

**CLARKE COUNTY PLANNING COMMISSION
TABLE OF CONTENTS
March 6, 2020 Business Meeting Packet**

| <u>Item #</u> | <u>Description</u> | <u>Pages</u> |
|----------------------|---|---------------------|
| 1 | Meeting Agenda | 1 |
| | | |
| 2 | Approval of Minutes | |
| A | February 4, 2020 Work Session | 2-5 |
| B | February 7, 2020 Business Meeting | 6-14 |
| | | |
| | <u>Continued Public Hearing</u> | |
| | | |
| 3 | SP-19-02, Clarke County Humane Foundation | 15-20 |
| | | |
| | <u>Other Business</u> | |
| | | |
| 10 | Discussion Items, Zoning and Subdivision Ordinance Update Project | |
| A | Continued Discussion – Accessory Apartment Use | 21-24 |
| B | Service Business Uses by Special Use in AOC and FOC Districts – Onsite vs. Offsite | 25-29 |
| C | Landscaping Design Standards – Eastern Red Cedar | 30 |
| D | Proposed “Non-Residential Building” Use – Agricultural and Forestal Buildings | 31-33 |



Clarke County Planning Commission

AGENDA – Business Meeting

Friday, March 6, 2020 – 9:00AM

Berryville/Clarke County Government Center – Main Meeting Room

1. Approval of Agenda
2. Approval of Minutes
 - A. February 4, 2020 Work Session
 - B. February 7, 2020 Business Meeting

Continued Public Hearing

3. **SP-19-02, Clarke County Humane Foundation.** Request approval of a Site Plan Amendment to add a 1,090 square foot addition to an existing animal shelter to accommodate six additional dog kennels and a 12’ by 24’ pavilion to the property in the Agricultural-Open Space-Conservation (AOC) District. The property is located at 225 Ramsburg Lane, reference Tax Map 13-A-13A, in the Russell Election District.

Board/Committee Reports

4. Board of Supervisors (Mary Daniel)
5. Board of Septic & Well Appeals (George Ohrstrom, II)
6. Board of Zoning Appeals (Anne Caldwell)
7. Historic Preservation Commission (Doug Kruhm)
8. Conservation Easement Authority (George Ohrstrom, II)
9. Broadband Implementation Committee (Mary Daniel)

Other Business

10. Discussion Items, Zoning and Subdivision Ordinance Update Project
 - A. Continued Discussion -- Accessory Apartment Use
 - B. Service Businesses by Special Use in AOC and FOC Districts – Onsite vs. Offsite
 - C. Landscaping Design Standards – Eastern Red Cedar
 - D. Proposed “Non-Residential Building” Use – Agricultural and Forestal Buildings

Adjourn

| |
|---|
| UPCOMING MEETINGS: |
| Policy and Transportation Committee Meeting Friday, March 6 (immediately following Commission Business Meeting) |
| Commission Work Session Tuesday, March 31 (3:00PM) |
| Commission Business Meeting Friday, April 3 (9:00AM) |

Clarke County

**PLANNING COMMISSION
WORK SESSION MINUTES -- DRAFT
TUESDAY, FEBRUARY 4, 2020**



A work session of the Planning Commission of Clarke County, Virginia, was held at the Berryville/Clarke County Government Center, Berryville, Virginia, on Tuesday, February 4, 2020.

ATTENDANCE

Present: Robina Bouffault, Anne Caldwell, Bob Glover, Doug Kruhm, Frank Lee, Gwendolyn Malone, and Pete Maynard

Absent: Randy Buckley; Mary Daniel; Scott Kreider; and George L. Ohrstrom, II

Staff Present: Brandon Stidham, Planning Director; Ryan Fincham, Senior Planner/Zoning Administrator

CALLED TO ORDER

Mr. Stidham called the meeting to order at 3:03PM. He noted that Chair Ohrstrom and Vice-Chair Buckley were not present and advised the members that he did not think that a temporary chair was needed for this meeting as there are no agenda items requiring a vote. Members agreed by consensus not to appoint a temporary chair.

APPROVAL OF WORK SESSION AGENDA

Members approved the work session agenda as presented by consensus.

REVIEW OF AGENDA ITEMS FOR FEBRUARY 7, 2020 BUSINESS MEETING

Mr. Fincham provided an update on the status of SP-19-02 (Clarke County Humane Foundation). He noted that Staff has requested comments from David Tyrrell (Town of Berryville) as the Animal Shelter's sewer line is connected to the Town's system. He said that the applicant's design professionals are currently working with Mr. Tyrrell to address his concerns. He added that he has also requested comments from the County's Maintenance Department which has responsibility for ongoing maintenance of the sewer line that serves the Animal Shelter. He noted that he has not received comments from the Maintenance Department or from the Building Department and Emergency Management Department. Commissioner Bouffault asked who is serving as the contact for the applicant. Mr. Fincham replied that George Ohrstrom is acting on behalf of the Humane Foundation and the agents are Stuart Dunn and Allen Kitselman. Mr. Fincham also said that Staff is recommending that the Commission hold the public hearing on Friday then defer action and continue the public hearing to the March meeting. He added that the Commission could alternatively ask the applicant to request a voluntary deferral which would stop the 60-day review clock. He noted that the March Business Meeting is within the 60-day review period. He apologized for the confusion as

Staff originally sent the application to the Clarke County Sanitary Authority as he thought that the Authority was responsible for the Animal Shelter's sewer line. Commissioner Bouffault said that it has always been a gray area with that County-maintained sewer line. Mr. Fincham added that the line would have to be brought up to the Town's standards in order for the Town to take over maintenance responsibilities. Mr. Stidham added that everything west of the traffic circle is part of that hybrid County system.

OLD BUSINESS ITEMS

Mr. Stidham stated that the Commission will be discussing issues that were marked for further review at the joint workshops with the Board of Supervisors last fall. He noted that two issues will be discussed today and two will be discussed at the Business Meeting on Friday. He added that the remaining issues will be discussed at the March meetings. He also said that he has not received an update from the County Attorney on the Subdivision Ordinance review and that the update project will not move forward until that legal review is complete. Commissioner Bouffault asked if we would be discussing anything today regarding the two Friday items. Mr. Stidham replied no and that we will treat those as workshop discussion items at the Business Meeting.

Discussion, Revised Rezoning and Special Use Review Factors (Ordinance Update Project)

Mr. Stidham reviewed the revised list of rezoning and special use review factors containing edits requested by the Commission in December. Commissioners had no questions or comments. Mr. Stidham said that these changes will be included in the next draft of the Zoning Ordinance.

Discussion, Scope of Agritourism Activities

Mr. Stidham reviewed the two issues presented in the Staff memo – whether horse shows should be included in the definition of “agritourism activity” and whether additional language is needed to clarify the scope of entertainment activities that may be conducted at an agritourism activity. He noted that agritourism activities can be held in conjunction with an agricultural operation, which can include traditional farms and also farm wineries, farm breweries, and farm distilleries.

Regarding the horse show issue, Commissioner Bouffault said that she does not think horse shows are tourism activities and agrees with the points raised in the Staff memo. She said most horse shows are “schooling shows” which are unofficial training events. She added that they rarely have more than 100 participants at a time and noted that there are only one or two larger events held in the County each year. She said that there used to be a nationally-known horse show at Chapel Hill that is no longer conducted. She reiterated that these are not tourist activities and recommended addressing it as recommended by Staff. Commissioner Caldwell said that the point-to-point race at Woodley is clearly an example of one that would require a special event permit. She also noted that some farms with large indoor arenas may be considering holding rodeo-type activities that may differ from the types of equestrian activities we have been discussing and may involve the public. Commissioner Bouffault replied that these events do not involve the public at all and they do not advertise. She added that in the past she had trouble getting Western event organizers to join the Equine Alliance because they did not want their activities listed anywhere. She added that they go to great lengths to make sure the public does not attend their events. Mr. Stidham described an example from another county of a rodeo event that was open to the public and conducted on a regular basis that would be considered an agritourism activity, and noted that there are no similar events being held in Clarke.

He added that Staff's proposed three-part test was assembled with this kind of event in mind. Commissioner Caldwell noted that polo events are not held in the County but may also require a special event permit or agritourism activity zoning permit. Commissioner Glover asked if this issue had been brought up previously and Mr. Stidham replied that it was raised at the November 1 joint workshop with the Board. Commissioner Kruhm asked about pony club and 4-H events and whether they would be considered an agritourism activity. Commissioner Bouffault explained how they operate and noted that they would be too small to be considered an agritourism activity. Mr. Stidham said that he has direction and consensus on this issue and will make the changes as presented.

Mr. Stidham said that in regards to entertainment activities, Staff felt that the current draft of the agritourism activity use may be sending the wrong message that you can have more live music and entertainment activities under this use than under current regulations. He said that as currently written, entertainment activities could be held up to 180 days per calendar year at farm wineries, farm breweries, and farm distilleries in addition to seasonal events held at farms. He stated that Staff proposes changes to the draft language to downplay the intensity of live music, entertainment, and festivals that can be held with an agritourism activity. He noted that such activities would be "incidental" and could not be promoted as a separate event or charged a separate admission fee. He noted that "incidental" music would be background music, such as someone playing a guitar and singing at a farm winery. He added that Staff also recommends using "incidental" to refer to the sale of food and beverages as being an accessory activity.

