

**CLARKE COUNTY PLANNING COMMISSION
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November 5, 2021 Business Meeting**

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Clarke County Planning Commission

AGENDA – Business Meeting

Friday, November 5, 2021 – 9:00AM

Berryville/Clarke County Government Center – Main Meeting Room

1. **Approval of Agenda**
2. **Approval of Minutes**
 - A. September 28, 2021 Work Session
 - B. October 1, 2021 Business Meeting

PUBLIC HEARING

3. **TA-21-03, Short-Term Residential Rental, Home Occupation Bed and Breakfast, and Country Inn.** Proposed text amendment to amend Section 5.2B (Residential Uses) and Section 5.2C (Business Uses) of the Zoning Ordinance (Code of Clarke County Chapter 200, Article I). The purpose is to establish a new “short-term residential rental” use in the Agricultural-Open Space-Conservation (AOC) and Forestal-Open Space Conservation (FOC) Districts, and to amend the use regulations for home occupation bed and breakfast uses and country inns.

The short-term residential rental use would create new regulations for the rental of a room or rooms within a single-family dwelling by the owner of the dwelling to one or more transient renters for lodging purposes for a period of fewer than 30 consecutive days in exchange for a charge. Maximum occupancy for all structures on a lot housing a short-term residential rental use would be 10 transient renters and residents of the lot subject to compliance with building code requirements and confirmation that onsite sewage disposal systems can support the proposed maximum occupancy. Additional proposed changes include but are not limited to:

- Increasing the maximum occupancy for home occupation bed and breakfast operations to five bedrooms and ten transient guests and residents of the lot during rental periods.
- Establishing the maximum occupancy period for a short-term residential rental, home occupation bed and breakfast, and country inn as fewer than 30 consecutive days.
- Amending the use regulations for home occupation bed and breakfast operations and country inns to require compliance with building code requirements and confirmation that onsite sewage disposal systems can support proposed maximum occupancies.

MINOR SUBDIVISION REVIEW

4. **MS-21-03, Jay D. & Linda Lee Cecca.** Request approval of a two-lot minor subdivision for the property identified as Tax Map #30-A-30B, located on the south side of Millwood Road (Rt. 723) between Bishop Meade Road (Rt. 255) and Thornton Road (Rt. 625), White Post Election District, zoned Agricultural-Open Space-Conservation (AOC).
5. **MS-21-04, John U. Miller, Jr. and John U. Miller, III.** Request approval of a two-lot minor subdivision with a residual lot of 100 acres or more for the property identified as Tax Map #24-A-24, located on the north side of Lockes Mill Road (Rt. 621) between Chilly Hollow Road (Rt. 621) and Parshall Road (Rt. 608), Buckmarsh Election District, zoned Agricultural-Open Space-Conservation (AOC).

APPEARANCE

- 6. **Presentation of Historic Preservation Commission (HPC) Report, Betsy Arnett (Chair)**

SET PUBLIC HEARING

- 7. **Clarke County Agricultural & Forestal District Six-Year Review**

- 8. **Board/Committee Reports**

- A. Board of Supervisors (Matthew Bass)
- B. Board of Septic & Well Appeals (George Ohrstrom, II)
- C. Board of Zoning Appeals (Anne Caldwell)
- D. Historic Preservation Commission (Jeremy Camp)
- E. Conservation Easement Authority (George Ohrstrom, II)
- F. Broadband Implementation Committee (Brandon Stidham)

Other Business

Adjourn

UPCOMING MEETINGS:
Comprehensive Plan Committee TO BE DETERMINED Main Meeting Room
December Work Session Tuesday, November 30 (3:00PM) Main Meeting Room
December Business Meeting Friday, December 3, 2021 (9:00AM) Main Meeting Room



Clarke County Planning Commission

DRAFT MINUTES – Work Session

Tuesday, September 28, 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)	X
Matthew Bass (Board of Supervisors)	✓E	Douglas Kruhm (Buckmarsh)	✓
Anne Caldwell (Millwood)	✓	Frank Lee (Berryville)	✓
Buster Dunning (White Post)	✓	Gwendolyn Malone (Berryville)	✓
Robert Glover (Millwood)	✓	Doug Lawrence (BOS alternate)	X

E – Denotes electronic participation

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

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

CALL TO ORDER: By Chair Ohrstrom at 2:59PM.

1. SUP-21-01/SP-21-01, Crown Castle International LLC (Tower Owner) and Network Building and Constructing, Inc. (Project Consultant), on behalf of AT&T (Service Provider)

Mr. Camp said he would address the tower questions from the previous Planning Commission meeting. One specific question, he said, related to the existing users of the tower. He said that Shentel, Verizon, and T-Mobile are existing users and the proposal would add AT&T as a new carrier. He said the other question was how the existing tower, which was originally approved at 95 feet, got to be 110 feet. He said while we do not have the records for the permit on file, per the regulations the height could be increased by 10% of the originally approved height or by the height needed to provide a 20-foot separation from the closest antennae located on the wireless communication facility, whichever is greater. He said the tower would still be in compliance and that it is a Federal requirement that we need to abide by. Commissioners had no additional questions.

2. TA-21-03, Short-Term Residential Rental, Home Occupation Bed and Breakfast, and Country Inn

Mr. Stidham said the discussion for today surrounds whether or not the Commissioners are ready to set public hearing on short-term residential rentals text amendment. He said the packet includes the changes in red font starting on page 101 and said the biggest change is the addition of a new use regulation to set maximum occupancy at ten persons. He said Commissioners also discussed previously how to apply this rule to an operator that has a main dwelling and one or more tenant houses they want to use as a rental. He said he understood from the Commissioners that they want the maximum occupancy of ten persons capped per lot regardless of the number of dwellings an operator proposed to rent. He said this would be regardless of whether their septic system could support more than ten persons or whether they comply with building code requirements to allow more than ten persons. He said if an operator wished

to have more than ten occupants on the property at one time, their only option would be to apply for a special use permit and site plan to become a country inn. He said the wording changed from permanent residents to resident to make enforcement easier.

Regarding other changes, Mr. Stidham said language was added to clarify that rental uses are not allowed to be conducted in structures other than a single-family dwelling, minor dwelling, or tenant house such as an RV, yurt, tent, treehouse, or other similar structures. When asked by Chair Ohrstrom what a “minor dwelling” is, Mr. Stidham answered a dwelling that is less than 600 square feet of living space.

