



Clarke County Planning Commission

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.

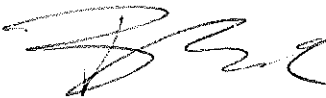
Mr. Stidham then outlined the specific changes proposed in the text amendment. Regarding the proposed rules for music and entertainment activities, Chair Ohrstrom asked if you had a music group performing in a hay wagon, would they still be in violation if the music was audible at the property line.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



Brandon Stidham, Clerk