Commissioner Caldwell asked if the term "incidental" is defined. Mr. Stidham replied that it is not and that we would use the plain language definition for the term. Commissioner Caldwell suggested that a definition be added and Mr. Stidham said that he would look into it. Mr. Stidham then reviewed the proposed use regulation to be added and indicated that this may help to explain the meaning of "incidental" and members agreed. Commissioner Bouffault asked if the second line of the use regulation could read, "...accessory to *a main* agritourism activity." Commissioner Maynard said that you could also say, "*an ongoing* agritourism activity," since you have to have the main agritourism activity approved first before having incidental activities. Mr. Stidham suggested "*the permitted* agritourism activity" so that the incidental entertainment activities would have to be in conjunction with the agritourism activity approved by the zoning permit. Commissioner Caldwell said this would help prevent a separate entry fee from being charged for the entertainment activity. Commissioner Lee added that he thinks this would cover it. Mr. Stidham added that we do not want to have an agritourism activity list a schedule of music and entertainment acts that will appear during the permitted use. Commissioner Glover asked if farm wineries could still advertise their entertainment acts, and Mr. Stidham replied that they would be held to the requirements of this use. Commissioner Glover asked if a farm winery could advertise a background band so long as they do not charge a separate admission fee. Mr. Stidham replied yes and said that charging admission for the act could require a special event permit. He added that one of the tests for a special event permit is that the event is held outdoors, so any indoor events would not have to get a special event permit. He also said in these cases, the operator would have to have a special use permit for a minor commercial public assembly use.

Mr. Stidham said that he has direction from the Commission and will make the changes to the upcoming draft Zoning Ordinance.

OTHER BUSINESS

Regarding the recent issuance of County email addresses, Mr. Stidham said that he would prefer that Commissioners use that email address for County correspondence but he noted that we cannot require Commissioners to do this. He said if you intend to continue using your personal email address, please notify Debbie Bean. He added that Staff will begin using the County email addresses in March for all correspondence but will also copy to any Commissioner's personal email address if desired. Commissioner Bouffault said that she set up her County email account and watched a required email security training video that used up her monthly internet data. She also said that she cannot import the contact list from her personal email account to the County email account. She asked if Staff could provide a copy of all the Commissioners' new email addresses and Mr. Stidham replied that he will do so.

Mr. Stidham also noted that copies of the final versions of Organizational Meeting items are included in the work session packet for your reference.

The meeting was adjourned by consensus at 3:43PM.

Brandon Stidham, Planning Director

Clarke County

**PLANNING COMMISSION
BUSINESS MEETING MINUTES - DRAFT
FRIDAY, FEBRUARY 7, 2020**



A regular meeting of the Planning Commission of Clarke County, Virginia, was held at the Berryville/Clarke County Government Center, Berryville, Virginia, on Friday, February 7, 2020.

Attendance

Present: Randy Buckley (Vice-Chair); Robina Bouffault; Anne Caldwell; Mary Daniel; Bob Glover; Frank Lee; Pete Maynard; and Gwendolyn Malone

Absent: Scott Kreider; Doug Kruhm; and George L. Ohrstrom, II (Chair);

Staff Present: Brandon Stidham, Planning Director; Ryan Fincham, Senior Planner/Zoning Administrator; and Debbie Bean, Recording Secretary.

Others: Chris Boies (Clarke County Administrator)

CALLED TO ORDER

Vice Chair Buckley called the meeting to order at 9:01 a.m.

Approval of Agenda

The Commission voted to approve the agenda as presented.

Yes: Bouffault, Buckley, Caldwell, Daniel, Glover, Lee, Malone (moved), and Maynard (seconded),

No: No one

Absent: Kreider, Kruhm, and Ohrstrom

Approval of Minutes

The Commission voted to approve the Planning Commission Business Meeting minutes of January 10, 2020.

Yes: Bouffault (seconded), Caldwell (moved), Daniel, Lee, Malone, and Maynard

No: No one

Absent: Kreider, Kruhm, and Ohrstrom

Abstained: Buckley and Glover

Public Hearing

SP-19-02, Clarke County Humane Foundation. Request approval of a Site Plan Amendment to add a 1,090 square foot addition to an existing animal shelter to accommodate six additional dog kennels and a 12' by 24' pavilion to the property in the Agricultural-Open Space-Conservation (AOC) District. The property is located at 225 Ramsburg Lane, reference Tax Map 13-A-13A, in the Russell Election District.

Mr. Fincham explained this request. He said that the Clarke County Animal Foundation is requesting an addition to the north side of the existing animal shelter. He stated that the addition will be a 1,090 square foot addition to the existing animal shelter to accommodate six additional dog kennels and a 12' by 24' pavilion to the property. He said that the property is 10 acres in size. He showed an aerial view of the property and where the addition is going. He said that on January 16, 2020, the Health Department commented by email that they have no issues with the proposal. He stated that the Virginia Department of Transportation was not required to review this request because there is no proposed increase in traffic. He said that a Erosion and Sediment Control will be permitted by the Building Department. He stated that a stormwater review is not required due to the scope of the project. He said that the Health Department has no issues with the existing well being used for the proposed addition. He stated that there are no parking changes, and no lighting changes proposed unless they put a security light right outside the door for the police officers to come and go. He said that there is no external signage proposed and landscaping changes proposed. He stated that the facility is served by an extended sewer line from the Town of Berryville wastewater system which is maintained by the County Maintenance Department. He said that Staff sent the site plan for review to the Town of Berryville and to County Maintenance. He stated that Dave Tyrell, Town of Berryville Director of Utilities, noted that the Town code states that no animal waste may be deposited on land or in an unsanitary manner within the jurisdiction of the Town or areas served by the Town. He said that animal waste provides unique challenges in both the collection and treatment systems mostly from excessive hair. He stated that Mr. Tyrell requested that the Applicant provide additional information on the pretreatment tank that is indicated on the plans and how it has been maintained over the years since its installation. Mr. Fincham said that the Applicant has not responded as of the drafting of this report. He also stated that Staff has not received comments from County Maintenance, the Building Department, or Emergency Services. He stated that we have not received any public inquiries about the proposed request. He said that Staff has not received the sets of the revised plans from the Applicant's agents. He stated that the proposed request has been advertised for public hearing. He said that Staff recommends conducting the public hearing and deferring action until the next Planning Commission meeting on March 6, 2020 pending the outstanding review comments from the Town and the Applicant. He stated that Staff did receive a voluntary deferral request from the Applicant by email this morning. He said that Staff recommends accepting that request. He asked the Commission if they have any questions. Commissioner Caldwell stated that we should continue the public hearing until the next Planning Commission meeting. Mr. Fincham said that it should read to continue the public hearing and defer action based on the voluntary request from the Applicant until the Planning Commission meeting on March 6, 2020 meeting. After discussion with Staff and the Commission, Vice Chair Buckley opened the public hearing.

There were no public comments.

Vice Chair Buckley called for a motion.

The Commission voted to continue the public hearing and accept the Applicant's deferral request until the Planning Commission meeting on March 6, 2020.

Yes: Bouffault (seconded), Buckley, Caldwell (moved), Daniel, Glover, Lee, Malone, and Maynard

No: No one

Absent: Kreider, Kruhm, and Ohrstrom

Board of Supervisors (Mary Daniel)

Commissioner Daniel said that on Monday the Board of Supervisors will have a work session and is expecting to see the initial proposed budget. She said that there has been some research done on personal property taxes in other jurisdictions. She said that we will be discussing if we are doing it the right way or not. She stated that she does not know if it will result in any changes.

She said that the Virginia Department of Transportation is putting in a gravel parking lot on Morgans Mill Road so people can park when they are going to the trail. She stated that the contractor on the Route 9 project has released his schedule. She said that he has indicated that the impacts will begin around Labor Day. She stated that they are doing other parts of the work first before they start on things that require lane closures. She said that the highway work will start in March and go for five or six months with no traffic restrictions. She stated that there will be flagging from time to time. She said that we will probably see some increase in lane closures. Commissioner Glover asked what is the time frame for completion from Labor Day. Commissioner Daniel said about one year, which makes the entire project about 18 months. She said that for every concerning complaint that we have received, Loudoun County constituency is screaming even louder. She said that we have received the results of the audit from Robinson, Farmer, Cox Associates - CPAs & Consultants, which were excellent. She said that our internal controls are very strong and that is our line of defense against any trouble accidental or intentional. She stated that we have a .9% debt service to the general fund ratio and the average in Virginia is 10%. She said we are doing good staying out of debt. She stated that we have a rather high general fund balance for our general obligations. She said that the average state wide is 15% and we are about double that. She said she thinks that this will figure into the next budget. Commissioner Caldwell asked where does the County stand on the debt for the new High School. Commissioner Daniel stated that she is not sure. Mr. Boies stated that we have a debt schedule and he can send it to her. Commissioner Caldwell asked if it makes any sense if there is a large general fund balance to use it to offset property taxes and to use some of that money to pay off that debt early so there would not be such an interest payment. Commissioner Daniel said she thinks that is a legitimate question that could be looked at by the Finance Committee. Mr. Boies stated that the reason the general fund balance is so high is that we have this pay as you go program for capital where you save money for capital projects year after year. He said that it makes your fund balance look inflated but it really is designated for certain uses so it is good to have that cash but when we save and then do projects it makes our fund balance look larger than it actually is. He said that there are projects designated for a lot of that money. He stated that it is still a fair question as to how we manage the fund balance.

Board of Septic Appeals (George Orstrom, II)

Mr. Fincham spoke for Chair Orstrom. He said that Commissioner Daniel will be replacing Bev McKay on the Board of Septic Appeals and Mr. McKay will be the alternate. He stated that we do expect an application from Stond's Mill any day.

Board of Zoning Appeals (Anne Caldwell)

No report.

Historic Preservation Commission (Doug Kruhm)

No report.

Conservation Easement Authority (Randy Buckley)

Vice Chair Buckley stated that the Conservation Easement Authority held the annual awards ceremony on January 16th. Michael Hobert was this year's recipient for the Winkie Mackay-Smith Conservation award which was well deserved. He stated that when you see Michael be sure and congratulate him.

Broadband Implementation Committee (Mary Daniel)

Commissioner Daniel stated there has been no change. Mr. Stidham stated that he has had a couple people that live on the mountain inquire about how to get internet service. He said that he gave them everything including the new Visual Link product and he made sure to ask them if they decide to go with that product please notify him on how good it is in real life. He said that it would be good to get some feedback from customers about this product.

