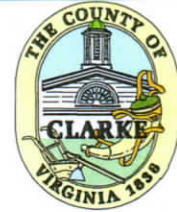


Clarke County



PLANNING COMMISSION WORK SESSION MINUTES TUESDAY, JULY 9, 2019

A work session of the Planning Commission of Clarke County, Virginia, was held at the Berryville/Clarke County Government Center, Berryville, Virginia, on Tuesday, July 9, 2019.

ATTENDANCE

Present: Robina Bouffault; Randy Buckley; Anne Caldwell; Mary Daniel (arrived late); Bob Glover; Frank Lee; Gwendolyn Malone; Pete Maynard; and George L. Ohrstrom, II.

Absent: Doug Kruhm; Scott Kreider

Staff Present: Brandon Stidham, Planning Director; Alison Teetor, Natural Resources Planner; Ryan Fincham, Senior Planner/Zoning Administrator (via conference call)

Others Present: Lora Walburn (County Administration)

CALLED TO ORDER

Mr. Stidham called the meeting to order at 3:00PM. He noted that Mr. Fincham would be participating in the work session via conference call.

APPROVAL OF WORK SESSION AGENDA

Members approved the work session agenda as presented by consensus.

REVIEW OF AGENDA ITEMS FOR JULY 12, 2019 BUSINESS MEETING

SUP-19-01/SP-19-01, Crown Castle

Mr. Stidham provided an overview of this request to construct a 185-foot Class 4 wireless communication facility (WCF) to replace an existing 84-foot tall monopole. He clarified that the applicant proposes to replace the existing monopole located on the west side of Mt. Carmel Road and not the Verizon Wireless tree pole located on the east side of Mt. Carmel Road behind the church. Ms. Caldwell replied that the proposed WCF will be in a highly visible location and added that she thought they were replacing the monopole behind the church. Mr. Stidham replied with background information on why there was initial confusion as to which existing monopole is being proposed for replacement. He also noted that the existing monopole has T-Mobile as a current tenant and the proposed WCF would have T-Mobile and AT&T as tenants.

Chair Ohrstrom asked about the applicant's statement that they are not considering co-location on the Verizon Wireless monopole because they do not have lease agreements with them. Mr. Stidham said

that the Verizon Wireless monopole is actually owned by American Tower which is a competitor to Crown Castle. Chair Ohrstrom asked if the message could be conveyed to the applicant that we would prefer that the Verizon Wireless monopole be replaced instead of having two poles in the same location. Mr. Stidham replied that George Condyles, the County's telecommunications engineering consultant, has asked the applicant some of the same questions and the Commission could also ask the applicant whether or not this would be feasible. Mr. Stidham also stated that recent changes to State law prevent localities from denying an application based on the applicant's business decision to locate in a certain spot or whether a new tower would improve coverage. He added that the County already previously approved two monopoles in this area that were originally closer together than the current monopole and proposed WCF would be.

Mr. Stidham noted that the proposed WCF is designed to collapse on itself at a distance of 92 feet as required by the Zoning Ordinance, and they have also provided a stamped letter from an engineer to certify the design. He noted that they cannot meet the minimum setback distance from an adjacent cemetery lot and would need a variance from the Board of Zoning Appeals (BZA) in order to approve the WCF location. He also said that the BZA granted a variance on the original application for the existing monopole. He added that the applicant has the option of filing for the variance and having the review run concurrently with the SUP and site plan application, or they could apply for the variance after the SUP and site plan review process is complete. In the latter case, the site plan would be approved on the condition that the variance is granted by the BZA prior to final approval of the site plan. Mr. Stidham also provided an overview of comments received from review agencies to date and noted the applicant's narrative and George Condyles's initial comment letter in the meeting packet. He said that Staff is recommending that the Commission set public hearing for the September meeting. He also advised the members of the new State code requirement that mandates the entire review process to be completed within 150 days, adding that Staff has forwarded a review timeline to the applicant's agent depicting how Staff will be interpreting the 150 day review period.

Ms. Bouffault asked if the applicant has provided coverage maps and Mr. Stidham replied that State law now prevents localities from asking for coverage maps. Chair Ohrstrom asked if internet service can be provided on the proposed WCF. Mr. Stidham replied that there would be space for co-location opportunities but the County cannot require the applicant to allow co-location. Chair Ohrstrom asked for Staff's position on towers designed to collapse upon themselves. Mr. Stidham commented on the letter provided by the applicant's engineer and also provided a past example of a large tower that collapsed upon itself in another locality. Mr. Maynard said that some localities require the setback to be the fall zone plus 10% and questioned whether a 199-foot tall tower will collapse within 92 feet of itself. Mr. Stidham said that the fall zone setback was added a few years ago and that the Ordinance could be amended to change the setback if there are concerns. Mr. Maynard asked why the current and proposed WCFs are both considered to be monopoles but the proposed WCF will have larger arrays. Mr. Stidham replied that the Ordinance used to require all antennas to be flush-mounted.

