

# Clarke County

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## PLANNING COMMISSION ORDINANCES COMMITTEE MEETING MINUTES MONDAY, JULY 30, 2018



A meeting of the Planning Commission's Ordinances Committee was held at the Berryville/Clarke County Government Center, Berryville, Virginia, on Monday, July 30, 2018.

### ATTENDANCE

**Present:** Randy Buckley, Anne Caldwell, Frank Lee, and Gwendolyn Malone

**Absent:** None

**Staff/Others Present:** Ryan Fincham (Senior Planner/Zoning Administrator); George L. Ohrstrom, II

### CALLED TO ORDER

Mr. Stidham called the meeting to order at 11:03AM.

### APPROVAL OF AGENDA

The Committee approved the agenda by consensus as presented.

### APPROVAL OF MINUTES

The Committee approved the July 24, 2018 meeting minutes as presented.

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

**No:** none

### OLD BUSINESS

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

No new items were requested.

#### Follow-Up Discussion of Deferred Policy Issues

Mr. Stidham noted that the three policy issues were broken off from Policy Issue 27 for more in-depth discussion by the Committee.

**For the AOC and FOC special use "retail and service businesses," determine whether to continue limiting services only to those conducted onsite (P30)**

Mr. Stidham reviewed the Staff Report for this issue noting that the primary question for the Committee is whether to allow service businesses that perform services offsite to locate in the AOC and FOC Districts with a special use permit.

Mr. Ohrstrom asked with the exception of cleaning or pest control businesses, why you would exclude businesses just because they conduct their services off-site. Mr. Stidham provided background information on the evolution of this provision and noted that a policy justification for allowing these uses in the rural areas is for the local convenience of residents and businesses. He noted that a service business conducting all service activities off site would not need to be located in a rural area to provide a convenience for local residents. Mr. Ohrstrom asked about home occupations and Mr. Stidham replied that home occupations are regulated separately and are not part of this issue. Mr. Buckley asked if we are dealing with uses in separate buildings and Mr. Stidham replied yes. Mr. Stidham noted that an off-site service business could be run as a home occupation if it complied with the regulations for that use. Mr. Lee said that you could have a veterinarian that works off-site and only maintains an office, and he noted that we could be excessively restricting businesses that could go into the AOC and FOC Districts. Mr. Stidham said that veterinary services are allowed by special use permit in the AOC and FOC Districts but offices are not an allowable use. Mr. Lee replied that he thinks the current rules are very restrictive. Mr. Stidham noted that if the rules were relaxed, then property owners could build new business buildings in the AOC and FOC Districts that could potentially go vacant in the future or have more intensive uses go into those spaces. Mr. Buckley asked about the status of a pest control business on Triple J Road and Mr. Fincham said that this was approved as a home occupation. Mr. Ohrstrom said he thought some level of business activity should be permitted in the rural areas that is more intensive than the home occupation regulations allow. Mr. Buckley said that he thinks it makes a difference if someone lives on the property or not and Mr. Lee added that they would be less likely to cause nuisances. Ms. Caldwell said that this is a key issue and whether impacts from these businesses can be minimized or controlled. Mr. Stidham noted that some home occupations that grow could obtain a special use permit to allow them to stay in the same location but this would not currently apply to businesses that conduct off-site services. Mr. Buckley asked if a special use permit could be used to regulate the number of business vehicles. Mr. Stidham replied that you run the risk of being arbitrary and capricious if you were to set a maximum number of vehicles on a case-by-case basis. He noted that you could have problems approving businesses in which the owner lives on site if that owner can move away and rent the home to someone unrelated to the business. He also noted that if service businesses could locate in the rural areas with a special use permit, you may have a number of businesses relocate from commercial districts to large AOC or FOC zoned parcels. Mr. Lee said that it is a question of scale and we do not want to adversely impact business in the town. Mr. Buckley said that for home occupations it would be good to relate maximum floor area of the business to the size of the parcel. Mr. Stidham added that you could also regulate where on the parcel that the business can operate. He also noted that the current special trade contractor special use allows for contractor-type service businesses to operate in the AOC and FOC Districts. He added that there are few types of service businesses that are burdened by the regulations if you consider the home occupation and special trade contractor regulations.