Discussion Items, Zoning and Subdivision Update Project

Mr. Stidham said that there are two more items to talk about today for follow-up discussion from the joint workshop with the Board of Supervisors. He said that at the November 1, 2019 meeting a question was raised regarding whether the rules should be relaxed regarding the types of products that can be sold onsite in conjunction with an agricultural operation. He said that in the way of background he gave a brief overview of the current rules that were established with the agribusiness text amendment that was adopted by the Board of Supervisors in 2017. He stated that prior to this text amendment, agricultural products could only be sold on AOC-zoned property by-right as a home occupation "wayside stand." He said that any products sold at a wayside stand had to be produced primarily on the premises and the wayside stand had to clearly be a secondary use of the property. He said that if a farm operator could not qualify as a home occupation, the alternative was to apply for a special use permit for a retail and service business use. He said that we created a new accessory use in AOC and FOC Districts in 2017. He stated that the wholesale or retail sale of agricultural products, grown or processed in conjunction with an agricultural operation, that is clearly accessory and incidental to that agricultural operation. He said that this is a by-right use which allows products to be sold at a farm which are grown or processed as part of that farm's operation. He stated that the use does allow agricultural products to be sold that are processed with products that are not produced by that farm. He said that an example would be an apple producer selling baked goods made with apples grown on that farm along with ingredients not produced on the farm. He said that the use does allow agricultural products to be sold that are processed with products that are not grown or produced by that farm. He said that would include products from other farms in the County. He stated that if there was a honey producer that does not want to have their own farm stand they would not be able to

sell their honey at another farm stand under the use that was adopted in 2017 unless that farm stand had a special use permit for retail service business. He said that this is sort of the crux of the issue and if you turn to page 12 of 16 he explains how this is going to be folded into the current Zoning Ordinance. He stated that right now we are folding it in the same way that the text amendment was adopted in 2017.

Mr. Stidham said that one of the big arguments raised was about relaxing what you can and cannot sell on a farm. He said one argument is if we want to support niche agriculture we need to be able to get these smaller producers more opportunity to sell their products. He stated that one suggestion was made that we could consider whether we focus on products that are produced specifically in Clarke County to be sold at a by-right farm store whether or not they were produced in whole or part by the farm that is operating the store. He said that when we discussed the text amendment in 2017 one of the Staff concerns was how do we determine if we are in an enforcement position of whether something being sold was truly being produced on the farm or in Clarke County or outside of Clarke County. He stated that we used to have a use for the processing of farm products allowed by-right if all the products were produced in Clarke County and by special use permit if the products came from outside the County. He said that when we changed that use to remove that distinction the point was made how do we as Staff identify the origin of the products. He stated that under the current use that concern is lessened because we just need to prove that they are growing a product onsite that is being mixed in with offsite products. He stated that ultimately this question about what you all want to do with what you can and cannot sell at a farm store is a policy decision and if you turn to page 13 of 16 there are a few questions to help move the discussion along.

- What are the main policy goals of allowing onsite sale of agricultural products?
- Would expanded retail sales be consistent with the character of rural AOC and FOC-zoned land?
- Should a limit on the number or type of offsite products that can be sold at a by-right farm store be established?
- If a limit on the type of product is chosen, how should the allowable products be described or defined (e.g., “agriculture products”)?
- If any relaxed regulations are adopted, could they result in a farm store growing to an intensity equal to or greater than the agricultural production use on the property? If so, is the Commission comfortable with this use and its potential impacts (e.g., traffic) continuing to be by-right?

Regarding the last point, he said that an example could be the large farm stores that you see in western Frederick County. He stated that these become destination locations and most of them sell products that they do not produce onsite. He said that he is throwing this out for discussion and looking for direction on what you want to do with this.

Commissioner Caldwell asked if this has been a problem. Mr. Stidham said he thinks we have had people raising questions about this. He said he thinks that if there are people selling products onsite that are not theirs, then it must have been going on for a while and no one is complaining about it. Commissioner Bouffault suggested that if the language could be modified to say something that is a product and not produced on their farm but within the County then any agricultural product produced within the County can be sold at any of the farms. She said would this not give it a lot of flexibility.

Commissioner Caldwell said that we just talked about that and it becomes an enforcement nightmare. Mr. Stidham said if we had Farmer A selling Farmer B's branded honey but we have no way to prove that the honey in Farmer B's jar actually came from their production site or they bought an excess of honey offsite, we could presume that if it is labeled from Clarke County then we are not going to look at it any further. He asked if that creates a problem. Commissioner Bouffault said no she does not see that as a problem. Commissioner Maynard said that he tends to agree and why try to scientifically determine the origin of the honey when it is printed on the label that it is from Clarke County. He said his concern is that he has been to these places and thought that he was going to buy something local and then he reads the back of the jar and sees it was made by a cold packer in North Carolina. He said that he has found that jams and pickled products are a good example and he has found that a lot of products are not locally produced. He said you need to read the back of the jars to see where the origin is. He stated that he would not be in favor of that. Commissioner Bouffault said she does not think they can falsely label these products. Mr. Stidham said that we would not be involved with false labeling. He said the question is do we want a farm store to continue to operate and bring in products from other farms. Commissioner Daniel asked is this where a special use permit would be needed? Mr. Stidham said that a special use permit and site plan would be needed and also an engineer to put the site plan together which can run into a lot of money. Commissioner Daniel said it really is a money issue. Commissioner Caldwell stated that she thinks we need to recognize that we are talking about two very different things. She said that the regulations we are talking about for some place like Nalls would fall into the special use category. She said she thinks these regulations are really designed for the very small Mom & Pop operator who works for a few months out of the year selling their produce along the roadside where it is not such a big operation that they have a parking issue and if it has not been a real problem she does not see a problem with these particular regulations unless it becomes an issue with somebody having a much bigger operation but not quite a special use operation. Mr. Stidham said that where he thinks it would come to us is if some big farming operation would become wildly popular. He said this would mean it is generating a lot of traffic and we get a neighbor complaint and we go out and see that they are selling a whole bunch of things from offsite, but to date we have never seen a complaint of that nature. He stated that it does not sound like there is a lot of interest in moving forward with anything different at this point but he can make a list of what we discussed. Commissioner Bouffault said she does not see this as such an issue that we really need to focus on it again. He said if it comes up again we can look at the list and we can pick up the discussion again.

Mr. Stidham said the second issue is the Accessory Apartment Use and it starts on page 14 of 16. He said there were general concerns about creating this use. He said it was created primarily to address two issues that we identified. He stated that one is the Duplex problem with the dwelling less than 600 square feet. He said that this is a dwelling that you can qualify you can have one of these accessory to an existing single family dwelling on lots of 6 acres or larger. He stated that they can be separate buildings or it can be attached to the single family dwelling. He said if you attach it to the single family dwelling the current rules state that it has to remain separate from and with no internal ingress/egress to the main dwelling. He stated depending on how it is structured for building code purposes and also for zoning ordinance purposes that could produce a duplex which is a two family dwelling that is not currently allowed in the AOC and FOC Districts. He said that the other issue is the flexibility to accommodate family members. He stated that we currently prohibit a single family dwelling from having a mother-in-law suite or accessory apartment that has separate sleeping, cooking, and bathroom facilities which would constitute a dwelling unit, unless it has approval as a

dwelling less than 600 square feet. He stated that properties less than 6 acres in size cannot get that approval. He said if someone would come in and would want to create a wing, a basement apartment or something for a family member so they can have their own kitchen, bathroom area, and sleeping area, we say you do not qualify for that because there is no approvable use for that. He stated that it often results in the person saying we will just eliminate the kitchen and that involves deleting the stove plug from the plans and removing the word kitchen. He said that as we all know as it most often happens after the Building Official finishes up with that permit, the person will go back in and put that stove plug in and it becomes a kitchen anyway. He stated that we proposed the use to give that flexibility and to address the duplex problem by allowing an accessory apartment with kitchen, bathroom area, and sleeping area but provided that it would be within the foot print of the existing single family dwelling and not be physically separated. He said that the residents of that accessory apartment would have full access back and forth to the balance of the dwelling. He stated that the thought being if there were concerns of it being rented out as a separate rental to a separate family, separate entity, it would be less likely that it would occur if these unrelated renters had full access to the balance of the house. He stated that the new rules would also require the existing septic system to be upgraded to current Health Department standards with 100% reserve drainfield area. He said there were specific concerns raised at the November 1, 2019 workshop meeting including that the use would open the door to people renting out apartments in their homes, potentially exceeding the approved occupancy of the residence and overburdening the septic system. He stated that it was pointed out that we have built in these requirements to upgrade the septic system, the ingress/egress and one suggested approach was instead of having this as a freestanding use we would fold it into the use regulations for single family dwellings. He said if you look on page 16 of 16 this shows we no longer have a separate use called accessory use but a regulation for how you can have an accessory apartment within a single family dwelling. He said he is looking for direction from the Commission and if you have any specific concerns with this approach otherwise, we can move this into the new draft of the zoning ordinance that will be coming out.