Ms. Caldwell asked if the applicant went into detail about why they could not co-locate on the other nearby monopole. Chair Ohrstrom replied that they said they could not or would not be able to lease with the other tower company, and he added that Mr. Stidham said new State code requirements prevent localities from ruling on an application based on the applicant's business decisions. Mr.

Fincham added that he questioned the applicant extensively on this issue but that they did not express interest in co-locating on the other tower for the stated reasons. He added that American Tower, the owner of the other tower, has inquired about this application and its review status. Mr. Stidham referenced information provided by Mr. Condyles comparing the height of the proposed tower to the existing tower owned by American Tower. Ms. Bouffault said that they are probably concerned with getting above the tree canopy at that location. Mr. Glover asked when the applicant has to respond to Mr. Condyles's comments. Mr. Stidham replied that they have an additional month to respond since there is no Commission meeting in August. Mr. Glover asked if information is provided early could it be forwarded to the Commission members and Mr. Stidham replied yes.

Ms. Caldwell asked if we know how many providers are currently leasing space on the American Tower monopole and Mr. Stidham replied no. He added that the tower was developed by Verizon and the only other cellular carrier that could be on that tower is Sprint. Ms. Caldwell asked to confirm the height of that tower is 80 feet and Mr. Stidham replied yes. He added that the top of that monopole is just above the tree line which may not leave room above the tree line for other carriers. Ms. Caldwell said that it would be cheaper to extend that tower height than to build a new tower. Mr. Stidham noted that the applicant is a competitor to American Tower and that it is unlikely that the application would be withdrawn unless Crown Castle lost commitments from the carriers.

MS-19-03/MLSE-19-02, Shannon Dulaney (Applicant)/Sharon Warfield (Owner)

Ms. Teetor reviewed the Staff Report for this request. Chair Ohrstrom asked about VDOT's concerns and Mr. Fincham provided information on how the concerns have been resolved. Mr. Fincham added that the revised plat should depict the resolved issues. Ms. Teetor stated that all other agency concerns have been addressed and that Staff recommends approval of the minor subdivision and maximum lot exception.

Mr. Maynard noted that the Virginia Department of Health (VDH) letter states that the applicant has not applied for a certification letter. Mr. Fincham replied that the language means that once plats are approved by the Commission, VDH staff will not sign off on the final plat until all of their required fees have been paid.

Other Business Items

Mr. Stidham noted that there are three Other Business items on Friday's agenda. He said the first item is a discussion of AirBNBs requested by Ms. Bouffault.

Ms. Bouffault distributed a packet of information that she assembled on transient lodging and wedding/event facilities in the County and whether or not each facility is licensed. She noted that there are 35 unlicensed bed-and-breakfast facilities operated under AirBNB and five unlicensed event centers. She then presented a map showing the location of the facilities including whether or not the property owners reside on the property. Ms. Daniel asked whether licensed/unlicensed refers to a business license and Ms. Bouffault replied yes. Ms. Daniel asked how she determined where people reside and Ms. Bouffault replied that she used the County online tax map information. Ms. Daniel noted that this is the address where tax bills are sent. Ms. Bouffault agreed and said that where they pay their taxes is usually where they live. Ms. Bouffault said that the information on the map is the economic development and tourism expansion that the County has seen over the past few years. She

referenced an article reporting that AirBNB has 4-5 times the business of Marriott and Hilton combined. She stated that some of the AirBNBs are operating without building permits for residential use and that some advertise occupancies without septic system approval from the Virginia Department of Health (VDH). She also referenced another study that examines the pros and cons of AirBNBs and notes that with the explosive growth, AirBNBs need to be placed on an equal footing with other types of transient lodging businesses.

Chair Ohrstrom said that he would think that the insurance companies are having serious problems with these uses. Ms. Bouffault replied that the insurance companies are probably not being told that the properties are being operated as AirBNBs. She said that she is concerned the County could be held liable for injuries that occur at unlicensed AirBNBs, adding that the County has signed an agreement with AirBNB for transient occupancy tax collection which in her opinion opens the County up to such liabilities. Chair Ohrstrom noted that the County Attorney does not agree with her position. Ms. Bouffault said that the Zoning Ordinance has to be amended to regulate short-term rental uses and also recommended that we ask the General Assembly to enable us to increase the transient occupancy tax from its current 2%. She said that once we have zoning regulations in place, they can be included in correspondence from the Commissioner of the Revenue to AirBNB operators and would help protect us against the liabilities she described. Ms. Daniel said she has been concerned about AirBNBs from a tax collection perspective and noted that the operators are not usually concerned with the tax because it is paid directly by the customers.