Mr. Stidham said language was added to emphasize that even though the maximum occupancy limit is set to ten, it can be further limited by the septic system and any building code requirements that may arise. He continued that there are definition language changes to the bed and breakfast regulations. As the changes only apply to home occupation context, he said they are in this particular section rather than in the definitions chapter. He explained that it is a home occupation where lodging and meals are offered for fewer than thirty consecutive days in exchange for a charge. He said that the primary reason for adding the language is to make sure that across the board, short-term residential rentals, bed and breakfasts, and country inns can do short-term occupancies of fewer than thirty consecutive days and so the language is standardized across the three uses. He said language was added that bed and breakfast lodging would not be permitted in any structure that is not a dwelling. He said it is emphasized that the holder of the home occupation permit has to occupy the lot at all times during rental periods as they would for any home occupation. He said maximum occupancy language was added to mirror what is proposed for short-term rentals. He said this includes the current occupancy of three bedrooms and five persons increased to five bedrooms and ten persons subject to any further reductions due to septic systems or building code requirements. He said that language was also added for operators to comply with septic system requirements and have a business license in good standing throughout the lifetime of the use. He added there is a minor change in the country inn regulations where he combined the two sections on occupancy and septic system requirements that now mirror the other two uses.

Mr. Stidham noted a draft zoning permit application for short-term rental residential uses on page 115 and pointed out that applicants would have to initial disclaimers that they have read and understand the short-term residential rental regulations and they can only advertise rentals for the maximum occupancy that is consistent with the permit. He said if they advertise the occupancies for a higher amount, it is considered a violation of their zoning permit. He said it may not hold up in court if advertising at a higher amount on a website is our only evidence during an investigation. He said it gives us more weight in court by adding this disclaimer.

Chair Ohrstrom asked if a grandfathered operator is non-conforming if they continued to advertise and allow more than ten occupants on their lot even after this text amendment is adopted and approved by the Board of Supervisors, and also following the six-month grace period. Mr. Stidham answered that it depends if they received County zoning approval or not. He said this interpretation is based on a prior discussion regarding our ability to apply these rules retroactively. He said the operator might have come in to get a business license from the Commissioner’s office but if our zoning review line did not say “approved,” “zoning does not apply,” or “no zoning required,” then they have not received zoning approval to which they would be grandfathered. Chair Ohrstrom asked if they did get zoning approval, would they be grandfathered. Mr. Stidham said in order to be grandfathered, an operator had to have been legal at one point in time and in most cases, that means the operator would have had approval from the County. Commissioner Caldwell asked if we know how many people have already come in to get

zoning approval from the County for their Airbnb. Mr. Stidham replied he does not know how many there are, but the ones he is concerned about are the ones that may have gotten business licenses before this started. He said Staff at the time may have written “approved” instead of “no zoning required” in which case the operator would have zoning approval. He said once we started working on this and started talking about the implications, Staff started to write “no zoning required” or “zoning does not apply.” Commissioner Caldwell asked if we researched to see how many operators currently have zoning approval. Mr. Stidham replied that we would not get involved in that unless we got a complaint on a specific property once this is adopted. Chair Ohrstrom asked if it was possible to get a list of the people who do have zoning approval for an Airbnb. Mr. Stidham said he is hesitant to put that work in specifically because we are doing complaint-basis enforcement. He said Staff would pull paperwork to see if an operator was given approval or not only if someone complains that an operator is not in compliance. He said he is also hesitant to start making judgments on those generally, as it could be interpreted as a zoning determination. He said he would rather leave that alone unless we want to look at proactive enforcement as another form of zoning enforcement. He said the only reason we would want to access a list of who is legal or illegal is if we wanted to do proactive enforcement, however, it is irrelevant if we are doing complaint-based enforcement. Chair Ohstrom said it would be nice to know anyway. Mr. Stidham said it would take effort to do so such as going through individual business license forms in which case we would have to go far back. He said there may have been rentals even before Airbnb was introduced.

Commissioner Bass asked Mr. Stidham to walk him through the remedial procedure of someone without a permit through a court proceeding in the event of a violation. Mr. Stidham replied that in a complaint-based situation if someone complains that their neighbor is running an Airbnb without a permit, first we confirm they have no permit on file. He said if the neighbor has the rental advertisement along with pictures or videos of multiple vehicles with an out of state license plate on the property or gatherings in the backyard of people who do not reside there as evidence, Mr. Camp would issue a notice of violation to the property owner. He said the property owner would then have 30 days to contact us to discuss the matter and bring their property into compliance. He continued that if they do not want to work with or contact us at the end of that 30-day period, their ability to appeal our determination is gone and we can proceed to the next step of going through the court system. He said if the property owner wants to work with us, but they are committed to two more bookings within the next 30 days, we would consider that reasonable but would require they provide something in writing that stated they would cease those rental activities. He said they might even have the ability file an application to appeal the zoning determination that they are in violation. He said that appeal would first go to the Board of Zoning Appeals (BZA) and if they do not get the answer they want, they can take it to court. Commissioner Bass said it would be the same process if someone has a permit, that they would receive a notice of violation. Mr. Stidham said it would be a stronger case on our end since we would have the property owner’s initials on the application next to the disclaimers. Commissioner Lee asked about those who are grandfathered. Mr. Stidham said those are grandfathered from having to complete a zoning permit application but not necessarily would be grandfathered from having to follow the regulations. He said we would need a complaint and proof of violating one or more of the regulations themselves other than having to obtain a permit. He said the most obvious one would be the maximum occupancy and since we do not have them signing a permit application, just an advertisement would not be enough. Commissioner Glover asked for clarification that just an internet advertisement is not enough for anything. Mr. Stidham agreed that it is not as it is not evidence they have done the use. He said usually when you reach out to a property owner about a complaint and mention that we have a copy of your advertisement, it is something that will jolt them into compliance. He said other times they lay low for a while and start

back up again. Mr. Camp commented about a campground with a website that had sixty public comments on it from people that had camped there which added a little more depth to the evidence than just a website listing.

Chair Ohrstrom asked if Mr. Stidham heard from any of the audience members from the previous meeting. Mr. Stidham said when Mr. Waite stopped by his office, he provided an overview of the staff report, explained the process, and noted that a public hearing will be held in November. He further explained to Mr. Waite that if it moved forward, the process would be repeated at the Board of Supervisors level. Mr. Stidham said Mr. Waite would let him know if he had any questions regarding the staff report but did not have any specific concerns.