Ms. Caldwell asked if this has come up as a problem in the past and Mr. Stidham replied no. She replied that we may be trying to fix a problem that does not currently exist and members agreed. Mr. Stidham confirmed that the Committee recommends no action on this item and noted that we have record of this issue and discussion if it becomes a problem in the future.

Prior to moving on to the next issue, Mr. Ohrstrom said that it has always bothered him that the Highway Commercial and Neighborhood Commercial Districts are designated as "CH" and "CN" instead of "HC" and "NC" and he would like to see this changed in the update. Members agreed with this and Mr. Stidham said that he would make note of the change.

**Evaluate floor area requirements for shopping centers and whether to establish limitations to avoid creating "strip malls" (P31)**

Mr. Stidham reviewed the Staff Report for this issue noting that the Committee wanted specifically to discuss how the current regulations address development of strip malls.

Mr. Ohrstrom asked if you could regulate all of this under a special use permit and address the impacts on a case-by-case basis but then noted that you would not have base line regulations for applicants to follow in developing their proposals. Mr. Stidham said that these are uses allowable in the County's two commercial districts and it would not make sense to have some level of use that is allowed by-right. Mr. Ohrstrom said that he likes the ability to apply conditions on a case-by-case basis that comes with requiring a special use permit. Mr. Stidham noted that there is no special use alternative in the CN District and it appears that we would want to adopt regulations to close the loophole of a 2-4 unit strip mall that could be developed.

Mr. Ohrstrom asked if someone could redevelop the catering business building in White Post to contain three separate businesses with individual entrances inside the building. Mr. Stidham replied that if Staff's proposed changes were adopted, this would be considered a business center and would not be allowed in the CN District. He added if the three businesses were not sectioned off and occupied a shared space it would be permitted. He noted that the CN District only exists in the unincorporated villages and Mr. Lee added that this is why the CN District regulations have to be more stringent than the CH District regulations. Mr. Buckley said that he would prefer the village concept for commercial development instead of strip development and cited Creekside Village in Kernstown as an example.

Ms. Caldwell suggested simply tightening up the regulations for the CN District in response to Staff's concerns. Mr. Stidham noted that if you adopted Staff's recommended changes, the maximum size of any commercial building in the CN District would be 5,000 square feet and you would be limited to one business per building. He also noted the alternative recommendation of allowing two businesses to share space up to 5,000 square feet to provide some flexibility. Mr. Ohrstrom asked whether it would be arbitrary and capricious to allow only two businesses instead of three or more in a maximum 5,000 square foot building. Mr. Stidham replied that he could make two arguments in favor of the approach. He noted that you have a lot of latitude with scale of use and the regulations are designed to allow uses to serve the immediate local area. He said the other argument pertains to economic viability – how many businesses could remain viable sharing a maximum 5,000 square foot structure. He said that it does not make sense to take the same approach with the CH District where

we want larger commercial uses to develop. Ms. Caldwell asked whether it would be reasonable to focus on the floor area issues in the CN District and leave the rest of the issues to a discussion after the update project is completed. Mr. Stidham said that we definitely need to clean up the shopping center issue and he summarized Staff's recommendations on this point. Mr. Ohrstrom noted that there could be confusion between the terms "business center" and "business park." Mr. Stidham suggested using "commercial center" instead of "business center" and the Committee agreed with this change. Mr. Ohrstrom said that he thought the floor area thresholds were appropriate. Mr. Stidham noted that even with the proposed changes, you have the potential in the CH District of having a business center of up to 15,000 square feet with two or more tenants by-right. He also asked whether the Committee wanted to require special use permits for business centers in the CH District regardless of floor area. Mr. Lee said that this is pretty restrictive but he is not totally opposed to it. Mr. Ohrstrom asked whether the biggest issue with the special use permit is the fee, and Mr. Stidham replied that developers do not want to make a major investment in a business that is subject to a special use permit that could be revoked. He said the Committee should determine what it is about strip malls that bothers them the most and can this be addressed with a special use permit. Mr. Ohrstrom said that he is concerned with strip malls drawing businesses away from downtown and Ms. Caldwell said she is concerned with appearance.

