



Clarke County Planning Commission

Work Session Meeting Minutes

Tuesday, August 31, 2021 – 3:00PM

Berryville/Clarke County Government Center – Main Meeting Room

ATTENDANCE:			
George L. Ohrstrom, II (Chair/Russell)	✓E	Pearce Hunt (Russell)	✓
Randy Buckley (Vice-Chair/White Post)	✓	Scott Kreider (Buckmarsh)	✓
Matthew Bass (Board of Supervisors)	✓L	Douglas Kruhm (Buckmarsh)	✓
Anne Caldwell (Millwood)	✓	Frank Lee (Berryville)	✓
Buster Dunning (White Post)	✓	Gwendolyn Malone (Berryville)	✓
Robert Glover (Millwood)	✓	Doug Lawrence (BOS alternate)	✓

E – Denotes electronic participation

L – Denotes a late arrival

NOTE: George L. Ohrstrom, II participated electronically due to health issues related to the current pandemic.

STAFF PRESENT: Brandon Stidham (Director of Planning), Jeremy Camp (Senior Planner/Zoning Administrator), Kristina Maddox (Office Manager/Zoning Officer), Chris Boies (County Administrator)

CALL TO ORDER: By Chair Ohrstrom at 3:00PM.

1. Approval of August 31 Work Session Agenda

Chair Ohrstrom addressed ground rules for the work session for a few citizens in attendance and noted this meeting is not a public hearing. He said the best way to address any concerns is to have the attendees email Mr. Stidham directly who would forward the concerns to the Commission. Those concerns would be addressed during an upcoming public hearing. Chair Ohrstrom asked if Commissioners agreed to those plans and there was consensus across the board.

Mr. Stidham asked the Commission if there was anything to add to the August 31 Work Session agenda. There was no response from the Commissioners.

2. Review of September 3 Business Meeting Agenda Items

Mr. Stidham reviewed the September 3 Business Meeting agenda and items which include two sets of minutes from July and one Public Hearing item – a new special use permit and application.

Mr. Camp presented the Special Use Permit (SUP-21-01) and Site Plan (SP-21-01) application to the Commission.

After Mr. Camp's presentation, Commissioner Caldwell said she remembered when the tower was first proposed and developed in 2003. She said the 95 feet height limit was in agreement with the regulations at the time, that the tower could not be more than 10 or 15 feet above the tallest tree or tree line. She asked when the tower height was increased to 110 feet. She also asked if it was a result of our current

regulation or due to the Federal law, which allowed the tower company to increase their height by 20 feet or so by-right. Mr. Camp said the 95 feet to 110 feet qualifies for the Federal exemption that all of the counties are to follow by mandate and written into our code. He also said he was not able to find any permitting as building permits are not kept that long. Commissioner Caldwell asked if the other three antennae on the tower were currently active. Mr. Camp responded that as far as he was aware they were active. Commissioner Caldwell asked if we know of the other companies are utilizing the tower. Mr. Camp said he does not have that information and said he can provide those details during the Public Hearing. Commissioner Caldwell said she is very curious to know who else is operating those or if AT&T prefers to have the top tower location. Commissioner Caldwell asked if the applicant provided a coverage map. Mr. Camp replied no and said that was no longer required. Commissioner Caldwell said it was probably due to proprietary information. Mr. Camp said it is referenced in our study of the programs for the County and that it is a recognized tower within the program. He said that it is essentially filling in a gap for Route 7. Commissioner Caldwell said in the interest of disclosure her internet access depends on that specific tower. Chair Ohrstrom asked the Commission if there were further questions. Commissioner Glover asked if we needed to move to set a Public Hearing. Mr. Stidham replied that we would set a Public Hearing date at Friday's meeting for October.

