Clarke County Planning Commission

AGENDA – Ordinances Committee Meeting
Thursday, April 18, 2024 – 2:00PM
Berryville/Clarke County Government Center – A/B Meeting Room

For more information on this public meeting, please contact the Clarke County Department of Planning at (540) 955-5132 or visit the Clarke County website at www.clarkecounty.gov.

Upcoming Meetings:

- To be scheduled – early/mid May

Clarke County Planning Commission

DRAFT MINUTES – Ordinances Committee Meeting
Monday, May 15, 2023 – 2:00PM
Berryville/Clarke County Government Center – A/B Meeting Room

ATTENDANCE:			
Randy Buckley (White Post)	✓	Frank Lee (Berryville)	✓
Ron King (Buckmarsh)	✓**L**	Gwendolyn Malone (Berryville)	✓
George L. Ohrstrom, II (Ex Officio)	✓**E**		

L – Denotes late arrival

STAFF PRESENT: Brandon Stidham (Director of Planning), Jeremy Camp (Senior Planner/ Zoning Administrator)

CALL TO ORDER: By Mr. Stidham at 2:03PM.

1. Approval of Agenda

Members approved the agenda by consensus as presented by Staff.

2. Approval of Minutes – September 2, 2022 Meeting

Members voted 3-0-1 to approve the September 2, 2022 meeting minutes as presented by Staff.

Motion to approve September 2, 2022 meeting minutes as presented by Staff:			
Buckley	**AYE (moved)**	Lee	**AYE (seconded)**
King	**ABSENT**	Malone	**AYE**

3. Old Business -- None

4. New Business

A. Maximum lot size exception regulations

Mr. Stidham presented the staff memo on this proposed text amendment. He said that this text amendment codifies the Commission's and Staff's interpretations that a maximum lot size exception (MLSE) can be granted for a pre-1980 dwelling that is demolished or destroyed, and that the MLSE can be applied to any lot in a subdivision. He also noted that the text amendment contains several changes to update and clarify this section. He then reviewed the proposed changes in detail.

Mr. Stidham noted that the proposed language would make it clear that if the pre-1980 dwelling is demolished and a new dwelling constructed to replace it, the lot would still be eligible for a maximum lot size exception. He said he wanted to make this clear to the Committee as it is not an issue that has come up in the past. Chair Ohrstrom asked for clarification that in this scenario, the lot owner would not be receiving an additional MLSE. Mr. Stidham replied no and clarified that in the scenario, the property owner is only subdividing one time using the MLSE. He added

that the new dwelling would be using the dwelling unit right (DUR) exemption from the original pre-1980 dwelling and the lot would still qualify to be subdivided using a MLSE. Chair Ohrstrom asked about the language requiring the pre-1980 dwelling to be recognized as a farmstead or tenant house per Section 3.4. Mr. Stidham replied that this is how the sliding-scale zoning section was originally written with the intent being that DUR exemptions were granted for existing residences on farms. He also noted that in most cases, lots less than 6 acres in size in 1980 were assigned a DUR but not an exemption for any existing dwelling. Commissioner Lee asked what criteria was used in 1980 to assign DUR exemptions and Mr. Stidham said that he assumes it was the minimum lot size to qualify a property for land use taxation. Mr. Stidham also noted that he has run across some 8-10 acre lots with pre-1980 dwellings that were not assigned DUR exemptions. He speculated that these lots may have been viewed as part of a common subdivision and not a farm.

Commissioner Lee asked if the county charges a fee for Land Evaluation and Site Assessment (LESA) scoring. Mr. Stidham replied that this fee was recently removed because most LESA scores are generated in evaluating potential conservation easement properties. He also noted that a tool has been developed to automate the calculation process so it does not take a significant amount of staff time.

Members had no further questions or concerns and agreed by consensus to forward the text amendment to the full Commission.

B. Farm winery, farm brewery, and farm distillery regulations

Mr. Stidham presented the staff memo on this proposed text amendment. He said the text amendment was drafted to strengthen rules for farm wineries, farm breweries, and farm distilleries that were first adopted in 2015. Chair Ohrstrom asked whether localities could define the business hours of these operations. Mr. Stidham replied yes and said that hours of operation are proposed in the text amendment.

