

Clarke County



PLANNING COMMISSION ORDINANCES COMMITTEE MEETING MINUTES TUESDAY, JUNE 5, 2018

A meeting of the Planning Commission's Ordinances Committee was held at the Berryville/Clarke County Government Center, Berryville, Virginia, on Tuesday, June 5, 2018.

ATTENDANCE

Present: Randy Buckley, Anne Caldwell, and Frank Lee

Absent: Gwendolyn Malone

Staff/Others Present: Ryan Fincham (Senior Planner/Zoning Administrator)

CALLED TO ORDER

Mr. Stidham called the meeting to order at 2:00PM.

APPROVAL OF AGENDA

The Committee approved the agenda by consensus as presented.

APPROVAL OF MINUTES

Ms. Caldwell noted one typographical error on Page 2 of 6, third paragraph, tenth line. The word "concerns" should be "concerned." The Committee approved the May 4, 2018 meeting minutes as amended.

Yes: Buckley, Caldwell (moved), Lee (seconded)
No: none
Absent: Malone

OLD BUSINESS

Additional Policy and Technical Issues Requested by Committee Members

No new items were requested.

Follow-Up Reports

Mr. Stidham briefly reviewed the revised Staff Reports for Issues P7 (Evaluate whether to allow construction of accessory buildings over 150 square feet on parcels that do not have a current permitted or special use) and P18 (Consider adding new regulations and a definition for "agritourism"). He noted the summary of Committee recommendations included in each report. Members had no concerns with the recommendations summaries.

Ms. Caldwell asked how hay rides would be treated under the agritourism regulations. Mr. Stidham replied that this could be added to the list of agritourism activities but also noted that the regulations would refer to “activities including but not limited to” in order to cover activities that are not specifically referenced. Mr. Lee asked how other activities would be determined and Mr. Stidham replied that it would be at the Zoning Administrator’s discretion.

Ms. Caldwell also asked how the plant sale at Blandy Experimental Farm would be handled and Mr. Stidham replied that it is exempt from zoning by virtue of being on State property. He also said that if a privately-owned farm wanted to host a plant sale not involving their own products, it would either be an agritourism activity or a retail sales special use depending upon the scope and duration. Mr. Lee asked what would be the distinction. Mr. Fincham said if they are charging admission, it would be regulated under the special events ordinance. Mr. Buckley noted that the Blandy event includes vendors that sell other items such as tablecloths, garden gates, and birdhouses that are not agricultural products. Mr. Stidham asked what the Committee thought about requiring an agritourism zoning permit for an event such as this on private property. He added that it would regulate the activity in the same manner as a special event permit. He also noted that it would depend on the nature of the agricultural operation hosting the activity and gave the example of a cattle farmer hosting a plant sale that does not have a relationship to the production of the agricultural operation. He said the most important rule is that the agritourism activity has to be accessory to the agricultural operation. He noted that if a farm is hosting yoga classes or jewelry vendors or other activities to be held in a pastoral setting, there is no nexus to the agricultural operation and it is not an agritourism activity. Mr. Buckley asks what the farmer gets out of hosting the activities. Mr. Stidham replied that he did not know specifically but perhaps the yoga instructor pays the farmer for the use of the property. He also said that we may see more property owners with open space hosting activities to take advantage of the pastoral settings.

NEW BUSINESS

Discussion, Consider establishing technical requirements for location and construction of screening berms (T13)

Mr. Stidham reviewed the Staff Report for this item and noted that it originated with the Planning Commission following a 2014 Board of Zoning Appeals case. He said Staff does not recommend creating regulations for berms because their construction will be regulated by erosion and sediment control and State stormwater management regulations. Ms. Caldwell noted that the Commission’s hands are tied in dealing with berms proposed in site development plans because it is an administrative review of a by-right use. Mr. Stidham said that an applicant will not want to engineer a berm any greater size than is necessary and the most likely type of berm proposed would be for stormwater detention. Furthermore, he said that the Zoning Ordinance does not require berms for screening. Members agreed with Staff’s recommendation.

Discussion, Evaluate and clarify the definition of "open space" and its application as a use in the AOC, FOC, and RR Districts (T8)

Mr. Stidham reviewed the Staff Report for this item. Members agreed with Staff’s recommendation to delete “open space” as a listed use but retain the term and definition. Ms. Caldwell asked if there would be any issues in coordinating with the Commissioner of the Revenue’s office and their use of

the open space category and Mr. Stidham replied no. Ms. Caldwell also asked if this would impact the Agricultural & Forestal District (AFD) program and Mr. Stidham replied no.