Mr. Stidham said the only other items for the September 3rd are the board and committee reports. Mr. Stidham noted one discussion item on the Work Session agenda related to short-term residential rentals. He explained the Planning Commission was asked to discuss this issue at the February 5th Business Meeting. He said there was a proposed text amendment for review at that time but the decision was not to pursue the text amendment and to hold off until after the ordinance update project was completed which occurred earlier this month. He said this would establish new regulations that would apply to all new and existing short-term residential rentals in the County like Airbnb, VRBO, and similar rental platforms. He said we would create new short-term residential rental regulations that would be incorporated into the rules for single-family dwelling use. This would allow regulation of rentals for fewer than thirty consecutive days with a maximum occupancy of two bedrooms and four occupants. He said maximum occupancy includes all transient guests and any permanent residents of the home that are in the structure at any point in time. He continued that in this particular rental category, it is capped at two bedrooms and four occupants but there would not be a requirement that the homeowner be present in the home during the rental periods. He said that under this draft text amendment, this was the only proposed use that they could have without an owner occupancy requirement absent applying for a special use permit to operate a country inn. Mr. Stidham said the next category of modification would be to our existing rules for home occupation bed and breakfast. He said we would increase that occupancy from its current level of three bedrooms and five guests to five bedrooms and ten occupants, reiterating maximum occupancy includes all transient guests and all permanent residents. He said all home occupations require the permit holder to be present during rental periods. He said this would have to be an owner occupied situation so the owner would have to be there during all rentals. Any rental activities that could not fit into these two categories under this text amendment could only be approved through special use permit and site plan approval for a country inn. He said the Commission had talked about increasing the current duration of a stay at a country inn from fourteen days of continuous occupancy to fewer than thirty consecutive days as to standardize what is a short-term rental period. He said all three of these rental scenarios require confirmation by the Virginia Department of Health (VDH) that the onsite sewage disposal system could handle the proposed maximum occupancy of the rental by conducting a file review of the property. He said if the VDH was not able to find enough information to support a confirmation, they would ask the applicant to then work directly with them to confirm their

septic system. He said that in many cases, it would require a soil scientist to review and potential modifications to the existing system.

Mr. Stidham mentioned that some rental operators provided written comments in February regarding their concerns with regulations that require property owners to occupy residences during rental periods. He said additional concerns included that they would need to apply for a special use permit and site plan which would be more intensive than the Airbnb type use they were currently proposing and operating. He said some of the rental operators indicated support for rules to ensure rental activities are operated within the design perimeters of the residences, which includes compliance with onsite sewage disposal system regulations and provisions from the building code.

Mr. Stidham said Staff has assembled a simplified approach for the Commission's consideration in attempts to address some of these concerns. He said under this approach, we would establish no maximum occupancy requirements for short-term rentals and instead the maximum occupancy requirement would be driven solely by the capacity of the onsite sewage disposal system and compliance with any applicable requirements of Virginia Uniform Statewide Building Code. He explained the applicant would complete a short-term residential rental application, we would initiate the file review with the Health Department and, if confirmed, the applicant would be directed to the Building Department for further compliance. He said the Building Department regulations change when there are more than ten occupants and that there might be other building code issues that may arise.

Chair Ohrstrom asked how someone with an older home could become an Airbnb operator if there were no septic records on file. Commissioner Lee explained that if there were no records on file, they would first have to uncover the type of system in place, which involves hiring an onsite system designer to determine the septic tank capacity and the distribution box to determine the number of lines on the system. He said they could run a camera to see how long the lines are. He said this process shows what is in the ground but not the age or function of the system. He continued that there would be no requirement to tell if it is a functioning system unless it was failing and backing up in the house or onto the ground. He said the evaluator would then use current standards to determine the number of bedrooms that system could have. Chair Ohrstrom clarified that one cannot determine how many bedrooms a system is capable of handling from the size of the septic tank or length of the line. Commissioner Lee confirmed.

Commissioner Bass arrived at 3:25PM.

