



1) *Call to Order*

Chairman Weiss called the meeting to order at 1:01 pm.

2) *Adoption of Agenda*

- Add “Update on Proposed Rezoning of Friant Property by Brandon Stidham” as item 14A.

**Supervisor McKay moved to adopt the agenda as amended. The motion carried by the following vote:**

|                  |   |        |
|------------------|---|--------|
| Matthew E. Bass  | - | Absent |
| Terri T. Catlett | - | Aye    |
| Doug M. Lawrence | - | Aye    |
| Beverly B. McKay | - | Aye    |
| David S. Weiss   | - | Aye    |

3) *Citizen’s Comment Period*

No persons appeared to address the Board.

4) *VDOT Update*

Residency Administrator Ed Carter provided the following update for the month of September:

Maintenance Matters:

- Completed fence-to-fence secondary mowing; scheduled to start fence-to-fence primary mowing October 15, which is beyond the butterfly habitat restrictions.
- Conducted patching operations on Rt 608 and pipe installations on Rt 601, Rt 621, Rt 608, & Rt 644.
- Performed ditching and shoulder repairs on Rt 604, Rt 609, Rt 608, and Rt 644.
- Cleaned out pipes and repaired potholes on various other routes.

- Trimmed trees on Ellerslie Road and will continue this month.
- Will begin fall grading cycle and stone application on stabilized routes this month.

**Board Matters:**

- Completed excavation and sight distance improvements on Route 7 west at Route 612 (Shepherds Mill Road). VDOT will monitor that intersection for several months. If there is not a significant reduction in accidents, VDOT will proceed with an RCUT at the crossover.
- Did significant trimming on Route 50 east at the Appalachian Trail to provide sight distance for hikers crossing the road. VDOT has updated the signage package for this crossing and the one on Route 7. These signs have been ordered and will be installed when received.
- Repairing the slide on Tilthammer Mill Road at the creek. The road is closed during the day and reopened at night, though emergency vehicles and school busses are allowed to pass through during the daytime.
- VDOT is prepared to move forward with the placement of speed tables – an elongated, raised pavement area – on a pilot trial in the Millwood Community. This traffic calming measure has been suggested by some members of the community. Speed tables would be installed at the beginning of the community at all four locations, along with additional paint markings to warn motorists that they are entering a community. For VDOT to proceed, the Board will have to provide its endorsement.
- For reference, there is a similar speed table on Route 50 in Upperville. This is different from a speed hump; trailers and cars with low clearance are able pass over them easily and they can be easily maintained over the winter.

**Supervisor McKay**

- Asked if the speed tables would be safe for people on motorcycles.
  - o Ed Carter replied that they will be well-marked, ample warnings provided, and speed tables are only appropriate in areas that are 35mph or less. He added that there is no way to build anything that will accommodate people who want to speed.

**Vice Chair Catlett**

- Shared that the traffic sub-committee for the Millwood Community is enthusiastic about this idea but they have not yet spoken with the larger community group about it.

**Chairman Weiss**

- Suggested that the Board not take any action until receiving input directly from the Millwood citizens.

Ed Carter continued his update:

- The crew working at the bridge on Swift Shoals Road had to call an engineer out to the site after removing the deck. To make sure the bridge support was adequate; the engineer had to make some changes. The completion date for that project is extended to October 12. The road will be closed until it is finished.

#### Supervisor Lawrence

- Advised that a resident on Moose Road is requesting a larger speed limit sign, because the current one is covered and not visible.
  - Ed Carter advised that VDOT could cut the brush back to improve visibility.
- Observed that the US 340 closure to repair the rockslide near Harpers Ferry has reduced the amount of truck traffic in Berryville.
  - Ed Carter added that VDOT is monitoring traffic at intersections and can change the timing if necessary. So far, there do not seem to be any adverse effects.

Supervisor Bass entered the meeting at 1:14 pm.

#### Chairman Weiss

- Suggested keeping a close eye on Shepherds Mill Road traffic, because there is a noticeable increase there.
  - Chris Boies added that, as much as they are able to, the Sheriff's Office has been dedicating a deputy to Shepherds Mill Road during commuter times.
- Stated that the paving work on Route 7 left a significant ridge at the intersection with Hawthorne Road.
  - Ed Carter responded that it would be corrected before the end of the re-paving project.
- Questioned how to help the public understand if VDOT determines that an RCUT is necessary at the Shepherds Mill Road crossover.
  - Ed Carter answered that VDOT considered the public's response and would move the U-turn down to the next intersection, as requested. VDOT would also hold a public forum with drawings, diagrams, and explanations if the RCUT were needed. Further evaluation and discussions between VDOT, the Board, and the citizens would happen prior to that determination.

## 5) *Commissioner of the Revenue & Reassessment Update*

Donna Peake, Commissioner of the Revenue, advised that the upcoming reassessment will be conducted by Wampler-Eanes Appraisal Group and introduced President Steve Wampler, who presented the following:

- Located in Daleville, Virginia, Wampler-Eanes has completed 142 reassessments in Virginia and North Carolina and have appraised over two million pieces of property to date.
- This will be the fifth reassessment Wampler-Eanes has been involved with in Clarke County, and Ethan Andrews will be the Field Supervisor.
- The state just calculated the sales ratio for Clarke County at about 71%, which indicates that property values are going to be increasing.
- Fauquier County was reassessed in 2022, and their values increased about 22%, while Shenandoah County increased 29%. Increases elsewhere include Isle of Wight County 22.1%, Amelia County 39%, Campbell County 33%, King and Queen County 31%, Mathews County 26%, Montgomery County 35%.
- The real estate market may be stable and houses might not be selling as quickly as they were, but there is no decline in the market across the state.
- Staff will pick up sales information from the Commissioner of the Revenue today and will likely start fieldwork after Thanksgiving.
- With the help of the Public Information Officer, staff will put out a press release to notify the public of the process.

### Supervisor McKay

- Asked if assessors will be going onto every property in the county.
  - Mr. Wampler answered that they will be going on to properties. To facilitate this, they will be sending a mailer asking property owners to set appointments.

### Supervisor Lawrence

- Shared that the neighboring Summit Point Motorsports Park in West Virginia affects property values in his district and suggested that assessors visit some of these properties on the weekends so they can see why. Some properties in that district have sold for less than their appraised values because of the noise.

### Chairman Weiss

- Recalled that there were some difficulties with some age-restricted properties in Berryville during the last reassessment.
  - Steve Wampler advised that they would try to take a closer look at income generated by those properties this time around.
- Further shared that the Board and staff are glad to assist them however possible to get accurate data, especially if trying to get appointments scheduled for individual properties.

Vice Chair Catlett

- Inquired how long they anticipate the fieldwork to take.
  - o Mr. Wampler answered it will be about twelve months. By the proposed schedule, they plan to mail notices around November 2024.

Chris Boies explained the following:

- The sales ratio mentioned earlier compares assessed values to actual sales data. If the assessed value were equal to the sales price, the ratio would be 100%. At 71%, the county is well-below the market rate. An ideal ratio is between 90%-110%.
- Staff will use the reassessment data to develop an equalized tax rate. If the Board wanted to approve a rate above that, there would be additional public hearing requirements.
- Historically, the Board of Supervisors has neutralized the tax rate. People may get upset by the property values increasing, but if they get an accurate explanation that the tax rate is going down at the same time, then they will see that there is a minimal change to their tax bills.

6) *Approval of Minutes*

- The start time of the November 21 regular meeting was changed to accommodate holding the Legislative Luncheon on the same day, but that luncheon has since been rescheduled so the November 21 meeting will start at the regular time, 1:00 pm.

**Vice Chair Catlett moved to approve the minutes of the August 15, 2023 Regular Meeting as presented. The motion carried by the following vote:**

|                  |   |     |
|------------------|---|-----|
| Matthew E. Bass  | - | Aye |
| Terri T. Catlett | - | Aye |
| Doug M. Lawrence | - | Aye |
| Beverly B. McKay | - | Aye |
| David S. Weiss   | - | Aye |

7) *Resolution to Request a Declaration of Drought Disaster (2023-19R)*

Chris Boies presented the following:

- Damage assessments by the Virginia Cooperative Extension show significant crop yield loss due to drought this summer.
- While the Board has little control over what happens after, the proposed resolution would start the process of getting relief and/or assistance at the state or federal level.

**Supervisor McKay moved to adopt the resolution as presented. The motion carried by the following vote:**

Matthew E. Bass - Aye  
 Terri T. Catlett - Aye  
 Doug M. Lawrence - Aye  
 Beverly B. McKay - Aye  
 David S. Weiss - Aye

**Clarke County Board of Supervisors**



Berryville Voting District  
Matthew E. Bass  
(540) 955-5175

Millwood Voting District  
Terri T. Catlett – Vice Chair  
(540) 837-2328

Russell Voting District  
Doug Lawrence  
(540) 955-2144

Buckmarsh Voting District  
David S. Weiss – Chair  
(540) 955-2151

White Post Voting District  
Bev B. McKay  
(540) 837-1331

County Administrator  
Chris Boles  
(540) 955-5175

**Resolution to Request a Declaration of Drought Disaster  
2023-19R**

**WHEREAS** rainfall during the spring and summer growing season has been extremely low across most of Clarke County; and

**WHEREAS** the Virginia Cooperative Extension, along with their damage assessment teams and partner USDA agencies including the Farm Service Agency, is working to complete a damage assessment for Clarke County; and

**WHEREAS** the damage assessment estimates show that this lack of rainfall has caused yield losses of 45% for hay, 30% for corn, 25% for soybean, and 35% loss of pasture grazing days; and yield losses will continue to escalate unless there is significant rainfall soon; and

**WHEREAS** the combined effect of hay yield loss and pasture grazing day loss is resulting in a severe shortage of hay in the area and yield losses will continue to escalate unless there is significant rainfall soon; and

**WHEREAS** US Geological Survey Groundwater data shows groundwater levels are at extremely low levels and there are reports of some wells under performing in the area; and

**WHEREAS** it is incumbent upon the Clarke County Board of Supervisors to act responsibly in an effort to help protect vital public interests, including the viability of the County’s agricultural economy and the farmers who constitute the core of that economy.

**NOW, THEREFORE, BE IT RESOLVED** by the Clarke County Board of Supervisors that the County Administrator is directed to make a formal request of the Governor of Virginia that Clarke County be declared an agriculture disaster area and that any and all appropriate State and Federal disaster relief and assistance be made available to the farmers in Clarke County.

**APPROVED AND ORDERED ENTERED** in the official records by the unanimous vote of the Clarke County Board of Supervisors’ members assembled on the 19<sup>th</sup> day of September, 2023.

ATTEST 2023-19R

\_\_\_\_\_  
David S. Weiss, Chair

8) Set Public Hearing: Conditional Rezoning REC/Virginia Port Authority (PH2023-11: CZ23-01)

Brandon Stidham, Director of Planning, presented the following:

**CZ-23-01, Rappahannock Electric Cooperative (applicant)/Virginia Port Authority (owner)**

- Re-zone 65 acres from Agricultural-Open Space-Conservation (AOC) to Highway Commercial (CH) and Historic Access Corridor Overlay District (HAC) subject to conditions proffered by the applicant.
- Located on south side of Lord Fairfax Highway (US 340) between intersections of Featherbed Road (Rt. 644) and Highland Corners Road (Rt. 669).
- Double Tollgate Plan Area – Sub-Area B
- Tax Map #27-A-10C
- White Post Election District (McKay)





### Proposed Use

- **“Public utility facility” – a new regional office for REC to include:**
  - Offices
  - Auditorium (for REC training and briefing purposes)
  - Storage yard
  - Fuel tanks and fueling stations for REC vehicles
  - Maintenance shop with wash bay for REC vehicles
  - Indoor storage for vehicles and mobile substations
  - Communications tower of approximately 60 feet in height
- **Approximately 41 acres to be developed – remainder would be left vacant except for cattle grazing**
- **Rezoning to CH District is necessary to allow the proposed use**
- **Rezoning to HAC Overlay District is recommended by the Double Tollgate Area Plan “to ensure high-quality, compatible architectural design for structures at the County’s southeastern gateway”**







Supervisor McKay

- Shared concern that adding a second entrance and paving Featherbed Road will invite more traffic, as people will think it is a main road.

Chairman Weiss

- Observed that the applicant is trying to make a functional site and paving is necessary to do that.

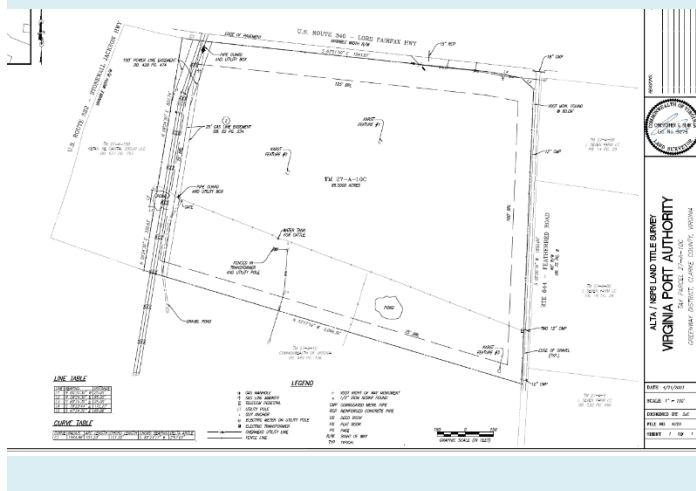


### Conditional Zoning Generally

- Rezoning “subject to certain conditions proffered by the zoning applicant for the protection of the community that are not generally applicable to land similarly zoned.”
- Va. Code limitations on proffers include:
  - Rezoning must give rise for the need for the conditions.
  - Conditions shall have a reasonable relation to the rezoning.
  - Limits on payment for or construction of off-site improvements.
  - Cannot have a proffer that is not related to the physical development or physical operation of the property.
  - Shall conform to the Comprehensive Plan.
- Locality cannot deny a conditional zoning application on grounds that the applicant did not proffer something that was requested by the locality.

### Conditional Zoning Generally

- Proffers must be provided in writing prior to advertised public hearing and in accordance with Zoning Ordinance deadlines.
- Site development plan is not required.
- A survey plat showing the area to be rezoned is required.
- Applicant has provided a “concept development plan (CDP)” that is proffered to govern the overall development of the property.



### Key Issues

- **Property access:**
  - Transportation improvements – turn lanes and partial paving of Featherbed Road
  - Citizen concerns regarding the partial paving of Featherbed Road
- Provision of wastewater pump station site per Frederick Water report
- Proffered conditions are provided by applicant to address these issues and mitigate other impacts of the proposed development



### VDOT Comments

- **VDOT comments on applicant's revisions (8/30/2023):**
  - No overall objections to the applicant's proposed entrances and improvements
  - Continue to recommend upgrades to Featherbed Road as proffered by the applicant
  - Recommend proffering the U.S. 340 right turn lane onto Featherbed Road – this is currently proffered by the applicant subject to warrant analysis to be conducted at site development plan review
  - All transportation improvements should be constructed prior to issuance of an occupancy permit for the facility – the applicant has proffered to do this
- **Traffic impact analysis (TIA) is required by Zoning Ordinance but not by VDOT requirements**
  - VDOT staff stated that they do not believe a TIA would identify any other required improvements
  - Recommends applicant instead conduct turn lane warrant analyses to determine need for turn lanes and tapers at intersections and access points – this will be done for the two improvements noted in the proffers

### **Proffers 1.1 – 1.3, Development and Use of Property**

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- Applicant has proffered that the only allowable use will be a “public utility facility” – a new regional office for REC
- “Agriculture” is a permitted use in the CH District – cattle grazing can continue until property is developed, may continue on undeveloped area after development at REC’s discretion
- No other uses would be allowed unless the applicant applies for a proffer amendment

### **Proffers 2.1 – 2.2, Building and Site Design**

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- Development to be in “substantial conformance” with the Concept Development Plan (CDP) – material alterations at site development plan review would require proffer amendment, minor modifications are allowed
- Oil/water separators to be installed and/or collection/containment facilities to be provided in maintenance and wash areas and will be cleaned at least annually

### **Proffers 3.1 – 3.5, Transportation**

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- Property access limited to one entrance on US 340 and two entrances on Featherbed Rd as generally shown on CDP – actual locations to be determined at site development plan review
- US 340 entrance improvements to be constructed prior to issuance of occupancy permit:
  - Eastbound 200’ right turn lane with 200’ taper
  - Westbound 100’ left turn lane with 200’ taper
- US 340/Featherbed Road intersection improvements to be constructed prior to issuance of occupancy permit:
  - Eastbound 200’ right turn lane with 200’ taper, if warranted at the time of site development plan review
  - Westbound 100’ left turn lane with 200’ taper

### **Proffers 3.1 – 3.5, Transportation**

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- Featherbed Road improvements to be constructed prior to issuance of occupancy permit :
  - Improve 150’ of existing pavement and add 115’ of new pavement to point just beyond full property entrance, 24’ pavement width with 3’ shoulders
  - Southbound 100’ right turn lane with 100’ taper, if warranted at the time of site development plan review
- Provision of 30’ wide interparcel access easement to Tax Map #27-A-10 in a location that is mutually agreeable to both property owners.