Regarding two other disclaimers on the form, Mr. Stidham said one notes the zoning approval does not authorize events such as special events, weddings, conferences, or other gatherings of people. He said the second disclaimer reads that zoning approval is contingent upon the property owner maintaining their septic system and being in good standing with the Health Department. He said if there are additional constructed uses or something that requires an upgrade of the drainfield, the property owner is responsible for that as well. He said it will be very clear on the permit that failure to do so is a violation of the zoning permit. Commissioner Lee asked if a property owner with a three-bedroom approved who advertises for six people wanted to upgrade their system, would they have to comply with 100% reserve according to the regulations. Commissioner Lee then asked if someone is in compliance without the 100% reserve area, would they not be required to upgrade their system. Mr. Stidham asked him to clarify if he means someone who has a confirmed three-bedroom drainfield with four occupants and they wish to increase to six occupants. Commissioner Lee said they can go up to the sewage level at six because the three-bedrooms is designed for six full-time occupants but we are not requiring them to do anything as far as reserve area, only if they want system modifications. Mr. Stidham said or if they want to do an occupancy that is greater than what is permitted. He said it depends on the situation and what is actually in the Health Department's file on the drainfield. He continued there may need to be a reasonable agreement between the applicant, the soil scientist, and the Health Department to fill in the blanks of what is on file. He said it may be that a soil scientist needs to investigate what is there to confirm the file details. He said he is unsure how complete their files are consistently across different time periods. He said it is up to the applicant to go to the Health Department to sort it out.

Commissioner Bass asked Mr. Stidham if he foresees any glaring holes in the regulations. Mr. Stidham said getting existing operators to come in for compliance. He reiterated that we are not going to do proactive enforcement. He said the plan is to get the word out once the new amendment is adopted and encourage people to come in voluntarily during the grace period. He added proving someone is operating a rental illegally is an additional challenge and that the grace period might encourage people to come in but noted it will be challenging after the grace period. Additionally, he said a potential problem lies with the conforming operators who follow the process and pay a lot of money to upgrade their systems while seeing non-conforming operators continuing to run. He said the irritant to a potential applicant is that we are attempting to apply retroactive rules to users who are already operating, may already have business licenses, and think they are in the clear. He said the biggest challenge potentially is retroactive enforcement. He said that some applicants may disagree with Mr. Mitchell's interpretation and think they are grandfathered with a business license in which they could appeal and challenge those grounds. Furthermore, he said we could get push back when applicants realize how much it is going to cost and what needs to be done to bring their septic into compliance. Mr. Stidham said the zoning permit fee is the same as other permits at \$100.00 and that one idea is to waive the fee during the six-month grace

period. Lastly, he said education and getting the word out to let people know that the rules have changed will be another challenge. He said in addition to posting on our website and social media pages, Mr. Camp suggested we put together a realtor distribution list. Commissioner Bass said he hopes Mr. Stidham will keep the Commissioners informed as he encounters any significant hurdles. He said as overdue as some might think, he is glad that we took the time to get to this point as there is no comprehensive set of regulations that we could craft to cure every detail.

Mr. Stidham said to be prepared at the public hearing to hear arguments from operators that there is not a huge outcry against short-term residential rentals that would necessitate us having regulations. He said some may say it arose from a complaint of one person that started all of this. Chair Ohrstrom pointed to the fact there are a few legal operators who have been concerned about this so it puts everyone on a level playing field. Mr. Stidham agreed and said that compared to different localities, we view this from a completely different perspective. He said most other localities put these regulations in effect because they have high-density neighborhoods where people do not want transient visitors staying in single-family homes as there would be noise and parking complaints. He said we come from the perspective ensuring ground water quality. Commissioner Lee said we are not the only county doing it this way at the present time and that a lot of counties within the state are taking a strong look at this. He said a number of our local communities are looking at and dealing with this same thing. Chair Ohrstrom said that almost every single one they spoke to from the Regional Planning Commission mentioned that septic capacity is a major concern. Mr. Stidham said some localities around the state that have had these rules in place and either their first attempt failed or they need to modernize them. Chair Ohrstrom said our approach would be much stronger legally than a “not-in-my-backyard” (NIMBY) approach in a high-density neighborhood. Mr. Stidham said our approach is legally defensible given the groundwater quality and building code compliance. He said even the maximum of ten is not arbitrary since you can tie that back to the building code number. Mr. Stidham added that he will not say much on Friday and will look for the Commissioners to pass the motion to set public hearing at the November Business Meeting.

3. Other Business

Commissioner Caldwell asked about the court case against Mr. Legge. Mr. Camp said we are waiting for Mr. Mitchell to file a rebuttal against Mr. Legge’s suit. He said this is after the appeal period so it is pretty much dead in the water but they are still making an effort. He said he heard that Mr. Legge has a new attorney and that Staff will let the Commissioners know as soon as there is an update from Mr. Mitchell. When asked by Commissioner Caldwell, Mr. Camp confirmed that the trial would go before a judge rather than a jury. Mr. Stidham said they are still at the procedural deliberations. When asked by Commissioner Caldwell, Commissioner Bass responded that it would probably be Judge Iden. He said the scheduling of the injunction hearing is scheduled for October 13, 2021 so perhaps 30-60 days after that.

Mr. Stidham said the finalized Guidance Manual can be found in the meeting packet which is the very first public draft. He said he is working with Cathy Kuehner to add it to the website and that he plans to have a series of webpages and/or one page where it is downloadable as a pdf. He highly suggested the Commissioners read through the manual and he welcomed their ideas or suggestions for content. He said this is a living fluid document and will continue to improve over time. He added that he imagines it will need to be updated in January or February depending on what happens with the rentals text

amendment. He noted a section in the document for transient lodging rules, noting that they are on notice the rules are being examined and to be aware of possible changes.