Commissioner King entered the meeting at 2:18PM.

Mr. Stidham noted that the Code of Virginia requires localities to allow activities that are usual and customary in the production of wine, beer, and alcoholic beverages. He added that Clarke County has always had a stricter interpretation of "usual and customary" activities as compared to other localities. Chair Ohrstrom agreed and said that this interpretation is based on ensuring the health, safety, and welfare of our citizens. Mr. Stidham reiterated that we need to ensure that any regulations we adopt for these operations are designed to ensure health, safety, and welfare. He then provided a description of what Staff considers to be usual and customary activities.

Regarding sale of wine, beer, or alcoholic beverage-related items, Commissioner Lee asked whether sale of t-shirts and other items promoting the winery, brewery, or distillery are allowed and Mr. Stidham replied yes.

Mr. Stidham noted that public events are not considered to be usual and customary activities and would require approval of either a special use permit for a minor commercial public assembly

use or a special event permit. He noted that wine, beer, or alcoholic beverages from other businesses cannot be sold at a farm winery, brewery, or distillery. He also said that you cannot sell items that are not related to the production of wine, beer, or alcoholic beverages such as garden supplies. Chair Ohrstrom asked if a winery could sell grapes and Mr. Stidham replied that they can sell grapes grown onsite as they are considered to be a farm.

Mr. Stidham said that concerts and separately advertised entertainment events are not permitted but incidental entertainment not advertised as an attraction, such as background amplified music or a solo guitar player, could be allowed. He said the objective of these rules is to allow these operations to conduct their business without having the operation develop as an event center. He added that the prohibited activities may be approvable through other zoning processes but should not be part of by-right agriculture.

Mr. Stidham said that farm wineries, farm breweries, and farm distilleries must be part of an agricultural operation on the same lot or adjacent lot in common ownership and the ingredients for wine, beer, and alcoholic beverages must be grown on the farm. He added that State law allows these operations to obtain most or all of their ingredients from off-site locations. He said that a winery, brewery, or distillery that makes beverages primarily from off-site ingredients is a manufacturing facility and not a farm. He also noted that these uses could be allowed if the Commission wanted to add a new special use to permit them as some could be operated in a compatible fashion. Commissioner Lee asked about a brewery that only grows a 6' x 6' area of hops. Mr. Stidham replied that this would not be a farm because beer manufacturing, not farming of hops, is the primary activity. He provided an example of a cidery in another locality that manufactures and sells their own cider, operates a modest tasting room, and does not hold public events, noting that this cidery would not be allowed in Clarke because they obtain all the apples for cider production from off site.

Vice-Chair Buckley posed a scenario in which a farmer owns several parcels and wants to have a farm winery on a separate parcel that they own but that is not contiguous to the farm. Mr. Stidham replied that this would not be allowed because the farm winery parcel must be contiguous to a parcel containing the farm. Mr. Stidham also posed a scenario discussed by Staff in which a cattle farmer with a farm stand to sell beef wants to dabble in beer production but the farm is not conducive to growing hops. Under the proposed rules, the farmer could not operate a farm brewery if the hops are brought in from off-site producers. He added that the cattle farm is an agricultural operation but not an agricultural operation for the production of beer. Vice-Chair Buckley offered a different scenario in which the farm raises cattle and grows hops but the hops are not grown on a parcel contiguous to the lot containing the farm brewery. Mr. Stidham replied that this scenario would be acceptable so long as hops are being grown somewhere on the contiguous farming operation.

Chair Ohrstrom noted Mr. Stidham's cidery example and said that this appears to be the kind of operation that Clarke would want. He asked whether we could require products to be grown on the farm or produced elsewhere in the county. Mr. Stidham replied that it would be hard to prove that the agricultural products were grown in the county.