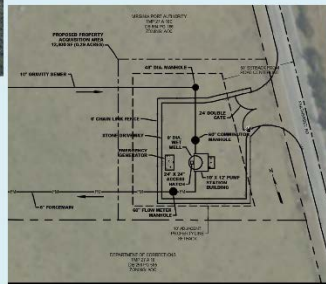
**Proffers 4.1-4.3, Water and Sewer**

- Connection to future service provided by Frederick County via Frederick Water
- Applicant shall not be responsible for any delays to implementing service
- Applicant to design and construct at their expense all onsite and offsite improvements necessary to provide the service for the demand generated by their development
- Possibility of using well and onsite sewage disposal system on a temporary basis if water and sewer is not available at time of development – shall connect to water and sewer when it is available within 1,000 feet of property line

**Proffers 4.1-4.3, Water and Sewer (cont.)**

- Wastewater pump station site
  - If requested by Frederick County Sanitation Authority, applicant shall cooperate in good faith with the Authority to identify a mutually acceptable location for a wastewater pump station site.
  - If such a location is identified, the applicant shall dedicate the land for the site and associated easements at no cost to the Authority.
  - Construction of the pump station improvements shall not require a proffer amendment.

**Wastewater Pump Station Lot and Easement**



**Proffer 5.1, Miscellaneous**

- Security plan to be provided to Clarke County Fire, EMS, and Emergency Management Department and Sheriff's Office if facility is developed as a secured campus
- Plan to include information regarding site access

### Review Factors

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- **Conditional zoning regulations require evaluation of applications against 10 review factors set forth in Zoning Ordinance Section 6.3.3(D)**
- **These 10 factors can be used along with any other factors deemed applicable to determine action on a conditional zoning application.**

### Review Factors

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- **Consistency with the Clarke County Comprehensive Plan and any applicable implementing component plans (Double Tollgate Area Plan).**
  - **Property is located in Sub-Area B of the Double Tollgate Plan Area**
  - **Sub-Area B allows for CH District zoning if development is served by public water and public sewer**
  - **Facility generally would not be expected to cause significant degradation of natural resources (karst, erosion and sediment, and stormwater management plan reviews); proffer to provide collection/separation facilities for waste fluids**
  - **Transportation improvements are proffered to address impacts to the public road network**
  - **The proposed use as proffered is generally in accord with the Comprehensive Plan and Double Tollgate Area Plan**

### Review Factors (cont.)

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- **Impacts on the County's short-term and long-term fiscal resources (e.g., education, water, sewage, fire, police, rescue, solid waste disposal or other services) and compatibility with the County's capital improvement goals and objectives**
  - **Facility will have minimal impact on County resources and is expected to provide significant tax revenues**
- **Potential impacts that would reduce the conservation value of adjacent or nearby agricultural or forestal land or would impede the operations of an active agricultural or forestal operation**
  - **Facility will not impact adjacent agricultural land**
  - **Cattle grazing will be permitted to continue**



### Review Factors (cont.)

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- **Compliance with Virginia Department of Transportation (VDOT) regulations and recommendations of VDOT deemed necessary for safe and efficient movement of traffic**
  - VDOT has no outstanding concerns with the applicant's proposed entrances and improvements
- **No destruction of or encroachment upon historic or archeological sites, particularly properties under historic easement**
  - Applicant's cultural resources desktop review found no adverse impacts to historic or archaeological sites – County's architectural historian concurs

### Review Factors (cont.)

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- **Will not cause an undue adverse impact on the following important resources located on the subject property or surrounding properties:**
  - Surface or groundwater resources
  - Natural areas (e.g., unique geological features, rare plant habitats, or wildlife nesting areas)
  - Areas designated for conservation, recreation, or natural preservation
    - No impacts to environmental resources are noted at this time – final determination would be made in conjunction with site development plan review

### Review Factors (cont.)

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- **Will not cause undue noise, light or glare, dust, odor, fumes, or vibration.**
  - Facility is not expected to generate excessive noise, odor, fumes, or vibration that would impact nearby properties
- **Availability of sufficient water for foreseeable needs.**
- **No unreasonable depletion of or other undue adverse effect on the water source(s) serving existing development(s) in adjacent areas.**
  - Sufficient capacity will exist to serve the facility with public water
  - If temporary well is needed, applicant will use water stored in above ground tanks for washing vehicles and equipment
- **Effective screening and buffering is provided, or the proposed development will be situated away from adjacent properties, in a manner to avoid causing detrimental visual impacts.**
  - Applicant indicates that they will fully comply with the County's landscaping design standards

### **Citizen Comments**

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- **Two nearby residents expressed concerns with the partial paving of Featherbed Road at the 9/1 Commission public hearing**
  - Concerned that improving the Featherbed Road entrance and extending the pavement would encourage more drivers to use the road
  - Questioned the need for a second property entrance given the limited number of regular employees in the office building
  - Noted there are other design options to separate passenger vehicle from truck traffic

### **Planning Commission Recommendation**

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- Duly advertised public hearing was held on July 7
- Continued public hearing was held on September 1
- Commission voted unanimously to recommend approval of the conditional zoning request subject to the applicant's proffered conditions (dated August 31, 2023)

### **Staff Recommendation**

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- Staff has no outstanding concerns with the application.
- Recommend scheduling public hearing for the Board's October 17 meeting.

#### Vice Chair Catlett

- Asked how many employees the applicant would have on site.
  - Brandon Stidham answered that the application states 75 employees would report to the site daily.

#### Supervisor Lawrence

- Inquired if pole trailers would present difficulties for the proposed turn lanes.
  - Josh Johnson, Director of Facilities and Procurement for REC, replied that REC traffic engineers would evaluate the area in conjunction with VDOT.
- Further suggested requesting that state legislators to have VDOT dedicate staff to answering concerns on mapping applications errors and inaccuracies.

Chairman Weiss

- Offered the Board’s compliments to staff, REC, and the Planning Commission for their work on such a thorough plan that addresses many issues and concerns. This is the culmination of a long process for this property and should be a great benefit to Clarke County.

**Supervisor Lawrence moved to set a public hearing on the proposed conditional rezoning (PH2023-11: CZ23-01) for October 17, 2023 at 6:30 pm or as soon thereafter as the matter may be heard. The motion carried by the following vote:**

|                  |   |     |
|------------------|---|-----|
| Matthew E. Bass  | - | Aye |
| Terri T. Catlett | - | Aye |
| Doug M. Lawrence | - | Aye |
| Beverly B. McKay | - | Aye |
| David S. Weiss   | - | Aye |

9) *Set Public Hearing: Text Amendment Campground Regulations (PH2023-12: TA23-01)*

Brandon Stidham, Director of Planning, presented the following:

**TA-23-01, Campground Regulations**

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- **Proposed text amendment to add a new temporary use, “camping,” to Zoning Ordinance Section 5.4 (Uses, Definitions, and Use Regulations – Temporary Uses) and to delete the current uses “campground” and “summer camp” from Section 5.2D (Recreation/Education/Assembly Uses).**
- **Purpose:**
  - Prohibit new permanent campgrounds including those operated as a business, as a non-profit, or as a summer camp.
  - Establish new regulations for the duration of camping activities, the long-term lease of a lot for camping, and temporary event camping.
  - Prohibit temporary or permanent onsite connections for recreation vehicles.

### Proposed Text Amendment

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- "Camping" would be re-defined as a temporary activity listed as a new temporary use in Section 5.4.
- Current zoning uses "campground" and "summer camp" would be removed from the Zoning Ordinance.
- Development of new permanent campgrounds both as businesses and as year-round facilities for groups and organizations would be prohibited.
- Any existing campgrounds and summer camps previously approved by the County would become non-conforming and would have limited capability to expand.

### Proposed Text Amendment (cont.)

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- The new temporary use, "camping," would limit all camping activities to:
  - A total of 30 days in any 60-day period
  - A maximum of 14 consecutive days
- Allows 180 days of camping in a calendar year and establishes a reasonable limit on the duration of a continuous camping activity.
- Applies to all camping activities being conducted on a lot of record (e.g., time limit would apply to three separate groups camping separately on a lot as a whole, not separate time limits for each group).
- Property owners can have friends and family camp including groups (e.g., church groups, scouts); new regulations would prevent group camping activities from becoming permanent.
- Would help to better distinguish between a legitimate camping activity and persons residing on a lot in a camping structure or RV.

### Proposed Text Amendment (cont.)

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- New regulations to emphasize temporary nature of camping:
  - Limited to recreational vehicles and temporary structures such as tents or yurts or similar forms of temporary shelter not permitted for permanent residential use.
  - Use of cabins or residential structures for a fee would be regulated as a short-term residential rental.
  - Temporary or permanent onsite connections for recreational vehicles to water, sewage disposal, electric power, or other utilities are prohibited.
  - Does not apply to generators, propane tanks, satellite dishes, and other portable utilities brought to a site on board an RV.

### Proposed Text Amendment (cont.)

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- Camping activities cannot be publicized as being open to the public or as being the permanent campground for a non-profit or similar organization.
- Temporary campground approval from the Virginia Department of Health (VDH) shall be obtained if required and maintained in good standing.

### Proposed Text Amendment (cont.)

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- **Long-term lease of a lot (e.g., “river lot camping”):**
  - Must have a written agreement between the property owner and each lessee for a minimum term of 30 days.
  - Limited to two campsites per lot of record.
  - “Campsite” – Area designated in a lease for camping by a specified lessee.
  - Each campsite is limited to no more than one RV including travel trailers, fifth-wheel campers, motor homes, pickup campers, and similar vehicles.
  - Time limitations apply – one lessee with a 4-month lease could:
    - Camp for consecutive three-day weekends throughout the lease period
    - Camp for 14 days in a row and still have 16 camping days to use over the remaining 46 days in the 60-day period
    - Use the campsite during the day without staying overnight without having the day count towards the total number of camping days used
    - Two lessees camping at separate times would count against the total time limitation for the lot of record

### Proposed Text Amendment (cont.)

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- **Temporary event camping in conjunction with a special event permit or agritourism activity zoning permit:**
  - Requires a zoning permit unless approved in conjunction with an agritourism activity zoning permit
  - Temporary campground approval from VDH is required and must be maintained in good standing throughout the event.
  - Duration is limited to the duration of the event.
  - Camping plan is required with the zoning permit application including:
    - Areas reserved for campsites
    - All facilities required by VDH temporary campground permit
    - Any other pertinent information required by the zoning administrator

### Citizen Comments

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- **Planning Commission held public hearing on June 2**
- **Speaker Lowell Smith – text amendment should take into account the possible future need for camping facilities along the Appalachian Trail (AT)**
- **Proposed that new camping facilities be allowed, either by-right or by special use permit, on lots that meet the following requirements:**
  - Adjacent to AT corridor land owned by the National Park Service
  - Are owned or operated by an IRS-qualified charitable organization with the principle mission being the maintenance and protection of the AT
  - Organization must have an established record of serving the public interest in providing access to and maintenance of the AT including its campground operations

#### **Citizen Comments (cont.)**

- Commission deferred discussion of the text amendment to the July 5 Work Session and continued the public hearing to the September 1 Business Meeting
- Commission requested no changes to the text amendment following discussion on July 5

#### **Planning Commission Recommendation**

- Continued public hearing was held on September 1
- Commission voted unanimously to recommend adoption of the proposed text amendment

#### **Staff Recommendation**

- Staff has no outstanding concerns with the adoption of this text amendment.
- Recommend scheduling public hearing for the Board's October 17 meeting.

#### Vice Chair Catlett

- Offered compliments to the Planning Commission on their efforts.

#### Chairman Weiss

- Opined that a total prohibition on camping is challenging, given that the county wants to attract visitors to the river and the Appalachian Trail.
- Suggested possibly sending a portion of the amendment back to consider a narrow window to allow some types of camping, adding that there are some very nice state operated campgrounds in Michigan.

#### Supervisor Lawrence

- Requested clarification on property owners allowing family members to camp on their property.
  - Brandon Stidham responded that it would be permissible to let family members or friends camp on private property, but designating an area a campground so it appears that the group could use the facility anytime would be prohibited.
- Further inquired if property owners could allow AT hikers or people canoeing on the river to camp on their property overnight.
  - Mr. Stidham advised that it is allowable if the property owner does not charge people for the privilege, because charging people to camp creates a commercial campground operation. He added that

advertising free camping would establish a permanent campground and would also be prohibited. Federally or state-owned properties are exempt from zoning regulations.

**Supervisor Lawrence moved to set a public hearing on the proposed text amendments (PH2023-12: TA23-01) for October 17, 2023 at 6:30 pm or as soon thereafter as the matter may be heard. The motion carried by the following vote:**

|                  |   |     |
|------------------|---|-----|
| Matthew E. Bass  | - | Aye |
| Terri T. Catlett | - | Aye |
| Doug M. Lawrence | - | Aye |
| Beverly B. McKay | - | Aye |
| David S. Weiss   | - | Aye |

10) *Board of Supervisors Personnel Committee Items from September 11, 2023*

A. Expiration of Term for Appointments Expiring through November 2023

2023-09-11 Summary: Following review, the Personnel Committee took no action.

2023-09-19 Action: Chris Boies reviewed the above summary.

- Supervisor McKay developed a recommendation after the Personnel Committee meeting.

**Supervisor McKay moved to appoint Chris Bates to fill the unexpired term of James Willis as Parent Representative on the Community Policy & Management Team, a term that will expire on December 31, 2023. The motion carried by the following vote:**

|                  |   |     |
|------------------|---|-----|
| Matthew E. Bass  | - | Aye |
| Terri T. Catlett | - | Aye |
| Doug M. Lawrence | - | Aye |
| Beverly B. McKay | - | Aye |
| David S. Weiss   | - | Aye |

11) Board of Supervisors Finance Committee Items from September 11, 2023

- A. FY24 Supplemental Appropriation Request for Ballistic Vests: Clarke County Fire & Rescue is requesting a supplemental expenditure appropriation in the amount of \$4,500 for the purchase of ballistic vests for Fire & Rescue personnel. This purchase was approved at a previous Finance Committee meeting and it was determined that ARPA LATCF revenue (\$50k) would cover the expenses. Some of the vests were received and paid for in FY23 but the remaining items will be received in FY24. The unused ARPA LATCF revenue from FY23 was deferred to FY24 and will be used to cover the expenses for the remaining vests.

