status of the plans. He said with the exception of the Mountain Land Plan, the Commission has gone through at least one or two five year reviews. He said Staff is not recommending to initiate a review and update as both plans underwent significant reviews in 2018 and that both remain applicable and consistent with the recently adopted 2022 Comprehensive Plan. He added that the Historic Preservation Commission and Easement Authority Specialist were consulted and did not have additional recommendations and that the next review timeframe would be June 28, 2028. There were no questions from the Commission.

B. Discussion, Maximum lot size exception regulations text amendment (TA-23-02)

Mr. Stidham said that when the Ordinances Committee reviewed the last text amendment in October, they decided it would be a good time to clean up and clarify wording. He said the language that will be added specifically addresses the policy issues in general as outlined in subsection two. He summarized the first sentence to say that if a lot with a dwelling in existence prior to October 17, 1980 and recognized as a farmstead or tenant house, it may be subdivided with a maximum lot size exception. He said one policy question that was raised previously is whether a lot should be eligible for a maximum lot size exception if the qualified dwelling was demolished any time after October 17, 1980 and a new home was later constructed in its place. He said while the current language would prohibit this, the new language in subsection 2B would allow it.

Mr. Stidham noted several edits to subsection 3, in particular the first sentence which was difficult to read. He noted addition of the word “permanent” to “conservation easement” as an applicant could propose a MLSE on a lot in a conservation easement only for a fixed term of years. He said language was added at the end of subsection A that says when there is a proposed subdivision that involves an easement holder other than Clarke County Easement Authority, the maximum lot size exception recommendation will be based on the easement holder.

Mr. Stidham said there were extensive edits on subsection 4 to clear up language but there were no overall changes.

The Commission agreed to add this text amendment to the Business Meeting agenda to set public hearing. There were no questions or comments from the Commission.

C. Discussion, Farm winery/farm brewery/farm distillery regulations text amendment (TA-23-03)

Mr. Stidham summarized the text amendment changes and said that overall the updates help to ensure the safety or welfare of the public and is in alignment with the updated Code changes made by the General Assembly. He said the changes by the General Assembly added protections for these types of agricultural operations by right. He continued that the overall objective of the interpretation is to allow agricultural operations to conduct their core functions of growing agricultural products and producing beverages without allowing an operation to become an event and entertainment destination unless there is an approved special use permit. He continued that under the general requirements, there will be new zoning permit requirements, Health Department approvals required, and potentially VDOT entrance approval. He said the new language will also require the operation to go to the Department of Environmental Quality (DEQ) to obtain an approved stormwater plan or a letter from DEQ stating that a stormwater plan is not required. He said that additional requirements include providing proof that the agricultural operation will be conducted as such, proof that an ABC license has been filed, and any other pertinent information needed for the Zoning Administrator including site sketches or supplementary information that may be unique to the application. Additionally, he said the minimum lot size requirement will be five acres which is the same requirement for agricultural operations to be eligible for land use value assessment for tax purposes. He added that if an agricultural lot contains a house, the minimum lot size is six acres for the property to qualify for land use taxation.

Mr. Stidham reviewed the use regulations that only apply if there are public operations to include hours of operation, dark sky requirements, sediment control and stormwater management plans, live music and entertainment regulations including a 300-foot setback from all property lines from any building conducting live music entertainment. He added that any live music is prohibited after 6:00PM. He continued that if the operation is for the public, it must have an access road for the public to use and must not be a shared driveway or private access easement. Mr. Stidham said that these regulations would be the base rules and would have precedence over previous rules for any agritourism permits.

Mr. Stidham reviewed a list of prohibited activities including retail sale of merchandise not related to wine, beer, or alcoholic beverages; minor commercial public assembly activities such as weddings, parties, and private meetings; personal services such as spa and beauty services; educational and recreational classes; and amusement devices such as motorized go karts, ATVs, hot air balloons, or

helicopters. He added that the camping text amendment would apply to any overnight and camping accommodations.

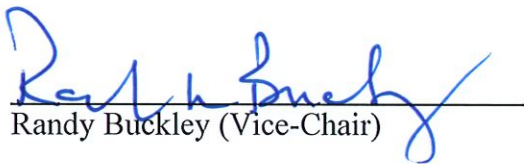
Mr. Stidham asked if the Commission had any questions and if they were comfortable with adding the text amendment to the Business Meeting agenda. Vice Chair Buckley asked if the section on page 16 titled "Additional General Requirements" also considers contiguous parcels. Mr. Stidham replied yes.

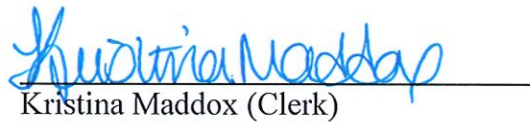
Commissioner Staelin asked if hops could be grown in Clarke County. Mr. Stidham replied that he was uncertain.

The Commission agreed to add this text amendment to the Business Meeting agenda to set public hearing.

ADJOURN

The Work Session adjourned by consensus at 4:10PM.


Randy Buckley (Vice-Chair)


Kristina Maddox (Clerk)