Commissioner King asked for clarification on the contiguous requirement. Mr. Stidham said that we want to ensure that the farm winery, brewery, or distillery is contiguous to a lot that is part of the owner's farming operation. Vice-Chair Buckley said that he would not be allowed to grow crops for the beverage production on a farm he owns in Berryville and then have the production facility on a separate farm he owns in White Post. Commissioner Malone replied that this is a clear example. Chair Ohrstrom asked if the manufacturing use could be allowed by special use permit. Mr. Stidham replied that "small scale production of fruits and vegetables" is a special use that could be modified to allow these manufacturing operations. Commissioner Malone asked for clarification and Mr. Stidham said that we want farmers to have these operations in conjunction with their farms and not use a separate lot for its public visibility that it not part of or contiguous to their farm. Vice-Chair Buckley said that he believes it is a different situation if it involves a farming operation and added that most of the operations that cause concerns are run by absentee landowners.

Mr. Stidham provided an example in the county of an owner of a 40-acre lot that wants to operate a brewery and have since constructed a barn. If they decide to lease the farm to someone for hay production, the applicant could argue that this is their agricultural operation and they now have the right to operate a farm brewery. Vice-Chair Buckley said he would not agree that a farm brewery could be allowed in this example. Mr. Stidham said that this is the scenario we are trying to avoid with the proposed regulations and committee members agreed that we are all on the same page. Mr. Stidham referenced the cattle farm example in which the local farmer wants to expand into beer production but the farmland is not suitable for growing hops. Chair Ohrstrom said not under our regulations and Commissioner Malone added that this example is a little different. Vice-Chair Buckley said that the agricultural production has to match the crops being grown and someone should not be allowed to have a farm winery if they cannot grow grapes onsite. Mr. Stidham asked if the members want to allow a special use for the small-scale manufacturing scenarios in which the farmer cannot grow the beverage crop onsite. Chair Ohrstrom said that a special use permit would allow for more control and Vice-Chair Buckley asked if the use would need to be added to the Zoning Ordinance. Mr. Stidham said Staff could look at modifying the "small-scale processing of fruits and vegetables" use.

Mr. Camp noted that "or contiguous lot under common ownership" will need to be added to the text amendment after every incidence of "on the same lot." Mr. Stidham agreed and noted that this will be corrected.

Commissioner King asked if you could have a farm winery and a separate home occupation on the same lot. Mr. Stidham replied yes but noted that if the operations of one use conflict with the regulations governing the other use, then the owner would have to reconcile the conflict by following the more restrictive requirement.

Mr. Stidham then outlined the specific changes proposed in the text amendment. Regarding the proposed rules for music and entertainment activities, Chair Ohrstrom asked if you had a music group performing in a hay wagon, would they still be in violation if the music was audible at the property line. Mr. Stidham replied yes.

Chair Ohrstrom asked if we have parking requirements for uses in the rural areas. Mr. Stidham replied yes if they are operating as a business. He also noted that parking lots could require erosion and sediment control plans and possibly stormwater management plans. Chair Ohrstrom also asked if these rules apply to the farm owner's private parties. Mr. Stidham replied that zoning rules would apply if the farm owner was being compensated for hosting the party.

Mr. Stidham stated that the proposed rules would apply to any special event permit applied for at these businesses. Chair Ohrstrom asked if the special events ordinance contains the same rules for amplification as the proposed text amendment and Mr. Stidham replied no. Mr. Stidham added that if a farm winery, brewery or distillery wanted to hold a concert under a special events permit, the concert activity would have to comply with these proposed rules.

Mr. Stidham asked members if they were comfortable with forwarding the proposed text amendment to the full Commission and members agreed. Mr. Stidham also asked if the members wanted Staff to look at a separate text amendment to allow farm wineries, breweries, and distilleries to operate as beverage manufacturers without a farm onsite by special use permit. He added that there would need to be a manufacturing activity for the use so that they do not become solely a packaging and distribution operation. Mr. Camp said that you could require all agricultural products to come from this area and Mr. Stidham replied that this is difficult to track. Mr. Stidham said the key policy issue to consider is whether you want to allow these manufacturing operations in the rural areas that do not have any connection to an agricultural operation and would likely require direct sale to the public. Commissioner Lee asked if we have had inquiries of this type and Mr. Stidham said just one brewery. Mr. Stidham said that he will pose this policy question to the full Commission.

ADJOURN: Meeting was adjourned by consensus at 3:03PM.