2023-09-11 Summary: Following review, the Finance Committee recommends, "Be it resolved that FY24 budgeted Fire & Rescue Personal Protection Equipment expenditure and appropriation be increased \$4,500 and that deferred revenue from ARPA LATCF be budgeted and appropriated in the same amount, all for the purpose of providing ballistic vests to Fire & Rescue personnel."

2023-09-19 Action: Brenda Bennett reviewed the above summary.

Chairman Weiss

- Asked if carryforward would be decreased by the same amount.
  - o Brenda Bennett answered no, it will not because the revenue for this expense is already sitting on the balance sheet as deferred revenue.

**Supervisor McKay moved, be it resolved, that FY24 budgeted Fire & Rescue Personal Protection Equipment expenditure and appropriation be increased \$4,500 and that deferred revenue from ARPA LATCF be budgeted and appropriated in the same amount, all for the purpose of providing ballistic vests to Fire & Rescue personnel. The motion carried by the following vote:**

|                  |   |     |
|------------------|---|-----|
| Matthew E. Bass  | - | Aye |
| Terri T. Catlett | - | Aye |
| Doug M. Lawrence | - | Aye |
| Beverly B. McKay | - | Aye |
| David S. Weiss   | - | Aye |



- B. FY24 Supplemental Appropriation Request for Fire & Rescue Turnout Gear: Clarke County Fire & Rescue is requesting a supplemental expenditure appropriation in the amount of \$20,751 for the purchase of turnout gear. This expense was previously budgeted in FY23; however, the gear was not received until FY24, making it an FY24 expense. The gear is for new recruits.

2023-09-11 Summary: Following review, the Finance Committee recommends, "Be it resolved that FY24 budgeted Fire & Rescue Personal Protection Equipment expenditure appropriation be increased \$20,751 and that designation for Fire & Rescue be decreased in the same amount, all for the purpose of providing turnout gear to new recruits."

2023-09-19 Action: Brenda Bennett reviewed the above summary.

**Supervisor McKay moved, be it resolved, that FY24 budgeted Fire & Rescue Personal Protection Equipment expenditure appropriation be increased \$20,751 and that designation for Fire & Rescue be decreased in the same amount, all for the purpose of providing turnout gear to new recruits. The motion carried by the following vote:**

|                  |   |     |
|------------------|---|-----|
| Matthew E. Bass  | - | Aye |
| Terri T. Catlett | - | Aye |
| Doug M. Lawrence | - | Aye |
| Beverly B. McKay | - | Aye |
| David S. Weiss   | - | Aye |

- C. FY23 Supplemental Appropriation Request for Clarke County School Division: The School Division has received \$99,876 of additional FY23 Operating Fund revenue not included in the revised FY23 budget. During the August 2023 School Board meeting, the Board approved a supplemental expenditure and revenue appropriation request for this additional revenue. The supplemental budget and appropriation will allow the School Division to recognize the additional revenue and provide expenditure budget and appropriation for any remaining FY23 expenses as well as possible FY23 audit adjustments.

2023-09-11 Summary: Following review, the Finance Committee recommends, "Be it resolved that FY23 School Operating budgeted expenditure and appropriation be increased \$99,876, and that additional revenue be budgeted and appropriated in the same amount, for the purpose of receiving the additional state revenue and covering remaining FY23 expenses."

2023-09-19 Action: Brenda Bennett reviewed the above summary:

- The FY23 School Operating budget currently has about \$7,000 available to finish out the fiscal year for any adjustments, which the school board finds concerning, so this additional buffer will help.
- Staff believes that all revenue and expenditures for FY23 have been received, but it is possible that auditors will require some expenses to be moved between FY23 and FY24.
- The \$99,876 figure is a fixed number, not an estimate, and no local funds are involved.

**Supervisor Bass moved, be it resolved, that FY23 School Operating budgeted expenditure and appropriation be increased \$99,876, and that additional revenue be budgeted and appropriated in the same amount, for the purpose of receiving the additional state revenue and covering remaining FY23 expenses. The motion carried by the following vote:**

|                  |   |     |
|------------------|---|-----|
| Matthew E. Bass  | - | Aye |
| Terri T. Catlett | - | Aye |
| Doug M. Lawrence | - | Aye |
| Beverly B. McKay | - | Aye |
| David S. Weiss   | - | Aye |

D. Department of Planning Fee Schedule Change

2023-09-11 Summary: Following review, the Finance Committee recommends increasing the fees as presented.

2023-09-19 Action: Brandon Stidham reviewed the above summary:

- The change is directly applicable to increases in the county engineering consultant review fees.
- The consultant, Hurt & Proffit, recently renegotiated their contract and requested a fee increase, which requires an adjustment to the Planning Department fee schedule.

Chairman Weiss

- Observed that these fees are used to pay costs, not to make a profit.
  - Brandon Stidham affirmed and clarified that these are pass-thru fees.

**Supervisor McKay moved to approve the increases to the Department of Planning fee schedule as presented. The motion carried by the following vote:**

|                  |   |     |
|------------------|---|-----|
| Matthew E. Bass  | - | Aye |
| Terri T. Catlett | - | Aye |
| Doug M. Lawrence | - | Aye |
| Beverly B. McKay | - | Aye |
| David S. Weiss   | - | Aye |

**E. Bills and Claims**

2023-09-11 Summary: Following review, the Finance Committee recommends approving the August 2023 Invoice History report.

2023-09-19 Action: Brenda Bennett reviewed the above summary.

**Vice Chair Catlett moved to approve the August 2023 Invoice History Report as presented. The motion carried by the following vote:**

|                  |   |     |
|------------------|---|-----|
| Matthew E. Bass  | - | Aye |
| Terri T. Catlett | - | Aye |
| Doug M. Lawrence | - | Aye |
| Beverly B. McKay | - | Aye |
| David S. Weiss   | - | Aye |

**F. Standing Reports**

- a. Year to Date Budget Report
- b. Reconciliation of Appropriations
- c. Capital Projects Report

2023-09-19 Action: Information Only.

**12) *Joint Administrative Services Board Update***

Brenda Bennett advised the following:

- The Joint Administrative Services Board has not met.

### 13) Government Projects Update

Chris Boies provided the following update:

- The Clarke County Citizen’s Academy kicked off this past Friday, thanks to Supervisors Catlett and McKay for attending the elected officials forum, and to Cathy Kuehner for her presentation on public information. There are 18 participants this year, including two high school students.
- A number of Clarke County employees will participate in the United Way Day of Caring on September 22, including most of the Commonwealth’s Attorney’s office. Volunteers will be doing a project at FISH in the morning and helping out at the Humane Foundation in the afternoon. It is nice to have those employees working hard in the community we serve.
- There is a list of outstanding items we are still tracking for either board updates or approvals this fall:
  - The Sanitary Authority is working to finalize their Utility Master Plan, which likely needs to be a work session item.
  - Still waiting on a draft agreement from Frederick Water on the funding agreement for the pump station and force main. To date, the Board has approved the design work for the portion of the project located in Clarke County and will start receiving invoices for that work soon. This agreement will cover the shared portion of the project.
  - The Board also needs to see a plan for the next design phase of the courthouse green master plan. Staff had a call with the design team last week and will need at least one more meeting before providing information on how they can assist us with the monument design contest.
  - The Opioid Abatement Fund work group plans to meet October 3 and will eventually make a recommendation to the Board on the expenditure of those funds.
  - As previously discussed, the October work session will focus on legislative priorities and the November work session on FY25 budget goals and the Capital Improvements Plan.
  - VACO asked that the Board confirm that their voting representative for annual conference is still Vice Chair Catlett.

### 14) Miscellaneous Items

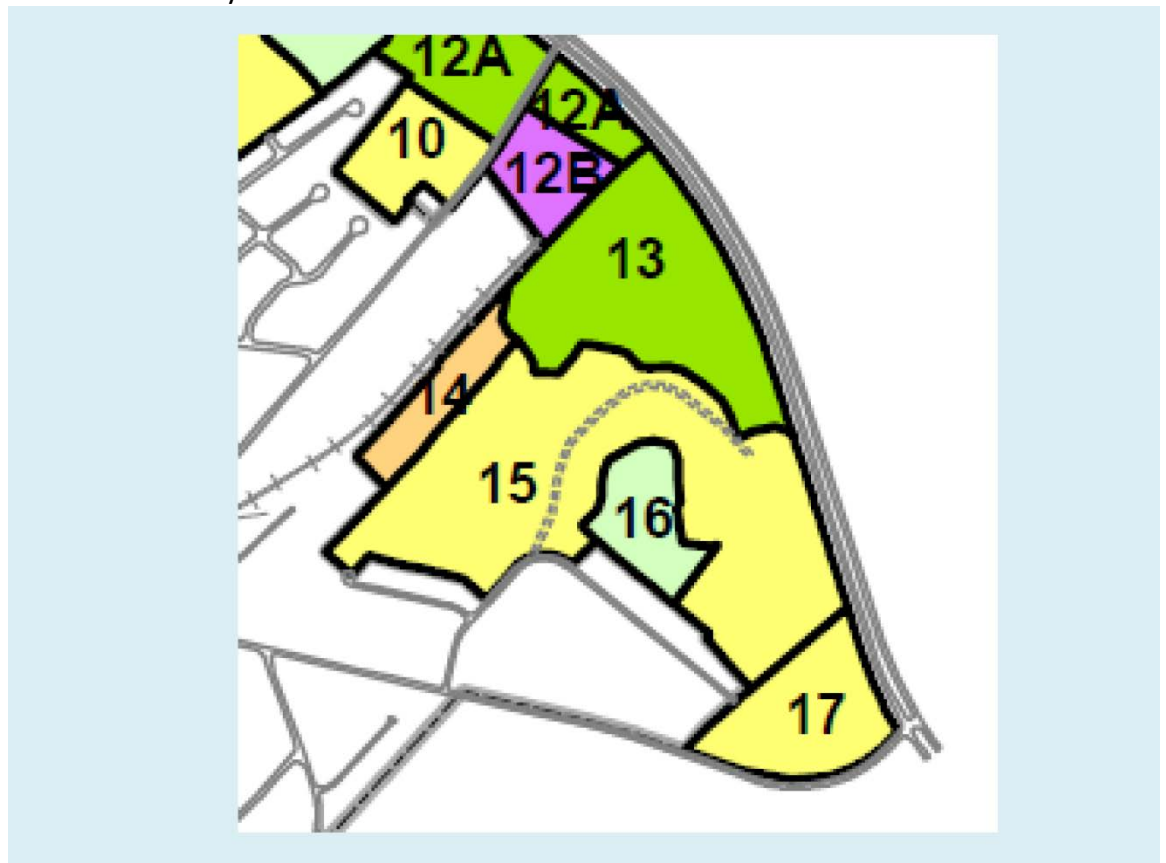
#### A. Update on Proposed Rezoning of Friant Property

Planning Director Brandon Stidham presented the following:

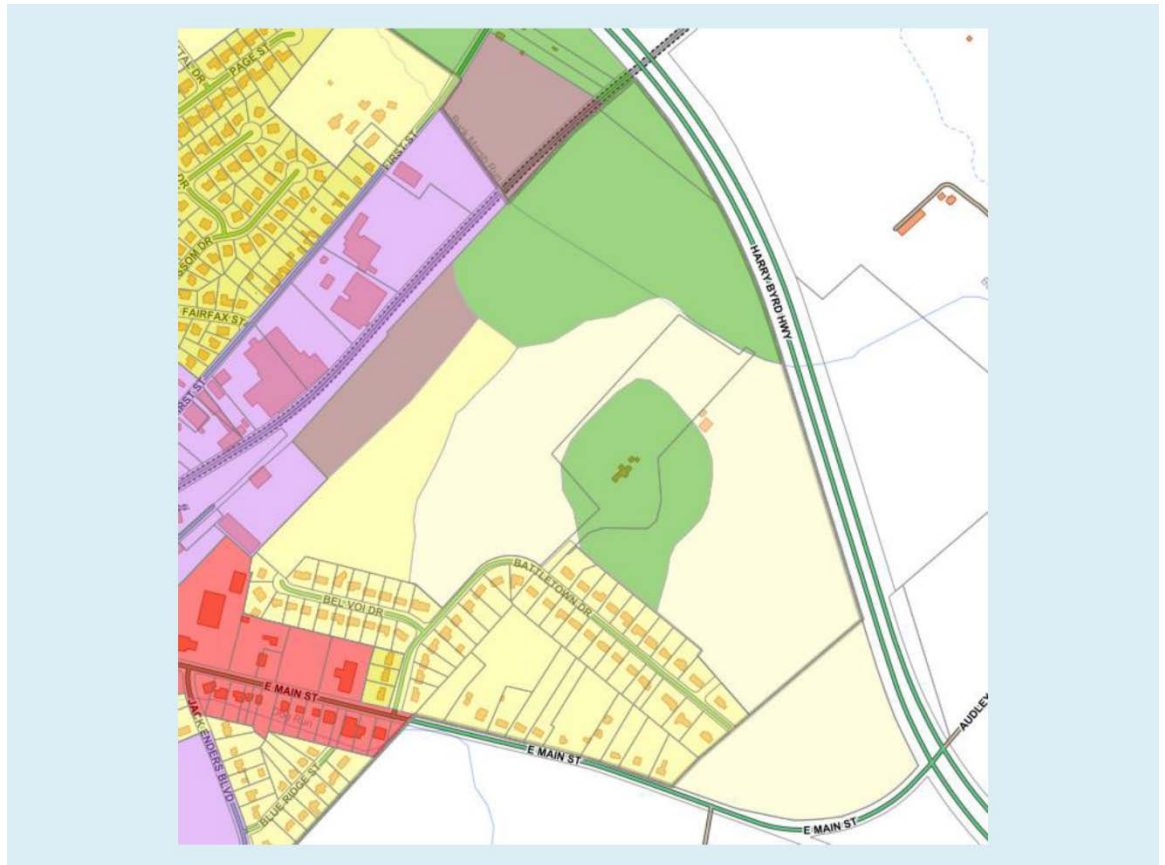
- The county is not directly involved with the review of this rezoning application. Any proposed rezoning or conditional zoning within the annexation area is

reviewed by the Town’s Planning Commission and is acted upon by the Berryville Town Council.

- The County’s Planning Commission, the Berryville Area Development Authority, and the Board of Supervisors are not involved because the property is in part of the annexation area that has been fully annexed and is part of the Town of Berryville.



- The Berryville Area Plan was updated in 2015 by changing sub-area 14 to medium density residential, which is four units per acre, and therefore eliminating the idea of locating a business park by the railroad tracks.
- The Friant property is composed predominantly of sub-areas 13, 14, & 15. Sub-area 16 covers part of the Bel Voi property, under separate ownership, and part of the Friant property.
- Audley owns sub-area 17, who previously negotiated a deal with the Friant family to have a right-of-way designated for use as future sub-division street access.
- When the 2015 Berryville Area Plan was updated, future development of the property as a common residential subdivision was contemplated, so many of the issues with this application are spelled out fairly clearly.