Mr. Stidham provided an example at the bottom of page 3 of 110 of an applicant who is proposing twelve occupants as their maximum occupancy. He said this would be capped at a maximum occupancy of ten if their sewage disposal system was on record as showing a capacity of five bedrooms. He said in the same scenario, the occupancy may be limited due to building code requirements over ten persons. He said both of those levels of review would validate the applicants proposed occupancy. He reassured that the Planning Department would not issue an approved permit until they received confirmation from the Health Department and Building Department. He said this situation puts more pressure on these agencies to validate the occupancy, as there would not be a set maximum occupancy in the proposed regulations. He said meetings were held with both departments to ensure they are comfortable with the approach. He said the Health Department agrees and noted that if anyone comes in for a proposed expansion of an existing system, they will require that system be upgraded to meet current regulations. He said he thinks in many cases if someone is coming in to propose an additional occupancy, they are

putting in a system that meets current regulations. He said as far as the function of the text amendment is concerned, instead of being incorporated into the use regulation for single-family dwelling, we would create a new stand-alone short-term residential rental use. He said this would be allowed by right with the zoning permit in the Agricultural-Open Space-Conservation (AOC) and Forestal-Open Space-Conservation (FOC) districts and would be prohibited in the Rural Residential (RR). Chair Ohrstrom questioned why this would be prohibited in the RR district. Mr. Stidham explained that in the RR district, there are much smaller lots. Chair Ohrstrom further explained the RR district includes Pine Grove, White Post, Millwood, and the Retreat. Chair Ohrstrom asked if someone had a home in the Millwood, they would not be able to have a bed and breakfast. Mr. Stidham said they could open a home occupation bed and breakfast. Chair Ohrstrom clarified that they would be in a different category. Mr. Stidham confirmed and further clarified that as a home occupation bed and breakfast, the owners of the property would need to occupy the residence during the time of rental. He said under the proposed text amendment, the short-term rental residential use would not have to be owner-occupied during rental periods. Mr. Stidham said the bed and breakfast would not have to serve meals but that would be the only use that would allow them to have Airbnb type of rentals and they would be subject to the specific regulations for home occupation bed and breakfast. Chair Ohrstrom said this means they would have to be onsite. Mr. Stidham agreed. Mr. Stidham said the text amendment would also require a business license as a condition of approval of the zoning permit, which helps the Commissioner of the Revenue track transient occupancy tax requirements.

Mr. Stidham said this text amendment would allow property owners to have rentals not just in their primary residence, but also in any accessory dwelling, a minor dwelling, or tenant house on the property provided they are conforming structures. He said evaluating the maximum occupancy would be done individually based on the individual structures. He said you would look at the maximum occupancy of a single-family dwelling, any accessory dwellings on the property, their individual code compliance requirements, and their drainfield capacity. He used the example that if there is a four-bedroom house with a two-bedroom tenant house, and they are on a four-bedroom drainfield and a two-bedroom drain field, then there would be a maximum occupancy of eight for the house and four for the tenant house. He said this means that if there are multiple conforming dwellings on a property, that one could have a significant number of occupants on the property at a time.

Mr. Stidham said Staff recommends inclusion of a list of specific prohibited activities as a new use regulation for short-term residential rentals. He said someone would not be allowed to provide meals to transient renters. He said if this were to happen, one would need to operate as a home occupation bed and breakfast or country inn. He said all commercial public assembly activities such as special events including live music, weddings, meetings, conferences, and reunions would not be permitted. He said such events could be approved through the minor commercial public assembly special use permit, however, none of these activities is consistent with the low impact activity scope for short-term residential rentals. He noted that we are also saying that other gatherings of persons that are not transient renters or permanent residents of the short-term residential rental are also prohibited. He explained that if someone were to rent their house to eight occupants, those eight occupants are not permitted to throw a party with additional people during that rental period as it will inflate the maximum occupancy of the structure and stress the onsite sewage disposal system. He said there would be a requirement that an operator will be held to the maximum occupancy requirement stated on the application. Commissioner Bass asked what would happen if neighbors reported a property with too many occupants. Mr. Stidham replied that it will be difficult to enforce, however, there are certain disclaimers on the application that the operators will need to sign initially noting that it is their responsibility to ensure the maximum

occupancy. He said if we could prove there were more occupants than permitted, they could potentially have their permit revoked. Commissioner Kruhm asked if it would be a violation if a renter had an additional ten people over during the daytime (not spending the night) according to the new verbiage. Mr. Stidham confirmed.

