

Clarke County

PLANNING COMMISSION ORDINANCES COMMITTEE MEETING MINUTES TUESDAY, JULY 24, 2018



A meeting of the Planning Commission's Ordinances Committee was held at the Berryville/Clarke County Government Center, Berryville, Virginia, on Tuesday, July 24, 2018.

ATTENDANCE

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

Absent: None

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

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

The Committee approved the July 11, 2018 meeting minutes as presented.

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.

Mr. Buckley entered the meeting.

Follow-Up Reports

Mr. Stidham reviewed the revised Staff Report for the discussion of private access easement issues, noting the Committee's direction provided at the previous meeting. Members had no questions or outstanding concerns.

Follow-Up Discussion of Deferred Policy Issues

Mr. Stidham noted that the three policy issues for discussion were deferred from previous meetings in order to have the County Attorney review and provide comment on various items. He noted that the County Attorney's responses are included in the enclosed reports for discussion.

Evaluate Review Process and Regulations for Berryville Annexation Area Properties (P4); Evaluate NAICS use codes for Business Park (BP) District

Mr. Stidham reviewed this item and recapped three specific questions that were provided for the Commission's discussion of Issue P4 in January. He stated that the County Attorney recommends that the district uses be divided into two separate groups – "Districts for Land in Annexation Area B" and "Districts for Land other Than Land in Annexation Area B" – to indicate that Annexation Area Districts can only be used on Annexation Area B properties. Mr. Stidham said that he would make one modification to this recommendation by referencing Berryville Annexation Areas generically in the event that future annexation areas are established. The Committee supported this recommendation.

Mr. Stidham said that the County Attorney noted that Annexation Area Districts and regulations cannot be applied only to existing uses and structures. The County Attorney did say that the prohibition of onsite sewage disposal systems can be extended to the B, BC, and ITL Districts to ensure that any new development requiring sewage disposal would have to connect to the Town utility and be annexed into the Town. He noted that the Committee did not provide recommendations because they wanted to hear back from the County Attorney before doing so. Members were comfortable with the proposed changes.

Mr. Stidham also noted that the County Attorney recommends the County and Town annexation area regulations should be consistent unless the County has substantive objections to particular provisions. He said that as Staff drafts these regulations, any items that may be a policy concern will be brought to the Committee for discussion.

Mr. Stidham noted that the guidance provided in Issue P4 pertains directly to resolution of Issue P5 regarding the Business Park District use codes. He stated that the Committee previously decided not to undertake a full review of the use codes due to the complexity of such an effort. He also said that the Committee wanted to implement the most recent version of the NAICS Manual to replace the 1997 version that is currently used, and that the manual version should be reevaluated every 10-15 years. He noted that since the County Attorney recommends that the Town and County rules be consistent, any changes to the NAICS Manual and uses would have to be agreed to by the Town. He recommends that such a project be undertaken after the Ordinance Update Project is completed. Mr. Lee asked whether the Town has been approached about this project. Mr. Stidham replied that County Staff approached the Town on several occasions in the past about reviewing the NAICS code list and the Town was not interested in doing so.

Members agreed with recommendations of Staff and the County Attorney on these policy issues.

Evaluate the regulations for nonconforming uses, lots, and structures along with the "deemed special use" status; include review for conformity with State code requirements (P19)

Mr. Stidham reviewed the items in the Staff Report and noted the Committee's prior direction given and comments provided by the County Attorney. Regarding 4-K-2 which allows construction to proceed when an ordinance change results in a nonconformity after building permit issuance, Mr. Stidham noted that the County Attorney said that the section as written with time limits for completion is legal under State Code. Mr. Stidham said that the time limits help to avoid the problem of a property owner taking a number of years to complete the project but making just enough progress to allow the building permit to remain active. The Committee agreed to keep this section without any changes.

Mr. Stidham reviewed 5-B-6 regarding the special use deemed approved status. He stated that the County Attorney recommends removing language indicating that failure to file a site plan to verify a deemed special use status constitutes a zoning violation. He added that the County Attorney suggested alternative language in the event that the Committee wants to retain the deemed special use status but noted that it would only apply to existing uses that are impacted as a result of future amendments to the use designations. He noted that the County Attorney also confirmed that if this section is removed, any uses that were confirmed in writing by the Zoning Administrator to be a deemed special use would retain the status and all future impacted uses would be made nonconforming. He also stated that there is one deemed special use that appears to have followed the process as outlined in 5-B-6 but that prior Staff issued zoning determination letters granting the status to other uses.