- The current zoning of the property is as follows:
  - (pale yellow) DR-1, which is one unit per acre
  - (green) Open Space Residential, which is one unit per ten acres and is dedicated to the preservation of the historic home and surroundings
  - (darker yellow) DR-2, which is two units per acres
  - (brown) Business Park, but it is eligible for DR-4.
- Under current zoning, the Town has calculated that the applicant could develop the property with 112 lots. The applicant is proposing a development of 214 homes. This scenario was contemplated in the 2015 Berryville Area Plan, if the development plan meets certain elements.
- Several areas were programmed for residential development at a specific density. Over time, those areas were not built out at the projected density, resulting in leftover available dwelling units totaling 160.
- Sub area 15, including the Friant property, was programmed to potentially be eligible to use some of the 160 unassigned dwelling units and increase density if the following elements are addressed:
  - Transportation connectivity and improvements
  - Cluster design to reduce infrastructure costs and adverse environmental impacts

- Walkability elements including sidewalks and walking trails
  - Viewshed protection
  - Master planning for public water, public sewer, and stormwater infrastructure
  - Cash proffers or other developer-funded improvements to mitigate the impact of new development on Town and County capital needs
- If those elements are effectively addressed, sub area 15 could support a density of four units per acre. The applicant is proposing to develop the Friant property in a cluster style with DR-4 zoning, which is why they are requesting a rezoning of the property to accommodate 214 lots.
- Transportation is a big issue and there is one area that is critical to development. Two portions of the Friant property are separated by a small parcel under separate ownership. An access road across that parcel would be necessary to connect the western and eastern portions and have a unified transportation network for the location. Otherwise, the western half would have to rely entirely on existing streets in the Battletown subdivision.
- Also from the 2015 Berryville Area Plan:
  - Transportation access to sub area 15 is a challenging element due to the fact that the historic Bel Voi house is located on an 11.47-acre parcel that overlaps sub areas 15 & 16 and extends northward to Buckmarsh Run and the planning boundary with sub area 13.
  - Connectivity between the west and east sides of sub area 15 can only be achieved with future cooperation with the owner of the Bel Voi parcel. Absent this participation, the challenge will be to develop separate access plans that do not adversely impact existing transportation networks.
- As of right now, the applicant is not proffering to make this connection. They are instead proffering that, if they cannot make that connection, then they will provide the Town a cash proffer of \$300,000 to make the connection.
- The boundaries for sub area 16, designated for historical/cultural preservation, are drawn much differently than the boundaries of the Bel Voi parcel. The BADA did a site visit and determined that the area boundary was drawn that way in order to provide additional viewshed protection for the historic home and the following language was included in the 2015 Berryville Area Plan:
  - Regardless of the participation of the owner of Bel Voi in a future development project, it is recommended that the boundaries and recommended development density of sub area 16 be retained and any adjoining development project shall provide appropriate mitigation measures, (e.g., buffers, architectural features) to further protect the historic home.

- The plan that was submitted to the Town Planning Commission at their previous meeting shows a number of lots within the area that is designated as sub area 16. The applicant would have to pull those lots and demonstrate what other measures they will take to provide viewshed protection as recommended by the Berryville Area Plan.
- The applicant has an extensive list of proffers, including making connections and upgrades to their main access road to meet subdivision street standards that would be triggered by the 132<sup>nd</sup> building permit. They want to build a substantial number of homes before committing to lock in the road network. Such a late trigger could result in the subdivision spending many years with streets that cannot be accepted by the state system or being accessible only through the existing neighborhood.
- The Town Planning Commission is holding a work session on this application at the end of September and has a public hearing scheduled in October.
- Staff has additional concerns over natural drainage on the property relative to the applicant’s proposed stormwater management ponds. DEQ would have ultimate approval authority on the matter.
- Development of the property for 112 lots is programmed by-right and has been for many years. There is another whole level of additional scrutiny that must be done if the developer wants to increase that to 214 lots.
- If the Town wants to do something other than what is programmed in the Berryville Area Plan, they should have to go through the plan amendment process with the BADA.

Chairman Weiss

- Clarified that the Berryville Area Plan is developed by the BADA and then is formally adopted by both the Berryville Town Council and the Board of Supervisors and is a binding document, conceptually.
  - Brandon Stidham added that the Plan represents trust built between the Town and the County over many years.

Supervisor McKay exited the meeting at 3:02 pm.

15) *Summary of Required Action*

| <u>Item</u> | <u>Description</u>          | <u>Responsibility</u> |
|-------------|-----------------------------|-----------------------|
| 1.          | Process approved minutes    | Catherine Marsten     |
| 2.          | Execute approved resolution | David Weiss           |



- |  |                   |
|--|-------------------|
| 3. Process approved resolution & send to Farm Service Agency | Catherine Marsten |
| 4. Process appointment to CPMT                               | Catherine Marsten |
| 5. Advertise October public hearings                         | Catherine Marsten |
| 6. Process bills & claims and finance items                  | Brenda Bennett    |
| 7. Process changes to Code of Clarke County Chapter 17       | Catherine Marsten |
| 8. Process changes to zoning ordinance                       | Brandon Stidham   |

### 16) Board Member Committee Status Reports

#### Supervisor Doug Lawrence

Berryville-Clarke County Joint Committee on Economic Development & Tourism

- Nothing to report.

Board of Social Services

- Sent out information on compassion fatigue in social workers.

Broadband Implementation Committee

- Broadband project is progressing.

School Board

- Discussed free counseling sessions offered to middle & high school.

Regional Jail Authority

- Fully staffed, while other jails in the state are having trouble hiring.
- Well-run facility that is fiscally sound.

#### Vice Chair Terri Catlett

Career and Technical Education

- Has not met, possibly due to the change in administration.

Historic Preservation Commission

- Holding a public hearing on a Certificate of Appropriateness application that appears to be incomplete.

Clarke County Humane Foundation

- Shelter is very full and very busy with 12 dogs and over 80 cats.

Village of Millwood

- Will get community input on speed tables.

Planning Commission

- Update already provided.

Community Policy & Management Team

- Interviewing for a new CSA coordinator.

Supervisor Matthew Bass

Board of Septic and Well Appeals

- Has not met.

Library Advisory Council

- Did not attend last meeting.

Litter Committee

- Has not met.

Josephine School Community Museum Board

- Has not met.

Legislative Updates

- Nothing to report.

Northwestern Regional Adult Drug Treatment Court Advisory Committee

- Has not met.

Northwestern Regional Juvenile Detention Center Commission

- Has not met.

Sheriff's Office

- Nothing to report.

Town of Berryville

- Update already provided.

Parks and Recreation Advisory Board

- Nothing to report.

17) *Closed Session pursuant to §2.2-3711(A)(3)*

**At 3:06 pm, Vice Chair Catlett moved to enter closed session pursuant to §2.2-3711-(A)(3) to discuss the acquisition of real property for a public purpose, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body. The motion carried by the following vote:**

- |                  |   |        |
|------------------|---|--------|
| Matthew E. Bass  | - | Aye    |
| Terri T. Catlett | - | Aye    |
| Doug M. Lawrence | - | Aye    |
| Beverly B. McKay | - | Absent |
| David S. Weiss   | - | Aye    |

**At 3:23 pm, with the members of the Board of Supervisors being assembled within the designated meeting place with open doors and in the presence of members of the public and/or the media desiring to attend, Supervisor Bass moved to reconvene in open session. The motion carried as follows:**

|                  |   |        |
|------------------|---|--------|
| Matthew E. Bass  | - | Aye    |
| Terri T. Catlett | - | Aye    |
| Doug M. Lawrence | - | Aye    |
| Beverly B. McKay | - | Absent |
| David S. Weiss   | - | Aye    |

**Supervisor Bass further moved to execute the following Certification of Closed Session:**

**CERTIFICATION OF CLOSED SESSION**

**WHEREAS, the Board of Supervisors of the County of Clarke, Virginia, has convened a closed meeting on the date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and**

**WHEREAS, Section 2.2-3700 of the Code of Virginia requires a certification by the Board of Supervisors of the County of Clarke, Virginia, that such closed meeting was conducted in conformity with Virginia law.**

**NOW, THEREFORE BE IT RESOLVED, that the Board of Supervisors of the County of Clarke, Virginia, hereby certifies that, to the best of each members knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which the certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board of Supervisors of the County of Clarke, Virginia. The motion was approved by the following roll-call vote:**

|                  |   |        |
|------------------|---|--------|
| Matthew E. Bass  | - | Aye    |
| Terri T. Catlett | - | Aye    |
| Doug M. Lawrence | - | Aye    |
| Beverly B. McKay | - | Absent |
| David S. Weiss   | - | Aye    |

No action was taken following the Closed Session.

At 3:34 pm, Chairman Weiss recessed the meeting.

At 6:30 pm, Chairman Weiss reconvened the meeting.

18) *Citizen’s Comment Period*

No persons appeared to address the Board.

19) *Public Hearing: Farm Winery, Farm Brewery, and Farm Distillery Regulations (PH2023-09: TA23-03)*

Brandon Stidham, Director of Planning, presented the following:

**TA-23-03, Farm Winery, Farm Brewery, and Farm Distillery Regulations**

- Proposed text amendment to amend the current uses, “farm winery,” “farm brewery,” and “farm distillery,” per Section 5.2A of the Zoning Ordinance.
- The amendment would consolidate these three uses under a new use defined as an agricultural operation with agricultural activities conducted on the same lot or on a contiguous lot under common ownership, which is licensed as a farm winery, a farm brewery, or a farm distillery by the Commonwealth of Virginia.
- A new minimum lot size of 5 acres is proposed and new zoning permit requirements and use regulations for operations that are open to the public would be added.
- The proposed administrative requirements are intended to mitigate any potential significant impacts on the health, safety, and welfare of the public.

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**Overview**

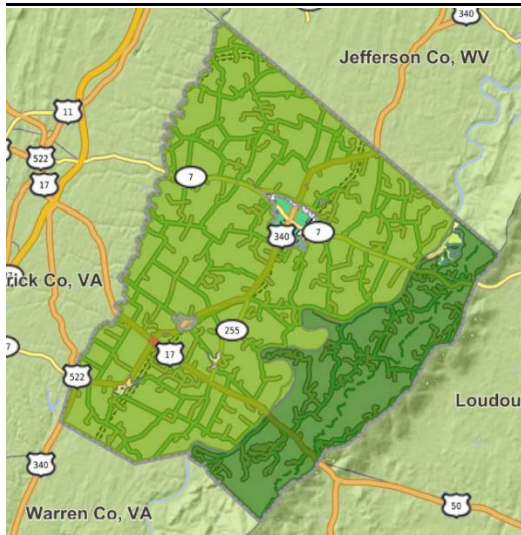
- This proposed text amendment applies only to the regulations for :
  - Farm wineries
  - Farm breweries
  - Farm distilleries
- The text amendment does not apply to farms and agribusinesses that do not produce wine, beer, or spirits

### Overview (current)

- **Current regulations were adopted in 2015 to address State law changes that provided protections to farm wineries, farm breweries, and farm distilleries from local zoning.**
- **Localities must allow by-right as agricultural operations in agricultural zoning districts – special use permits cannot be required.**
- **Localities specifically cannot regulate:**
  - Production/harvesting of agricultural products and manufacturing of wine, beer, or alcoholic beverages
  - On-premises sale, tasting, and consumption of beverages during regular business hours and within the normal course of business of the operation
  - Direct sale/shipment, storage, and wholesaling of product
  - Sale of wine, beer, or alcoholic beverage-related items that are incidental to the sale of such beverages

### Overview (current)

- **County’s agricultural zoning districts:**
  - AOC – Agricultural-Open Space-Conservation District
  - FOC – Forestal-Open Space-Conservation District
- **By-right use:**
  - Permitted use in a zoning district not subject to review/approval by the governing body
  - Administrative approval (zoning permit) granted if all technical regulations are met
- **Special use:**
  - Allowable use subject to review/approval by the governing body on a case-by-case basis
  - Can impose special conditions to address unique concerns
  - Evaluated against review factors, e.g., conformance with comprehensive plan, impacts on surrounding properties and environment
  - Planning Commission review and public hearings are required



**AOC (light green):**  
72.7% of land area

**FOC (dark green):**  
23.7% of land area

**Total Ag. Zoning:**  
96.4%

**Overview (cont.)**

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- **State code:**
  - Regulations *“shall be reasonable and shall take into account the economic impact on the [farm winery, farm brewery, farm distillery] of such restriction, the agricultural nature of such activities and events, and whether such activities are usual and customary for [such operations] throughout the Commonwealth.”*
  - *“Usual and customary activities and events at [such operations] shall be permitted without local regulation unless there is a substantial impact on the health, safety, or welfare of the public.”*

**Overview (cont.)**

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- **Staff interprets “usual and customary activities” to include:**
  - Tasting rooms
  - Retail shops to sell product and product-related items
  - Sale of pre-packaged food items and non-alcoholic beverages not requiring regulation as a “food establishment” by the Virginia Department of Health (VDH)
  - Temporary use of food trucks or off-site caterers
  - Incidental entertainment that occurs infrequently such as amplified or acoustic background music
- **Staff has not interpreted “usual and customary activities” to include:**
  - Public events
  - Retail sale of wine, beer, or alcoholic beverages produced by off-site operations or merchandise not related to sale of these beverages
  - Minor commercial public assembly events (e.g., weddings, private parties, or private meetings)
  - Live music or entertainment concerts promoted as events and/or charged a separate fee
- **These uses may be approvable through other permit processes**

**Overview (cont.)**

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- **Agritourism activity zoning permit:**
  - Administrative approval issued by Planning Staff
  - Allows temporary activities for the public to view or participate in agricultural activities for recreational, entertainment, or educational purposes
  - Can conduct for maximum of 180 days in a calendar year
  - **Examples include:**
    - Harvest-your-own fruits, vegetables, Christmas trees, etc.
    - Farm-to-table events
    - Farm tours and educational activities associated with the agricultural operation
    - Seasonal activities such as corn mazes, petting zoos, animal exhibitions
    - Incidental sale of agricultural or silvicultural-related products
    - Incidental live music or similar performance-based entertainment
    - Incidental sale of food and beverages including temporary vendors

**Overview (cont.)**

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- **Special event permit:**
  - Permit issued by the Board of Supervisors with public comment allowed
  - Allows for outdoor public events of varying sizes to be held for a maximum of five days in a calendar year
  - Small event – 150-499 people
  - Medium event – 500-999 people
  - Large event – 1000 people or more

**Overview (cont.)**

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- **Minor commercial public assembly:**
  - Special use permit issued by the Board of Supervisors after Planning Commission review and public hearings
  - Allows venue to be used, for a fee, for events such as meetings, conferences, weddings, parties, and similar events
  - Six or more days in a calendar year
  - Maximum of 149 people on the property at one time
  - Requires approval of a site development plan

**Overview (cont.)**

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- **Retail Business:**
  - Special use permit in the AOC and FOC Districts issued by the Board of Supervisors after Planning Commission review and public hearings
  - Allows for retail sale of items other than those produced by the farm winery, farm brewery, or farm distillery
  - Requires approval of a site development plan

**Overview (cont.)**

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- **Farm wineries, farm breweries, and farm distilleries are required to be operated in conjunction with an agricultural operation located on the same lot or contiguous lot in common ownership.**
- **Agricultural ingredients for the beverages must be produced by the agricultural operation onsite or on a contiguous lot in common ownership.**
- **Objective is to allow these agricultural operations to grow agricultural products and produce beverages from them for public sale and consumption – otherwise would be a beverage manufacturing operation, not an agricultural operation.**
- **Farm wineries, farm breweries, and farm distilleries should not operate by-right as an event and entertainment destination (could be allowed with special use permit).**

**Proposed Text Amendment**

- Codifies Staff’s interpretations and application of current regulations since 2015, creates a more robust and standardized review process
- Proposes new regulations to mitigate impacts on surrounding properties and help ensure public safety, health, and welfare
- Current farm winery, farm brewery, and farm distillery uses would be combined into one use with a common set of use regulations under a single definition:
  - *“An agricultural operation with agricultural activities conducted on the same lot or on an contiguous lot under common ownership which is licensed as a farm winery, a farm brewery, or a farm distillery by the Commonwealth of Virginia.”*

**Proposed Text Amendment (cont.)**

- **General Use Regulations:**
  - Current State code requirements for allowable farm winery, farm brewery, and farm distillery activities
  - New zoning permit requirements to provide:
    - Copies of permits demonstrating VDH approval of the private well and onsite sewage disposal systems for domestic and process operations
    - Virginia Department of Transportation (VDOT) approval of the property entrance
    - Approval of an erosion and sediment control plan and stormwater management plan (by Virginia Department of Environmental Quality) if required
    - Proof that the farm winery, farm brewery, or farm distillery will be conducted as an agricultural operation with agricultural activities on the same lot or contiguous lot under common ownership
    - Proof that an application has been filed with the Virginia Alcoholic Beverage Control Authority (approved license to be provided before commencing production)
    - Proof of business license application
    - Provision of other pertinent information required by the Zoning Administrator
  - New minimum lot size requirement of five (5) acres – minimum lot size for lot without a dwelling to be eligible for land use value assessment for taxation purposes