Commissioner Kruhm asked about the broadband grant and said he does not recognize any of the companies listed online. Mr. Stidham said he sent out an email that noted part of the broadband grant program allows providers to challenge areas that we claim are unserved. He said we received data that Comcast, Winchester Wireless, and Shentel have challenged certain areas and the state agency gave us a map showing the specific address points that are being challenged. He said we currently do not have a breakdown as far as to who made the challenges at those different addresses, but you can see where there are clusters, such as Shenandoah Farms as an example, which is most likely challenged by Comcast. Others, he said, are sort of scattered throughout the County and may be challenged by Winchester Wireless at the points they are serving. He said he was under the impression that we could automatically rebut wireless service provider challenges as wireless technology cannot provide the same level broadband can, but he does not think that is a default rebuttal. He said that anyone that happens to have Winchester Wireless and is not getting the broadband speed should go on the website and indicate they are not being served with broadband as proposed in the grant application. He said localities in our region are experiencing similar challenges from the same providers. He said he thinks Clarke County is at an advantage by being a smaller county and it is easier for us to spread the word. He said it is a tight turnaround timeframe to get everyone to at least get on the website to log in their address within the next couple of days. Chair Ohrstrom said that is only if you are not a customer of broadband and he asked if he should log his address anyway. Mr. Stidham said he should as it is a good rebuttal if he is close to a challenged address. Commissioner Glover said that it also cannot be underestimated that Winchester Wireless or Shentel does not compare to fiber. He said the website reads 25 megabytes per second or less and he is technically at 15 at the maximum as you have to pay more to get more and we are limited to 200 gigabytes per month. He said he is underserved and noted that is why virtual learning did not work. He said he understands Winchester Wireless was challenging it and he is curious to see what they are going to do. He said he is a new customer that only became eligible one year ago. He said he did answer the question online and noted Clarke is underserved for the reasons mentioned including they do not get fiber connectivity or the data needed. Mr. Stidham said even the best wireless services may be able to produce speeds greater than what is listed but the fact remains that it is an up and down, weather-dependent technology and it cannot compete with consistent unlimited wired broadband. Commissioner Glover said Winchester Wireless was out for three-and-a-half weeks at one point. He said he has the most needs and that it is difficult to reach his location so he pays more than other customers. He also said they were out for a period of three-and-a-half months because they are a small company and do not have the fiber support.

Mr. Stidham said unless you are in the town of Berryville, Boyce, or an active Comcast fiber area, you should go to the site and log your address. Commissioner Glover noted the Retreat and Pine Grove have Comcast. Mr. Stidham said he is not sure why Shentel is challenging because they told us repeatedly they do not provide residential service in Clarke County. He noted they may be challenging some business addresses they are serving bug again, we will not know who made the challenge until we get data from the state. He said to tell as many people as you can to log their address on the site. When asked about the drive for the turnaround time by Commissioner Glover, Mr. Stidham replied it was due to the grant timeline. He said challenges came in at the end of the last week.

Commissioner Caldwell said she attempted to fill it out but it kicked her off after she entered her zip code. Commissioner Glover said he added his address and zip code and when asked if he had internet,

he said no because he wanted to get further into the questionnaire. Commissioner Caldwell commented that she was not even able to get that far into it. Commissioner Malone asked if she tried it again afterwards. Commissioner Caldwell said she tried several times. Commissioner Malone said it booted her off when she added 22611 but it allowed her to proceed when she tried a second time. Mr. Stidham said he hopes to get an answer soon but he still feels confident about this project. He said he unless we do not get the grant funds that we think we are going to get, All Points is going to survey everyone and eventually want to get the customer base to get the additional density.

ADJOURN: The September 28 Planning Commission Work Session adjourned by consensus at 3:44PM.

George L. Ohrstrom, II (Chair)

Kristina Maddox (Clerk)



Clarke County Planning Commission

DRAFT MINUTES – Business Meeting

Friday, October 1, 2021 – 9:00AM

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)	X
Matthew Bass (Board of Supervisors)	✓	Douglas Kruhm (Buckmarsh)	✓
Anne Caldwell (Millwood)	✓ L	Frank Lee (Berryville)	✓
Buster Dunning (White Post)	✓	Gwendolyn Malone (Berryville)	✓
Robert Glover (Millwood)	✓ L	Doug Lawrence (BOS alternate)	X

E – Denotes an 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)

CALL TO ORDER: Chair Ohrstrom called the meeting to order at 9:05AM.

1. Approval of Agenda

The Commission voted 8-0-3 to approve the October 1, 2021 amended meeting agenda as presented by Staff.

Motion to approve the October 1, 2021 Business Meeting amended agenda as presented by Staff:			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice Chair)	AYE	Kreider	ABSENT
Bass	AYE	Kruhm	AYE
Caldwell	ABSENT	Lee	AYE (Seconded)
Dunning	AYE	Malone	AYE (Moved)
Glover	ABSENT		

2. Approval of Meeting Minutes

The Commission voted 8-0-3 to approve the August 31, 2021 Work Session minutes as presented by Staff.

Motion to approve the August 31, 2021 Work Session Meeting minutes as presented by Staff:			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice Chair)	AYE	Kreider	ABSENT
Bass	AYE	Kruhm	AYE
Caldwell	ABSENT	Lee	AYE (Seconded)
Dunning	AYE	Malone	AYE (Moved)
Glover	ABSENT		

Commissioner Caldwell and Commissioner Glover arrived at 9:06AM. Commissioner Caldwell asked to reconsider as she had some minor meeting minute corrections.

The Commission voted 10-0-1 to reconsider the August 31, 2021 Work Session Meeting minutes and the September 3, 2021 Business Meeting minutes.

Motion to reconsider the August 31, 2021 Work Session minutes and September 3, 2021 Business Meeting minutes:			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice Chair)	AYE (Moved)	Kreider	ABSENT
Bass	AYE	Kruhm	AYE
Caldwell	AYE	Lee	AYE
Dunning	AYE	Malone	AYE (Seconded)
Glover	AYE		

Commissioner Caldwell had two minor corrections. The first of these corrections, she stated, on Page 8 of 116 in the first line to change “was” to “were”. She said the second change is to strike the additional word “added” in the fourth line of the second paragraph at the beginning of the full sentence.

The Commission voted 10-0-1 to approve the August 31, 2021 Work Session Meeting minutes and as corrected.

Motion to approve the August 31, 2021 Work Session minutes as corrected:			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice Chair)	AYE (Moved)	Kreider	ABSENT
Bass	AYE	Kruhm	AYE
Caldwell	AYE	Lee	AYE
Dunning	AYE	Malone	AYE (Seconded)
Glover	AYE		

In the September 3, 2021 Business Meeting minutes, Commissioner Caldwell asked for the correction of the word “sated” to “stated” on Page 15 of 116 under short-term residential rentals. The second correction, she said, is to remove the word “good” from the same sentence.

The Commission voted 10-0-1 to approve the September 3, 2021 Business Meeting minutes as corrected.

