



Clarke County Planning Commission

MINUTES – Ordinances Committee Meeting

Thursday, April 18, 2024 – 2:00PM

Berryville/Clarke County Government Center – A/B Meeting Room

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

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

CALL TO ORDER: By Mr. Stidham at 2:01PM.

1. Approval of Agenda

Members approved the agenda by consensus as presented by Staff.

2. Approval of Minutes – May 15, 2023 Meeting

Members voted unanimously to approve the May 15, 2023 meeting minutes as presented by Staff.

Motion to approve May 15, 2023 meeting minutes as presented by Staff:			
Buckley	AYE (moved)	Lee	AYE
King	ABSENT	Malone	AYE (seconded)

3. Old Business -- None

4. New Business – Proposed Text Amendments

Mr. Stidham said that he plans to bring a text amendment to the Committee at a later date dealing with handling of applications that have been filed for review and are affected by the adoption of an ordinance change. He noted that Loudoun County recently adopted a policy in which the Board of Supervisors adopts a resolution for each text amendment stating whether or not pending applications will be subject to previous or newly adopted ordinances.

Mr. Camp added that Staff is currently working with a business that has requested a zoning determination as to whether cannabis production is considered to be by-right agriculture. He said that these facilities are more industrial in scale and all growing and production activities are conducted within an enclosed building. Commissioner Lee asked if it is similar to a hydroponic lettuce facility and Mr. Stidham replied yes. Mr. Stidham added that the Virginia Department of Agriculture and Consumer Services does not regulate cannabis as it is regulated by the Virginia Alcoholic Beverage Control Board. He also noted that the Zoning Ordinance definition of agriculture includes the growing of plants of any kind. Commissioner Lee said that the only way that cannabis can be sold legally in Virginia is through a licensed dispensary and only to customers with a medical card provided by a doctor. Mr. Stidham said that the state issues a limited number of licenses for these growing facilities.

A. Cesspools and Other Unpermitted Onsite Sewage Disposal Systems

Mr. Stidham reviewed the staff report for this proposed text amendment.

Commissioner Lee said that he agrees with not allowing any more subdivisions with cesspools and unpermitted sewage disposal systems but has concerns with regulating existing permitted systems. He said that there are three different time periods in which Health Department approvals were given. He said up until the mid-1980s, reserve areas were not required. From the mid-1980s to about 1990, a 50% reserve area was required by the Health Department until the County began requiring a 100% reserve area in 1990. He noted that it will be difficult to find a reserve area for an existing system even using an alternative system, especially on smaller properties. He said if someone has an approved system on the property, that should suffice and we should focus on getting rid of cesspools and illegal systems by not allowing those property owners to subdivide. He added that in these cases, we should recommend but not require that these property owners upgrade to conforming systems. Mr. Stidham said that in these situations, Staff would recommend that the subdivider have their soil scientist make sure that they are not subdividing off the only suitable land for a reserve area for the existing system. Commissioner Lee said that you do not want to put a restriction on someone with a system that was permitted at one time and is continuing to function. He added that it will create a hardship to require reserve areas to be located for existing permitted systems in order to subdivide. Mr. Stidham noted that Staff has drafted the text amendment to apply only to cesspools and unpermitted systems and added that the Committee could discuss whether to extend the requirement to permitted, nonconforming systems. He added that owners of nonconforming systems would still be required to design a conforming system and show it on the plat but would not be required to construct the system. He then asked Commissioner Lee whether the Health Department would recognize a system that was approved in the 1950s and is still functioning and Commissioner Lee replied yes. Commissioner Lee reiterated that if you have a permitted system with no reserve or a 50% reserve that is functioning, you should be allowed to subdivide. He also noted that Health Department requirements have become much more restrictive over the years for new systems. He added that it will be very difficult for someone with an unpermitted system to get the Health Department to verify that it is a nonconforming system because of the requirements that they must meet.

Mr. Stidham noted the removal of the word “standard” from the first bullet, adding that it is confusing and could be interpreted in different ways including that the subdivider must show an existing conforming system on the plat. Commissioner Lee asked if we are going to require a 100% reserve area to be shown on the plat for all existing systems and Mr. Camp replied that this is currently required. Commissioner Lee noted that there will be situations where people will not be able to meet that requirement. Mr. Stidham replied that he cannot recall a situation in recent years where someone was prohibited from subdividing for this reason. Vice-Chair Buckley asked what the alternative would be if a 100% reserve area cannot be found. Commissioner Lee said that you can use an alternative system such as a drip system but there are other types of systems that are not allowed in the County such as direct discharge. Mr. Stidham gave an example of a 3 acre lot with an existing house being divided from a 30 acre lot, noting that the subdivider would have to design a 100% reserve for that existing system to prove that the only suitable area for a reserve is not being left on the residue lot. Vice-Chair Buckley said that he was concerned that a 100% reserve area for an existing drainfield has to be the same size as that drainfield, and Commissioner Lee added that alternative systems can be designed in a smaller size. Mr. Camp noted that the design has to be fully

permitted including resistivity testing and not just shown on paper. He added that if there is a cesspool or unpermitted system, then the text amendment would require the replacement system to be built. Commissioner King asked if there is a minimum lot size requirement for a septic system. Commissioner Lee replied no and Mr. Stidham added that it is driven by lot characteristics. Mr. Camp also noted that it is dependent on soil characteristics. Commissioner King asked if a drainfield can be placed on someone else's property. Commissioner Lee replied yes with an easement but that this is not allowed in Clarke County. Mr. Stidham added that it can be allowed with a variance from the Board of Septic and Well Appeals.