**Proposed Text Amendment (cont.)**

- **Use Regulations for Public Operations:**
  - Hours of operation – open to the public from 8:00AM to 8:00PM
  - Provision of food and non-alcoholic beverages is allowed so long as a VDH “food establishment” permit is not required – food trucks, caterers, and sale of pre-packaged food and non-alcoholic beverages are allowed but not restaurants
  - Live music and entertainment shall be “incidental and accessory” to the agricultural operation, cannot be advertised separately or charged a separate fee
  - 300 foot setback from all property lines for any building where live music, entertainment, or amplified sound will take place
  - No amplified sound shall be audible beyond any property line
  - All amplified sound is prohibited after 6:00PM



**Proposed Text Amendment (cont.)**

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- **Use Regulations for Public Operations (cont.):**
  - Public ingress/egress shall be via direct access to a public road - use of a shared driveway or private access easement for the public is prohibited (traffic exclusive to the farm operation would be allowed to use a shared driveway or private access easement)
  - Parking is required per Zoning Ordinance parking regulations
  - Outdoor lighting is required to conform to dark sky requirements for AOC and FOC District uses; all lighting for the public's safe ingress/egress shall be turned off one hour after closing or 9:00PM, whichever is earlier
  - Events approved by special event permit (Chapter 57) or agritourism activity zoning permit shall comply with these use regulations

**Proposed Text Amendment (cont.)**

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- **Use Regulations for Public Operations (cont.):**
  - **Prohibited activities include but are not limited to:**
    - Retail sale of merchandise not related to wine, beer, or alcoholic beverages
    - Minor commercial public assembly activities such as weddings and private parties
    - Personal services such as spa and beauty services or educational/recreational classes
    - Amusement devices and similar rides including motorized go-karts, ATVs, hot air balloons, and helicopters
    - Overnight accommodations and camping

**Planning Commission Recommendation**

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- **Following a duly advertised public hearing on July 7, the Commission voted 7-0-4 to recommend adoption of the proposed text amendment.**
- **No one spoke for or against the text amendment at the Commission's public hearing.**

**Staff Recommendation**

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- **Staff has no outstanding concerns with the adoption of this text amendment.**
- **The proposed regulations are necessary to protect the health, safety, and welfare of the public and will not create an adverse economic impact on these agricultural operations.**

Chairman Weiss opened the Public Hearing at 6:47 pm.

James Charles Bogaty of Quarry Road, Berryville

I stand before you today, not just as a blind nearly 80 year-old farmer, but as a testament to the resilience and enduring spirit of the agricultural community in Virginia. I live and work at an I am the custodian of Veramar Vineyard, a piece of our beautiful Commonwealth's farmland.

Farming, my friends, is a labor of love. It's a lifelong commitment to the land. With an unwavering dedication to producing the finest products from our soils. In my case, it is the cultivation of fruits, grapes, hay, cattle, timber, and the crafting of exceptional wines.

But it is no secret that the path of a farmer is one fraught with hardships. Nature, unpredictable and often unforgiving, throws at us her fiercest challenges. From droughts to frost, from pests like spotted lanternfly, the relentless stink bugs, and the Japanese beetles. We battle plant diseases, like the stubborn leaf roll, the persistent fungi such as black rot and powdery mildew. We toil against weeds that seem to spring up overnight, and we protect our crops from the ever-present threat of birds and deer. Additionally, I was shut down for nearly six months during COVID and I had to look my employees in the eyes and tell them I no longer have work for you and I can't pay you.

In farming, I lose sleep at night worrying about whether I can make payroll. We, as well as everyone else in this room, are fighting inflation for all my supplies and my labor costs, and we pay a significant amount of taxes.

Yet, through it all, we persevere. We wake up each morning to tend our land, care for our animals, and to nurture our vineyards. We face each setback with determination and resolve, because farming is not a livelihood, it is a way of life.

Today I implore you to consider the weight of the new rules and regulations you propose, which threaten to hinder our noble farming pursuit. For a quarter of a century I have operated my farm in this county, adhering to practices that are considered by the state to be fair and equitable, and have had zero complaints. My experience should stand as a statewide model for reasonable and customary farm winery practices.

I firmly believe that many of these proposed rules do not meet the three-part test and run counter to Virginia law. They don't just affect my farm; they deter my children and grandchildren from farming and cast a shadow over the entire farming community, putting jobs and tax revenue at risk.

So, I beseech you, do not pass these rules. Do not add to the burden that farmers like me already carry. Instead, let us find a way to support and uplift our agricultural heritage, for it is the backbone of our great state and county.

Shannon Dulaney of Annfield Road, Berryville

I thank you for the opportunity to speak, and thank you to the community. My wife Stephanie and I, along with my sister and brother-in-law Wayne and DeeDee Warfield, have owned and operated our beef cattle farm, located on Chilly Hollow Road, since 1996.

Owning a part-time farm is a labor of love, as for anyone in this room who does own one can attest. Less than five percent of family farms in Virginia receive their income exclusively from their farming operations. According to a previous UVA study, over three-quarters of Virginia farms operate in the red on a yearly basis. Adding additional restrictions on family farms will only accelerate the decline in the number of farms and on-farm revenue.

Our family has been planning and working on opening up a farm brewery for several years and have, to date, invested hundreds of hours and hundreds of thousands of dollars to achieve that dream. That is a lot of money for us.

We are here tonight to speak out against the overly burdensome restrictions proposed by the Planning Commission to the Board of Supervisors and ask that you return the restrictive regulations back to the Planning Commission. We also would recommend that the Planning Commission develop a working group that would include agribusiness owners so as to not negatively impact existing agribusinesses or discourage future investments in such businesses.

From the Code of Virginia §15.2-2288.3:1, Limited brewery license; local regulation of certain activities: “Local regulations upon such activities and public events of breweries licensed pursuant to subdivision 4 of §4.1-206.1 to market and sell their products shall be reasonable and shall take into account the economic impact”—who determines what the economic impact is?—“on such licensed brewery of such restriction, the agricultural nature of such activities and events, and whether such activities and events are usual and customary for such licensed breweries.”

I did a poll of thirty breweries and wineries around and I can give you a long list of what is usual and customary. “Usual and customary activities and events at such licensed breweries shall be permitted unless there is a substantial impact on the health, safety, and welfare of the public”.

Closing at 8:00 pm is ridiculous, and the noise restrictions are overly burdensome. With a 300-foot setback, you are going to take agricultural land away when trying to put this up. Music off at 6:00 pm? I could turn the music off at 6:00 pm and go get on my ram-hoe, go out to the property line and hammer on the rock until 9:00 pm. That’s what the current noise ordinance says, the one that you just re-did in 2022. Limiting retail sales limits us from collaborating with other local farm businesses: Harvue Farm cheese and things like that, why shouldn’t we be permitted to do that? Prohibition of group and educational activities would mean no First

Responder fundraisers and not being able to support local artists or craftspeople. The VDH references are completely wrong. The VDH does not regulate processed waste. They also require public wells, not private wells, so that is inaccurate.

In conclusion, our family has lived and farmed in Clarke County for over thirty years and we are an integral part of the fabric of the Clarke community. We do not want to make any changes that would change this county. We strongly recommend sending the proposed amendments back to the Planning Commission for revision. In general, as the governing body of Clarke County, you guys should be considering ways to encourage and promote agribusinesses, not overregulate and discourage investment in family farms.

Justin Bogaty of Jefferson Street, Winchester

I stand before you as Justin Bogaty, the representative of Veramar Vineyard and the Virginia Wineries Association. Our purpose here is to shed light on the upcoming proposal that could adversely affect farm wineries, not only in Clarke County but throughout the state. This proposal seeks to amend certain ordinances that we believe may run contrary to the laws that govern our state.

Virginia operates under the Dillon Rule, which means that localities can only impose regulations on farm wineries within the boundaries of state law. Specifically, §15.2-2288.3 outlines these regulations. This statute recognizes the importance of preserving the economic vitality of our cherished Virginia wine industry, while protecting the health, safety, and welfare of our citizens.

Before we dive into the specifics of this proposed ordinance, I'd like to introduce a crucial letter into the public record. This letter is authored by Mary Beth Williams, Esq., who serves as legal counsel for the Virginia Wineries Association. In this letter, Ms. Williams eloquently addresses the discrepancies between the proposed amendments and the state law, highlighting several critical points of contention. Now let's dive into those points of concern.

First, the proposed amendment appears to require a minimum lot size for farm wineries, which may be in violation of state law. Secondly, restrictions on operations and the prohibition of regular food provisions and limiting the marketing of on-site entertainment and events seems overly burdensome and unrelated to substantial risk to the public's health, safety, and welfare. Hours of operation are already regulated by the ABC and no local control of these hours are permissible under state law. Food provisions are controlled by VDACS and VDH as the primary regulators. Events, such as private events, weddings, and corporate functions, are determined to be within "usual and customary". Therefore, any regulations would have to show that these events cause a substantial impact to the health and safety of the public.

Furthermore, as Ms. Williams points out, many of these concerns are already regulated by federal and state agencies, and local involvement should be limited

and narrowly tailored to address only substantial impacts. Additionally, Ms. Williams highlights, no noise ordinance may be more restrictive than already exists on the county's noise ordinance. Lastly, all of the proposed regulations seem to focus on solving a problem that doesn't exist.

In closing, we believe this proposed amendment conflicts with state law and is unnecessarily broad. We urge you to reject this proposal in its current form and consider revisiting it with a focus on state law and potential impacts to these agricultural businesses. We are here to provide more information and assistance as needed and we thank you for your time and consideration.

Curt Harvey of Bluemont

On September 8, the Governor of New Mexico decreed that the second amendment was null and void in the city of Albuquerque by suspending the right to open and concealed carry firearms, saying that "the time for standard measures has passed". A district judge soon blocked the Governor's decree. Decrees perpetrated by tyrants rarely stand the test of time. As far as I am concerned, these new rules constitute a decree by the Planning Commission. Sure, the process is neat and tidy. The time-honored tradition of a public hearing and a vote by the Board of Supervisors is on display as the will of the people being carried out by our duly elected representatives.

Nevermind that everyone in this room either knows or is about to learn that our concerns carry absolutely no weight with these county officials. It is my opinion that their minds were made up long before this hearing was announced. I am fairly new to Clarke County, but in the 26 years I've been here, this body has made rules first and asked public opinion later.

As I interpret the Fifth Amendment to the Constitution, some of these rules would be a taking. By disallowing the regular sale of food there, they are taking Veramar's existing ability to generate revenue from currently allowed sales practices. By abolishing advertising special events that charge a fee to attend, they are taking Veramar's existing ability to generate revenue from currently allowed event activities. By denying advertising for special events, they are also infringing on the first amendment rights of Mr. Bogaty. Ironically, the Supreme Court case that established advertising as protected under the first amendment was in Virginia.

Here's the Winchester Star's quote of Mr. Stidham regarding, ostensibly, farm wineries and breweries. "They are not intended to be entertainment centers, but rather agricultural operations." To further quote the Star, "the restrictions, Stidham added, are intended to let businesses conduct their core functions of growing agricultural products without allowing them to become event and entertainment destinations." These statements imply, at least to me, that farm operations should not be entertaining. Farm operations must be boring, stodgy, and unworthy of

attracting tourist dollars. Or, as re-stated from a non-government perspective, these restrictions are intended to force businesses to conduct only those functions deemed to be appropriate by the county government, even to the exclusion of existing business practices.

These rules are punitive in nature and will reduce the profitability, perhaps even the viability of Veramar Vineyard. Will the Supervisors reduce the level of services in the county resulting from this significant loss of tax revenue, or are they going to raise our taxes? One or the other. Supervisors are well known for their consistent references to the virtues of preserving farmland, but these new rules make it plain that how you farm—by their rules—is just as important to them. Perhaps the time for the standard measures has passed in Clarke County.

Tiffany Bogaty

I will keep it simple. Your new rules and regulations that you are trying to impose will be taking away my job, because I am the event coordinator for private events, festivals, and marketing, as well as my counterparts Debbie and Leah. You will be getting rid of our jobs with your rules and regulations. I bring in the food, I schedule the musicians that are all local, and I bring in the weddings and create the festivals. I also bring in the food trucks as well. I coordinate all of this for our county. Most of our county people come to Rock the Grapes, my country music night, and we had a Republican convention not too long ago. So, we have all of these things that we bring in that also contributes back to the community. So, with your regulations you would, pretty much, taking away my job.

Eric Hamilton of Possum Hollow Lane, Berryville

Your rules and regulations are out of line. I think they are hurting my family, myself, my job, and everything. A lot of these people think these are out of line. The four of you should have given your seats to a few of the women that are standing back there.

Linda Coffman of Merrimans Lane, Winchester

I live in Frederick County and I am a supporter of Clarke County business, especially our friend's winery who has brought us many happy hours and a lot of tourism from friends of ours who visit this area. Today, I challenge you to confront a glaring contradiction within our approach to safeguarding Clarke County's agricultural essence. Supervisor David Weiss champions farmland protection, advocating for accessible land for our future farmers. While Supervisor Bev McKay laments the loss of thousands of acres of farmland while both supervisors seemingly endorse new zoning regulations that target our agritourism business.

This paradox demands a straightforward answer: what do our leaders genuinely support? While we voice concern about farmland lost to solar projects and nutrient credit programs, we must question whether these zoning regulations align with our commitment to family farms. We stand at a crossroads, torn between preserving farmland and imposing restrictions that could hinder our agritourism ventures. It's time to choose our path wisely. Family farming: for it or against it?

Darlene Kent of Omph Drive, Winchester

As a fellow small business owner, I am deeply concerned with the proposed restrictions being placed on farm wineries, breweries, and distilleries in Clarke County. Consequently, I struggle to understand and thus support the county's desire to alter Virginia Code §15.2-2288, which provides protection to farm wineries, farm breweries, and farm distilleries by limiting local zoning authority over these operations. The code further states "local regulations shall be reasonable, and shall take into account the economic impact on the farm winery, farm brewery, or farm distillery of such restrictions, the agricultural nature of such activities and events and whether such activities are usual and customary for operations throughout the Commonwealth".

Veramar Vineyard, a locally owned and operated winery in Clarke County, was started by the Bogaty family over twenty-five years ago and was the tenth winery in the state of Virginia, that now hosts over 200 wineries. I think that number is actually a lot larger. A significant portion the Veramar Vineyards annual gross receipts is as a direct result of activities directly tied to their wine producing business, such as public assembly events, weddings, private parties, private meetings, live music, and entertainment.

In closing, I feel very strongly that the proposed rewriting of the current code, a code that has been in place for over eight years, is attempting to solve a problem that simply does not exist, nor do I see how these businesses pose a potential, significant impact on the health, safety, or welfare of the public. In closing, please consider the financial negative impact, now and in the future, that such a change would have on the many small businesses that make their living in this industry as farmers in Clarke County.

Gail Farrace

I have been in Clarke County forever and also part of a family farm, so I know how hard it is to keep making ends meet farming. I think these restrictions will inhibit their – Veramar and the Bogatys, and not just them but a lot of other wineries in the area. Local farms are something that gets handed down to your children and your grandchildren. The Bogatys grandchildren happen to be also my grandchildren. So, I would just like to see these regulations, which seem to me totally unnecessary,

there's not a problem, so if it ain't broke don't fix it. And I just don't want to see the opportunities that my children and grandchildren will have if this business gets squelched or business cuts back where there is not enough for everybody involved. I just think it's a situation where it is just not necessary. Things are fine; if it isn't broken don't fix it.