Motion to approve the September 3, 2021 Business Meeting minutes as corrected:			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice Chair)	AYE	Kreider	ABSENT
Bass	AYE	Kruhm	AYE
Caldwell	AYE	Lee	AYE (Moved)
Dunning	AYE	Malone	AYE (Seconded)
Glover	AYE		

3. SUP-21-01/SP-21-01, Crown Castle International LLC (Tower Owner) and Network Building and Construction, Inc. (Project Consultant), on behalf of AT&T (Service Provider)

Mr. Camp reviewed a presentation to summarize the application by Crown Castle International SUP-21-01/SP-21-01. When asked by Chair Ohrstrom, the Commissioners and audience members had no additional questions or concerns once the presentation ended. Chair Ohrstrom opened the Public Hearing.

Richard Thuss (2342 Wickliffe Road) said he strongly supports the tower as he has many trees on his property that make connectivity difficult due to high frequency attenuating radio signals. He stated that he runs a small one-person research company on advanced energy technology teamed with one of the national laboratories on the west coast. Last year, he said, he attended a virtual meeting where his company won an international award for innovation, however, his service cut out moments before his award was announced. He explained how important it is for him to be able to communicate in a research organization especially during west coast time which happens to be during Route 7 evening traffic. He said he hopes the additional AT&T antennas will solve his connectivity problem and noted how important it is to have stronger telecommunication capabilities in the County.

Chair Ohrstrom commented he had heard that the wireless companies including AT&T talk about producing broadband within their sphere of effective areas but has always heard that it was not actually true and what they really wanted is cell service. He said he hopes this increases Mr. Thuss’s broadband but wonders if it actually will. Mr. Thuss replied that he does not know if will solve it and that his overall issues are his trees and the high frequencies. He said at best it is a few megabits per second and at the worst it is below dial-up grade. He said he hopes it will improve so he can use virtual meeting programs. When asked by Chair Ohrstrom if anyone from AT&T was present, Mr. Camp replied no, but he has the contact information of the representative if we have further questions. Commissioner Caldwell asked if a multiple satellite system would get around the tree problem. Mr. Thuss replied that perhaps when he could see multiple satellites or tower through the trees. He said he really looks forward to the County getting fiber in three years. When asked by Commissioner Bass, Mr. Thuss replied that he had completed the online survey.

There was no response from the Commissioners or the audience when asked by Chair Ohrstrom if anyone had any questions or concerns. Chair Ohrstrom closed the Public Hearing.

The Commission voted 10-0-1 to recommend approval for the Board of Supervisors to set public hearing for SUP-21-01 and SP-21-01 to increase the tower by 10 feet located at Shepherds Mill Road, Tax Map ID # 16-A-33, with the five conditions as proposed by Staff.

Motion to recommend approval for the Board of Supervisors to set public hearing for SUP-21-01/SP-21-01, Crown Castle, located on Shepherds Mill Road (TM# 16-A-33) to increase the tower by 10 feet with the five conditions as proposed by Staff:			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice Chair)	AYE	Kreider	ABSENT
Bass	AYE	Kruhm	AYE
Caldwell	AYE (Moved)	Lee	AYE (Seconded)
Dunning	AYE	Malone	AYE
Glover	AYE		

4. TA-21-03, Short-Term Residential Rentals, Home Occupation Bed and Breakfast, Country Inn

Mr. Stidham announced the next task is to schedule public hearing on TA-21-03. He said this is regarding the short-term residential rental, home occupation, bed and breakfast and country inn Text Amendment item . He noted that for the benefit of those in the audience, he was going to read the changes that were included in the iteration which are different from last month’s version. For the new short-term residential rental use he said we would establish a use regulation that would set a maximum occupancy of ten persons per lot that houses a short-term residential rental operation. He said the maximum of ten would be regardless of the number of structures that could be used, or whether the existing septic systems on site could support more than ten. He said an additional change is added language to clarify that rental uses can only be conducted in structures. He continued that the same rental use cannot be operated in a tent, RV, or structure that is not intended for residential use. He said language is added to clarify that the maximum occupancy of ten can be further limited by the maximum occupancy that is allowed by the building code or by the on-site sewage disposal system. He said the changes that have been made to the home occupation bed and breakfast and country inn regulations primarily to standardized language across all three uses. He continued that for all three uses the maximum occupancy period would be a period of fewer than thirty consecutive days. He said language was also added to the home occupation bed and breakfast that you can have occupancy and accessory dwellings, but not for structures that are not intended to be dwellings. He clarified that the holder of a home occupation permit must be on site and occupying a lot at all times during rental periods. He said he is recommending that the Commission schedule public hearing at the next business meeting on Tuesday, November 5, 2021. Commissioner Bass asked in advance of the public hearing, what can people do to help get the word out to the current operators in order to get them thinking about getting into compliance. Mr. Stidham replied that there will be a Public Hearing advertised. He added that he hoped word will spread among current Airbnb operators and noted that some operators have been following the Commission’s work.

Chair Ohrstrom entertained a motion to set public hearing for TA-21-03, Short-Term Residential Rentals, Home Occupation Bed and Breakfast and Country Inn as recommended by Staff.

The Commission voted 10-0-1 set Public Hearing TA-21-03, Short-Term Residential Rental, Home Occupation Bed and Breakfast, and Country Inn for November 5, 2021.

Motion to set public hearing for <u>TA-21-03</u>, Short-Term Residential Rental, Home Occupation Bed and Breakfast, and Country Inn for November 5, 2021:			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice Chair)	AYE	Kreider	ABSENT
Bass	AYE (Moved)	Kruhm	AYE
Caldwell	AYE	Lee	AYE
Dunning	AYE	Malone	AYE (Seconded)
Glover	AYE		

BOARD/COMMITTEE REPORTS

Board of Supervisors (Matthew Bass)

Commissioner Bass announced the survey that is out for All Points Broadband. He said the deadline was extended through Monday and asked that everyone blast the information through social media, emails, and network with neighbors to better the chances of the County getting the grant as we have to push back on the challenges from the other service providers. Chair Ohrstrom said he was perplexed by the survey as one of the questions asked if he had internet and the only option was yes or no. Commissioner Bass agreed that it was not completely straightforward and that he has heard similar comments. Mr. Stidham said high traffic is a concern too as many people were not able to get to the site. He said All Points were aware of the concerns. Commissioner Glover said he answered “no” in the survey as his definition of internet is not what he currently has. He said his service is substandard and that he is greatly limited. He suggested that when the County sends out their email that they mention substandard service should be answered as a “no” in the survey. Commissioner Bass said he would speak with Mr. Boies about pushing those specific concerns in the new set of social media blasts that go out to encourage people to do so over the weekend. Commissioner Glover commented the survey wants to know if people can get internet so other companies can challenge and say it does not need to be provided by State and County grants. He said we want better than what is currently offered for the entire County. He reiterated the survey is misleading and that the current providers cannot provide unlimited internet without choking people’s connectivity per month. Additionally, he said the current providers cannot provide the speed of fiber broadband so they are challenging it. Chair Ohrstrom said that it is important for everyone to complete the survey as the County does not have the tax base for it. Commissioner Malone remarked to Commissioner Bass that even people in town have difficulty with internet service. Commissioner Bass said he hopes the word is spread through word of mouth and social media. When asked by Commissioner Kruhm, Commissioner Bass replied that close of business on Monday is the new survey deadline. Commissioner Glover noted an article in the Winchester Star about how Frederick County is taking the same survey. Commissioner Bass hopes to get the maximum response in hopes it does wonders for the grant process.