Mr. Buckley suggested requiring commercial centers to have three separate and distinct storefronts to make them more visually appealing. Mr. Stidham noted that design regulations could be added to the Historic Access Corridor Overlay District guidelines to require a distinct entrance and roofline for business center uses in the CH District. He said this would cover most of the CH-zoned properties in the County where business center uses could be developed. Mr. Lee asked who the approval authority would be and Mr. Stidham replied the Planning Commission with review by the architectural historian. Mr. Stidham also noted that this would be an alternative to requiring a special use permit for all commercial centers regardless of size.

Mr. Stidham confirmed that the Committee is comfortable with the recommendations for the CN District including allowing two businesses in a shared space and the proposed changes regarding the new commercial center use. He also confirmed that the Committee is comfortable with the CH District recommendations including adding new design criteria to the Historic Access Corridor Overlay District regulations in lieu of requiring a special use permit for commercial centers of any size. Members also briefly discussed floor areas of comparable existing business buildings within and outside the County. Ms. Caldwell said that we should not fiddle too much with maximum floor area requirements. Mr. Stidham said that the current floor area requirements will not be changed but will be adjusted to address the new commercial center use that will be added. Ms. Caldwell replied that she is comfortable with this approach. Mr. Stidham said that he will provide a revised report to explain the changes and will try to provide a visual explanation of how they will be applied.

### **Evaluate regulations for clubs and lodges (P32)**

Mr. Stidham reviewed the Staff Report for this issue and stated that the Committee wanted to take a closer look at regulations for clubs and lodges. He summarized Staff's recommendations to identify the use with a single term and revised definition, as well as adding use regulations to address entertainment activities at private clubs and special event permit requirements under County Code Chapter 57.

Mr. Buckley asked about the different private clubs that are active in the County and the members identified and discussed several examples. Regarding entertainment, Mr. Stidham asked what the members thought about distinguishing between entertainment for the club members only versus entertainment that is open to the public. Mr. Lee said that private parties would likely include nonmembers and would be difficult to enforce. Ms. Caldwell and Ms. Malone both said that they did not think that this is a problem in the County. Mr. Stidham asked whether the Committee is comfortable with Staff's recommendations on entertainment as written and the members agreed.

Mr. Stidham asked about allowing private clubs only on Federal primary highways and State primary divided highways. Mr. Ohrstrom asked whether this would make the Millwood Country Club nonconforming and Mr. Stidham replied yes and noted that it may already be nonconforming. Mr. Buckley noted that he raised this issue because of a potential lodge that was considering locating on Gun Barrel Road a few years ago in an inappropriate location. Mr. Stidham noted that allowing private clubs in rural areas may encourage them to take advantage of the rural setting for accessory activities such as shooting.

Prior to the lunch recess, Mr. Fincham reported the following estimated floor areas for existing structures in regards to the discussion of strip mall regulations:

- HandyMart – 7,000 square feet
- 340 Depot – 8,000 square feet
- Family Dollar – 7,500 square feet
- Radio Shack building – 23,000 square feet
- Old Mr. B's in White Post – 1,800 square feet

The Committee recessed the meeting for lunch at 12:23PM. The meeting was reconvened at 12:55PM.

Resuming the discussion of private club regulations, Mr. Stidham asked the members if they had any additional thoughts. Mr. Lee said that he did not think we would see many applications for new ones in the future. Ms. Caldwell said that private clubs may come into play in regards to owners of large mansions in the County looking for ways to reuse their properties. She said that limiting private clubs to primary highways would help address this concern and Mr. Stidham added that it would help with the issue of private club buildings going vacant along secondary roads with no compatible uses to occupy them. Members agreed to limit private clubs to Federal primary highways and State primary divided highways.

Mr. Buckley asked about limiting private clubs to the CH District and Mr. Stidham noted that this would potentially take away land that could be developed for commercial uses as intended in the district. Mr. Buckley also asked about how drainfields are approved for private clubs and Mr. Lee explained how they can be implemented using timed dosing systems. Mr. Ohrstrom asked how churches are addressed and Mr. Stidham replied that they are regulated as a separate use with separate regulations. Mr. Stidham also noted that it can be problematic to address traffic issues with churches because they only have activity on specific days of the week.