Commissioner Caldwell stated if this was discussed at the workshops why are we talking about this again. Mr. Stidham said he believes it was Commissioner Kreider that brought it up at the November 1, 2019 workshop and he was initially concerned with how do we regulate when somebody rents out a basement or a wing to a separate family. He said are we going to have too many people in the house and asked how is it going to effect the septic system. Commissioner Caldwell said she did remember that he was very opposed to any accessory dwelling. Mr. Stidham said that he seemed to be ok with this. He said he thinks it was the use itself as proposed that he was opposed to. Commissioner Bouffault said she was thinking about the Airbnb aspect of this and what we have seen over the past few years with people buying up a dwelling and then not even living in the dwelling. She said then they rent out aspects of their suites allowing them to add on a minor addition less than 600 square foot to enable them to better commercialize what it is theoretically residential. She said that is a concern and enforcement is a nightmare as we already know and we need to talk about that. She stated that she does not know if there is a huge demand for these. Mr. Stidham said that we often have people that want to add a second kitchen to their house and we have traditionally not allowed second kitchens because of the way we have the rules set up. He said that the one benefit to the change is how they are going to rent it out because they have to come in and get a zoning permit in addition to their building permit and as a condition of zoning approval they have to fully comply with current Health Department standards. He said if they are adding a bedroom they are going to have to upgrade their drainfield and make sure it meets current standards and make sure they have 100%

reserve area. Commissioner Lee asked how we make sure that when they have this put in that they do not turn around and make it a rental unit. He asked if there is some kind of stipulation that it has to be a family member. Mr. Stidham said that this would be difficult for us to police and he thinks the best thing we could do would be by virtue of requiring them to keep it open if there is a complaint that we could use the Building Department's authority to go in and inspect to see if they have had an open basement apartment with a stair step going up and the report is they have removed the door and stairs we could go in and say you are in violation of your zoning permit for that in addition to the building permit. Commissioner Lee said he thinks that would be very hard to catch. Mr. Stidham said we would have to have right of entry and I think you could potentially do it through the Building Department as modification. Commissioner Lee said he sees it as an opening for people to put in a rental unit in their house and that worries him a little. Mr. Stidham said that if the septic system is addressed and we are not worried about septage then the next policy issue you are concerned with the fact there are unrelated people renting part of that house. He asked if this is a policy issue and if so then that is a separate matter for us to talk about how to create regulations for. Commissioner Daniel said that about five years ago the mother-in-law house by-right came through the General Assembly to allow those. Mr. Stidham said that was the temporary family health care structure and they were called Granny Pods. He said that it is such a narrow type of use that people inquire about it but no one has actually applied for one. Commissioner Maynard asked if this eliminates the right to have a separate free standing structure as an accessory building. Mr. Stidham said no that would be separate. Commissioner Maynard said would this be replacing a 600 square foot building. Mr. Stidham said no it would still be available to you. Commissioner Glover asked if you could still put in a bathroom less than 600 square foot in a garage. Mr. Stidham stated that the 600 square foot is kitchen, bathroom, and living space. Commissioner Glover asked if this would require a separate septic. Mr. Stidham stated that you would have to comply with current standards and if you are adding on to your property and whether you have your own drainfield for it or tie into an existing one you will have to get compliance with the Health Department under the current regulations.

Commissioner Caldwell said in regard to the points made from Commissioners Bouffault and Lee, what happens when one of these are approved under this regulation and that house is sold to another person and it has two dwelling units which are side by side and no one comes in for any further permits. Mr. Stidham stated that we are not necessarily facilitating it and by requiring them to get a building permit and bringing everything with the septic system into full compliance we are creating a better situation versus what we have right now where people will just do it and it does not qualify for the minor dwelling because it is less than 600 square foot. He said it has to be contained within the footprint of the existing single family dwelling. Commissioner Maynard said that this raises another question is there any square footage limitations on the accessory apartment by making a bedroom, kitchen, living room, studio, and den. Mr. Stidham stated that you are essentially designating a portion of that house as the accessory apartment. Commissioner Maynard said he could put on a 1000 or 1200 square foot addition and have that my accessory apartment. Mr. Stidham said that is correct. Commissioner Bouffault said she thinks this is an increase of zoning density. Mr. Stidham said not necessarily if you could otherwise do it without a kitchen and calling it an accessory apartment, what would be changing other than the potential for it being rented out as a separate unit to unrelated people and if that is the concern then that is the policy question we need to discuss. Mr. Stidham said that if we want to add accessory apartments he would not recommend trying to regulate who can live in them and who cannot. He said it would be a nightmare for us to try and figure out who it is. He said that if there is not a comfort level he would not do this. Vice Chair Buckley stated that from his

perspective is that it has been going on and will continue to go on whether we have a mechanism to allow it or not and our best defense is that we have a way to react if there is a complaint. Commissioner Bouffault said how do we react to enforcement. Mr. Stidham asked do we have a problem with Mr. Fincham turning down a request for a second kitchen. Mr. Fincham said that he has had adult children come in and they have aging parents with no health concerns but they want them to live in one part of the house and the adult children live in the other part. He said they bring in a zoning application and he starts asking them questions and what usually happens is that they have to tear out the stove and then they build the addition and whether it is 1200 square foot or 2000 square foot it meets the intent of the code.

After discussion by Staff and the Commission it was determined to continue this discussion until the March 6, 2020 Business Meeting.

There being no further discussion Vice Chair Buckley called for a motion.

The Commission voted to continue this discussion until the March 6, 2020 Business Meeting.

Yes: Bouffault, Buckley, Caldwell, Daniel (moved), Glover, Lee, Malone (seconded), and Maynard

No: No one

Absent: Kreider, Kruhm, and Ohrstrom

Other Business

On motion by Commissioner Daniel and seconded by Commissioner Malone the meeting was adjourned at 10:08 a.m.

George L. Ohrstrom, II, Chair

Debbie Bean, Recording Secretary

SITE PLAN AMENDMENT (SP-19-02)
Clarke County Humane Foundation
March 6, 2020 Planning Commission Meeting – PUBLIC HEARING
STAFF REPORT – Department of Planning

The purpose of this staff report is to provide information to the Planning Commission and Board of Supervisors to assist them in reviewing this proposed site plan amendment. It may be useful to members of the general public interested in this proposed amendment.

Case Summary

Applicant(s):

Clarke County Humane Foundation

Location:

- 225 Ramsburg Lane
- Tax Map #13-A-13A (Parcel Size: 10 acres)
- Russell Election District (Ohrstrom/Maynard)

Zoning:

Agricultural-Open Space-Conservation (AOC)

Request:

Request approval of a Site Plan Amendment to add a 1,090 square foot addition to an existing animal shelter to accommodate six additional dog kennels and a 12' by 24' pavilion to the property in the Agricultural-Open Space-Conservation (AOC) District. The property is located at 225 Ramsburg Lane, reference Tax Map 13-A-13A, in the Russell Election District.

Case Update:

As noted previously, the facility sewer system is an extension of the Town of Berryville sewer system which is owned by the County and maintained by the County Maintenance Department. David Tyrrell, Town of Berryville Director of Utilities, conducted an inspection of the existing pre-treatment tank serving the facility (shown on the plans), and determined that it is satisfactory for the proposed use. The Town required the Applicant to add notes to the site plan stating that all waste will pass through the pre-treatment tank and that an annual reporting of the tank cleaning be sent to the Town. Joey Braithwaite, County Maintenance Director, indicated that the tank is serviced every September, and a service report will be sent to the Town.

The site plan has been revised with these notes and Staff's required revisions of notes.

Staff received no comments from the Building Department or Emergency Services regarding this proposal.

Staff Recommendation:

Staff recommends approval of a Site Plan Amendment to add a 1,090 square foot addition to an existing animal shelter to accommodate six additional dog kennels and a 12' by 24' pavilion to the property located at 225 Ramsburg Lane on Tax Map 13-A-13A zoned Agricultural-Open Space-Conservation (AOC).

History:

| | |
|-------------------------|--|
| November 2019 | Pre-Application meeting held with Planning Staff. |
| December 6, 2019 | Site Plan Application filed by the applicant. |
| January 10, 2020 | Placed on the Commission's meeting agenda to schedule Public Hearing. |
| February 7, 2020 | Public hearing was continued and action deferred. |
| March 6, 2020 | Placed on the Commission's meeting agenda for Public hearing. |

Memo

To: Christy Dunkle

From: David Tyrrell

Date: February 21, 2020

Re: Clarke County Animal Shelter Expansion Review.

Christy,

After review of the Clarke County Animal Shelter expansion plans as submitted, several discussions and emails with Clarke personnel, and a site inspection, the desired expansion will not be an issue for the WWTP. Originally in the discussions there was confusion about the pretreatment tank found on the plans but the Shelter does have a proper pretreatment tank that is in service. During the inspection the tank was clean and appeared to be functioning properly.

There are two items that need to be addressed for full approval. First the plans need to indicate that all waste leaving the new facility is passing through the existing pretreatment tank. Second, we will need to arrange for an annual reporting of the tank having been cleaned. Fortunately, I see no need to develop a full pretreatment program for the animal shelter so this should simply be a confirmation of a tank cleaning each September.

Once the plans show that all waste is passing through the pretreatment tank there is no reason to further delay the project and it can proceed. Clarke County is already working to provide the yearly report and I can coordinate that with them separately.

GENERAL NOTES:

1. THE PROPERTY SHOWN HEREON ON THIS PLAN IS LOCATED IN LONGMARSH MAGISTERIAL DISTRICT, ON THE CLARKE COUNTY ASSESSMENT MAP 13-A-13A, AND IS CURRENTLY ZONED AOC, AGRICULTURAL - OPEN SPACE - CONSERVATION.
2. THE BOUNDARY INFORMATION SHOWN ON THIS PLAN IS BASED ON A SUBDIVISION PLAT PREPARED BY DUNN LAND SURVEYS, INC, OF RECORD IN PLAT BOOK 2, PAGE 40.
3. THIS PLAN MAY NOT SHOW ALL ENCUMBRANCES IN THE CHAIN OF TITLE; NO TITLE REPORT FURNISHED FOR THIS PLAN.
5. TOPOGRAPHIC INFORMATION SHOWN ON THIS SITEPLAN WAS TAKEN FROM A SITEPLAN PREPARED BY BOWMAN CONSULTING GROUP DATED JUNE 15, 2001.
6. THE AREA OF THE THIS PARCEL IS 10.0000 ACRES.
7. THIS PLAN IS FOR THE FOLLOWING: (a) THE EXPANSION OF THE EXISTING FACILITIES LOCATED AT THE ANIMAL SHELTER. THE ADDITION WILL HAVE A CAPACITY FOR 6 NEW KENNELS. THE ADDITIONAL AREA WILL BE 1,090 SQUARE FEET. AND (b) THE ADDITION OF A 12'x24' VISITATION PAVILION.
8. THE ANIMAL SHELTER IS SERVED BY PUBLIC SEWER AND ON-SITE WATER SOURCE; THE EXISTING CONNECTIONS ARE TO REMAIN.
9. THIS ADMINISTRATIVE SITEPLAN IS SUBJECT TO CONDITIONS ESTABLISHED IN SITEPLAN DATED JUNE 14, 2001, WITH A FINAL REVISION OF JULY 18, 2002. SEE NOTES INCLUDED THEREON.
10. THIS ADDITION PROPOSES NO CHANGES IN PARKING, LIGHTING AND/OR LANDSCAPING.
11. THE FUTURE TRAINING PAVILION IS AS SHOWN IN SITEPLAN DATED JUNE 14, 2001, WITH A FINAL REVISION OF JULY 18, 2002.