Commissioner Bass said he wrote a letter to Norfolk Southern after an incident about three weeks ago or so where an engine just stopped on the middle of the tracks. He said he noticed that traffic has been backing up almost to Chalmers Court. He said while he is not certain the company will do anything about the issue, he has invited them to the table.

Commissioner Bass noted a recent Winchester Star article written by Mickey Powell about the annexation. He said the Commissioners were familiar with the County's grand plans, including variable area plan and sliding scale zoning. He noted comments from people concerning the County and how they feel it is turning into Loudoun, however, they may not realize the plans that have been in place for a couple of decades. He said hopefully the new housing will have some solid, helpful impact on Clarke's downtown businesses in addition to schools, parks and recreation, and other collateral consequences that hopefully will be to the benefit of everybody in the County. Commissioner Kruhm commented on traffic to which Commissioner Bass replied that it is inevitable with more houses but hopes the developers will be sensitive to that issue. He said he hopes the developers will do their best to make use of not only working with existing traffic patterns but may even create new ones as part of the process that can help alleviate backups.

Board of Septic & Well Appeals (George L. Ohrstrom, II)

Chair Ohrstrom said there was nothing new to report.

Board of Zoning Appeals (Anne Caldwell)

Commissioner Caldwell reported there is nothing new to discuss.

Historic Preservation Commission (Jeremy Camp)

Mr. Camp announced the Historic Planning Commission (HPC) has a few things underway including working on adding historic markers for a few of the historic districts. They have met once on that and are close to reaching a consensus to decide if that is something they want to pursue. He said the next stage is finding locations, making applications and seeing if we can get donations to fund the signs.

Mr. Camp commented that there will be a Public Meeting on October 14, 2021 for the Battle of Berryville grant project with consultants who are going to present their preliminary research and analysis.

Mr. Camp stated the HPC Chairman will give an annual report presentation at the next Planning Commission meeting on November 5, 2021. Additionally, he said they look forward to discussing their demolition criteria with the Planning Commission in the near future.

Conservation Easement Authority (George L. Ohrstrom, II)

Chair Ohrstrom announced that the Natural Resource Planner, Alison Teetor, will be retiring at the end of December and has agreed to stay on board part-time to help the Conservation Easement Authority. He noted Mrs. Teetor's ability to work with federal and state grant systems is legendary in this region.

Chair Ohrstrom stated there were a couple of easements getting ready to close by the end of the year that will be great publicity for the County and for the program and said he is not ready to announce names as they have yet to close. When asked by Commissioner Caldwell regarding the acreage, Chair Ohrstrom replied that there were 350 acres. Vice Chair Buckley confirmed that information and noted that a few smaller easements have been closed in the last thirty days.

Broadband Implementation Committee (Brandon Stidham)

As this topic was previously discussed, Mr. Stidham said the only other item to note is that their next meeting will be held on Wednesday, October 13, 2021 at 2:00PM to talk about the grant process.

OTHER BUSINESS

Mr. Stidham noted the revised list of agenda items for the remainder of the year. He said next month there are quite a few items for the Work Session which will be held on Wednesday, November 3, 2021 instead of Tuesday due the Election Day holiday. He said Mr. Boies will be at the meeting to talk about the annual Capital Improvement Plan (CIP) review. Additionally, he said the Commission is going to do a five-year resolution review for the Waterloo and Double Tollgate Area Plans that need to be adopted by December. He said Mr. Camp will also be discussing the Agricultural and Forestal District six-year review process and the Planning Commission's role. He said there will be a Public Hearing at the next Business Meeting regarding the Short-Term Residential Rentals Text Amendment. He said there is one minor subdivision application that will be ready in November for review as well. He said he hopes to set public hearing on the Agricultural and Forestal District six-year review process. He also noted that Betsy Arnett, Chair of the Historic Preservation Committee, will be in attendance. He said the Comprehensive Plan Committee is meeting at some point in the near future to finish the Chapter 3 review and then they will start working on the five-year review resolution of the Agricultural Land Plan.

Commissioner Kruhm inquired about the hillside clearing project near Delaplane off Route 17 and Route 50. Chair Ohrstrom said he believes it is on Loudoun County's side and that the land belongs to Phil and Patty Thomas. He said he called Clarke County's former Zoning Administrator, Ryan Fincham, about a month ago and learned that while there is nothing on record for it in Loudoun County's Planning Department, it could be managed through a Forestry Management Plan. He said if it is being managed through that department, they would detail all of the erosion and sediment concerns. He said he also learned from Mr. Stidham that Forestry Management Plan erosion and sediment guidelines are quite strong. Commissioner Kruhm said he was concerned that it might gravitate over to the Clarke County side. Chair Ohrstrom replied that the owners also own property across Route 50 on the Clarke County side and that they most likely would have started the project already if that was the initial plan. Mr. Stidham stated they own approximately thirty to forty acres across the ridgeline and back down on the Clarke County side East of Blueridge Mountain Road. He said he did not think they had started timbering in that area. Chair Ohrstrom asked if timbering is what they are actually doing. Mr. Stidham replied it looked like they were trying to get the timber off before they sell. Vice Chair Buckley said he was not sure if the bulldozed lot belongs to the Thomas family and said it used to belong to the Kirk family. Chair Ohrstrom asked if Staff could give Patty Thomas or Bobby Kirk a call to find out more information. Vice Chair Buckley commented that he does not think the Kirks own that land anymore. Mr. Stidham said it would be best to call the affected counties including Fauquier. Vice Chair Buckley responded that he thinks everything on the North side of Route 50 is Loudoun County. Mr. Stidham agreed when asked by Chair Ohrstrom to call Loudoun and see if he can find out any information. At the end of the conversation, Vice Chair Buckley noted he researched it and confirmed the Thomases do own the parcel in discussion.