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Brandon Stidham, Clerk

Clarke County Department of Planning
Berryville-Clarke County Government Center
101 Chalmers Court, Suite B
Berryville, VA 22611

TO: **Ordinances Committee**

FROM: **Brandon Stidham, Planning Director**

RE: **Discussion of Proposed Text Amendments**

DATE: **April 12, 2024**

Enclosed for your review and discussion at the next Ordinances Committee meeting **(Thursday, April 18 at 2:00PM)** are initial drafts of four text amendments addressing a range of issues. Staff is looking for the Committee to provide policy direction on each text amendment which we will use to develop final drafts for the Committee's consideration in May and forwarding to the full Commission at the June 4 Work Session. Below are some possible dates for the Committee's next meeting in May:

- **Tuesday, May 7 at 2:00PM**
- **Wednesday, May 8 at 10:00AM or 2:00PM**
- **Thursday, May 9 at 10:00AM or 2:00PM**
- **Tuesday, May 14 at 10:00AM or 2:00PM**
- **Thursday, May 16 at 10:00AM or 2:00PM**

Please let me know if you have questions or cannot attend the meeting.

(540) 955-5132
www.clarkecounty.gov

ZONING ORDINANCE TEXT AMENDMENT (TA-24-XX)
DRAFT: Cesspools and Other Unpermitted Onsite Sewage Disposal Systems
April 18, 2024 Planning Commission Ordinances Committee Meeting
STAFF REPORT – Department of Planning

The purpose of this staff report is to provide information to the Planning Commission and Board of Supervisors to assist them in reviewing this proposed ordinance amendment. It may be useful to members of the general public interested in this proposed amendment.

Issue:

When subdividing a lot containing an existing dwelling, Subdivision Ordinance Section 4.5.6E requires the plat to show either:

1. *Location of an existing approved standard septic system as shown by VDH record and a 100% reserve drainfield area*

2. *Location of a new primary and 100% reserve drainfield area as approved by VDH.*

The wording of 4.5.6E only obligates the applicant to demonstrate that the Virginia Department of Health (VDH) has approved their existing or proposed system and to show that system on the plat. The applicant is not obligated to construct the new system. This is particularly problematic for existing dwellings served by a cesspool or other substandard, unpermitted system as 4.5.6E contains no requirement to install the proposed system.

The proposed text amendment would require any cesspool or unpermitted system (no VDH records of approval exist) to be replaced or upgraded to a VDH-approved system before final approval of the subdivision plat. The draft text amendment would not apply to nonconforming systems that are currently permitted in good standing with VDH. The justification for this rule is to protect groundwater from contamination. Cesspools have never been an approved method of sewage disposal per VDH and should be replaced to guard against groundwater contamination before a failure occurs. Unpermitted systems may be just as problematic or may be able to be deemed compliant upon inspection by a design professional, repairs or modifications if required, and review/approval by VDH.

As a matter of practice, Staff would recommend that any applicant in this situation conduct the work to replace or install a compliant system before filing their subdivision application. Staff would not recommend the Commission grant a conditional approval contingent upon the system being replaced or installed before final plat approval. 3.1.3C requires subdivision plats to be recorded within six months of approval and it could take longer than six months for a property owner to complete the replacement or upgrade.

One problem with requiring an existing unpermitted system or cesspool to be replaced is that it could be a financial burden on the applicant. For example, you could have a low income property owner who is subdividing simply for financial reasons or estate settlement purposes and who does not have the resources to construct a new system. It could also be difficult to justify

requiring an existing substandard system to be replaced if there is no evidence that it is failing. The Committee should discuss this policy issue in particular in considering this text amendment. One additional technical issue is noted. Under subsection E, the word "standard" in first bullet is unnecessary and could be interpreted as only allowing "conventional" systems to qualify. Staff recommends deleting this word.

Proposed Text Amendment:

4.5.6 Private Wells and Onsite Sewage Disposal Systems

E. Existing Onsite Sewage Disposal Systems.

1. If any lot contains an existing dwelling, the plat shall indicate one of the following:

- Location of an existing approved ~~standard~~ septic system as shown by the Virginia Department of Health (VDH) records and 100% reserve drain field area, or

- Location of a new primary and a 100% reserve drain field area, as shown in a permit, approved by VDH, pursuant to a certificate of approval signed by the Health Official evidencing conformity with VDH requirements with respect to individual on-site subsurface septic systems and potable water supply systems, as applicable. Such location shall be shown by distance and bearing to one corner of the primary drain field and one corner of the reserve drain field from two property corners.