OWNER & DEVELOPER:

CLARKE COUNTY HUMANE FOUNDATION

PO BOX 472

BERRYVILLE, VA 22611

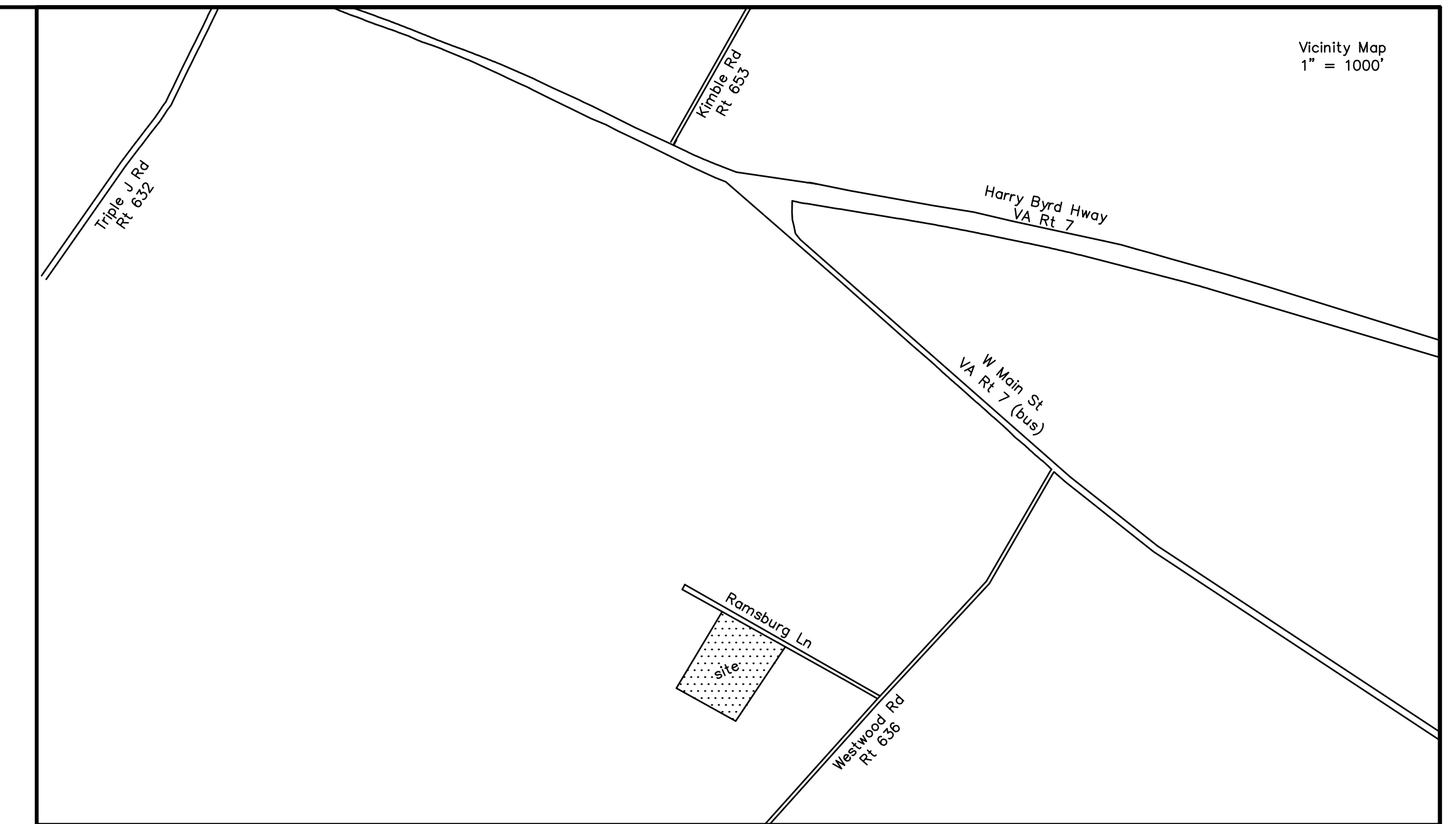
APPROVAL:

CHAIRMAN OF PLANNING COMMISSION

BOARD OF ZONING APPEALS

CONSTRUCTION NOTES:

1. ALL CONSTRUCTION SHALL CONFORM IN ALL RESPECTS TO THE COUNTY OF CLARKE AND/OR VDOT STANDARDS, SPECIFICATIONS AND ORDINANCES, EXCEPT AS MODIFIED BY THIS PLAN. FAILURE TO COMPLY WITH ALL APPLICABLE CODES, STANDARDS, SPECIFICATIONS, ORDINANCES, PERMITS, ESCROWS, ETC. SHALL BE DEEMED AS A VIOLATION.
2. ALL EXISTING UTILITIES SHOWN ARE BASED ON EITHER FIELD LOCATION OR EXISTING RECORDS. THE CONTRACTOR SHALL BE REQUIRED TO DETERMINE THE EXACT LOCATION OF ALL UTILITIES PRIOR TO BEGINNING CONSTRUCTION TO VERIFY THE EXACT LOCATION AND DEPTH OF ALL UTILITIES. THE CONTRACTOR IS ADVISED THAT THERE MAY BE OTHER EXISTING UTILITIES ON OR IN THE VICINITY OF THE SITE AND WORK AREA THAT MAY NEED TO BE LOCATED AND PROTECTED AS PART OF THIS PROJECT; AND, IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY FOR LOCATING AND PRESERVING ALL UTILITIES AS REQUIRED FOR CONTINUED SERVICE.
3. THE CONTRACTOR MAY BE REQUIRED TO NOTIFY MISS UTILITY PRIOR TO COMMENCING CONSTRUCTION AND MAY FURTHER BE REQUIRED TO DIG TEST PITS TO DETERMINE THE EXACT LOCATION OF UNDERGROUND UTILITIES. THESE TEST PITS SHALL BE PERFORMED AT LEAST 30-DAYS PRIOR TO COMMENCING CONSTRUCTION, WITH ANY DISCREPANCIES REPORTED IMMEDIATELY TO THE OWNER AND THE DESIGN PROFESSIONAL. SHOULD THE LOCATION OF ANY OF THESE UTILITIES CONFLICT WITH THE PROPOSED IMPROVEMENTS REQUIRING ANY REDESIGN, THEN THE REDESIGN SHALL BE APPROVED PRIOR TO COMMENCING CONSTRUCTION.
4. THE CONTRACTOR SHALL VISIT THE SITE AND VERIFY THE EXISTING CONDITIONS PRIOR TO COMMENCING CONSTRUCTION.
5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR NOTIFYING THE OWNER AND DESIGN PROFESSIONAL OF ANY CHANGES OR CONDITIONS ATTACHED TO PERMITS OBTAINED FROM ANY AUTHORITY ISSUING PERMITS.
6. NO EVIDENCE OF GRAVES OR BURIAL SITES HAS BEEN INVESTIGATED OR FOUND ON THIS PROPERTY.
7. BASED ON AVAILABLE MAPS AND RECORDS, THERE ARE NO WETLANDS, RESOURCE PROTECTION AREA AND/OR FLOOD PLAIN ON THIS PROPERTY.
8. THE APPROVAL OF THIS PLAN SHALL IN NO WAY RELIEVE THE OWNER AND CONTRACTOR, OR THEIR AGENT(S), OF ANY LEGAL RESPONSIBILITIES THAT MAY BE REQUIRED BY THE CODE OF VIRGINIA OR ANY ORDINANCE ENACTED BY THE GOVERNING AND/OR PERMITTING AGENCY(S).
9. THE UTILITY DEPARTMENT OF THE TOWN OF BERRYVILLE WAS REQUIRED TO UPDATE THEIR SEWER USER ORDINANCE TO COMPLY WITH DIRECTIVES FROM THE VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY. THE TOWN WILL NOT ALLOW ANIMAL WASTE TO BE DEPOSITED ON LAND OR IN AN UNSANITARY MANNER WITHIN THE JURISDICTION OF THE TOWN OR AREAS SERVED BY THE TOWN.
10. THE TOWN NO LONGER PROHIBITS THE DISCHARGE OF ANIMAL WASTE INTO THEIR SEWER COLLECTION SYSTEM. HOWEVER, AS CONDITIONS OF APPROVAL OF THIS ADMINISTRATIVE SITEPLAN, ANIMAL WASTE WILL PASS THROUGH THE PRE-TREATMENT TANK. ADDITIONALLY THIS PRE-TREATMENT TANK MUST BE MAINTAINED ON A REGULAR SCHEDULE TO BE DETERMINED. ANNUAL REPORTS OF MAINTENANCE PERFORMED WILL BE PROVIDED TO THE UTILITY DEPARTMENT OF THE TOWN OF BERRYVILLE AND/OR THE COUNTY OF CLARKE.