ADJOURN: The October 1, 2021 Business Meeting adjourned by consensus at 9:55AM.

George L. Ohrstrom, II (Chair)

Kristina Maddox (Clerk)

ZONING ORDINANCE TEXT AMENDMENT (TA-21-03)
Short-Term Residential Rental, Home Occupation Bed and Breakfast, and Country Inn
November 5, 2021 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 ordinance amendment. It may be useful to members of the general public interested in this proposed amendment.

Description:

Proposed text amendment to amend Section 5.2B (Residential Uses) and Section 5.2C (Business Uses) of the Clarke County Zoning Ordinance (Chapter 200, Article I). The purpose is to establish a new “short-term residential rental” use in the Agricultural-Open Space-Conservation (AOC) and Forestal-Open Space Conservation (FOC) Districts, and to amend the use regulations for home occupation bed and breakfast uses and country inns.

The short-term residential rental use would create new regulations for the rental of a room or rooms within a single-family dwelling by the owner of the dwelling to one or more transient renters for lodging purposes for a period of fewer than 30 consecutive days in exchange for a charge. Maximum occupancy for all structures on a lot housing a short-term residential rental use would be 10 transient renters and residents of the lot subject to compliance with building code requirements and confirmation that onsite sewage disposal systems can support the proposed maximum occupancy. Additional proposed changes include but are not limited to:

- Increasing the maximum occupancy for home occupation bed and breakfast operations to five bedrooms and ten transient guests and residents of the lot during rental periods.
- Establishing the maximum occupancy period for a short-term residential rental, home occupation bed and breakfast, and country inn as fewer than 30 consecutive days.
- Amending the use regulations for home occupation bed and breakfast operations and country inns to require compliance with building code requirements and confirmation that onsite sewage disposal systems can support proposed maximum occupancies.

Requested Action:

Conduct the advertised Public Hearing and take formal action on the proposed text amendment.

Background:

Short-term residential rentals are not currently defined or regulated in the Zoning Ordinance. Staff historically has considered a short-term residential rental to be the rental of a portion of a dwelling (one or more rooms), or the rental of an entire dwelling, to a single paying customer for a period of less than 30 days. A single paying customer can be one person or can be a group of people that are renting together. If a property owner is operating a short-term residential rental within these parameters, then no zoning approval is required because the activity is not regulated by the Zoning Ordinance.

If a property owner is renting to two or more separate paying customers at a time, then the activity is regulated by the Zoning Ordinance either as a home occupation bed and breakfast operation, a country inn, or a hotel/motel depending upon how it is being operated.

Concerns were raised regarding the absence of regulations for short-term residential rentals due their apparent proliferation in the County via websites such as AirBNB. The Planning Commission began studying this issue in July 2019 and delegated work to the Commission's Policy & Transportation Committee. This text amendment was developed over numerous meetings and included solicitation of informal feedback on regulations and process from the Board of Supervisors. The primary issue of concern identified is the potential adverse impacts that unregulated short-term residential rental activities may have on onsite sewage disposal systems and groundwater quality. Additional issues of concern are ensuring compliance with the requirements of the Virginia Uniform Statewide Building Code, creating regulations that establish a "level playing field" for all commercial lodging establishments, and developing these regulations within the existing ordinance framework.

Proposed Text Amendment:

The most significant change proposed is the addition of "short-term residential rental" as a new use in the AOC and FOC Zoning Districts. The use is defined as follows:

The rental of a room within or a portion of a single-family dwelling, minor dwelling, or tenant house; or the rental of an entire single-family dwelling, minor dwelling, or tenant house; by the owner to one or more transient renters for lodging purposes for a period of fewer than 30 consecutive days in exchange for a charge.

Any short-term rental of a single-family dwelling, minor dwelling, or tenant house for a period of less than 30 consecutive days would require issuance of a zoning permit and compliance with the following use regulations:

- Maximum occupancy of ten persons on a lot housing a short-term residential rental use which includes transient renters and residents of the lot. The maximum occupancy requirement applies at any point in time during rental periods.
- Maximum proposed occupancy may be further limited by:
 - The maximum occupancy for the structure or structures proposed for rental use as allowed by the onsite sewage disposal system permit issued by the Virginia Department of Health (VDH). This issue is discussed in greater detail below.
 - The maximum occupancy for the structure or structures proposed for rental use as permitted by the Virginia Uniform Statewide Building Code.
- A short-term residential rental may be operated in a single-family dwelling, minor dwelling, or tenant house subject to total maximum occupancy limits for the structure and the lot. No rental occupancies are permitted in other permanent or temporary structures on the lot such as accessory structures, tents, or recreational vehicles.

- Owner occupancy is not required for a short-term residential rental as this use is not considered to be a home occupation.
- Issuance of a business license by the Office of the Commissioner of the Revenue is required and such license must be maintained in good standing throughout the life of the use as a condition of zoning permit approval.
- The following activities are prohibited:
 - Provision of meals to transient renters.
 - Commercial public assembly activities such as special events, live music, weddings, meetings, conferences, and reunions.
 - Other gatherings of persons that are not transient renters or residents of the rental structure or lot.

Short-term residential rentals would not be allowed on lots in the Rural Residential (RR) District. Rental uses in the RR District could still be operated under the regulations for home occupation bed and breakfast operations.

The following changes to the home occupation bed and breakfast use are also proposed to provide consistency with the proposed short-term residential rental use:

- Maximum occupancy would be increased from three guest rooms and five transient guests to a maximum of five bedrooms and ten occupants including transient guests and residents of the lot. The maximum occupancy requirement applies at any point in time during rental periods.
- Maximum proposed occupancy may be further limited by:
 - The maximum occupancy for the structure or structures proposed for rental use as allowed by the onsite sewage disposal system permit issued by the Virginia Department of Health (VDH). This issue is discussed in greater detail below.
 - The maximum occupancy for the structure or structures proposed for rental use as permitted by the Virginia Uniform Statewide Building Code.
- A home occupation bed and breakfast may be operated in a single-family dwelling, minor dwelling, or tenant house. No rental occupancies are permitted in other permanent or temporary structures on the lot such as accessory structures, tents, or recreational vehicles.
- Issuance of a business license is required and such license must be maintained in good standing throughout the life of the use as a condition of zoning permit approval.