Mr. Stidham continued with additional proposed changes. He said Staff is recommending an expansion of the maximum occupancy for home occupation bed and breakfast to five bedrooms and ten occupants. Additionally, he said the rental period duration for country inns went from fourteen days to fewer than thirty consecutive days to standardize the rules across the board. He said that comments from operators Bill Waite and Teri Dunphy for short-term residential rentals regulations were in the meeting packets. He said the operators provided a version of their own proposed text amendment, which is parallel to what Staff has proposed. He said they support the regulation of onsite sewage disposal system requirements and compliance with building requirements. He said they also support capping the amount of occupants at ten persons and regulating short-term residential rentals home occupation with modification. Mr. Stidham said the Northern Shenandoah Valley Regional Commission (NSVRC) reached out and provided information on what other localities are doing in the region. He said the information can be found in the meeting packet. He said the City of Winchester is currently in the process of revamping their regulations while Frederick County does not have any short-term rental regulations and they are not planning to develop any at this point. He asked NSVRC if any locality put any particular emphasis on onsite sewage disposal system requirements and while they have that as a box to be checked, the creation and development of their regulations did not arise from that concern. He said it was usually to regulate that type of use for residential settings.

Mr. Stidham directed Commission to page 7 of 110 of the meeting packet with a list of questions regarding the text amendment. He asked Commission if the maximum occupancy should be determined based solely on onsite sewage disposal system and building code requirements or if something needed to be added to the zoning regulations to cap the ultimate maximum occupancy. He provided the example of per structure in use for rental purposes or it could be for the entire property in general. Chair Ohrstrom asked the Commission their thoughts on the first question. Commissioner Caldwell asked Commissioner Lee what year did the VDH start calculating the septic per bedroom. Commissioner Lee answered 1948 but noted that over time the amount of usage has changed. He said it used to be 100 gallons per bedroom and that has increased to 150 per bedroom or 75 gallons per person per day. He said many of the old records say 200-300 gallons so one would have to equate that to what is used today. Commissioner Caldwell clarified that the records would show gallons per day per person rather than bedrooms. Commissioner Lee said many of the older records will say the amount of gallons per day and that in the 1960s is when they started using the amount of bedrooms per day. Commissioner Caldwell commented that it is helpful to know the current number of gallons per day per person. Commissioner Lee agreed and said that it would 75 gallons per day per person so you can equate that to the total number of gallons that it was designed for. He used the example that 300 gallons would be for a two-bedroom home today but the property may have been a three-bedroom originally. He said going by current regulations, if it says 300 gallons, it might state on the permit three bedrooms, however, today that would be a two-bedroom as regulations have changed and systems have gotten larger over time. He said it would be up to the Health Department to determine the actual amount that system was designed for. Chair Ohrstrom said everything that he has read in the proposed text amendment says the Health Department is going to go by their current records. Commissioner Lee agreed. Chair Ohrstrom asked if that meant they would not make an interpretation. Commissioner Lee agreed that the Health Department would not make an interpretation. He said the property owner would have to hire an outside consultant to uncover the system

and evaluate it but that the Health Department would be the ultimate decision maker in the process. Chair Ohrstrom asked Commissioner Lee, on average, how long would this determination process take. Commissioner Lee said it could be done in a couple months. Chair Ohrstrom asked if it would be a problem for someone to do this. Commissioner Lee said no that there are several Authorized Onsite Soil Evaluator (AOSE) firms that people can hire that will uncover the system with cameras or even pingers to show where the distribution box is. He said it does not take long to do it, but it does require a backhoe. He said it could be done in approximately two weeks.

Commissioner Caldwell asked those in the audience who are familiar with Airbnb rentals about their insurance coverage regarding some of the listed prohibited activities. She asked how the insurance by the Airbnb platform company protects damages. Mr. Stidham responded that the meeting was not open for comment but that the audience members could email him with their answers. Mr. Stidham responded to Commissioner Caldwell using ATVs as an example. He said that it would not be a rental activity but would be considered a commercial public assembly type of activity. Commissioner Glover gave the example of a home on the river with kayaks. Chair Ohrstrom commented that a guest could arrive at a rental property with kayaks and unless it is stated as a non-conforming activity, he is not sure how that would work. Commissioner Caldwell said she would be very interested in knowing more about the platform insurance details as it could help the Commission and Staff in designing the regulations. She said if the insurance prohibits certain activities, the Commission would not have to address it. Mr. Stidham replied that not everyone uses the same platform and Commissioner Bass said not every platform is going to have the same insurance details.