Discussion, Address the gap in by-right vs. special use regulations for breeding kennels (T11)

Mr. Stidham reviewed the Staff Report and explained how the current thresholds for home occupation and special use breeding kennels have left a gap that makes breeding kennels with 11-15 canines a prohibited use. Members agreed that in order to close the gap, the minimum number of canines to constitute a special use breeding kennel should be decreased to 11.

Discussion, Evaluate the definition of "restaurant" and how it relates to businesses with food service as accessory uses (e.g., Sheetz, HandyMart) and businesses with commercial kitchens (e.g., caterers) (T12)

Mr. Stidham reviewed the Staff Report for this issue including Staff's concerns and recommended changes. In regards to country inns, he noted that this special use is the only use that would enable a restaurant to be operated in the AOC and FOC District. He also noted that the prohibition on waterworks and sewerage treatment works usage would most likely limit a country inn's restaurant function to guest service only. He said that L'Auberge Provençale contains a full service restaurant but was developed prior to adoption of this prohibition and is grandfathered. Any new country inn with restaurant services would have to comply with the prohibition. Ms. Caldwell asked what Locke Store is classified as and Mr. Stidham replied that it is a convenience store with restaurant service which is addressed later in the report.

Mr. Stidham also reviewed the State regulation of restaurants and food service establishments through the Virginia Department of Health (VDH) and Virginia Department of Agriculture and Consumer Services (VDACS). Ms. Caldwell asked who regulates Nalls Farm Market and Mr. Fincham replied VDACS. Mr. Lee said that it gets cloudy in determining who regulates between VDH and VDACS. Mr. Stidham noted that Staff does not recommend using State regulations as a metric for determining what is or is not a restaurant.

Mr. Stidham reviewed Staff's recommended change to the definition of "restaurant." Ms. Caldwell asked how many restaurants are located in the County. Mr. Stidham noted McDonalds, Lone Oak, Pine Grove Restaurant, and Horseshoe Curve Restaurant as being the ones located in the County and outside of the incorporated towns. Mr. Buckley asked about Jim's Country Store in Shenandoah Farms and Mr. Stidham replied that they are a convenience store with restaurant service similar to Locke Store. Ms. Caldwell asked about L'Auberge Provençale and Dunkin Donuts and Mr. Stidham replied country inn and convenience store with restaurant service respectively.

Mr. Stidham reviewed Staff's recommendations on catering. Ms. Caldwell asked if catering as a home occupation would be allowed throughout the County and Mr. Stidham replied yes. Mr. Lee noted that VDH also regulates where home caterers prepare their food. Mr. Fincham asked whether this recommended definition regulates other types of food preparation home occupations such as a business that makes salsa for resale. Mr. Stidham replied that this type of home occupation would not be a caterer. Mr. Buckley asked if you have an agricultural operation with a commercial kitchen to prepare products from your farm's goods, would you be prohibited from also using that commercial kitchen as a caterer. Mr. Stidham said that the proprietor of the catering operation would

have to reside on the subject property for it to be considered a home occupation. Mr. Buckley then asked how a home occupation could be approved if the property is owned by a corporation. Mr. Stidham replied that home occupations are not limited to the property owner but can be operated by anyone who resides on the property with the owner's permission. Mr. Stidham asked the members if they wanted to add catering as a special use in the AOC and FOC Districts and Ms. Caldwell replied no. Ms. Caldwell then posed a hypothetical scenario of her daughter-in-law residing at her home and making wedding cakes there as a business, and she asked whether this would be a catering home occupation. Mr. Stidham replied yes and noted that if the daughter-in-law did not reside at Ms. Caldwell's residence but prepared the cakes there, it would not be a catering home occupation unless Ms. Caldwell were listed on the home occupation permit as a co-operator of the business.

Mr. Stidham reviewed Staff's recommendations regarding restaurant uses as accessory to a convenience store. Ms. Caldwell asked if Locke Store falls under this designation and Mr. Stidham replied yes but the restaurant service activity has been increasing in intensity compared to the convenience store primary activity. Ms. Caldwell said she has a hard time thinking of Locke Store as convenience store and instead sees it as a high-end deli with wine sales. Mr. Stidham said that they do have prepared foods, wines, and other items for retail sale which qualifies them as a convenience store but that if they expanded their food service, it could tip them in the direction of being a restaurant. He asked Mr. Fincham if Locke Store is regulated by VDACS and he replied that they are regulated by VDACS and VDH. Mr. Stidham said that if they are ever regulated by VDH exclusively then it would play into Staff's evaluation of whether they have become a restaurant.