Members had no additional questions or comments.

B. Minor Commercial Public Assembly Accessory Use – Country Inns

Mr. Stidham reviewed the staff report for this proposed text amendment. Regarding allowing meal service only for overnight guests of the country inn, Mr. Stidham said that overnight guests would not be allowed to invite friends over for dinner at the country inn if they were also not staying overnight. He added that the intent is to treat country inns similar to bed-and-breakfast uses. Vice-Chair Buckley asked if this is the desired intent. Mr. Stidham noted that an alleged point of confusion with the Carter Hall case was that the applicants thought they could operate a restaurant because the current language allows for meal service. He said the proposed language makes it very clear that you cannot have a restaurant with a country inn. He also noted that restaurants are not an allowable use in the AOC and FOC Districts. Vice-Chair Buckley said that he could see an instance where an overnight guest wants to invite his brother who lives nearby to have dinner with him at the country inn. Mr. Stidham said we are trying to take a black-and-white approach, noting that the same logic could be used with an overnight guest wanting to have a family reunion of 25 people over dinner at the country inn. He said this would be difficult to police and we want country inns to be small-scale. He added that the original country inn regulations allowed for full-service restaurants but this was later changed. He also noted that meal service for 15 guest rooms would be pretty intensive on a well and septic system. Commissioner Lee asked if we had a country inn with 15 guest rooms and Mr. Stidham said that L'Auberge Provencale has 12 rooms. Mr. Camp suggested an alternative to limit meal service to the maximum number of overnight guests allowed. Mr. Stidham replied that this would still be difficult to police. He noted that if 2 overnight guests planned to have 28 relatives for dinner at the country inn and 50 relatives showed up, it would be difficult to prove. Vice-Chair Buckley added that you would be enforcing after the fact too. He also asked whether a distinction could be made if the country inn was on water and sewer. Mr. Stidham noted that the only AOC properties that are on water and sewer are on the utilities for a reason. He added that another approach to consider would be allowing food service businesses in AOC and FOC by special use permit. He said this would be driven by septic system capacity and he did not see how this would work. He also said that a common thread with these uses is that we do not want uses that add traffic to our back roads which you would be doing if you allowed restaurants in the rural areas. He added that you could require restaurants to have direct access to a primary highway. Commissioner Malone asked about the Battletown Inn in Berryville that had rooms and a restaurant and Mr. Stidham replied that they were set up more as a traditional hotel.

Members had no additional questions or comments.

C. Temporary Use of Major Recreational Equipment

Mr. Stidham reviewed the staff report for this proposed text amendment. Vice-Chair Buckley asked whether a temporary dwelling use should be described in the text amendment. Mr. Stidham replied that the temporary dwelling use is included in the same section as temporary use of major recreational equipment. He added that we always want to use terms of art and temporary dwelling is a use with a definition in the Zoning Ordinance.

Members had no additional questions or comments.

D. Regulation of Helicopter Use and Prohibition of Private Airstrips and Airports

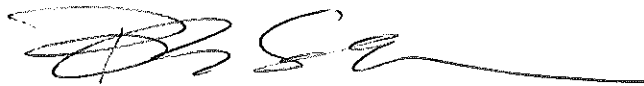
Mr. Stidham reviewed the staff report for this proposed text amendment. Commissioner Lee asked if we have private airstrips in the County and Mr. Stidham replied that there is one in White Post and also one near the quarry that is still shown on Federal Aviation Administration maps. Vice-Chair Buckley noted that we would be limiting helicopter landing areas for residential uses but what about agricultural uses, adding that some farmers use helicopters for spraying. Mr. Stidham asked how often this happens and Vice-Chair Buckley replied that it is becoming more and more common and that a County producer may want to own their own helicopter for this function. Vice-Chair Buckley asked if prohibiting commercial helicopter use would prohibit farmers from using their own helicopters and Mr. Stidham replied yes. Mr. Camp noted that the text amendment would not prohibit a farmer or landowner from hiring a company that uses a helicopter for this function. Mr. Stidham said you could add "for agricultural purposes" but he cannot think of how that could be twisted into other applications.

Mr. Stidham noted that the text amendment currently does not allow helicopter landing areas to be hard surfaced but added that this could be allowed for someone that wants to use their driveway or other hard surfaced existing area. Vice-Chair Buckley asked what Staff's objection is to hard surfacing and noted that some helicopter landing areas are relatively small. Mr. Stidham replied that concrete landing pads would be more visible to neighboring properties. Commissioner King said they could probably use asphalt which would be less visible. Vice-Chair Buckley noted that hard surfaced areas could be needed to wheel a helicopter into a storage building. Commissioner Lee said that he is not opposed to a hard surface. Mr. Stidham said that he will amend the language to allow for hard surfacing as an option.

Members had no additional questions or comments.

Mr. Stidham asked members if they were comfortable sending these text amendments to the full Commission for review and members agreed by consensus.

ADJOURN: Meeting was adjourned by consensus at 3:05PM.



Brandon Stidham, Clerk