Commissioner Kreider said if the VDH says a property is a four-bedroom and says an operator can have eight people but there is no onsite inspection then no one knows if the sewage system is capable of handling that many people on a long-term basis. He said there is no provision for that other than a paper inspection. Mr. Stidham said if it is not a recent permit with detailed information to current regulations, the Health Department may not authorize it even if it is a 1976 permit that says four bedrooms and the applicant is proposing four bedrooms. He said the Health Department might require additional work to be done before it is authorized. Chair Ohrstrom agreed that it is a correct assessment and the other localities in the NSVC report are going through the same thing we are. He said no one really seems to know the right answer to that question but everyone wants to make sure the Health Department is aware of what is going on the property.

Commissioner Kreider would also like a zoning regulation to cap the maximum occupancy. Commissioner Glover asked if there was a way to require septic inspections. He said as a homeowner, a septic inspection is recommended every three-to-five years. Mr. Stidham responded that it is what VDH is willing to do. He said the VDH views this as a commercial activity and they are not going to get directly involved with issuing a written approval, however, if a homeowner needs to talk to them about confirming a system, the Health Department has a process they would go through. Commissioner Glover asked if Clarke County required a three-to-five-year inspection. Mr. Stidham explained that we do not want the Planning Staff to have to interpret those documents. Chair Ohrstrom said Clarke County does not require an inspection. Mr. Stidham responded that the Health Department handles all inspections, and we are limited by what they are willing to do with this particular activity. Commissioner Glover said it would be nice to have something in writing. Mr. Stidham asked who is going to identify that it is valid. He said we should not be interpreting a private sector's septic inspection. Commissioner Glover asked about the pump out and inspection. Mr. Stidham said he would be worried about making it mandatory. He said that it is in our books as a mandatory pump out, however, it is not enforced as

such and to enforce it for this particular use would be a challenge as we are not requiring it of any other use. He said that mandatory pump out is a bigger discussion to have. Commissioner Lee said the Board of Supervisors initiated a five-year pump out but they have not approved this as of yet. Commissioner Glover says he understands that it would be difficult for every citizen to do. Vice Chair Buckley said he thinks the Commission is hitting this too hard and said he is pleased on the current progress. He said we are prohibiting the operator who advertises “sleeps nineteen” for a three-bedroom home which is going to help the majority of the problems. Chair Ohrstrom agreed and said that everyone else essentially has the same process. Vice Chair Buckley said he also thinks that if there are more than ten people, that there should be a special use permit. Commissioner Lee spoke regarding systems in modification. He said that systems are for single-family residents that go in a daily flow basis. He said if a house stays empty for four days a week, the system just sits but if it is a three-bedroom and twelve people are occupying the residence, that will not work as its design is not set up correctly. He said one would have to conform to the number of daily use. He noted that a system can adapt or have a different design for higher usage on a time-use basis. He said in order to do that, additional tanks would be added and a pump system that will pump out at various times so that there is enough holding capacity to handle the additional flow. He said he would not recommend it for every system such as older ones, but it can be done and that it is not inexpensive. He said it could be done for irregular flow systems like churches, for example. He reiterated that he would not recommend putting in a time dose system for older systems that was originally designed for a 1955 house, for example.

Mr. Stidham responded to Commissioner Kreider’s concern regarding how VDH will view this. He said when he met with VDH, he did not want them to feel like they would get pressure on them to make overbroad interpretations. He said he did not get that sense from them at all and he feels they know exactly what we are trying to accomplish. He said that if it is not clear from the file as to whether or not the system can support the occupancy, they are going to require a soil scientist or another consultant to review. Commissioner Kreider said he is okay with that.