2. If any lot contains a cesspool or an onsite sewage disposal system for which no records of VDH approval exist, the cesspool or unpermitted system shall be replaced with or upgraded to a system that can be approved by VDH. Such system shall be replaced or upgraded and VDH approval obtained prior to final approval of the subdivision plat.

ZONING ORDINANCE TEXT AMENDMENT (TA-24-XX)
DRAFT: Minor Commercial Public Assembly Accessory Use – Country Inns
April 18, 2024 Planning Commission Ordinances Committee Meeting
STAFF REPORT – Department of Planning

The purpose of this staff report is to provide information to the Planning Commission and Board of Supervisors to assist them in reviewing this proposed ordinance amendment. It may be useful to members of the general public interested in this proposed amendment.

Issue:

The "country inn" special use allows minor commercial public assembly as an accessory use subject to the requirements of use regulation 3. During the Carter Hall special use permit application deliberation, some commissioners indicated a preference for removing this as an accessory use. If this accessory use is removed, applicants who want to operate a country inn and have minor commercial public assembly activities would be required to get a special use permit for a country inn and a separate special use permit for a minor commercial public assembly use.

The proposed changes below would remove use regulation 3 and reference to "permanent place(s) of public assembly" in the definition of "country inn." Staff also recommends removal of use regulation 8 referencing compliance with County Code Chapter 57 requirements for any special events. Special events are not considered to be minor commercial public assembly uses however reference to them in the use regulations could give the impression that country inns are appropriate places to hold special events. Removal of use regulation 8 would not prohibit special events from being approved at country inns. Should the Committee want to prohibit special events, use regulation 8 should be replaced with language stating that special events per Chapter 57 are prohibited.

One unrelated change is also recommended. Staff has added language to use regulation 2 to clarify that meal service is only allowed for overnight guests of the country inn. This ensures that meal service is not expanded to the general public and operated as a restaurant. The language would also prohibit meal service to individuals who may be visiting guests at the country inn but who are not staying overnight. Corresponding language in the definition would also be deleted.

Proposed Text Amendment:

COUNTRY INN	
Permitted Use	CN
Accessory Use	None
Special Use	AOC, FOC

Definition:

A business offering for compensation to the public guestrooms for transitory lodging or sleeping accommodations for a period of fewer than 30 consecutive days. ~~As accessory uses to a country inn, meal service and/or permanent place(s) of public assembly may be provided.~~

Use Regulations:

1. Maximum occupancy and use of onsite sewage disposal system.

   a. A maximum of 15 guest rooms for transitory lodging or sleeping accommodations shall be permitted subject to compliance with Virginia Department of Health (VDH) regulations for onsite sewage disposal systems if applicable. The maximum occupancy shall not exceed the maximum occupancy allowed by the onsite sewage disposal system permit issued by the Virginia Department of Health (VDH). If the onsite sewage disposal system serving the country inn is shared with another structure or structures, the maximum occupancy of all structures shall not exceed the maximum occupancy allowed by the onsite sewage disposal system permit.

   b. An application for a country inn that is served by an onsite sewage disposal system shall be reviewed by VDH in conjunction with the site development plan application review. Written confirmation by VDH that the existing onsite sewage disposal system can support the proposed maximum capacity of the country inn shall be a prerequisite to approval of a site development plan.

   c. If a country inn is served by an onsite sewage disposal system, that system shall be maintained and remain in an operable condition for the life of the use. In the event that the system fails as determined by the Virginia Department of Health (VDH), the zoning administrator may issue a notice of violation to cease the country inn use until the system is repaired or replaced and is approved in writing by VDH.

2. The sale of meals or prepared food ***to overnight guests only***, which may include beverages and confections, is permitted as an accessory use to a country inn. Approvals or permits by applicable State agencies shall be obtained and remain active for the lifespan of this activity.

~~3. Assembly activities for compensation are permitted as an accessory use. The maximum number of building occupants during an assembly activity shall not exceed 149, or the maximum occupancy of the facility as approved by the Building Department, whichever is lesser.~~

3. One bathroom shall be provided per each bedroom in structures less than 50 years old or one bathroom shall be provided per each two bedrooms in structures 50 years or older.

