

# Clarke County

---

## PLANNING COMMISSION ORDINANCES COMMITTEE MEETING MINUTES WEDNESDAY, JULY 11, 2018



A meeting of the Planning Commission's Ordinances Committee was held at the Berryville/Clarke County Government Center, Berryville, Virginia, on Wednesday, July 11, 2018.

### ATTENDANCE

**Present:** Randy Buckley (arrived late), Anne Caldwell, Frank Lee, and Gwendolyn Malone

**Absent:** None

**Staff/Others Present:** None

### CALLED TO ORDER

Mr. Stidham called the meeting to order at 2:03PM.

### APPROVAL OF AGENDA

The Committee approved the agenda by consensus as presented.

### APPROVAL OF MINUTES

Ms. Caldwell noted on Page 2 of 4, last full paragraph, beginning at end of third line, it is stated that the developer moved DURs via boundary line adjustment. She said that this is not accurate and that the developer wanted to move DURs but did not do so. Mr. Stidham said that he would make the change to the minutes.

The Committee approved the June 21, 2018 meeting minutes as amended.

**Yes:** Caldwell (moved), Lee, Malone (seconded)

**No:** none

**Absent:** Buckley

### OLD BUSINESS

### Additional Policy and Technical Issues Requested by Committee Members

No new items were requested.

### **Follow-Up Reports**

Mr. Stidham reviewed the updated staff reports from the Committee's June 21 discussions including the issue of temporary uses and structures (P23) and evaluating the regulations for DUR allocation in subdivision regulations versus boundary line adjustment regulations (P29).

### **NEW BUSINESS**

#### **Discussion, Determine whether to merge County Code Chapter 189 regarding outdoor lighting in agricultural, forestal, and residential areas with the Zoning Ordinance's outdoor lighting rules (T18)**

Mr. Stidham provided an overview of this issue. He noted that Staff could not determine from the record why these regulations were placed in the County Code instead of the Zoning Ordinance and asked Ms. Caldwell if she had any recollection. Ms. Caldwell replied no but did remember being confused at the time as to why the regulations were adopted into the County Code.

Mr. Buckley entered the meeting.

Members agreed with Staff's recommendation to incorporate the regulations into the Zoning Ordinance with minor changes as referenced in the Staff Report.

#### **Discussion, FOC District Residual Open Space Parcel Requirements (P28)**

Mr. Stidham reviewed this issue for the Committee. Ms. Caldwell noted that she was on the Mountain Land Plan Committee when these regulations were developed and provided some background information on their creation. She said that the development impacts of Ashley Woods and Coulson Lane subdivisions were the reason for the regulations, noting that the developers did not take into consideration terrain and topography in designing the lots. She added that long, destructive roads were constructed and some of the best potential home sites were overlooked. She noted that she developed the residual open space parcel chart and tested them against the Ashley Woods and Coulson Lane subdivisions to show how they could have been developed more effectively with shorter roads and difficult terrain located outside of developable areas. Mr. Stidham asked if they contain equal sized lots and Ms. Caldwell replied yes. She also noted that the developers made the lots at least 20 acres or larger so they would be eligible for the land use taxation program. She noted that both of the recent examples cited by Staff as reason to discuss this issue were ultimately resolved through other means and she believes that the current regulations are reasonable and flexible. Mr. Stidham added that Staff's proposed alternative regulations would only impact parcels 80-200 acres in size of which there may not be many on the mountain.

Mr. Lee asked how Staff's two examples were resolved. Ms. Caldwell noted that in one example, the property owner noted that the property had been subdivided earlier but not noted in the tax maps – this enabled resolution with a boundary line adjustment. Mr. Stidham said that the other example was complicated but the solution fell in line with the property owners' estate planning efforts. Mr. Lee said that he would like to see some flexibility created for property owners that want to divide their land in half but not if it would be at the expense of the protections provided by the current rules.



Members agreed that no changes should be made to the regulations in response to this issue.

### **Discussion, Private Access Easement Issues (P12)**

Mr. Stidham reviewed the Staff Report for this item noting that it consists of four separate issues pertaining to private access easements.

He reviewed the first issue regarding whether to require landlocked parcels created through administrative land division or boundary line adjustment to be served by a 30 foot access easement to a public road or by a private access easement constructed to County standards. Ms. Caldwell noted that this came up with the Rock Heaven Subdivision case which did not require compliance with the private access easement design standards. Mr. Lee said that it does not make sense to create a lot without an easement to a public road and he asked whether you can make the property owner build or bond the private access easement construction. Mr. Stidham replied that the current rules require you to construct it if it will serve three or more lots. He added that if the rules were to apply to administrative land divisions and boundary line adjustments, the private access easement would have to be constructed or bonded if it serves three or more lots and this would be handled by Staff instead of the Planning Commission. Mr. Lee asked about private access easements serving two lots and Mr. Stidham replied that construction is not required. Mr. Buckley asked if the construction is bonded, how long does the property owner have to construct the private access easement? Mr. Stidham replied that the Subdivision Ordinance does not have a time limit to complete construction but maintaining the surety over time would impact the property owner's credit. Mr. Buckley asked about a situation in which three lots served by a private access easement were established for estate planning purposes with no immediate plans to develop the lots. He said that if the private access easements had to be constructed up front, they could fall into a state of disrepair if the lots remain vacant. Mr. Stidham said that currently with major subdivisions of three or more lots you would have to construct the road. He added that it is not a good idea to allow road construction to be delayed until the time that lot owners want to build because it lets the original developer off the hook and places the burden of construction on the lot owners.