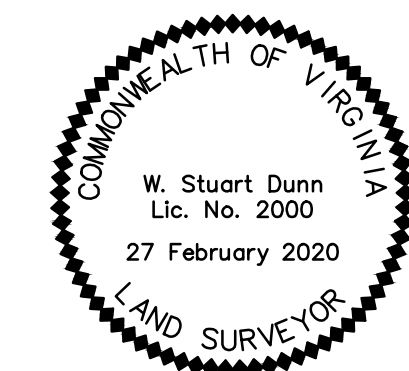


Clarke County Humane Foundation
Administrative Siteplan
Longmarsh Magisterial District, Clarke County, Virginia

| | | |
|------------|------------------|---|
| Plan date: | 15 November 2019 | revision, location of addition |
| | 11 December 2019 | revision, revised location of addition, location of proposed pavilion |
| | 2 January 2020 | revised notes |
| | 27 February 2020 | |

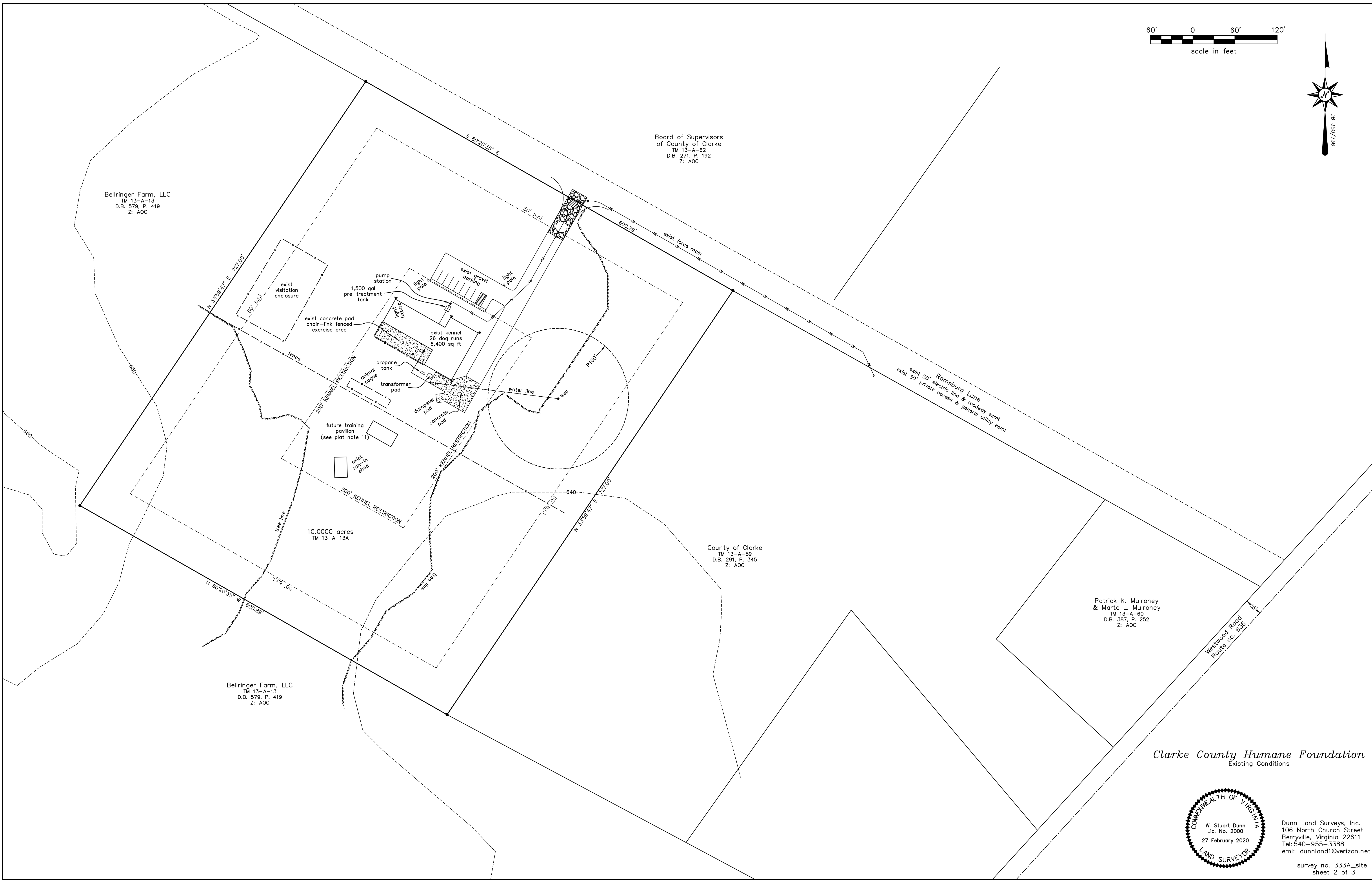
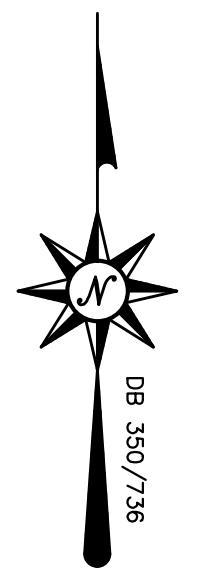
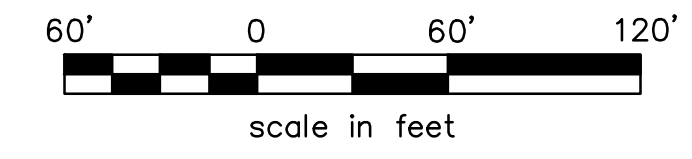
SHEET INDEX:

1. CONSTRUCTION NOTES AND DETAILS
2. EXISTING CONDITIONS
3. GEOMETRIC PLAN
4. SEWAGE PLAN

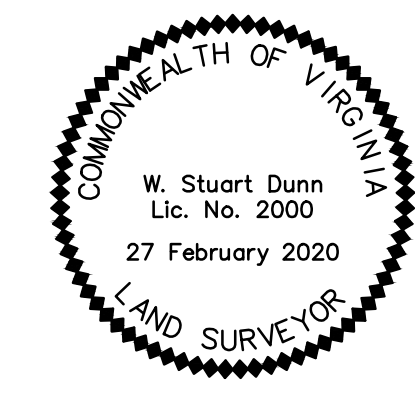


Dunn Land Surveys, Inc.
106 North Church Street
Berryville, Virginia 22611
Tel: 540-955-3388
eml: dunnland1@verizon.net

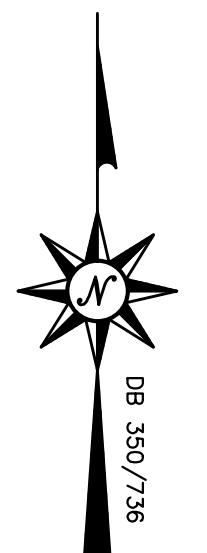
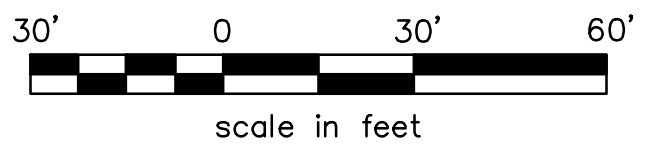
survey no. 333A_site
sheet 1 of 3



Clarke County Humane Foundation
Existing Conditions



Dunn Land Surveys, Inc.
106 North Church Street
Berryville, Virginia 22611
Tel: 540-955-3388
eml: dunnland1@verizon.net
survey no. 333A_site
sheet 2 of 3



Belringer Farm, LLC
 TM 13-A-13
 D.B. 579, P. 419
 Z: AOC

Board of Supervisors
 of County of Clarke
 TM 13-A-62
 D.B. 271, P. 192
 Z: AOC

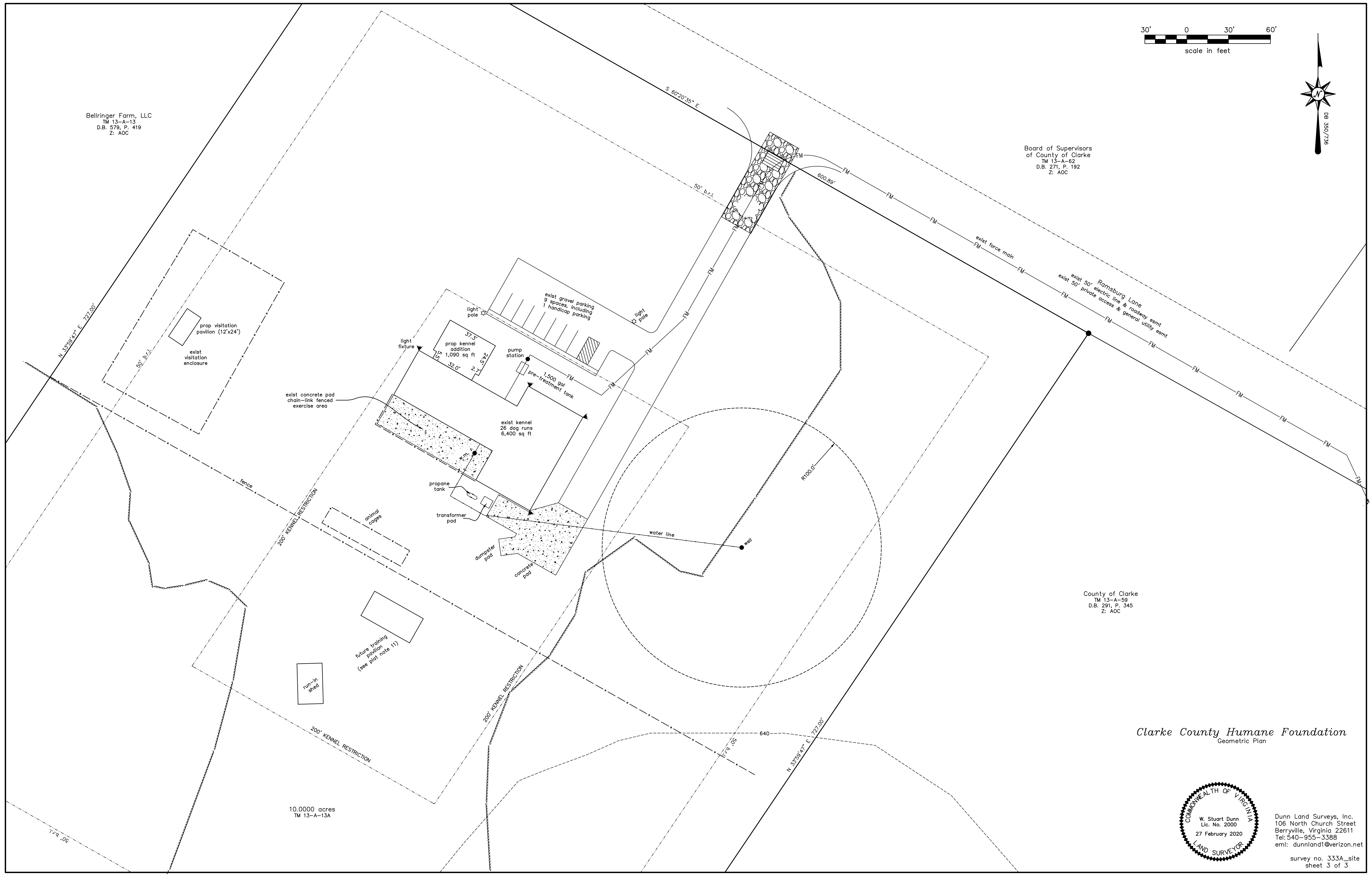
County of Clarke
 TM 13-A-59
 D.B. 291, P. 345
 Z: AOC