Mr. Stidham asked the members if they wanted to remove private clubs from the FOC District noting that they would only be allowed along Route 7 and US 50. Members said that the sites are probably limited already and did not want to remove the use from the FOC District. Mr. Stidham also asked if they wanted to regulate accessory activities like shooting. Mr. Buckley asked how shooting activities at private clubs are currently regulated. Mr. Stidham replied that the Zoning Ordinance does not allow shooting ranges so Staff would interpret accessory shooting activities to be prohibited, however a private club could argue that the shooting activities are limited to the members. He also noted that he had an inquiry in the past about how a group could hold regular turkey shoots. Mr. Buckley described an example of a shooting club in Jefferson County and how it operates. Ms. Caldwell said that since Staff currently interprets shooting ranges as prohibited uses, there is no reason to create a regulation that references the activity.

## **NEW BUSINESS**

### **Review Process Maps**

Mr. Stidham stated that the Committee has previously reviewed the process maps for subdivision and site plan review processes. He added that not all of the process maps have Staff concerns so he will not go into detail on those maps unless the members want to discuss them in detail. Prior to reviewing the process maps, he described the information provided on County consultant reviews of applications and noted how this will be incorporated into the revised Ordinances and proposed Guidance Manual.

Regarding administrative land divisions, Mr. Stidham said that Staff recommends that Planning Commission authority over the review of applications involving a residual lot that was the subject of a merger or boundary line adjustment within the previous two years be returned to the Zoning Administrator (Subdivision Ordinance 10-F-2). He added that the Commission's Plans Review Committee could be included as a reviewing agency to provide recommendations to the Zoning Administrator as a way of keeping the Commission involved in these applications. He noted that this was implemented a few years ago in response to a specific case that raised concerns among Commission and Board of Supervisors members. He also said that this recommendation would also apply to mergers and boundary line adjustments as described in 10-F-2. Mr. Ohrstrom posed the scenario of a future zoning administrator that may be pro-development or have a different philosophy on land use regulations and asked if this would give that zoning administrator the authority to apply the rules any way they want. Mr. Stidham replied no and said that if you have an ordinance written so broadly that two different zoning administrators could come up with two diametrically-opposed interpretations, then you have a bad ordinance and you need to fix it. He said if you have a zoning administrator that is taking liberties with interpretations or disregarding rules altogether, then you have a different problem that needs to be addressed in a completely different way. Ms. Caldwell said that it becomes more difficult to solve if examples are not coming through the Commission for review and oversight and they find out about it several months later. She added that these problems may not occur if the Commission is aware of things right at the outset. Mr. Stidham noted that State Code provides a protection which allows an administrative approval that was issued in error, either accidentally or on purpose, to be recalled within 60 days. He also said that if you require the Plans Review Committee to review these applications, they will review it before the Zoning Administrator approves it. Ms. Caldwell replied that she thought this is probably a good compromise and the

Committee members agreed. Members also agreed with Staff's additional recommendations on this process.

Regarding boundary line adjustments, members concurred with Staff's recommendations and noted that they promote consistency across similar application types. Mr. Stidham noted that he will ask the County Attorney to review the boundary line adjustment regulations to determine whether any of them should be moved to the Zoning Ordinance. Mr. Ohrstrom said that for consistency purposes, they should be in both ordinances. Mr. Stidham said that lot requirements in particular belong in the Zoning Ordinance in order to be enforceable.

Regarding certificate of appropriateness applications in the Historic Access Corridor Overlay District, members agreed with Staff's recommendations to establish consistency with certificates of appropriateness issued by the Historic Preservation Commission in Historic Districts by requiring a public hearing instead of a "public meeting" and indicating that certificates of appropriateness are good for five years from the date of approval.

Regarding lot consolidations/mergers, members agreed to use the term "merger" instead of "lot consolidation" throughout the revised Ordinances. Members also agreed to Staff's recommendations to establish a 60 day review deadline and the requirement that merger plats be recorded within six months of approval.

Mr. Stidham noted Staff's recommendation that language should be added to clarify that a maximum lot size exception only applies to the creation of new lots via major or minor subdivision as this is implied but not clearly stated in the current Ordinance. He also noted similar language for boundary line adjustments that could be referenced for clarity purposes. Ms. Caldwell asked what would be an example of this situation. Mr. Stidham noted that Mr. Fincham had a specific scenario in mind and he would ask him to explain it when he returns to the meeting.