Catherine Bogaty of Jefferson Street, Winchester

I am married to Justin Bogaty, the winemaker. We have three daughters. Our youngest is here and earlier escorted her Papa to the podium. Our two bigger girls wanted to be here however, one is at a golf banquet and one is grown-up and moved out and had to go into the office in DC today. Both of our big girls have worked at Veramar. Our big girl worked there on her breaks from college and in high school. She started in the kitchen and then moved behind the bar when she was old enough. She took so much pride in this job and would come home after work and talk nonstop about her conversations with customers, feedback she received and questions customers had for her dad, the winemaker. She was a marketing and business major and had ideas for marketing and social media that she could not wait to call and share with her dad.

Everyone in this family has worked for the family in some capacity or other. All the big kids have helped with bottling, even though they may not be doing the heavy lifting yet, they are bonding as cousins, working hard, laughing, and helping their family. Even stamping and taping boxes is important. The kids are loyal, they take pride in their work, are learning a great work ethic, and they genuinely want to help their dad, their grandparents, and their uncle Eric. My nephew Wyatt is here, and he spent his summer working the fields at Veramar to help his family.

In the Bogaty family, family comes first. The most valuable thing my mother-in-law has taught us is that spending quality time together and making memories and having experiences is what is most important. We do that as a family and that is what we want for our members and our customers.

Our members and customers are a bit more mature. They are families; they are bringing their children, their parents, and their extended family and friends. They know children are welcome, because the Bogatys have nine grandchildren. They know their dogs on leashes are welcome, because we all have dogs. They know they can throw a football with their kids or kick a soccer ball. They come to experience amazing wine, the beautiful scenery and to relax. They come spend money in your county to escape the hustle and bustle of the city and enjoy the views and have a memorable day.

The things you are worried about are not happening at Veramar. We do not have young people just coming out to party. Our staff is not just slinging drinks. That may be happening up on top of the mountain but at Veramar we are creating an



experience for our customers and we are building relationships. The events we have during the day are family friendly.

In closing, I want to say that most of us have to work for a living. We spend a lot of time at work, but I don't believe that most people love what they do. How blessed to be both talented and passionate about what you do. My husband and in-laws have found that. They love their work; they genuinely care and put their heart and souls into it. My in-laws are pushing age 80. They don't have to get up at eight o'clock every morning and be in the office, but they do because they love it. They crunch the numbers, they worry about the weather, the budget, and the harvest because they love it and they want to leave their grandchildren a legacy. Veramar is a beautiful place with a delicious product and friendly staff that we also consider our family, so Veramar must be grandfathered in.

Leah Wolford of John S Mosby Hwy, Upperville

I proudly lead the Marketing Department for the Bogaty Family's wineries. I work at the Veramar office here in Berryville, alongside a team of dedicated colleagues that, because of this family business atmosphere, I have grown extremely close to. When I first heard about the new county ordinances and proposed rules I found myself thinking, I really hope this doesn't impact my job.

These regulations on advertising and marketing against concerts and regulations against merchandise pose a significant challenge to my role at Veramar. My job revolves around creatively showcasing our unique company and products to our community. Without the assent to effectively do so, I won't be able to attract the customers and revenue that are vital to our business' survival. If I cannot do that, I can no longer do what I was hired to do for this family.

I understand that change can be unsettling and it might seem like I can easily find another job. That is indeed a valid point. However, it's not just my job that hangs in the balance. Every role here at Veramar plays a part in the Marketing Department. These rules not only threaten to redefine my entire job, but they will also impact the livelihood of my colleague's jobs as well. Our family run company thrives on our ability to bring people through our doors and these regulations prevent a number of possibilities. So, when you are making your revisions, I invite you to consider not only the fate of my job and those of at least thirty others, but also to acknowledge the countless hours we've invested in perfecting our strategies. Together we make a wholesome, family run company and your rules could change that forever.

Debbie Biard of Middleway Pike, Kearneysville WV

I don't have a lot to say, but I hope you think it is as important as I do. I am the operations manager for the Bogaty family winery. I ask that you consider, before you make this decision, the lives and the impact that your decision is going to have

on all of the employees. A lot of us are retired and we depend on this paycheck to keep roofs over our heads and food on our table. So, please consider that before you make your choice.

Missy Tuttle of White Post Road, White Post

I am here to talk to you about Twisted Oak Farm Brewery. We will be the first farm brewery in Clarke County, as we are slated to open within the next ninety days. These proposals that you are making are creating a challenge for us, so thank you for giving us the opportunity to discuss it with you tonight.

We respectfully request that you reconsider the proposed text amendments, considering the negative economic impacts that they will have on our farm brewery and others in the county. We ask that the voting on these proposed text amendments be temporarily paused for at least a period of thirty days. This would allow for further deliberation, dialog, and evaluation of the impacts associated with the proposed changes. We believe that the additional time for consideration will lead to a more informed and balanced decision making process. I'd like to focus on two crucial points regarding the proposed text amendments.

The first: amplified sound restrictions. Under the proposed text amendment, all amplified sound is prohibited after 6:00 pm. This would have a significant economic impact on our farm brewery. Music is really key to the guest experience. Banning amplified sound after 6:00 pm would hinder the ambiance we offer and limit our ability to provide an exceptional guest experience. We request a reconsideration of this restriction to allow for reasonable sound levels that don't disturb neighboring properties.

The second: restrictions on minor commercial public assembly activities. The proposed amendment introduces restrictions on minor commercial public assembly activities such as private parties and private meetings. Breweries serve as gathering spots and are a natural venue for celebrations and events. The current ordinance states that permits are not required for events with attendance under 149 people on a parcel of six or more acres, provided they comply with the current noise ordinance. We believe the existing ordinance is sufficient and that additional restrictions would be detrimental to our business. We request that you maintain the current guidelines, as they strike a balance between ensuring responsible operations and allowing breweries like ours to thrive as integral parts of our community.

Again, a thirty-day pause on these proposed regulations would allow for further deliberation, dialogue, and evaluation of the impacts associated with the proposed changes. We believe that by working together, we can foster an environment that is both economically viable for farms like ours and contributes to the economic vitality of Clarke County.

Donna Evers

I am the owner and winemaker at Twin Oaks Tavern Winery. In 1997, my husband and I bought this property that had had a severe fire and spent a year fixing the house and the next year planted the first half of the vineyard. The story goes on from there. It has been quite an adventure and I am very very happy that we have had the opportunity to do that. I am going to tell you right up front that these regulations would make it impossible for me to continue as an agribusiness. I hope that you will take that into consideration.

I am very proud of the fact that my grandson is my assistant winemaker. He's a heck of a guy and he has just done a beautiful job for us. I have loved every minute of all the work that we have had to do and it is very hard work. Because I have a small vineyard, we have planted roses at the end of all the rows have really treated it like a beautiful garden. We were also lucky enough to have a gorgeous view of the Shenandoah Valley, and I always say to our visitors, when they come and visit with us – and babies and dogs and kids and everything else – that it is sort of like a mental vacation for them. And, by the way, your Clarke County Experience brochure has a picture of our winery in it with the autumn views. I know you want that to stay there, so please do not impose these onerous rules on everyone. It isn't right at all and I hope you all know that.

Mona Hope

I live in the Shenandoah Retreat and I have been there since 2006. I have been a patron of both Veramar and Twin Oaks for over twelve years and I stand before you today because I express my strong opposition to the current proposal to restrict the activities of the vineyards within our county. While I understand the need to regulate certain aspects of these establishments, I firmly believe that the proposed limitations go way too far and would have detrimental effects on both the success of our local vineyards and overall economic vitality of our community.

First, the proposed ban on parties and weddings poses a significant threat to the viability of the vineyards and the capacity to attract visitors. These celebratory events not only contribute to the local economy by generating revenue for the vineyards, but they also bring in guests from outside the county, benefitting our hospitality industry and other local businesses. Weddings, in particular, are a significant source of income for vineyards and often foster a deeper appreciation for our county and its beauty.

Second, the proposal seeks to ban or limit music at vineyards. Music has long been a vital component of the vineyard experience. It enhances the ambience and provides an enjoyable atmosphere for the visitors. By prohibiting live performances or even recorded music, we risk stifling the creativity and cultural enrichment that these events bring. Moreover, it would have a direct impact on the local musicians

who rely on these opportunities for exposure and income. It is crucial that we preserve the arts and support our talented musicians rather than limiting their ability to showcase their crafts at these vineyards.

Additionally, the restriction on serving food at vineyards would be equally detrimental. Many wineries have established on-site restaurants or have partnerships with local caterers or food trucks to offer visitors a complete dining experience. This not only adds value to the customer's visit but also supports local farmers, food suppliers, and culinary entrepreneurs. Restricting these establishments from serving food undermines the unique tourism potential of our county and hampers the growth of our small business ecosystem.

I urge you to reconsider this proposal and work towards a more balanced approach that respects the interest of wineries while addressing any genuine concerns related to noise, traffic, or environmental impact. Perhaps a consideration for a grandfather status for their operations would be in order. I believe that collaborating with the winery owners, local residents, and other stakeholders can ensure that we find workable solutions that strike a fair balance between the economic benefits and the quality of life within our community.

In conclusion, the proposed limitations on wineries including the bans on music, parties, weddings, and serving food would have serious and far-reaching consequences for our local economy, culture, and community and would put the investment and income of two of our most respected and longtime business owners, the Bogatys and Donna Evers, businesses in jeopardy.

Gary Hornbaker of Lord Fairfax Hwy, Berryville

I was the extension agent in Loudoun County for 26 years, retired from there and went to work for Loudoun County Department of Economic Development in 2003. The reason I mention that is because Loudoun is one of the leaders that helped develop all the format of ordinances and regulations for wineries at that time, when they were really just getting started. Breweries and cideries came along later. We were very involved as far as the Ag and Forestal districts and the innovation that was going on in this new enterprise that was coming to our area.

I lived in Clarke County for about forty years. I farm. Agriculture has been a part of my life my entire life. I question the process that the Planning Commission used on this. Have they gone back to compare what other counties have in their regulations? Counties like Loudoun, Albemarle, Nelson, the counties that have a lot of farm breweries there, to do a side-by-side evaluation of what's needed. You need to remember: a brewery, a distillery, a cidery may be located in Clarke County, but they are going to be in direct competition for that almighty dollar against all these other counties that have breweries, wineries, and cideries. We need to be on a level playing field for these operators of those operations.

I would encourage the Planning Commission to look at these regulations, because it has already been laid out. The signage, the parking, the amount of car trips per day, restrooms, all that is laid out in these other counties. With that, I kind of condemn the Planning Commission that they haven't gone the extra mile to set up like a citizen's advisory committee to help formulate. I read up here that they have no outstanding concerns. Obviously, there are a lot of people in this county that have outstanding concerns. With that, I've heard—I've been here a long time, forty years—the old slogan "Don't Loudoun Clarke". Maybe there's some things about Loudoun, and Albemarle, and Nelson, and Frederick, and all the other counties in Virginia that have breweries and wineries and cideries, that we need to adopt here also. Please send this back to the Planning Commission.

Scott Seeberger of Blue Ridge Mountain Road, Bluemont

I live a quarter mile from a limited brewery that is established in Loudoun County. Let me tell you a little story. That business established itself approximately five years ago, unbeknownst to the residents that live on Blue Ridge Mountain Road. When that business was established, we heard loud music, increased traffic, and increased trash. Our loss of quietude commenced and, when we approached the Loudoun County officials, we were told that there was nothing that we could do about it. We were shocked that this new business had been formed and we were faced with hearing music and entertainment a quarter mile away every weekend on Saturday and Sunday. To this day, we still hear that.

So, I think we're here tonight to really talk about Clarke County being business friendly. I'm all about supporting the breweries and the wineries in Clarke County, but it's about being a good neighbor. It's the entertainment aspect of that limited brewery or farm winery that we need to ensure does not get out of control. I'm part of the Blue Ridge Mountain Civic Association and there are members here with me tonight. We support this amendment, but we support this amendment primarily dealing with the curtailment of the entertainment and the music that is limited by the amendments. We must ensure that we protect our businesses and our farms, but we also need to ensure that we are good neighbors to those that live nearby. Just think about the families that own property next to those farm wineries and limited breweries and how they are going to feel when they hear music every weekend if we don't have some sort of regulation that curtails and restricts that. Thank you very much for your time tonight and I wish you the best of success in handling this critical issue for the county.

Peggy Duvall of Cunningham Lane, Millwood

I do not have a financial, vested interest in the proposal in front of you, but I do have an emotional connection to Clarke County that brings me here tonight. Over the

past several years, the turnover of large parcels in the county is becoming epic as traditional farming continues to become impossible for families as a means of survival. I believe the advancement of breweries, wineries, and other creative means of retaining our farms and our open spaces, while creating a passive income stream for the county and jobs in our community, is critical. I also believe that these endeavors would benefit from an engaged county leadership that would craft a framework that would promote the success, rather than throw up blockades that discourage productivity and even sets them up for failure deliberately.

Restricting such business models to less than an individual citizen's right as property owners, and inserting regulations that deliberately impacts the productive nature of the enterprise, such as retail sales and business hours that don't address the two biggest hours of income that any brewery, winery, or distillery is going to have. I also think that you undervalue the tourism aspect of our agrarian county and the value of the views and the place as income producing, not just what comes out of the ground. That is a real value that this county has to offer, and I think you undervalue that aspect of it. I also think that the particular proposal about additional roads coming in impacts our watershed by reducing the arable land and increasing the impermeable surfaces. The decisions on the table leave Clarke left with forcing the kind of development that creates a bedroom community for commuters, wealthy retirees, and part-timers who have limited interest in the healthy fabric that makes Clarke County Clarke County. It strains our resources. As stated before, it would be great if the county leadership would form positive framework that maps out a particular Clarke County vision for alternative farm operations to grow our future. But, if the leadership has no interest in helping, perhaps they should just get out of the way and let things stand as they are.

Doris Stimpson of Nelson Road, Boyce

I am here to show support for changes proposed for wineries, breweries, and distilleries. I see the problems in our neighboring counties, Loudoun and Frederick, because they did not plan well. We have Bear Chase, which gives nothing but problems. In Frederick County, they have neighbors complaining about the noise from music as well as traffic concerns on rural roads from the popularity of the brewery, winery, and music scene they bring in. The proposed changes presented here will, hopefully, keep Clarke from having the same problems. No, it isn't broken, but we can see that it could be broken. So, I think the Planning Commission has done a great job in setting forth some reasonable demands in these new changes. I support them.

Judy Whitehouse of Stonecrest Lane, Bluemont

I understand the farmers' plight and the agricultural part. I would like to commend the Planning Commission for tackling this issue. I hope the new proposed Zoning Ordinance text amendment TA23-03 Farm Winery, Farm Brewery; Farm Distillery Regulations are adopted by the Board. You can never go back and add more restrictions, are these restrictions enough? Having a brewery located on our mountain has made many of us realize the things we have lost. Many of us are disturbed by late night noises, bright lights, and a huge increase in traffic on a very narrow road. None of us can know how or if this brewery has had an impact on nature—the birds, deer, and other critters that share our mountain. While going through the drought this summer, what impact did this brewery have on our water supply?

I know that this brewery is not located in Clarke County, but will the mountain attract other such breweries, wineries, and distilleries? If they do, will the special event permits still limit the numbers that can attend and how many special events are allowed in a year? How will these new regulations be enforced? Enforcement by the county will be critical to the addition of these new regulations. These are all questions that must be asked and decided upon before more of these operations are added. Will Clarke County continue to be a lovely, agricultural place to live in, in harmony with its nature and all its natural resources? If so, then I strongly urge the Board to pass this new Zoning Ordinance text amendment.