Mr. Lee asked how many deemed special uses exist. Mr. Stidham replied that it is unclear because an accounting of letters that may have been issued by prior Staff to confirm this status was never kept. He added that Staff is aware of around five uses with this status and reaffirmed that those with written approval from the Zoning Administrator will retain the status regardless of whether the Ordinance is changed. Ms. Caldwell said that it might be useful to include a footnote in the special use permit section to reference the deemed special use status if it is removed. Mr. Lee replied that this may cause people to believe that they have a deemed special use status even though they do not have written approval from the Zoning Administrator. Ms. Caldwell said that the footnote could reference the requirement that written approval is necessary to confirm the status, and Mr. Lee replied that this would address his concern. Mr. Stidham suggested rewriting this section to indicate that it is repealed but that any uses with written approval from the County would retain the deemed special use status. Members agreed to remove the deemed special use provision and replace it with language as described by Mr. Stidham.

Mr. Stidham reviewed remaining issues regarding nonconforming signs. He described how billboards are treated differently in the State Code from all other sign types and also noted the County Attorney's comments and recommendations on whether the nonconforming sign provisions are consistent with the State Code. Members agreed with the recommendations provided by the County Attorney and Staff and had no additional questions.

Mr. Stidham reviewed the Committee's prior recommendations regarding expansion of nonconforming structures and how to address expansion of a business site that has nonconforming

site features. Members agreed with Staff's accounting of their recommendations and had no remaining issues.

Evaluate and Revise the Special Use Permit Review Criteria (5-B-5) and the Rezoning Review Criteria (8-E-3) (P14)

Mr. Stidham stated that the County Attorney performed an extensive review of this issue as it has a very significant impact on the review of rezoning and special use permit request. He noted that the County Attorney recommends referring to the review criteria as "factors" to avoid interpreting this section as a checklist which requires all items to be confirmed in order to approve the request. He said the County Attorney recommends adding language to the preamble for the review factors to note that "other factors deemed applicable" can be considered in addition to the listed factors in determining whether to approve or deny a request. He added that this will provide flexibility to assign weight to issues on a case-by-case basis.

Mr. Stidham noted two changes that the County Attorney recommended after the Staff Report was sent to the Committee. The language "and any conditions to be applied" should be added to the end of the preamble for special use permit review factors to indicate that the factors are used to determine conditions to be applied. In proposed Factor #6, first bullet, the language "mitigation of" should be added between "including" and "pollution" for clarity purposes.

Mr. Stidham reviewed each of the proposed factors as recommended by the County Attorney. Ms. Caldwell asked whether the new language to be added to the preamble could be considered capricious and whether other language needs to be included to explain how other factors are deemed to be applicable. Mr. Stidham replied that it is not necessary to add such language but if other factors are given weight in the review of a rezoning or special use permit application, it should be reviewed by the County Attorney to determine whether there is adequate justification for use of the other factors.

Regarding proposed Factor #3, Mr. Fincham noted that "conservation value" is referenced and asked whether this needs to be quantified. Mr. Stidham said that it is not the same as determining impacts to property values and that this should be applied as a factor in determining mitigation measures when developing a use adjacent to eased properties.

Regarding proposed Factor #6, Ms. Caldwell asked if "but not limited to" could be added following the word "included" to provide additional flexibility. Mr. Stidham replied that he will make this change to all three bullets in this condition.

Regarding proposed Factor #9, Mr. Lee asked how you would determine whether there would be unreasonable depletion of or undue adverse effects on water sources. Mr. Stidham replied that if it is not caught by the Health Department or in the Karst plan review, any other claims of depletion or undue adverse effects would be reviewed by the County engineer. Mr. Fincham asked about Factor #8 and noted that the Health Department does not review whether a use has sufficient water for its needs. Mr. Stidham replied that this is more clearly applied when a use will be accessing public water and whether there is sufficient capacity to serve the use. He noted that with both of these factors, the uncertainty of whether there will be sufficient groundwater for the use or whether there will be impacts to surrounding resources can be considered as one of a group of factors in

determining whether to approve or deny an application. Mr. Lee noted that there is no current way to determine impacts on groundwater resources. Mr. Stidham noted that some counties have adopted regulations to require draw down tests when certain types of development are proposed.

Ms. Caldwell stated that in Factor #10, the word "is" in the first line should be replaced with "will be." She also noted that some of the factors start with nouns and are not full sentences and others start with verbs as an instruction – she said that the factors should all be written in a consistent fashion. Mr. Stidham replied that he would attempt to rewrite them in the same manner and will make sure that the County Attorney does not have problems with the changes.

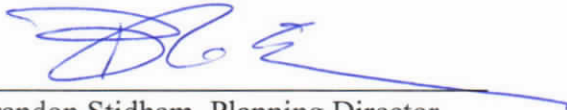
Members had no additional questions or concerns with the County Attorney's and Staff's recommendations.

NEW BUSINESS

Discussion, Reconcile use of the term "tract" throughout both ordinances (T2)

Mr. Stidham reviewed the Staff Report for this new technical issue and Staff's proposed changes to address the issue. Members had no questions or concerns with Staff's recommended changes.

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



Brandon Stidham, Planning Director