4. Any need for parking shall be met off the street and other than in a required front yard, and shall conform in all other ways with the provisions of **Section 7.2.5 (Parking Regulations)**.

5. No equipment, process, or vehicles which create unreasonable noise, vibration, glare, fumes or odors which are detectable to the normal sense off the premises shall be permitted.

6. Regulations for country inns in the AOC and FOC Districts:

a. A country inn shall require the use of a dwelling unit right (DUR).

b. If a country inn is developed in a structure other than an existing single-family dwelling, the structure shall be designed to resemble a single-family dwelling and constructed to enable the structure to be converted to a single-family dwelling if the country inn use is discontinued. Architectural renderings and construction plans for the proposed structure shall be submitted for review with the special use permit application.

~~8. Special events shall comply with **Chapter 57 of the Code of Clarke County**.~~

ZONING ORDINANCE TEXT AMENDMENT (TA-24-XX)
DRAFT: Temporary Use of Major Recreational Equipment
April 18, 2024 Planning Commission Ordinances Committee Meeting
STAFF REPORT – Department of Planning

The purpose of this staff report is to provide information to the Planning Commission and Board of Supervisors to assist them in reviewing this proposed ordinance amendment. It may be useful to members of the general public interested in this proposed amendment.

Issue:
"Major recreational equipment" is defined as:

A boat, boat trailer, travel trailer, pick-up truck camper or cap, motor coach, motorized dwelling, tent trailer, or similar recreational vehicle or equipment, as well as any cases, boxes, or towing trailers used for transporting recreational equipment, whether or not occupied by such equipment.

Use regulation 1 for the temporary use, "Temporary Use of Major Recreational Equipment," states that "no major recreational equipment shall be used for living, sleeping, or other occupancy on lots zoned RR, OSR, DR-1, DR-2, and DR-4 except as a temporary dwelling use." The intent of this language is to prevent people from camping or residing in recreational vehicles (RVs) in these zoning districts. This section does not reference any limitations on usage of RVs in the AOC and FOC Districts with the intent being that RVs can be used for camping by the property owner, family, and guests. The absence of language to address AOC and FOC usage could be interpreted by some as allowing RVs to be used for residential purposes in these districts.

Staff recommends cleaning up the language in this section to specifically prohibit camping in the residential districts and residential use of an RV in all districts. RVs may continue to be used for residential purposes with zoning permit approval as a temporary dwelling during construction of a permanent residence or in hardship instances when the applicant's residence on the same lot has been destroyed by natural causes. Language should also be included to tie into the new "camping" temporary use that remains under consideration in Text Amendment TA-23-01 so these proposed changes should not be considered until after TA-23-01 is adopted.

Proposed Text Amendment:

TEMPORARY USE OF MAJOR RECREATIONAL EQUIPMENT	
Permitted Use	None
Accessory Use	AOC, FOC, RR, OSR, DR-1, DR-2, DR-4
Special Use	None

Definition:
The temporary parking, storage, or non-residential use of major recreational equipment on a lot.

Use Regulations:
The following regulations shall apply to the temporary use of major recreational equipment which includes parking and storage.

1. ~~No~~ ***M***ajor recreational equipment shall ***not*** be used for ***residential purposes or for camping*** ~~living, sleeping, or other occupancy~~ on lots zoned RR, OSR, DR-1, DR-2, and DR-4 except as a temporary dwelling use. ***In the AOC and FOC Districts, major recreational equipment may not be used for residential purposes except in accordance with the temporary dwelling use, and may only be used for camping in accordance with the temporary camping use.***

2. Major recreational equipment six feet or more in average height, not parked or stored in a garage, carport, or other building, shall not be located in any required front or side yard and shall be located at least three feet from all buildings.

3. Major recreational equipment that is not in operating condition shall not be parked outdoors and shall be stored in a garage, carport, or other building.