Mr. Buckley asked if we should consider incentivizing adaptive reuse and noted that if we are too restrictive in the historic village areas, it may be difficult to get property owners in who will restore and maintain the historic structures. Mr. Stidham replied that we need to make sure we are comfortable with the potential uses that could come with an adaptive reuse project if we decide to encourage them.

Mr. Stidham asked if everyone is comfortable with the approach to be taken with restaurant service in convenience stores. Mr. Lee said that he would like to look at it one more time when it is written up just to make sure. Ms. Caldwell said that it we might want to say something about the possible evolution of a convenience store into a restaurant. Mr. Stidham replied that Staff does this now with applicants so they understand their limitations under zoning.

Mr. Stidham reviewed Staff's recommendations regarding entertainment, nightclubs, taverns and bars as terms. Members were comfortable with Staff's recommendations to describe "entertainment" as an accessory activity to a restaurant provided that it is periodic in nature. Regarding the elimination of "nightclubs," Mr. Lee asked how they would be handled if one were proposed in the future. Mr. Stidham said it depends on whether the Committee wants to establish this as a new allowable use but otherwise, it would be considered a prohibited use. Mr. Lee asked how the Horseshoe Curve Restaurant is currently classified. Mr. Fincham replied that it is a restaurant with entertainment as an accessory activity. Members were comfortable with removing the terms "nightclubs," "bars," and "taverns." Mr. Fincham asked if there is any need to reference alcohol sales or dancing in the Ordinance and Mr. Stidham replied no.

Members had no concerns with Staff's other recommendations on this issue.

Discussion, Evaluate "agriculture" as a special use in the Rural Residential (RR) District; Clarify the "residential" requirements for livestock/animal units limits in 3-C-2-r (P25)

Mr. Stidham provided an overview of agriculture as a special use in the RR District. He said that Staff recommends eliminating this use and replacing it with an accessory use and definition for "home gardens" to allow RR District residents the ability to do private cultivation of plants. He noted that by eliminating "agriculture" it would also eliminate the ability for RR District property owners to have livestock.

Ms. Caldwell said there may be one large parcel located east of Retreat Road that may be zoned RR and Mr. Stidham replied that he believes only parcels located in the Retreat are zoned RR. Mr. Stidham also noted that there are RR zoned parcels in Millwood that are larger than one acre. He said that if those property owners wanted to keep livestock, they could petition to downzone to AOC which would assign the parcel one DUR. A large RR zoned lot can potentially be subdivided into multiple lots under an acre in size. He said that RR is limited to the Retreat, Millwood, and White Post and the overall balance of the County outside of these areas is available for agriculture. Mr. Fincham asked about a split-zoned AOC/RR parcel in White Post and whether it could be downzoned to allow the property owner to construct a barn. Mr. Stidham replied that the property is 14 acres in size and probably should have never been split-zoned. He added that this is a good example of a property that could be downzoned to AOC but a half-acre parcel in the center of White Post would not be a good candidate for downzoning.

Mr. Stidham asked if the members are comfortable with Staff's recommendations on the RR District changes. The members all said that chickens are going to be a problem. Mr. Buckley noted another parcel on the other side of White Post where the owners keep lambs and he asked how this change would affect them. Mr. Stidham replied that the keeping of livestock would be nonconforming for them and they could continue to do so provided they did not stop for 2 years or more. Mr. Fincham noted that this could be difficult to prove in some cases. Mr. Stidham said that Staff receives complaints about chickens in the Retreat from time to time and under current rules these property owners would have to get a special use permit to keep them. Mr. Fincham agreed that chickens would be the biggest concern. Ms. Caldwell said that we need to address the chicken issue because people want to keep them these days. She added that they are small scale and could be compatible on small lots. Mr. Stidham noted that in the second part of this issue – the keeping of livestock on "residential lots" – the current regulations exempt poultry from the residential lot restrictions. He added that if agriculture is removed as a special use in RR, it would prohibit the keeping of chickens entirely. He also noted that the purpose statement for the RR District indicates that it is for residential uses and does not mention agricultural uses.