Members indicated that they are comfortable with Staff's recommended changes.

Mr. Stidham reviewed the second issue regarding how subdivision of lots on private access easements that do not meet current standards should be addressed. He noted that Staff recommends creating a process that would allow waiver of design standards in these situations if the applicant obtains written permission from the landowners through which the existing private access easement passes. Such waiver would have to be filed with the application and on a form approved by the County. He added that this approach is similar to the one proposed for special use permit applications on properties served by private access easement and would require review by the County Attorney. Mr. Lee said that such an approach would be dependent upon the applicant's relationship with their neighbors and Ms. Caldwell said that this would provide additional flexibility.

Ms. Caldwell asked if this issue would apply to North Hill Lane which does not have a 30 foot wide access easement. Mr. Stidham replied that all of the property owners along North Hill Lane would



have to agree to establish a 30 foot wide access easement in order to allow additional lots to be subdivided. He said that currently this proposed change would not apply to North Hill Lane.

Members indicated that they support this recommended change.

Mr. Stidham reviewed the third issue regarding establishing different terms and regulations for private access easements that meet County standards, do not meet County standards, do not have a minimum 30 foot wide access easement, and private driveways serving a single residence. He noted that included in this issue is a question whether the Committee wants to retain the current rule of requiring private access easement construction if it serves three or more lots or whether the threshold should be reduced to two lots. Ms. Caldwell said that it might be a burden on the typical non-developer driven minor subdivision. Mr. Lee added that some of these situations are family divisions and they may not want to construct a road to comply with all of the standards in Section 8-J.

Ms. Caldwell likes the idea of establishing new terms but has concerns about Staff's recommended terms. She added that the County has named private roads as "lanes" and use of the term "private lane" could cause undue confusion. She suggested calling access easements without a minimum 30 foot width as "major private driveways" instead of "private lanes," and referring to private driveways as "minor private driveways." She also said that "private road" may cause confusion with all of the existing streets that are referred to as "roads." Mr. Lee agreed that this could cause confusion. Ms. Caldwell added that private access easements were originally named if they had three or more telephone lines serving the properties on them.

Mr. Stidham suggested changing the recommended "private road" and "private lane" to "major private road" and "minor private road." Ms. Caldwell replied that she still has concerns with use of the word "road." Mr. Stidham then suggested using the terms "major access easement" and "minor access easement" although you may cause confusion by retaining the term "private access easement." Ms. Caldwell suggested replacing "private access easement" with "private road" to alleviate potential confusion. She noted that this also addresses her concern with using the term "road" because a "private road" would be one with a minimum 30 foot access easement that meets all of the design standards in 8-J. Mr. Stidham recapped these proposed changes and the members were comfortable with them.

Ms. Malone asked about Granddaddy Lane located off of Senseny Road. Mr. Stidham explained how that access easement did not have to comply with 8-J because the parcels served by it were created through a series of administrative land divisions and boundary line adjustments.

Mr. Stidham reviewed the final issue regarding whether to continue requiring private driveways on AOC and FOC zoned properties that are over 150 feet in length to comply with the full design standards in 8-J. He stated that it does not appear that this requirement has been actively enforced since it was added in 2005 and recommended that it be replaced with a new driveway design standard that retains current slope and all-weather surface requirements but otherwise requires it to be constructed and maintained to permit effective ingress/egress by fire and emergency services vehicles. Mr. Buckley asked if the primary purpose for driveway design standards is to permit ingress/egress for emergency response vehicles and Mr. Stidham replied yes. Mr. Stidham noted that

the proposed change would allow the Building Department and Fire & EMS staff to identify issues during construction and address with the property owner. He also noted that there are no standards for driveways 150 feet or less in length and the new proposed standards would apply to all driveways.

Members noted that they are comfortable with Staff's recommended changes.

### **OTHER BUSINESS**

Ms. Caldwell asked to revisit the issue of AirBNB operations and asked what the Committee agreed to do with the regulations regarding septic system compliance, noting an example of a current AirBNB that advertises room for 16 guests. Mr. Buckley supports AirBNBs as a way for owners of large properties to maintain the expense of keeping them but he has a serious problem with advertising accommodations for more guests than the septic system can handle. He said that the State requirements assume 2 people per bedroom so a facility advertising a capacity of 16 guests would have to have an 8-bedroom drainfield. Mr. Stidham noted that the Committee and Staff will be recommending that the Board of Supervisors establish a registry for transient occupancy facilities including AirBNB under the recently adopted State law. He said that this would also require the business owner to provide evidence of Health Department approval and occupancy in conjunction with the registry. Members then had a general discussion on AirBNB occupancies, how drainfields can be modified to accommodate guests, and how the Health Department applies their regulations in relation to occupancy.

Per Mr. Stidham's request, the Committee agreed to move the date of the August 16 meeting to Thursday, August 23 at 2:00PM.

The meeting was adjourned by consensus at 3:21PM.



Brandon Stidham, Planning Director