Clarke County Humane Foundation
 Geometric Plan



Dunn Land Surveys, Inc.
 106 North Church Street
 Berryville, Virginia 22611
 Tel: 540-955-3388
 eml: dunnland1@verizon.net

survey no. 333A_site
 sheet 3 of 3





Clarke County Planning Department

101 Chalmers Court, Suite B

Berryville, Virginia 22611

(540) 955-5132

www.clarkecounty.gov

TO: Planning Commission members

FROM: Brandon Stidham, Planning Director

RE: Continued Discussion -- Accessory Apartment Use

DATE: February 26, 2020

The merits of creating a new “accessory apartment” use including an alternative approach of incorporating the concept into the “single-family dwelling” use was discussed at the Planning Commission’s February 7, 2020 Business Meeting. The Commission tabled the issue for one month and asked Staff to consider additional changes to the alternative approach including establishing a maximum floor area and prohibiting separate electrical metering.

Staff discussed the Commission’s concerns and the relevant policy issues in developing the following revised alternative language:

Terms and Definitions.

The term “accessory apartment” is replaced with the new term “secondary dwelling.” The reason for this change is to address concerns that the new rules would encourage these dwelling units to be used as rentals. “Secondary dwelling” is a more generic term and emphasizes the fact that the dwelling unit is subordinate to the primary single-family dwelling. The term change would not prohibit rentals but it would help to lessen the potential perception that these dwelling units are intended for rental use. Secondary dwellings would not be a listed use but instead would be part of the use regulations for “single-family dwelling.”

The following new definition would be added to Article III (Definitions):

Dwelling, secondary. A dwelling unit that is subordinate to and located within the footprint of a single-family dwelling provided that it is not physically separated from the balance of the single-family dwelling. “Not physically separated” means that the secondary dwelling has internal access to the single-family dwelling via doorway, hallway, or other means of ingress/egress.

The proposed definitions for “dwelling” and “dwelling unit” would also be modified for clarity purposes:

Dwelling. A structure or portion thereof ~~that is used for human habitation~~ which contains at least one dwelling unit.

*Dwelling unit. One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or for rental or lease on a periodic basis. **A separate, independent housekeeping unit consists of one kitchen and at least one bathroom and one bedroom.***

These changes to the definitions clarify that a secondary dwelling consists of one kitchen and at least one bathroom and one bedroom located within the footprint of and not physically separated from the balance of the single-family dwelling. The meaning of “not physically separated” is also defined as meaning that the secondary dwelling has internal access to the balance of the single-family dwelling via doorway, hallway, or other means of ingress/egress. This would not prevent a secondary dwelling from also having an external means of ingress/egress – in many cases this would be required by the Building Code.

In addition to providing clearer descriptive language, the changes also help with the issue of allowing second kitchens in a single-family dwelling. If an applicant wants to install a second kitchen and it is not situated with a bathroom and a bedroom, it can be approved without being considered a secondary dwelling. Examples include canning kitchens or accessory kitchens intended to serve living rooms or recreation rooms in another portion of the house away from the main living space. In these cases, Staff will use detailed application forms to ensure that the applicant understands that a secondary dwelling is not being approved and that this information is also conveyed to the Building Department for issuance of a certificate of occupancy.

The changes also clarify that a secondary dwelling has to be located within the footprint of the single-family dwelling. A dwelling unit located in an accessory structure that is connected to a single-family dwelling by a breezeway could not be considered a secondary dwelling unless the breezeway is enclosed with walls and a common roof structure as an addition to the single-family dwelling. In this case, the dwelling unit could only be approved as a “minor dwelling.”

Use Regulations

- A new requirement is added limiting a single-family dwelling to a maximum of one secondary dwelling regardless of the single-family dwelling’s size or the property’s area.
- New requirements are added to prevent a secondary dwelling from being served by a separate electric meter and from being assigned a separate address. Both of these requirements will help to emphasize that the secondary dwelling is a component of the single-family dwelling and not a separate structure.

Staff did not include a maximum floor area for secondary dwellings although an area less than 600 square feet was discussed at the February 7 meeting. Establishing a maximum floor area does not address the major policy issue of impact to onsite sewage disposal systems. Applicants must comply with VDH requirements for the number of additional bedrooms and not the amount of new floor area being added. Staff also did not include a maximum number of bedrooms as this would be determined by the capacity of the onsite sewage disposal system as approved by VDH and by Building Code requirements.

Staff recommends the Commission continue discussing this issue and provide direction for changes to include in the next draft of the revised Zoning Ordinance. Below is the revised text of the single-family dwelling use -- new changes in bold green underlined italics and previous changes in bold red italics)

| SINGLE-FAMILY DWELLING | |
|-------------------------------|--------------|
| Permitted Use | AOC, FOC, RR |
| Accessory Use | None |
| Special Use | None |

Definition:

A dwelling unit, other than a manufactured home, designed for and occupied by one family. A single-family dwelling shall not include attached dwellings such as duplexes and townhouses.

Use Regulations:

- 1. A single-family dwelling requires use of a dwelling unit right (DUR).***

- 2.** The number of persons, who are permanent full-time residents occupying a single-family dwelling served by an onsite sewage disposal system with a Virginia Department of Health Permit, shall not exceed two for the number of bedrooms allowed by that permit. If it is found that a property is not in compliance with this requirement, then the owner of the property shall apply for a permit with the Health Department to expand the current disposal system for a sufficient number of bedrooms to accommodate the number of permanent full-time resident occupants in the dwelling. If the Health Department denies the expansion, the owner of the property shall apply for variance from Board of Septic and Well Appeals per [County Code Chapter 143 \(Septic Systems\)](#) for a system designed for a sufficient number of bedrooms to accommodate the number of permanent full-time resident occupants in the dwelling and install such a system if approved. Such a variance can only be requested for owner occupied property.

- 3.** An as-built setback certification, prepared by a licensed surveyor, is required for all new single-family dwellings constructed in the RR District as a prerequisite for issuance of a certificate of occupancy. The Zoning Administrator may also require an as-built setback certification for projects in the AOC and FOC Districts in the following situations:
 - a. For any proposed setback shown on the site sketch that is 10% or less of the minimum required setback.
 - b. If, prior to issuance of a certificate of occupancy, the Zoning Administrator has reason to believe that the single-family dwelling may be constructed in violation of a minimum required setback.

4. *A secondary dwelling may be located within the footprint of a single-family dwelling subject to the following requirements:*
- a. *A single-family dwelling shall be limited to a maximum of one secondary dwelling. A secondary dwelling shall not require use of a dwelling unit right (DUR).*
 - b. *A secondary dwelling shall not be served by a separate electric meter and shall not be separately addressed.*
 - c. *A secondary dwelling shall require approval of a Zoning Permit per Section 6.2.1.*
 - d. *For single-family dwellings with onsite sewage disposal systems, the addition of a secondary dwelling shall require the existing onsite sewage disposal system to be upgraded to current Virginia Department of Health (VDH) regulations including provision of a 100% reserve area. VDH approval is a condition of zoning approval.*
 - e. *A secondary dwelling that is physically separated from the balance of the single-family dwelling as defined above shall be considered a minor dwelling and shall comply with the regulations for the minor dwelling use per Section 5.2B.*



Clarke County Planning Department

101 Chalmers Court, Suite B

Berryville, Virginia 22611

(540) 955-5132

www.clarkecounty.gov

TO: Planning Commission members

FROM: Brandon Stidham, Planning Director

RE: Service Businesses by Special Use in the AOC and FOC Districts – Onsite vs. Offsite

DATE: February 24, 2020

Item #10B on the Business Meeting agenda is a discussion regarding limitations on service businesses in the AOC and FOC Districts.

A service business may be approved to operate in the AOC and FOC Districts by special use permit (“retail and service business” – 3-A-1-A-3-p and 3-A-2-a-3-m). The current definition of “retail and service business” reads as follows:

Buildings or land used for on site sale of merchandise at retail or for the rendering of personal services where such service is performed on site.

As noted in the definition, a service business is allowable only if the services are performed onsite. This issue was previously discussed by the Ordinances Committee in conjunction with the Ordinance Update Project. Copies of the final staff report for Policy Issue P30 and an excerpt from the minutes of the July 30, 2018 meeting at which the Committee discussed the issue are attached for your reference.

Commissioner Bouffault requested the Commission to discuss this issue in light of a specific scenario that she recently encountered. The current draft of the revised Zoning Ordinances proposes to retain the concept of retail and service businesses being allowed by special use permit in the AOC and FOC District. The use would be separated into a “retail business” use and a “personal service business” use with the latter continuing to be limited to services performed onsite at the business location. Staff is looking for direction from the Commission on any further changes to this use and its regulations.

Please let me know if you have questions or concerns in advance of the business meeting.