Chair Ohrstrom suggested having the Policy Committee review this issue and consider developing a text amendment over the next few months. Ms. Bouffault said that work needs to take place immediately and if not included in the Ordinance Update Project it would have to be a text amendment to the current Zoning Ordinance. Chair Ohrstrom said that adding it to the revised Zoning Ordinance could put the Ordinance Update Project at risk. Mr. Stidham asked for clarification whether we would be establishing a short-term rental registry which would go in the County Code and be developed by the Board of Supervisors but not be part of the Zoning Ordinance. He added that if we are going to create zoning regulations for short-term rentals, then that text amendment would definitely go in the Zoning Ordinance and be developed by the Planning Commission. Ms. Bouffault said that the County's AirBNB contract states that there will be a short-term rental registry. She added that she wants the Policy Committee to target the simplest fix we can to put everyone on a level playing field. She said she is concerned that AirBNBs that register and obtain a business license may be out of compliance with building code and VDH requirements which will leave the County open to liability. Chair Ohrstrom suggested having the Policy Committee develop a course of action parallel to the work on the Ordinance Update Project and then have the Commission decide what to do when the Committee forwards its recommendation. Ms. Caldwell asked whether it would be helpful to have a Board member sit on the Policy Committee for this effort. Ms. Daniel noted that some members may want to know how AirBNB regulations fit in with agricultural operations.

Mr. Stidham asked when we want to schedule a Policy Committee meeting and whether there is a need to have this on the agenda for Friday since the Commission has discussed it pretty thoroughly at this meeting. Ms. Bouffault said the meeting needs to be scheduled as soon as possible and Mr. Stidham replied that the Committee may need to meet without him as he is working on the Ordinance

Update Project and cannot take on another project. Ms. Walburn said that County Administrator David Ash asked her to attend this meeting because he has been tasked by the Board of Supervisors to develop a list of pros and cons for AirBNBs and he wants to solicit the input of this body. She asked whether Mr. Ash would be a natural fit to lead this effort since he is working on the topic for the Board. Mr. Stidham replied that this is purely a zoning issue. Ms. Walburn said that every jurisdiction in Region 3 is trying to address this issue after the fact and that the Economic Development Advisory Committee (EDAC) will be discussing transient occupancy tax at its next meeting. She asked whether a member of the EDAC can participate in this effort. Mr. Stidham replied that this needs to be delegated to the Policy Committee only for zoning purposes.

Ms. Caldwell suggested that if the Policy Committee could develop a simple, non-controversial text amendment, it could be adopted into the current Zoning Ordinance as was done earlier this year for antenna support structures. Ms. Bouffault said that she has a simple example from the City of Waynesboro so she thinks this can be done. Mr. Stidham said that he will try to find a specific date but that all four Committee members will need to be able to commit to that date. He added that he will try to have a date by the meeting on Friday. He also suggested that since Ms. Bouffault has a concept in mind that she should offer that as a starting point for discussing the text amendment. Mr. Buckley said if we require them to provide a VDH permit stating that they have the drainfield capacity for their stated occupancy and an occupancy permit from the Building Department, then he did not think there was anything else that we needed to require of them.

Mr. Stidham said that the next item under Other Business is a draft letter of appreciation for Cliff Nelson and he distributed a proposed letter for the Commission's review. Ms. Caldwell said that Mr. Nelson did not want a formal resolution as the Commission has done for previous departing members. She said that Chair Ohrstrom drafted the letter of appreciation for all of the Commissioners to sign and two books on Clarke County were also purchased for Mr. Nelson. Members requested a couple of edits and Mr. Stidham said that he would provide a final updated version for signature on Friday.

Mr. Stidham noted that the final Other Business item is the discussion with the Piedmont Environmental Council fellows who attend July Commission meetings each year.

NEW BUSINESS ITEMS

Zoning and Subdivision Ordinance Update Project, Revised Work Plan

Mr. Stidham reviewed proposed changes to the project work plan to account for additional time needed to review the Policy and Technical Issues. He asked for the members' consensus on dates and times for joint worksessions with the Board in the fall. Members preferred to have worksessions following the November and December Business meetings and to have the other two worksessions on Thursday evenings, preferably 6:30PM. Ms. Caldwell said that she cannot attend the first worksession. Mr. Stidham said that he would propose these changes to the Board at their next meeting.

Review of 2019 Project Priorities

Mr. Stidham reviewed the mid-year adjustments to the Commission's priority projects to account for work completed to date. Members agreed by consensus to the revised Project Policies.

The meeting was adjourned by consensus at 4:32PM.

George L. Ohrstrom, II (Chair)

Brandon Stidham, Planning Director