Required Review Processes: **None**

ZONING ORDINANCE TEXT AMENDMENT (TA-24-XX)
DRAFT: Regulation of Helicopter Use and Prohibition of Private Airstrips and Airports
April 18, 2024 Planning Commission Ordinances Committee Meeting
STAFF REPORT – Department of Planning

The purpose of this staff report is to provide information to the Planning Commission and Board of Supervisors to assist them in reviewing this proposed ordinance amendment. It may be useful to members of the general public interested in this proposed amendment.

Issue:

Staff recently noted the provisions in Code of Virginia §15.2-2293.2, Regulation of Helicopter Use:

No local zoning ordinance shall impose a total ban on departures and landings within the locality by non-commercial helicopters for personal use, but local zoning ordinances may require a special exception, special use permit, or conditional use permit for repetitive helicopter landings and departures on the same parcel of land in some or all zoning districts. Special exceptions or special use permits may be made subject to reasonable conditions for the protection or benefit of owners and occupants of neighboring parcels, including but not limited to conditions related to compliance with applicable regulations of the Federal Aviation Administration.

The Zoning Ordinance is silent on the use of helicopter landing areas for personal use. Per Section 5.1.2A, if a use does not meet the definition of any use listed in Section 5, then it is considered to be a prohibited use. This would appear to mean that helicopter landing areas for personal use are a prohibited use. Because the Code of Virginia does not allow localities to prohibit these uses, a legal argument could be made that helicopter landing areas are unregulated and are therefore by-right uses allowable without regulations or permitting requirements. Since the Code of Virginia does allow localities to require special use permits for helicopter landing areas and to include reasonable regulations, Staff recommends that we consider creating a new special use for them.

Staff has proposed some basic use regulations for helicopter landing areas. The use would only be allowed in the AOC District by special use permit. Use regulation 1 requires them to be accessory to a residential use on the same lot – this is to ensure that a vacant lot is not used for helicopter landings. The minimum lot size is 50 acres and setbacks from property lines (300 feet) and residences on adjacent lots (500 feet) are proposed to minimize impacts on adjoining properties. Setbacks of 300 feet from overhead power lines, and 100 feet from structures on the same lot are proposed for safety purposes.

In use regulation 5, Staff's initial recommendation is that helicopter landing areas are not to be hard surfaced and should be stabilized with grass or gravel to prevent erosion. The goal is to require these uses to be low impact and, similar to our approach with the draft primitive campground regulations, we would not require a site development plan. The Committee may want to discuss whether to allow hard surfaced landing areas in some circumstances, such as on existing hard surfaced areas or extension of hard surfaced driveways or parking areas.

Staff also notes that improvements are limited to markings, lighting, or other equipment required by State or Federal law and use of required lighting is limited to takeoffs and landings – lights are to be turned off when the landing area is not in use. An applicant would not be prohibited from constructing a building or shelter to house the helicopter when not in use as that structure would have to be located a minimum of 100 feet from and would not be part of the landing area.

On a related note, the Zoning Ordinance also contains no allowable uses for private airstrips or commercial airports thereby making them prohibited uses. Staff recommends including language in the use regulations for "helicopter landing area" to reinforce this prohibition.

Proposed Text Amendment:

HELICOPTER LANDING AREA	
Permitted Use	***None***
Accessory Use	***None***
Special Use	***AOC***

Definition:
An area designated exclusively for the takeoff and landing of helicopters for the personal use by the property owner and their guests.

Use Regulations:

1. Helicopter landing areas shall be accessory to a residential use located on the same lot.

2. The minimum lot size for a helicopter landing area is 50 acres. Minimum setback distances are as follows:

- ***From all property lines – 300 feet***
- ***From overhead utility lines – 300 feet***
- ***From structures on the same lot – 100 feet***
- ***From residences on adjacent lots – 500 feet***

3. Helicopter landing areas shall not be used for commercial purposes. Helicopter landing areas do not include private or public airstrips or airports for aircraft other than helicopters as these are prohibited uses.

4. Helicopter landing areas shall conform to all State and Federal regulations.

5. Helicopter landing areas shall not be hard surfaced and shall be stabilized with grass or gravel to prevent erosion. Improvements shall be limited only to markings, lighting, or other equipment required by State or Federal law. Any use of required lighting shall be limited to takeoffs and landings and all lights shall be turned off when the landing area is not in use.

Required Review Processes:

1. Special Use Permit Review is required per Section 6.3.1.