Wayne Warfield, Jr. of Annfield Road, Berryville

I have been a Clarke County resident for fifty-ish years. I have been actively involved in farming for probably 49 of those years; I think I was old enough to climb up on a tractor with my grandfather. I raised four children and so far eight wonderful grandchildren. There's nothing more rewarding than seeing the kids and the grandkids want to continue the farming operation. I feel like these regulations are going to put a damper on it. We applied for our zoning permit in January, so in one aspect I feel like we were directly targeted for these zoning changes. We ask you all to please reconsider and at least give it some more time and do some research.

Stephanie Dulaney of Annfield Road, Berryville

I have four pages prepared, but I've cut it down to about a paragraph, because most everything has already been repeated. First, I want to thank everybody who came out this evening from the community. This past week has been very humbling with calls, texts, visits, and lots of support. I want to thank the Board of Supervisors and the Planning Commission, I know that you all do not have an easy job to make everybody happy.

We moved to Clarke County fifty years ago from the last working farm in Anne Arundel County, Maryland. Our family was the first there, then subdivisions rolled in, growth happened, and we were pushed out by the state. The only blessed thing that I can say that happened out of this is that our family farm still exists there, but they've made it into a park that people can now visit to see what the way of life used to be. So, I know and I remember first-hand the loss of a generational family farm and how it affected my grandfather, his siblings, and all of our family.

We have worked hard and make sacrifices to keep our family farm. We still work our farm, we work my parent's farm—my dad passed away this year—and we still work my grandfather's farm, all of which are in different districts. We all work full-time jobs and we own a small business. We're just doing whatever we can to try to save our farms and keep them for our children and keep these generational farms here in Clarke County. We've worked really hard to raise really good kids and we want them to come back and want to be here also. I just ask for you to re-look at some of the restrictions that you have put into place and to try to help us support our family businesses and our family growth.

Justin Dulaney of Annfield Road, Berryville

I am the proud son of Stephanie and Shannon Dulaney, nephew of Wayne and DeeDee Warfield, I am a lifelong resident of Clarke County for twenty-six years. I have experienced the best that this county has to offer, from little league sports to 4H, to middle and high school sports. I've worked at Wayside Farm and I celebrated my wedding at Rosemont. Throughout all these experiences, one common thread has remained: the unwavering support of my family, both in their personal capacity and through their business sponsorships. Clarke County has felt the impact of this support and my family's commitment to this community is visible at every turn.

However, despite the love and support I have received and the countless opportunities this community has to offer, I find myself among a growing number of young adults and professionals who feel compelled to leave. Clarke has become a mere stopover, a place where many of my peers grew up but eventually outgrew. Today, I work in Fairfax and in Washington D.C., and it is disheartening to realize that so few have heard of our beautiful county. I'm often met with blank stares and I must resort to explaining "oh, we're the town between Loudoun and Winchester". My family has acknowledged this and believe that a thriving brewery can be a catalyst for that change. We need a gathering place, a place to eat, drink, and savor the breathtaking views of our farms, valleys, and mountains. We need a place to be proud of.

These newly proposed restrictions all back off of the concept of what is usual and customary for farm businesses. I am not sure how often many of you have visited local farm breweries, but it is quite usual and customary for a brewery to host public



events, have live music, and serve food. I think every single person in this room would find it quite uncommon if these were not integral functions of such businesses. Regardless of that, let's look at the impact through the lens of something we all know too well: money. Something in which the Virginia code states shall not be impacted by local regulation.

Restricting hours of operation to 8:00 pm will lead to reduced wages for employees, decreased revenue for breweries and will ultimately leave a dent in tax revenue for the county. The most impactful regulation affecting our community members is the food service restrictions. This will undoubtedly result in fewer job opportunities for our community members, a lack of collaboration with local farms, and the need to bring in food trucks from businesses outside of our county. It means less revenue for the brewery and, again, less tax revenue for our county. Lastly: the restrictions on events. Absence of events means no community engagement. Events including weddings, live music, fundraising for our little leagues, 4H, FFA, and high school sports. Why hinder the ability to fundraise for our youth? Why stifle the opportunities for young adults like me to get married at these beautiful venues within our county? Why limit the usual and customary events that bring our community together and create more jobs for our residents?

I yearn for our small town to flourish. A place where I can envision my children enjoying weekends at breweries and other agricultural destinations, and perhaps one day taking over a family business with the assurance of its success. In the land of the free and the home of the brave, let us be free to explore new opportunities and brave enough to do so without hindrance.

#### Wes Schoeb of Paris

I am here tonight to speak in strong opposition to the proposed amendments to the farm brewery, winery, and distillery legislation, due to the negative economic impact that would definitely follow, and there will be negative economic impacts. My family moved to Clarke County over twenty years ago. My wife and I have lived here for the past six years and I currently work at Dirt Farm Brewing in Bluemont, just on the other side of the mountain. My aunt and uncle were pretty big parts of getting that legislation passed over there for the farm breweries back in 2015.

I wanted to touch on a couple quick points. Hours of operation. It states that 8:00 am to 8:00 pm is a reasonable twelve-hour period for public access to the operation. I don't know any brewery that opens at 8:00 am, I don't know too many people that would go to a brewery at 8:00 am, 10:00 or 11:00 am, maybe. Clarke County is a pretty small county. A lot of people that live in the county work outside of the county and travel pretty far for their jobs. As first-hand experience, we have had to extend our hours. We found that people who are working are not going to make the trip into the brewery on their way home when they realize that it closes so early. It's just

not going to happen. There's only a three-hour window, say 5:30 to 7:30 that people are going to be able to get out of their place of occupation and back to the establishment in order to enjoy the time there. Seeing that short window really deters people from doing that. Not to mention, most breweries do implement some sort of last call thirty to forty-five minutes before the closing hour, so that really shortens the time that these businesses are able to make money.

The food service aspect. Food and alcohol establishments go hand-in-hand. Restricting businesses from having full-time food is a missed opportunity to showcase the incredible agricultural establishments in our county: fruits and veggies from just down the road at Chilly Hollow Farms, cheese from Harvue, burgers and steaks from Audley. As an example, last year we implemented a burger night showcasing Audley's beef. We did that on a night that we typically see less customers. What that did was to increase our revenue twenty to thirty percent just by having that name brand, local beef at our establishment. That's the kind of opportunity that will be missing by limiting the food aspect of these farm breweries, wineries, and distilleries.

Lastly, these businesses have enough to worry about without burdening them with several, questionably legal, requirements and ultimately setting them up for failure. They are not just producing alcohol at these businesses, they are making places for friends and family to go and share the best and worst moments of life. They are part time and full time jobs for community members and congregating locations for the community and so much more. I politely recommend that you revisit the proposed amendments as it, in my opinion and based on my experience over the last decade, will inevitably lead to failure of those already in operation and future businesses.

Ryder Hamilton of Possum Hollow Lane, Berryville

I am part of the Bogaty family. I just want to say that I feel like this shouldn't happen. My family's lives have worked on that farm for so long and this is kind of threatening them to take their whole livelihood away. I don't want that to happen to them. I don't want that to happen to any of the farmers here. So, could you please just think about all of this before you fully commit to this? If you could, please.

Turner Kobayashi of Lord Fairfax Hwy, Berryville

I am the General Manager of Audley Farm. I reviewed the presentation that Wayne and DeeDee Warfield and Shannon and Stephanie Dulaney put together regarding their proposed Chilly Hollow Brewing Company. It is articulate and poignant, specifically to the proposed amendments. We feel that the proposed amendments are too restrictive and do not take into consideration the possible current and future needs of the local farming community. It is challenging enough to manage a farm in today's world and economy. We seek ways to diversify, to help generate necessary

revenues, to continue our operations. We look to our local friends and farmers and help them, as they are so willing to help us. Through our involvement with the community and the Clarke County Farmer’s Market, we have gotten to know many of our local producers. Mackintosh Fruit Farm, Harvue Farm, Chilly Hollow Farm, Tupper Dorsey, Oak Hart Farm, Smith Meadows Farm, Blue Hill Farm, Veramar Winery. I mention these farm operations wondering if anyone has reached out to them for their perspective on these proposed amendments. We believe in local. We live by local, we support local. We work with our friends to help make more sales, either directly or indirectly, at our farm. They, in return, support us and sell some of our products at their farms. It works and it’s meaningful. We oppose specifically the proposed amendment that would prohibit the retail sales of merchandise not related to wine, beer, or alcoholic beverages, as this flies directly in the face of farmers helping other farmers while providing an opportunity for themselves to generate incremental revenue. We are opposed to the current proposed amendments that are too restrictive and strongly support the recommendation to send the proposed amendments back to the Planning Commission for them to get more input and feedback from local agribusiness owners to determine a possible or mutually viable way forward.

William Genda of Glen Owen Lane, Berryville

I am also the owner of Rosemont. I have two topics to discuss concerning business opportunities for Clarke County farmers and also address the issue of noise, drunkenness, and traffic.

I went to Bluemont Station this past weekend in Loudoun County. They had acoustic guitar playing, they probably have the best food of any winery or brew house, whatever you want to call them, very pleasant. The music was very low and not a problem for a citizen. Bear Chase is another story and I want to address that. We get probably fifteen to twenty thousand guests at Rosemont a year; we do 100 to 200 weddings. I would love to be able to send my clients and my guests to places in Clarke County and not send them to Magnolias or to Winchester for rehearsal dinners and other things and parties and activities. I would like to keep all those guests and all that income in Clarke County. If you restrict all our fellow Clarke County people, you’re going to hurt them and you’re going to hurt the county. It’s just not good business practice.

I think I have a pretty good understanding of noise. There is another wedding venue in Clarke County called the Kentlands. They were approved to do up to fifty to sixty weddings per year; they can go until 11:00 pm with no noise restrictions. That was approved here four or five years ago, before COVID. I supported them. At that time, you tried to limit them to 10:00 pm and I said, “No, no you can’t do 10:00, you have to do 11:00, because that’s what all the other wedding venues do”. To put these

restrictions on and say no noise past the property line is just unbelievable and 6:00 pm is ridiculous.

Let's address the problem of noise. The people here have a legitimate concern and fear about the noise. I get it. We have been very good neighbors to people in the Hermitage and we have not gotten one noise complaint in the last ten years. Well, other than the fireworks—we haven't gotten one complaint for music, we haven't gotten one complaint for traffic, when everyone is exiting the weddings. For drunkenness, that's a big concern, we monitor and control the alcohol. Those issues have to be addressed and there's ways to do it. There's vineyards, there's breweries in Loudoun County that have no complaints and there's other breweries that have lots of complaints. I think if we go and talk to the owners of those breweries, they'll show you how to be a good neighbor without putting on the restrictions that you're looking at.

Keith Wolf of Weeks Court, Berryville

I am new to Virginia. I've only lived in Clarke County for two and a half years. We moved to Berryville because it is a quaint, little, peaceful town. I have been relocated four times in my career and we've always lived in a town like Berryville. Small, rural nature, on the fringe of farm-to-table and crazy suburbia. I am a real estate appraiser and real estate broker. I've been a real estate appraiser and broker for over forty years. What you may not realize is that the zoning ordinances are equivalent of a back door eminent domain action. When you change the zoning ordinance, you are basically deed restricting the property that the owner can use the property for. As you think about these ordinances, think about the impact that it has on the owners' quiet use and enjoyment and making their land productive and income producing. In a rural community, land isn't worth anything unless it can be income producing. So, that's my view on it as the real estate professional.

Now, I don't have a dog in this fight. I've looked at your ordinance, and I really don't see anything that is really alarming. It's pretty typical for a lot of the other ordinances I see around the country because that is my role. I do real estate nationwide, not just locally. As a consumer living in a county, I do have a dog in that fight. I do see these ordinances as being overly restrictive and hurting the economic welfare of the overall county, the residents, and limiting these businesses to operate a substantial going concern as to profitability. I also see these ordinances as limiting the ability for them to hire and retain employees. Noise, traffic, yeah, those are issues. Route 7 is a nightmare, 340 is a nightmare. Frederick County is building houses like mad, so that traffic isn't getting any better.

I just don't understand this ordinance that says "proposed administrative requirements are intended to mitigate any potential significant impacts on the health, safety, and the welfare of the public". Can you post the studies that show

how these businesses are currently adversely impacting the public in that manner? Can you post the studies that show how making this change to the ordinance will mitigate those concerns? Other than a couple car accidents at Nalls, ok, Veramar is tucked back by the quarry. Twin Oaks is on the mountain, and Chilly Hollow is going to be down the road. So, thank you very much.

Lorie O'Donnell of Ashby Court, Berryville

I know you all have a difficult job trying to move us forward. I have been a resident of Berryville for thirty years. We have heard a lot of talk from people and I think we've heard a lot of comparisons. We've heard a lot of concern about Bear Chase. I would ask the Board to look at Dirt Farm. I would ask the Board to trust our families that are trying to run breweries, that are running wineries, the way Loudoun County trusted the Schoeb family in doing Dirt Farm. They were a family that was dedicated to the preservation of agriculture and wanting to make a name for themselves, make their county better, make their family better. That's what these families behind you want to do, that's what the community wants to see. They're not going to be like the brewery on the top of the mountain, that's a business. That's not an agriculture endeavor, that's not a family business. The families you've heard from tonight have put their lives and their livelihood into this. Trust them. Trust them to do right. They have a community to support, trust them.

Now, I've been practicing law for thirty years. I've spent a lot of time fighting local ordinances when they don't meet the state requirements or when they go against the state. If you look at what the state requires of local ordinances when regulating breweries, you must be reasonable. You must fulfill the expectations and the usual business practices. Is it reasonable not to allow these breweries and wineries to serve food? I personally want them to serve food, I don't want people drinking a bunch of wine and not eating. I don't want them drinking a bunch of beer and not eating. Let them serve food, please. Is it reasonable to have them shut down at 6:00 or not play music at 6:00? It is not. It is not reasonable. Your local ordinance is not going to comply with state law. If it doesn't comply with state law, it's not going to be able to be upheld if any of these individuals decide to challenge it.

So, I ask you again. Trust the families. Trust the community. Allow them to do what they need to do to grow, to prosper, and to have our county grow and prosper. Take a second look at your restrictions and your ordinance.

Nicole McDermott of Bittersweet Lane, Berryville

I fully support agritourism. I frequent some of the local establishments. I love what these breweries and local wineries are doing. I just wanted to remind everyone that, while there may not be problems now, I have a reality where I have to worry about what if. I know that businesses always have the best of intentions. I do trust family-

owned businesses and I do trust this community. But, I am a mom and we're a family and we work from home and have small kids. There are a lot of new babies being born in the area and I just want to remind you that the interest is not just economic, but it is still safety. I know that you are trying your best and I do not envy you all in your position. To balance this economic interest and people who aren't in the business industry but are the neighbors who are impacted when businesses may not be able to control what goes on in their establishments. As a mom, I have to worry about my kids. It'll increase traffic and noise and conduct that may get rowdy with alcohol introduced. Do I think it's going to be a huge problem, given the families that are here? No. But what recourse do I have going up against a big business if there are violations and if there are problems? Maybe this isn't it exactly and maybe there needs to be some tweaks, but I do want to remind you that there is a reality where you do have to be concerned about safety and neighbors and how these businesses impact their lives. I encourage you to keep trying and I am here to remind you that maybe there is not a problem that exists around some wineries and breweries and agritourism, but that doesn't mean there won't be. Families put their trust in local elected officials and people like you to have their interests in mind, too. I just wanted to remind you all of that and good luck. This is a really tough position. I don't want to stand in the way of business success, but I do have to remind everyone that it is a real issue to look out for.

Michael Wilson of Ross Lane, Bluemont

I am going to touch on things I don't think have been covered. We've had a couple people talk about problems with some of the existing breweries like Bear Chase. To compare that with something that is out in the middle of a farm is oranges and apples. That was a place put on a little patch of land to raise hell and sell booze, I think. These farmers are going to maintain their land and preserve their land. They're not going to have that kind of an operation with trash throwing all over—I've heard the complaints. So, I think you can write that off.