Mr. Buckley asked if there is any way to make people aware of the difference in zoning regulations across districts. He gave the example of a parcel in White Post where horses are kept and noted if someone were to buy an adjacent RR lot, they would not be able to have horses if agriculture is removed from the district but would assume they could because of the horses on the adjacent lot. Mr. Stidham said that property owners and potential purchasers have to educate themselves on the rules and there is no effective way to ensure they will do this. Mr. Buckley added that you are pushing

peoples' buttons with their emotions when you are dealing with their animals. Mr. Stidham said this is ultimately a policy issue which is why he has brought it to the Committee for direction. Ms. Caldwell said she thinks if they let people grow vegetables for their own use, they should be able to keep chickens for their own use. Mr. Stidham asked if roosters would be OK and the members said no. He also asked if guinea hens and peacocks would be OK and the members said no. He said that there are two paths before the Committee – you can prohibit poultry altogether or you have to create a poultry ordinance to establish limits on what is allowed in the RR District. He reiterated that if Staff received a complaint today about chickens in RR, the property owner would have to apply for a special use permit. He added that no one has ever applied for a special use permit to keep livestock in RR and if they did, Staff would have difficulty evaluating and making a recommendation on such an application. Mr. Buckley asked what the fees would be. Mr. Stidham replied that it would be a lower fee compared to special use permit applications in other districts but the fee would be high in relation to the cost of keeping chickens or other livestock. Ms. Caldwell said that we will still need regulations to evaluate such applications if we kept the special use category. Mr. Stidham replied that if they want to keep the rules, the Committee will have to tell Staff what regulations to create. Mr. Lee said that cultivation is not a problem but the problems start with the keeping of livestock. He said that if you open it up, people will likely take advantage of the rules. Mr. Buckley said that he feels like this is an all or nothing issue.

Members agreed with Staff's recommendations to remove the keeping of livestock in RR and allow cultivation as home gardens. Mr. Fincham asked how current keepers of livestock in RR can prove that they are nonconforming. Mr. Stidham replied that the burden is on the property owner to prove nonconforming status and added that letters from neighbors would be strong evidence to provide. He also noted that if an RR-zoned property owner wanted to downzone to AOC, they would need to have at least two acres in order to create a conforming AOC lot.

Mr. Stidham reviewed the second half of this issue regarding current limits on the keeping of livestock on residential lots. He said that the rules were created to limit large livestock on parcels under two acres in size. He noted that since the Committee supports prohibiting livestock in the RR District, these regulations would apply only to AOC and FOC zoned lots under two acres in size. He stated that the current regulations exempt the keeping of livestock for 4H/Future Farmer of America preparation animals which favors a specific special interest group. As noted previously, it also exempts poultry. He said whether to retain these two exemptions are the policy issues for the Committee to discuss.

Mr. Lee said that you exempt a special interest group but being in an agricultural community that supports these activities, the exemption should be retained. Mr. Buckley agreed with retaining the exemption given the level of support to 4H and the FFA program.

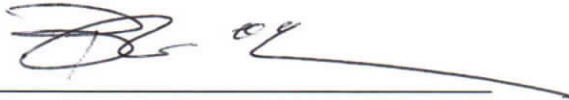
OTHER BUSINESS

Mr. Stidham relayed information on a recent visit to B Chord Brewery's facility in Loudoun County, noting that the interior of their brewery building is set up for music performances as the predominant use with a permanent stage with lighting and sound equipment along with acoustic tiles on all of the walls. He said that he is raising this issue to determine whether the Committee wants to strengthen its rules in regards to farm wineries, farm breweries, and farm distilleries to avoid business owners that

want to develop entertainment venues under these regulations. He added that one metric could be to ensure that entertainment or other activities not pertaining to the production and distribution of product would have to be “accessory to” the primary use. He noted that in the B Chord Brewery example, the nature of the building focuses on entertainment as the primary use and the production and distribution of beer as an accessory use. He also said that this issue could be dealt with as a policy issue after the Ordinance Update Project is completed. Ms. Caldwell said that if the facility is intended to be a tasting room, why would you construct a permanent stage with a sound system and acoustic tiles on the walls? Mr. Fincham said that you could require event infrastructure such as a stage and lighting to be temporary and removed after each event.

Ms. Caldwell said that it would be great to see a draft of something to address this issue and did not think that it needs to wait until after the Update Project is completed. Mr. Stidham said that he will work on proposed changes and bring it to the Committee at a future meeting.

The meeting was adjourned by consensus at 3:55PM.

A handwritten signature in black ink, appearing to read 'Brandon Stidham', written over a horizontal line.

Brandon Stidham, Planning Director