

# Public Hearing Notice

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The Clarke County Board of Supervisors will conduct three public hearings in the Berryville Clarke County Government Center Main Meeting Room, 101 Chalmers Court, 2nd Floor, Berryville, VA, on Tuesday, July 16, 2024, at 6:30 pm, or as soon thereafter as the matters may be heard, to hear public comment on the following:

**PH2024-12:** TA-24-03, Helicopter Landing Area Use and Prohibition of Private and Public Airstrips and Airports. Proposed text amendment to add “helicopter landing area” as a new special use in the Agricultural-Open Space-Conservation (AOC) and Forestal-Open Space-Conservation (FOC) Districts per Section 5.2E (Uses, Definitions, and Use Regulations – Public and Miscellaneous Uses) of the Zoning Ordinance. The purpose is to require a special use permit for departures and landings of non-commercial helicopters for personal use. Use regulations are proposed for the protection or benefit of owners and occupants of neighboring lots including a prohibition on takeoffs and landings between the hours of 10:00PM and 6:00AM. The text amendment also clarifies that helicopter landing areas for commercial use and private or public airstrips or airports for aircraft other than helicopters are prohibited.

Information regarding the above matters, including a full copy of the proposed text changes, is available to the public in the Clarke County Administration office and on the County website. Any person desiring to speak on the above matters should appear at the appointed time and place. Written copies of statements are requested but not required. Clarke County does not discriminate on the basis of handicapped status in admission to its programs and activities. Accommodations will be made for handicapped persons upon prior request.

Chris Boies – County Administrator

**ZONING ORDINANCE TEXT AMENDMENT (TA-24-03)**  
**Helicopter Landing Area Use and Prohibition of Private and Public Airstrips and Airports**  
**July 16, 2024 Board of Supervisors Meeting – PUBLIC HEARING**  
**STAFF REPORT – Department of Planning**

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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.  
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**Description:**

Proposed text amendment to add “helicopter landing area” as a new special use in the Agricultural-Open Space-Conservation (AOC) and Forestal-Open Space-Conservation (FOC) Districts per Section 5.2E (Uses, Definitions, and Use Regulations – Public and Miscellaneous Uses) of the Zoning Ordinance. The purpose is to require a special use permit for departures and landings of non-commercial helicopters for personal use. Use regulations are proposed for the protection or benefit of owners and occupants of neighboring lots including a prohibition on takeoffs and landings between the hours of 10:00PM and 6:00AM. The text amendment also clarifies that helicopter landing areas for commercial use and private or public airstrips or airports for aircraft other than helicopters are prohibited.

**Requested Action:**

Conduct advertised public hearing and take action on the proposed text amendment.

**Staff Analysis:**

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 allows localities to require special use permits for helicopter landing areas and to include reasonable regulations, Staff recommends that a new special use be established and use regulations be created for them.

Use regulations are proposed for helicopter landing areas. The use would only be allowed in the Agricultural-Open Space-Conservation (AOC) and Forestal-Open Space-Conservation (FOC) Districts 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.

Use regulation 5 allows helicopter landing areas to be hard surfaced and at a minimum requires them to be stabilized with grass or gravel to prevent erosion. The goal is to require these uses to be low impact and a site development plan would not be required. 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.

Per Board of Supervisors’ discussion at the June 18 meeting, use regulation 6 is added to prohibit helicopters from taking off and landing between the hours of 10:00PM and 6:00AM. This use regulation mitigates noise impacts on neighboring property owners during nighttime hours.

The Zoning Ordinance also contains no allowable uses for private airstrips or commercial airports thereby making them prohibited uses. Language is included in the use regulations for “helicopter landing area” to reinforce this prohibition.

**Planning Commission Recommendation:**

Following a duly advertised public hearing on June 7, 2024, the Commission voted 9-0-2 (Hunt, King absent) to recommend adoption of the text amendment to the Board of Supervisors. There were no speakers at the Commission’s public hearing.

**Staff Recommendation:**

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

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**History:**

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| <b>April 18, 2024.</b> | <b>Ordinances Committee agreed by consensus to forward the proposed text amendment to the full Commission for consideration.</b> |
| <b>April 30, 2024.</b> | <b>Placed on the Commission’s Work Session agenda for initial discussion.</b>  |
| <b>May 3, 2024.</b>    | <b>Commission voted 9-0-2 (Hunt, Staelin absent) to initiate consideration of the text amendment and to schedule public</b>      |

hearing for the June 7, 2024 Business Meeting.

June 7, 2024. Commission voted 9-0-2 (Hunt, King absent) to recommend adoption of the text amendment to the Board of Supervisors.

June 18, 2024. Board of Supervisors voted unanimously to schedule public hearing for the July 16, 2024 meeting.

July 16, 2024. Placed on the Board of Supervisors’ agenda and advertised for public hearing.

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Ordinance Amendment Text (changes shown in bold italics with strikethroughs where necessary):

<b><i>HELICOPTER LANDING AREA</i></b>	
<b><i>Permitted Use</i></b>	<b><i>None</i></b>
<b><i>Accessory Use</i></b>	<b><i>None</i></b>
<b><i>Special Use</i></b>	<b><i>AOC, FOC</i></b>

***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 may be hard surfaced and at a minimum 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.*

- 6. Takeoffs and landings of helicopters are prohibited between the hours of 10:00PM and 6:00AM*

**Required Review Processes:**

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