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

| ORDINANCE UPDATE PROJECT STAFF REPORT | | |
|--|--|---|
| P30 | For the AOC and FOC District special use “retail and service businesses,” determine whether to continue limiting services only to those conducted onsite | |
| Ordinances: Zoning | Report Date: August 1, 2018 | Revised Report? YES – Version 2 |
| Applicable Sections: 3-A-1-a-3-p (Retail and Service Businesses – AOC District); 3-A-2-a-3-m (Retail and Service Businesses – FOC District); Article 9 (Definitions) | | |
| Discussed by Ordinances Committee on: July 30, 2018 | | |

Issue Summary:

This Policy Issue was requested by the Ordinances Committee for further discussion during their review of the County Zoning District Uses (P27). Specifically, the Committee wanted to discuss whether to continue to allow service businesses by special use permit in the AOC and FOC Districts so long as the services are performed on site.

The current definition of “retail and service businesses” was established by text amendment in 2008 to replace “retail stores and shops” and reads as follows:

Buildings or land used for on site sale of merchandise at retail or for the rendering of personal services where such service is performed on site.

Below is the previous definition of “retail stores and shops” which did not include the requirement that services be performed onsite:

Buildings or land used for sale of merchandise at retail or for the rendering of personal services including, but not limited to, the following: antiques store, auction establishments, barber shop, beauty parlor, candy shop, drug store, dry goods and notions store, florist, food store, furniture store, gift shop, hardware store, household appliance store, laundry, music and radio store, newsstand, optician, tailor shop, wayside stands for display and sale of farm products; but specifically excluding coal, wood and lumber yards.

The record for this text amendment shows that the requirement to provide services onsite was specifically added as part of the modifications to the use term and definition but the record does not explain the reason for the change. One of the other reasons for the text amendment was to eliminate the short list of uses that would be considered “retail stores and shops.” This list contains four service businesses -- barber shops, beauty parlors, laundry, and tailor shop. Since these four uses consist of onsite provision of services, it is possible that the onsite requirement was added to be consistent with the prior list of uses and Staff’s historical application of the regulations.

We noted in our research that in mid-2008, Staff was handling a request to operate a pest control business in an existing commercial building (FOC-zoned, deemed special use) under the

previous “retail stores and shops” use. Staff interpreted that the business could conduct the retail sales of pest control products but noted that rendering of pest control services could not be approved because those services are conducted offsite. This is evidence that Staff previously interpreted that service businesses had to conduct all services onsite even though the prior definition did not contain the specific regulation.

The above-referenced case is a good example to use in evaluating whether to retain or eliminate the onsite services requirement. A pest control business typically conducts offsite pest control services for residences and business as its primary activity and may or may not offer retail sales of pest control supplies as an accessory activity. Under the current regulations, this use could not be approved as a “retail and service business” because it would violate the offsite services provision. The use could potentially be approved as an “office” in the Highway Commercial (CH) and Neighborhood Commercial (CN) Districts, or in the Business Park (BP) District under the applicable NAICS code.

Other examples of service businesses that conduct the majority of services offsite and would not currently be allowed under the “retail and service businesses” use include:

- Building/trades contractors
- Home improvement/decorating contractors (e.g., painters, window treatment businesses)
- Propane sales
- Cleaning companies
- Dry cleaners that send clothing to an offsite location to be cleaned

A strong policy justification for allowing certain retail and service businesses by special use in the AOC and FOC Districts is to provide a convenience for nearby residents and businesses that otherwise would have to travel to the towns or business intersections to obtain services.

Arguably, a service business that performs services offsite does not have to be located in the rural areas to provide a localized convenience.

Staff Recommendation:

Staff recommends the Committee discuss this policy issue and provide direction on any potential changes.

Committee Direction:

The Committee reviewed this issue on July 30 and recommended no changes to the Ordinance.



Clarke County Planning Department

101 Chalmers Court, Suite B

Berryville, Virginia 22611

(540) 955-5132

www.clarkecounty.gov

TO: Planning Commission members

FROM: Brandon Stidham, Planning Director

RE: Landscaping Design Standards – Eastern Red Cedar

DATE: February 26, 2020

During the December 6, 2019 Planning Commission/Board of Supervisors joint workshop on the Ordinance Update Project, members expressed concern about the addition of Eastern red cedar to the list of typical evergreen species in the revised landscaping design standards (see Table 7.2.4[5] – Specifications for Trees and Shrubs). Members expressing concerns noted that this species is invasive and in the past facilitated the spread of a fungus that harmed apple trees. Members in favor of retaining the species as an acceptable evergreen for landscaping noted that it is a hardy native species that grows fast and can produce very effective screening.

The Eastern red cedar is not listed in the current Zoning Ordinance landscaping regulations as a typical evergreen species but it is also not listed as a prohibited species. As a matter of practice, Eastern red cedars may be used in a landscaping plan but we encourage the use of other species such as American arborvitae or American holly. If Eastern red cedar is specifically listed in the revised Specifications for Trees and Shrubs table as proposed, the species would be on par with other listed typical species which could increase its usage by applicants and design professionals in future landscaping plans. If Eastern red cedar is removed from the table and not mentioned, it would still be considered an acceptable evergreen species for landscaping but as with current rules we would encourage (but not require) the listed tree types to be used. If the Commission wants to prohibit Eastern red cedar from being used altogether, it should be added to the prohibited species category. The table currently proposes Leyland cypress to be a prohibited evergreen species.

Staff recommends the Commission discuss this policy issue and provide direction on any potential changes. Please let me know if you have any questions or concerns.



Clarke County Planning Department

101 Chalmers Court, Suite B

Berryville, Virginia 22611

(540) 955-5132

www.clarkecounty.gov

TO: Planning Commission members

FROM: Brandon Stidham, Planning Director

RE: Proposed Non-Residential Building Use – Agricultural and Forestal Buildings

DATE: February 26, 2020

During discussion of the proposed “non-residential building” use at the November 14, 2019 Planning Commission/Board of Supervisors joint work session, members expressed concerns about how the use would relate to buildings used for agricultural or forestal purposes.

The “non-residential building” use is proposed to be added to the revised Zoning Ordinance to allow an accessory structure to be placed on an AOC or FOC-zoned lot without an existing single-family residence (see Policy Issue P7). Current Zoning Ordinance §4-E-2 prohibits construction of an accessory building larger than 150 square feet on a lot that does not contain an existing permitted use (such as a single-family dwelling) or approved special use. The regulation was established to prevent property owners from constructing accessory structures and then using them for residential purposes.

Over the years, this regulation has been problematic for lot owners who want to construct buildings to house property maintenance or recreational equipment or to store firewood and are limited to a 10’ X 15’ structure. The Ordinances Committee discussed this issue with Staff and supported creating the proposed “non-residential building” use. Such structures would be allowed by-right in the AOC and FOC Districts, would require a zoning permit, and could not be used for residential purposes. The maximum floor area for a non-residential building would be less than the minimum floor area requiring a building permit as set forth in the Virginia Statewide Building Code (currently 256 square feet). This would provide clearer regulations and allow property owners to construct larger buildings than currently allowed.

Two concerns were raised at joint work session regarding the proposed use:

- Are agricultural buildings such as barns included in this use and, if not, could the “non-residential building” use cause confusion?
- Does the definition of “forestry” include cutting of trees for property maintenance or personal use of firewood? If so, would there be a loophole that would consider buildings for these activities to accessory structures to a forestry use instead of a “non-residential building” and not subject to a maximum floor area limitation?

Staff proposes two modifications to address these concerns. First, we recommend creating a new “agricultural building” use that would be an accessory use in the AOC, FOC, and CH Districts where agriculture and/or forestry are allowed by-right. This proposed use would resolve the question of whether barns and the like would be considered “non-residential buildings” and would help alleviate potential confusion. The use would be defined as follows:

A structure under roof that is accessory to an agricultural use located on the same lot, or that is accessory to a forestry use located on the same lot that is subject to a pre-harvest plan as set forth in Section 6.2.7 (Pre-Harvest Plan), and is exempt from building permit requirements by the Clarke County Building Official.

Agricultural buildings would include typical farm structures such as barns and run-in sheds. While forestry operations in the County usually do not require structures to be built, any for-profit forestry operation harvesting over one acre and requiring a pre-harvest plan would be eligible to construct agricultural buildings. Agricultural buildings would require a zoning permit (consistent with current requirements) and would not be subject to a maximum floor area requirement.

The requirement that an agricultural building must be considered exempt from building code requirements by the Clarke County Building Official will provide better coordination and clarity for permitting these structures between the Planning and Building Departments.

The proposed agricultural building use and its definition would also help to address whether a property owner could construct an agricultural building for personal firewood cutting and storage or for property maintenance. If the forestry operation is not one that would be subject to a pre-harvest plan – a for-profit operation harvesting over one acre of trees – then the property owner would only be allowed to construct a non-residential building. Similarly, Planning and Building Department Staff have not considered grass cutting or similar property maintenance activities to be “agriculture” and would not consider structures primarily for such activities to be agricultural buildings.

Draft language for the proposed use would be added to Zoning Ordinance 5.2A (County Districts, Agricultural Uses) and would read as follows:

| AGRICULTURAL BUILDING | |
|------------------------------|---------------------|
| <i>Permitted Use</i> | <i>None</i> |
| <i>Accessory Use</i> | <i>AOC, FOC, CH</i> |
| <i>Special Use</i> | <i>None</i> |

Definition:

A structure under roof that is accessory to an agricultural use located on the same lot, or that is accessory to a forestry use located on the same lot that is subject to a pre-harvest plan as set forth in Section 6.2.7 (Pre-Harvest Plan), and is exempt from building permit requirements by the Clarke County Building Official.

Use Regulations:

None

Required Review Processes:

1. *A Zoning Permit is required per [Section 6.2.1](#).*
2. *Certificate of Appropriateness review is required per [Section 6.2.5](#) for lots located within the Historic Access Corridor (HAC) Overlay District.*

Staff recommends the Commission discuss this issue and provide direction on any potential changes. Please let me know if you have any questions or concerns.