Mr. Stidham recapped the Commission's recommendations that were made regarding major and minor subdivision applications and members had no additional concerns. Mr. Stidham noted that the Committee recommended keeping public hearings for major subdivision applications but recommended revisiting the issue of whether or not to schedule the public hearing in a separate meeting. Mr. Ohrstrom asked whether setting public hearing is a requirement and Mr. Stidham said no but is a procedural approach that allows for a first reading of an issue. He said that you could have a two-step process on the back end by holding the public hearing at one meeting but deferring action until the second meeting. Mr. Buckley noted that he likes this approach because it provides an opportunity to address changes in response to public hearing comments. Mr. Ohrstrom said that if you have a public hearing and the body approves it at the same meeting, it does not give the public the impression that you have considered their comments. Ms. Caldwell noted that the work session does give you a chance to review applications prior to the public hearing so it is not too bad to have the first meeting be a public hearing. Mr. Stidham said that if you are going to keep the required public hearing, it definitely has to be done this way in order to accommodate the State-mandated 60 day review deadline. He also noted a drawback in that citizens may get their hearing notices and contact Commission members with questions before they get their meeting packets and information on the applications. Mr. Lee said that we should invite more people to attend the work sessions and

Mr. Stidham replied that they always tell citizens to attend work sessions and that they are open to the public. Ms. Caldwell asked if Staff is advocating skipping the set public hearing step for all required public hearings. Mr. Stidham replied only for the administrative reviews that have a 60 day review deadline and noted that the legislative reviews for special use permits and rezonings can retain the set public hearing step because the Commission has more time to review them. He noted that the Commission's review clock starts at the first meeting at which they first consider an application which would include a set public hearing meeting.

Regarding sign permits, members agreed with Staff's recommendations to establish a formal review process, deletion of the separate variance process for sign applications, and noting that sign applications do not require a certificate of appropriateness in the Historic Access Corridor Overlay District.

Regarding rezoning applications, Mr. Stidham reported that the County Attorney said that we cannot require a site plan or subdivision plat to be provided with a rezoning application that does not involve proffered conditions if no development is proposed at that time. He said that you can require the applicant to provide a plat to show exactly what is being rezoned. He also asked the Committee whether we want to require a site plan for conditional zoning applications or allow a conceptual site sketch to be submitted to illustrate the development plan in a more general manner. He noted that this would allow an applicant to avoid some up front design expenses associated with a full site plan and added that when a site plan is filed after the rezoning approval, it would have to be consistent with the conceptual site sketch. He said some developers may not want to spend money on a full site plan if they do not know whether the rezoning will be approved, and other developers may want to submit the site plan simultaneously with the rezoning to save time. Mr. Ohrstrom said that it is onerous to require a full site plan with a conditional zoning application and Ms. Caldwell added that a conceptual site sketch sounds reasonable.

Regarding conditional zoning applications and proffer amendments, Mr. Stidham discussed the changes to State Code and how it impacts proffer negotiations. He said that the County Attorney is looking at it in more detail but noted as a matter of practice that there should be a single voice representing Staff, the Commission, and the Board of Supervisors when proffer negotiations occur. Mr. Ohrstrom asked whether you can hold a developer to their original proffer commitment even if they come back and ask for it to be amended to relieve them of some or all of the responsibility set forth in the proffer. Mr. Stidham replied that he thinks Mr. Ohrstrom is correct except if the developer argues prior precedent by claiming the County has granted a similar proffer amendment in the past or has granted approval to a similar development at the same level that the developer is requesting through the amendment.

Mr. Fincham re-entered the meeting and was asked about the recommendation on maximum lot size exceptions. He noted that the first bullet under the criteria for a maximum lot size exception is that a new dwelling unit is to be located on a lot of record existing in October 1980 which does not necessarily have anything to do with a subdivision. He added that all of the other bullets deal with subdivisions. Mr. Stidham said that it is clear that we only want to allow a maximum lot size exception with boundary line adjustments in the one specific scenario outlined in the current Ordinance.



Regarding the stream buffer mitigation plan process, the Committee agreed with Staff's recommendation to establish a permit process. He also noted that he will be asking the County Attorney whether it is acceptable to reference the Natural Resources Planner as the approval authority or whether it has to be the Zoning Administrator.