We do not need any more laws to prevent problems that may come up at some point in the future. We have enough of that stuff going on right now. We have an excellent Sheriff's Office. If these people get out of hand, I have every confidence that they can deal with that. We really need to maintain us. We're having a problem. I know at least two of you are commercial, working farmers in this county and I'd hope we had your support. One day you may be in the same position these people are. We need something that will keep our land open and allow incomes for the people who run it. That's the main thing I have to say.

Phil Jones of Old Ferry Lane, Bluemont

I have several properties here. I have listened to these regulations but I didn't hear anything about grandfathering of existing properties. So, I'd like to know if there is any provision in there for grandfathering existing operations, or those operations that are currently in the process for permits. There usually are, any time a body like this does any kind of regulations, the people who already have a business and the people in the process of starting a business, in good faith. I haven't heard any discussion about how those businesses, either existing or in the middle of formation, are going to be affected by these regulations.

Dr. John Prohaska

I was headmaster at Flint Hill years ago, so I've watched this whole area grow up. No wineries, no vineyards in Loudoun or Clarke at the time I was coming along. You've done a great job, you've got some real fine businesses that attract families and people, and it's great. I want to speak from a higher authority – not mine, I'm just quoting. He created everything and then he put man and dominion over everything. And just tell me: after he created it all and said "go be fruitful and multiply", then did he sterilize?

Chairman Weiss closed the Public Hearing at 8:12 pm.

Chairman Weiss

- Commended and offered appreciation for the respectful and thoughtful comments provided and shared that the Board is tasked with deciphering what they have heard and working toward balance.
- Requested staff to address the question of grandfathering in relation to the proposed changes.

Brandon Stidham, Director of Planning, presented the following:

- "Grandfathering" is determining whether a use is nonconforming.
- If a use has received prior zoning approval and the ordinance has changed, there are laws that grandfather them under their original zoning approvals.
- A perfect example is Veramar Vineyards: they obtained a special use permit a number of years ago when the ordinance required special use permits for farm wineries. That original special use permit gave additional leeway for them to have festivals and events. They have been working with the county Zoning Administrator on a zoning determination letter that would verify the aspects of their previous approval that would grandfather them out of the proposed regulations.

- Any other existing businesses in the county could also explore how their zoning was originally granted by the county and obtain similar zoning determination letters to verify their nonconforming or grandfathered status.

#### Supervisor Lawrence

- Asked, hypothetically, how he would go about following the proposed regulations, if he wished to open a vineyard and host weddings.
  - Brandon Stidham responded that he would apply for special use permit approval for a minor commercial public assembly use.
- Further asked about the process for serving food at the same, hypothetical winery.
  - Mr. Stidham answered that restaurants are not permitted in the AOC or FOC districts. Food services that would be allowed under the current and proposed rules would fall just short of the threshold for a restaurant. This would include pre-packaged foods or things that come prepared, as well as food trucks or off-site caterers bringing food in.
- Further asked if a special use permit would also allow his hypothetical winery to play music after 6:00 pm.
  - Brandon Stidham answered that it would depend on the nature of the music. Hosting a specific concert-type event, selling tickets to it and advertising it as a separate event would require a special event permit, which could be done five times per year. Background music or a musician performing that is incidental to the winery operation would be acceptable under the proposed regulations.

#### Supervisor McKay

- Requested clarification on what the proposed regulations allow by-right and what would require a special use permit.
  - Mr. Stidham confirmed that the proposed regulations allow a farm winery, farm brewery, or farm distillery to operate by-right. They would not need to submit a site plan, just apply for a zoning permit, which is administratively approved by staff. That operation could also seek an agritourism activity zoning permit, which allows additional flexibility. If an agricultural operation wants to sell their own products or things made from their products, they can do so by-right without needing a zoning permit. However, if they want to have retail sales of other products, they would need to get a special use permit. Charging a fee to host weddings or private parties would also require a special use permit. The special use permit process requires a public hearing, so that neighbors are notified and given the chance to share their concerns and opinions on the matter.



- Inquired what percentage of special use permit applications are approved.
  - Brandon Stidham responded that 100% have been approved. Some may not have been approved exactly as the applicant originally applied for them, but none have been denied in at least the past decade.

#### Supervisor Bass

Firstly, I want to thank everyone for coming out, we appreciate the public turnout for something like this. None of us take this job lightly, so this makes it feel worthwhile to hear the voices of our fellow citizens and neighbors. I could pick nits with several of the technical regulations, many of which have already been expressed ad nauseam here, including hours of operation, amplified sound, and retail sales.

I have come to the conclusion that I need to hear a lot more about economic impact and what constitutes usual and customary. In that context, what I have heard is a significant disconnect between usual and customary under the proposed regulations and what I have perceived to be the general consensus over that terminology. Also, concerns over economic impact, not only for these businesses but also for prospective ones. So, I will support whichever path takes us to more time.

#### Vice Chair Catlett

I agree, I think it is really good to hear everyone out. There's definitely a lot of passion. I represent the Millwood district, and so I've heard an awful lot over the last few years about the impact on neighbors. The folks on the mountain have, very much, been impacted by breweries and I had quite a few letters and input from people who live in my district but were unable to be here tonight. In particular, one of them stated how wineries have experienced varying degrees of success since the legislation changed, so they were supportive of the baseline regulations to establish a good basic footing for wineries and breweries but then, if they wanted more then they have an avenue to ask for more things. That gives a chance to look at it all, like how it impacts the neighbors and how to ensure traffic safety and figure out what fits where.

The regulations are meant to protect the health, safety, and welfare and we are tasked with that as well. Welfare is health, happiness, and general well-being, and we have to look out for that for all neighbors of these establishments.

#### Supervisor Lawrence

Do we want to by-right let people do what some of our neighboring counties have done or do you all want the opportunity to be able to come in here and express your opinions about it? If it is a by-right land use, then you're not going to be able to come in here and express your opinion, because you're never going to know about it until it's already built next door to you. Under this, it's not going to be by-right and so you will have the opportunity to come in and give your opinion. I think we need regulations

as strong as the state will allow us. There are certainly other paths, like a Special Use Permit that you can pursue and at least have a public hearing on what you want to do. I am in favor of the regulations, but I have a problem with a couple of the parts. Six o'clock is a little bit early, but the other night I laid in bed and listened to gunfire until I fell asleep and I thought about how much I would have liked to have given my opinion on that being allowed. You all are given the opportunity to come in here and tell us what you would like. I think we need to protect the minority and let them come in when there is a new project. If I have grapes or apples, I can sell them. But if I wanted to have live music, weddings, or an entertainment center then I would need to come in and present a plan that doesn't upset my neighbors. That's what we're trying to do. Enjoying peace and quiet on your property is also by-right.

Chairman Weiss

Clarke County is very lucky to have the families who have spoken tonight and who have gone into business here and created these very successful operations, or are planning to. We appreciate that, respect it, and are glad to have all types of agriculture. We did utilize other counties; Fauquier County has very similar regulations to what we are talking about now. My colleagues have talked about the rights of neighbors, which is very important to us all. I think that, as a governing body, we do have to think about the "what-if". We do have to think about how we can allow our county to grow and prosper but how can we have control over bad actors? Aside from the hours of operation, I believe that these changes will give us that control over bad actors while allowing the good actors to continue to prosper. The music festivals are a good example of how public hearings, by neighbors coming in and discussing it with the applicant, protects both the neighbors and the music festival. That is what we feel is a good system: one in which both parties are allowed to come in and voice their opinions, even if they do not get everything they want. In the end, it is helpful and protects both parties. I appreciate and sympathize and I have experienced it myself: jumping through hoops to do something that you think you ought to be able to do is irritating and costly. I get that. However, it is the system by which we all can have control over what happens next to us.

Chairman Weiss

- Suggested that the Board could come to consensus on expanding the stated hours of operation and eliminating the 6:00 pm cutoff for music.

**Supervisor Bass moved to table the proposed zoning ordinance text amendment (TA23-03: Farm Winery, Farm Brewery, and Farm Distillery Regulations) to allow for further development and discussion. The motion failed by the following vote:**

|                  |   |     |
|------------------|---|-----|
| Matthew E. Bass  | - | Aye |
| Terri T. Catlett | - | Nay |
| Doug M. Lawrence | - | Nay |
| Beverly B. McKay | - | Nay |
| David S. Weiss   | - | Nay |

Supervisor McKay

- Observed that the Planning Commission has been working on this matter for several months and already held an advertised public hearing, to which no one showed up or offered input.
- Agreed to work towards a consensus on operating hours.
- Added that someone wanting to do more on their property than what is available by-right can always pursue a Special Use Permit, which the Board has a history of approving.

Supervisor Lawrence

- Requested staff summarize the County’s current noise ordinance.
  - o Chris Boies advised that, per Clarke County Code Chapter 120, amplified noise, as measured at the property line, cannot exceed 80 decibels between 7:00 am and 11:00 pm, or 75 decibels between 11:00 pm and 7:00 am.

Chairman Weiss

- Opined that, when the General Assembly passed legislation to protect farm wineries and breweries, the legislature did not envision the idea of having active bars and restaurants on agricultural land. Instead, they wanted to give farmers the chance to sell and promote their product on-site in a tasting room. In neighboring counties, this concept has morphed into full-scale bars and restaurants on AOC land and that is a conflict point that these proposed amendments seek to alleviate.
- Stated that growing grapes or hops is agricultural and is intensive and challenging work, but entertainment is a separate pursuit. Clarke County has worked very hard to protect its AOC land, so having entertainment centers on that AOC land runs counter to intention.
- Suggested amending the proposed ordinance as follows:

- (Use Regulation 1) Change allowable hours of operation to 8:00 am to 9:00 pm on Friday and Saturday and 8:00 am to 8:00 pm Sunday through Thursday
- (Use Regulation 3C) Change to allow amplified sound until 9:00 pm on Friday and Saturday and until 7:00 pm Sunday through Thursday.
- (Use Regulation 6) Change to require lighting provided for safe egress from property be turned off within one hour of closing or at 10:00 pm, whichever is earlier.

**Supervisor McKay moved to adopt the proposed zoning ordinance changes (TA23-03: Farm Winery, Farm Brewery, and Farm Distillery Regulations) as amended by extending the allowable hours of operation to 9:00 pm on Friday and Saturday and extending the hours for amplified sound until 9:00 pm on Friday and Saturday and 7:00 pm on all other days. The motion carried by the following vote:**

|                  |   |     |
|------------------|---|-----|
| Matthew E. Bass  | - | Nay |
| Terri T. Catlett | - | Aye |
| Doug M. Lawrence | - | Aye |
| Beverly B. McKay | - | Aye |
| David S. Weiss   | - | Aye |

Chairman Weiss

- Acknowledged that not everyone will find this outcome favorable and added that the Board’s goal is to balance concerns on both sides of the community.
- Offered appreciation to all citizens who attended and participated in the public hearing.

*20) Public Hearing: Maximum Lot Size Exception Regulations (PH2023-08: TA23-02)*

Brandon Stidham, Director of Planning, presented the following:

**TA-23-02, Maximum Lot Size Exception Regulations**

- Proposed text amendment to amend Section 6.2.6C (Maximum Lot Size Exception (MLSE) – Review Criteria and Regulations) of the Zoning Ordinance.
- The amendment clarifies that a MLSE can be granted for a lot containing a dwelling existing on that lot prior to October 17, 1980 that was later demolished, and that a MLSE can be applied to any lot in a proposed subdivision.
- Additional changes are proposed for clarification purposes.

**Proposed Text Amendment**

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- **October 4, 2022 – Planning Commission provided policy direction to Staff for maximum lot size exceptions (MLSE) based on a lot containing a dwelling in existence prior to October 17, 1980.**
- **Commissioners agreed that a MLSE can be granted for such a dwelling if it had been previously destroyed or demolished.**
- **Commissioners also agreed that a MLSE can be applied to any lot in a proposed subdivision and not only the lot that will contain the dwelling that existed prior to October 17, 1980.**
- **Proposed text amendment would codify these interpretations.**

**Proposed Text Amendment (cont.)**

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- **Additional technical changes are proposed for clarification purposes and to update outdated language:**
  - **A MLSE can be granted for a lot containing a dwelling in existence prior to 1980 even if that dwelling was destroyed/demolished and a new dwelling was constructed to replace it – would still qualify for a MLSE.**
  - **For MLSE based on land being in conservation easement, the word “permanent” is added to clarify that the land cannot be in a conservation easement for a limited term.**
  - **MLSEs proposed on conservation easement properties will be reviewed by the easement holder and subject to any recommendations they provide.**

**Planning Commission Recommendation**

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- **Following a duly advertised public hearing on July 7, the Commission voted 7-0-4 to recommend adoption of the proposed text amendment.**
- **No one spoke for or against the text amendment at the Commission’s public hearing.**

**Staff Recommendation**

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- **Staff has no outstanding concerns with the adoption of this text amendment.**

Chairman Weiss opened the public hearing at 8:54 pm.

William Genda

I just wanted to say I support this, it affects me personally. We had a house prior to 1980 that burned down on our farm in 1999, so this is a good thing for us and gives us a little more flexibility. I appreciate this being changed.

Chairman Weiss closed the public hearing at 8:55 pm.

**Supervisor McKay moved to adopt the proposed zoning ordinance changes (TA23-02: Maximum Lot Size Exception Regulations) as presented. The motion carried by the following vote:**

|                  |   |     |
|------------------|---|-----|
| Matthew E. Bass  | - | Aye |
| Terri T. Catlett | - | Aye |
| Doug M. Lawrence | - | Aye |
| Beverly B. McKay | - | Aye |
| David S. Weiss   | - | Aye |

21) *Public Hearing: Amendments to Clarke County Code Chapter 17 – Fire, EMS, & Emergency Management (PH2023-10: CC2023-02)*

Chris Boies, County Administrator, presented the following:

- The proposed amendments accomplish three tasks:
  - o Changes title of “Director” to “Chief” throughout the chapter, in accordance with the Virginia state code and as recommended by the County Attorney.
  - o Notes and enumerates the authorities granted to Chiefs by the Code of Virginia, as recommended by the County Attorney.
  - o Names the County Administrator as the Director of Emergency Management and the Chief of Fire & EMS as the County’s Emergency Management Coordinator, in alignment with the current Emergency Operations Plan.

Chairman Weiss opened the public hearing at 8:57 pm.

No persons appeared to address the Board.

Chairman Weiss closed the public hearing at 8:58 pm.

Vice Chair Catlett

- Expressed appreciation, echoed by Supervisor Bass, to staff and the volunteer fire companies for providing valuable services to the community.

Supervisor Lawrence

- Offered thanks to staff for including language that allayed many of the volunteer companies’ concerns.

Chairman Weiss

- Further thanked the three volunteer companies for their collaborative efforts and for participating in the process.

**Supervisor Lawrence moved to adopt the proposed amendments to the Code of Clarke County, Chapter 17 – Fire, EMS, & Emergency Management as presented. The motion carried by the following vote:**

|                  |   |     |
|------------------|---|-----|
| Matthew E. Bass  | - | Aye |
| Terri T. Catlett | - | Aye |
| Doug M. Lawrence | - | Aye |
| Beverly B. McKay | - | Aye |
| David S. Weiss   | - | Aye |

*22) Adjournment*

Chairman Weiss adjourned the meeting at 8:59 pm.

*23) Next Regular Meeting Date*

The next regular meeting of the Board of Supervisors will be held on Tuesday, October 17, 2023, at 1:00 pm in the Berryville Clarke County Government Center, Main Meeting Room, 101 Chalmers Court, Berryville, Virginia.

ATTEST: September 19, 2023

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David S. Weiss, Chairman

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Chris Boies, County Administrator

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Recorded and Transcribed by Catherine D. Marsten