Mr. Stidham asked Commissioners how they felt about establishing a zoning requirement maximum of ten. Commissioner Bass asked if we have heard from prospective operators regarding the issue of a cap and, if so, have they offered any justification for not having a cap. Mr. Stidham said that operators that provided written comments are in favor of the ten-person limit. He said the building code changes when you go over that amount. Commissioner Bass wanted to know if anyone provided justification for no cap other than they want as many people on the property as possible. Mr. Stidham asked Commissioners about a cap situation where there is a rentable main dwelling in addition to a tenant house or multiple dwellings. Vice Chair Buckley said there should be a distinction between tenant house verses multiple tenant houses for Airbnb or VRBO. He said when there are 3-5 structures, it might create a problem for the neighborhood and community. Commissioner Caldwell said it reminded her of where hotels are going these days; that you could stay either in the main hotel or a cottage on the premise. Vice Chair Buckley said that it should depend on the size of the parcel. He said that if there are three houses on one-hundred and fifty acres would not be intrusive, however, if there are multiple, rentable properties on a smaller parcel, it might be problematic to neighbors. Mr. Stidham said if you do not place a cap on the number of people that can be on the properties at one time, you could have a large number of people (more than ten) rent the main house and tenant house and then gather at the main house. Commissioner Kreider said he thinks it should be capped and if not, they should obtain a special use permit. Mr. Stidham asked Commission how they feel about capping at ten for the entire property. Most Commissioners agreed but Ohrstrom said he would have to think more on it. He used the example that if there were three houses to include a main house and two tenant houses on one hundred acres and each

has a three-bedroom perk, that would be nine bedrooms and eighteen people. He said he would not think that amount of people on a bigger parcel would be problematic. Commissioner Caldwell said they could gather in a three-bedroom main house for hours together. Mr. Stidham said that would not prevent someone from using all available structures on the property, but they could not maximize the number of occupants at the same time. Commissioner Lee said that it is going to be difficult to regulate. Mr. Stidham replied that we would have to make sure it is very clear on the permit application form.


Mr. Stidham went on to question three on page 7 of 110 of the packet. He asked Commission if it is necessary to include owner occupancy. He said that with this new approach, it does not have to be owner occupied. Chair Ohrstrom said he thought the new draft ordinance removed that already. Mr. Stidham confirmed and asked Commission if they are comfortable with the new regulation. There was consensus amongst the Commission. Commissioner Lee commented the renter typically wants the property to themselves and does not wish for the owner to be present.

Mr. Stidham asked question 4 on page 7 of 110 should short-term residential rentals be prohibited in the RR district. He said to keep in mind home occupation bed and breakfast as an option and that if the maximum occupancy reaches ten, there will be equal occupancy between the two uses. He said this would still require owner occupancy. Commissioner Kreider said he does not believe it should be allowed in the RR district as the lots are smaller and some neighborhoods have houses within ten feet of one another. Commissioner Glover asked if this will not allow unoccupied homes in the RR district. Mr. Stidham confirmed. Commissioner Glover said this is the way rest of the country is doing it. Commissioner Kreider said that you have to take each property into consideration and mentioned that some of the neighborhoods have their own covenants that will not allow it. Commissioner Glover replied there are some areas in Pine Grove, for example, that have plenty of space and others that do not have the space. Mr. Stidham said this is why there is a home occupation bed and breakfast option, where it is owner occupied and, theoretically, they will better police it themselves. He said it would be less likely for parties. Commissioner Glover asked if anyone has complained about this potential limitation for the RR district. Mr. Stidham replied that he has not heard complaints for the short-term residential rentals. He said he can think of at least one existing bed and breakfast that is currently operating and they have a home occupation permit. Chair Ohrstrom asked what would happen to the current bed and breakfast operator if this is approved. Mr. Stidham said they would actually be able to add more people if their septic and building code requirements are okay.

Due to time constraints of the meeting room, Mr. Stidham said the discussion can continue at the next meeting on Friday.

ADJOURN: The August 31 Planning Commission Work Session adjourned by consensus at 4:04PM.


George L. Ohrstrom, II (Chair)


Kristina Maddox (Clerk)