Mr. Stidham reviewed the Committee's recommendations on site development plan review processes and the members had no additional concerns.

Regarding special use permits, Mr. Stidham reviewed Staff's recommendations to incorporate three standard conditions into the Ordinance as opposed to listing them as conditions – special use permit nontransferable without Board approval, applicant and property owner required to sign approved conditions within 30 days of approval, and right to inspect property for the life of the permit. Members agreed with the recommendations.

Regarding text amendments, Mr. Stidham reported that the County Attorney stated that the text amendment and rezoning review processes have to be separated in the revised Ordinance as Staff has recommended.

Regarding plat vacations, the Committee supports the creation of a review process and application requirements for vacations and to have the Board delegate review authority of plat vacations before sale of lots to the Planning Commission.

Regarding variance applications, the Committee supported Staff's recommendation the requirement that variance applications be forwarded to the Commission to provide a recommendation to the Board of Zoning Appeals or appear as a party at the hearing. The Committee also supported Staff's recommendation to add a 90-day deadline to review variance applications as they currently have for appeals. Mr. Ohrstrom asked what happens if the BZA fails to act by the 90-day deadline and whether the variance or appeal is deemed approved. Mr. Stidham replied that if they fail to pass a motion to approve, the request is denied and the applicant can appeal to the Circuit Court.

Mr. Stidham noted that the County Attorney has recommended deleting the Subdivision Ordinance variation process.

Regarding zoning letters, the Committee supported Staff's recommendations to add a formal process to both the Zoning and Subdivision Ordinances. They did not recommend establishing a deadline to complete a zoning letter. Mr. Ohrstrom asked whether zoning letters should come through the County Attorney and Mr. Stidham replied that the County Attorney is heavily involved in the preparation of most zoning letters.

Mr. Stidham noted that the Committee previously discussed zoning modifications in Policy Issue P6 and decided to eliminate the process.

Mr. Stidham reviewed the need to establish specific permitting processes for a range of zoning approvals issued by the Zoning Administrator. The Committee had no concerns with the establishment of the permit processes.

Mr. Stidham reviewed the process for intensive livestock zoning permits. The Committee supported creating a permit process for this application type. Mr. Stidham also noted that he will ask the County Attorney about whether intensive swine operations can be prohibited in lieu of requiring a 3,000 foot setback.

### **Review Framework for Revised Zoning and Subdivision Ordinances**

Mr. Stidham reviewed Staff's recommended outlines for the revised Zoning and Subdivision Ordinances. Mr. Ohrstrom noted that the use chart should include a key and Ms. Caldwell suggested having it at the bottom of each page for reference purposes. Regarding the uses, Mr. Stidham noted that he discovered that the Annexation Area uses and regulations do not match the County uses and regulations. He said that he has asked the County Attorney how to remedy this and offered some alternative approaches. He noted that the most likely but most labor-intensive alternative is to maintain the separate uses and import the definitions and regulations from the Town Zoning Ordinance into the County Ordinance. He added that is preferred approach is to convert the Town uses to the comparable County use and any that do not transfer over would be removed from the Ordinance. An example would be hospitals that are currently allowed in the Institutional (ITL) District but are not an allowable use in any County district. Staff would remove hospitals from the County Zoning Ordinance and if someone wanted to develop a hospital in the ITL District, they would have to get the property annexed by the Town before applying for zoning approval. He noted a third option of referencing the Town Zoning Ordinance but did not think it would be acceptable to the County Attorney.

Regarding Section 4, Mr. Ohrstrom recommended referencing the Land Evaluation and Site Assessment (LESA) system in the AOC District subsection. Mr. Lee added that this should include a description of what the LESA system is and how it works.

Following the discussion of the revised Ordinance framework, Mr. Stidham said that when the policy and technical issues are completed he plans to compile the final reports along with the minutes from all the Committee meetings and provide them to the Commission and Board of Supervisors. Since it will take several months to draft the revised Ordinances, it will give members the time to review the issues in detail and ask questions or raise concerns if they have them. He said the key to the project's success is to provide work product in manageable increments rather than providing the complete product all at once. He added that the revised Ordinance framework will also be presented in the near future so the Commission and Board will understand what will be coming.

The meeting was adjourned by consensus at 2:47PM.



Brandon Stidham, Planning Director