The following changes to the country inn use are also proposed:

- Maximum proposed occupancy of a country inn would remain unchanged at 15 rooms but may be further limited by:
 - The maximum occupancy for the structure or structures proposed for rental use as allowed by the onsite sewage disposal system permit issued by the Virginia Department of Health (VDH). This issue is discussed in greater detail below.
 - The maximum occupancy for the structure or structures proposed for rental use as permitted by the Virginia Uniform Statewide Building Code.
- The maximum occupancy period would be increased to less than 30 consecutive days to establish consistency with the occupancy periods for short-term residential rentals and home occupation bed and breakfast uses.

Regulation of onsite sewage disposal systems

A central issue of concern is to ensure that rental occupancies do not exceed the capacity of the dwelling's onsite sewage disposal system. Currently there is no required process for a proposed short-term residential rental or home occupation bed and breakfast use to verify onsite sewage disposal system capacity against approvals on record with the Virginia Department of Health (VDH). Onsite sewage disposal system capacities for country inns are verified through the site development plan process. A rental operation that exceeds the maximum occupancy of the onsite sewage disposal system can cause that system to fail resulting in groundwater contamination and potential harm to nearby drinking water wells.

To address this issue, language is proposed to require review and confirmation by VDH as a condition of approval for short-term residential rentals, home occupation bed and breakfast operations, and country inns. This review is required because many rental activities are operated in existing dwellings with septic systems designed to accommodate the number of bedrooms in the dwelling. Older dwellings may have septic systems approved many years ago under outdated regulations and even older dwellings may have systems that pre-date onsite sewage disposal system regulation. In order to ensure that an existing system can handle the sewage volume of a short-term residential rental use and the owner's residential occupancy, VDH review of the onsite sewage disposal system is necessary.

Planning Staff held discussions with VDH Staff regarding possible approaches to review rental applications under this proposed text amendment. VDH Staff agreed to provide "File Reviews" for applications as a County-initiated request for comments on zoning permit applications. This process would be similar to the process currently used to obtain VDH comments on site plan applications. Planning Staff will submit completed zoning permit application forms along with a comment request letter and any other pertinent information to VDH. VDH then will review the materials on file for the subject property and provide comments based on the file contents, application, and supporting materials. VDH will not make site visits in conjunction with a "File Review" request so their comments would be based on the written materials on file and documents provided by the applicant. Additionally, VDH will not issue a written "approval" of

the proposed use – their comment letter would confirm whether or not the existing onsite sewage disposal system will meet the capacity of the maximum proposed occupancy.

The “File Review” process would likely be sufficient to confirm the validity of more recent VDH permits and their compliance with current regulations. VDH would review the current permit on file and compare it with the maximum occupancy that the applicant lists on the application form. If VDH comments that the existing system has the capacity to support the stated use, then no further action or expense is required by the applicant. If VDH cannot confirm that the capacity for the proposed occupancy is compliant, then zoning approval could not be granted. The applicant then would have two options:

- Re-file the zoning permit application with a lower proposed occupancy that conforms to the existing system’s capacity and can be confirmed by VDH.
- Work directly with VDH through their application processes to make changes, modify, or expand the existing system to support the proposed maximum occupancy. This would require the applicant to incur costs of designing and installing the necessary system modifications according to current State and County septic system regulations. Once the modifications have been installed and approved by VDH, the applicant can re-file the zoning permit application.

New language is proposed in the text amendment for short-term residential rentals, home occupation bed and breakfast operations, and country inns to address this requirement as well as to require an onsite sewage disposal system to be maintained for the life of the use. If a system falls out of compliance with VDH regulations, the Zoning Administrator may issue a notice of violation to cease operation of the rental use until the system is repaired and brought into compliance as verified by VDH.

Application and Enforcement:

As previously noted, short-term residential rentals of a portion of a dwelling (one or more rooms), or the rental of an entire dwelling, to a single paying customer or group for a period of less than 30 days are not currently regulated by the Zoning Ordinance. In recent years, some rental operators have obtained business licenses for their short-term residential rental activities through the Commissioner of the Revenue Office. Business licenses require zoning review and action by the Planning Department as a condition of approval. In reviewing short-term residential rentals as described above, Planning Staff has typically written on the zoning approval portion of the business license application that no zoning approval is required for the use. If new proposed short-term residential rental regulations are adopted, the question was raised as to whether these regulations could be applied to existing operators with business licenses.

Following discussions with the County Attorney, it was determined that any short-term residential rental operator with a valid County business license stating that no zoning approval was required would still be required to comply with the new use regulations for short-term residential rentals. This would include compliance with the proposed onsite sewage disposal system requirements. Rental operators who did not obtain a business license for their use, or who do not have a written determination from the zoning administrator that the use does not

require zoning approval, would have to comply with all new regulations including applicable permitting requirements. Any operator who has prior County zoning approval in the form of a zoning permit, zoning determination letter, or business license review indicating that they have zoning approval for their rental activity (as opposed to no zoning approval required) would be considered nonconforming and would not have to comply with the new regulations.

Regarding application and enforcement of the proposed regulations, Staff has recommended continuing with our standard complaint-basis enforcement. Since there potentially is a significant number of existing rental operators who would have to comply with the new regulations, Planning Staff would work with other departments to publicize the new regulations if they are ultimately adopted. As discussed previously, the Commission could also recommend delaying the effective date of the regulations by six months. This would allow existing operators to contact Planning Staff and begin working on compliance with the regulations without being immediately in a state of noncompliance. If the Commission supports a delayed implementation, this recommendation should be included in the Commission’s formal recommendation to the Board of Supervisors.

Staff Recommendation:

Staff has no outstanding concerns with the adoption of this text amendment.

Should the Commission want to recommend establishment of a six month “grace period” to allow existing operators to comply with the proposed regulations, Staff recommends including such language in the Commission’s formal recommendation. An example would be recommending that the effective date be six months from the date that the Board of Supervisors acts on the proposed regulations.

History:

- | | |
|---------------------------|--|
| January 8, 2021. | Placed on the Commission’s Business Meeting agenda for further discussion |
| February 5, 2021. | Commission declined to schedule Public Hearing for a proposed text amendment and tabled further work until completion of the Zoning and Subdivision Ordinance Update Project. |
| August 31, 2021. | Commission resumed discussion at the Work Session. |
| September 3, 2021. | Commission continued discussion at the Business Meeting and directed Staff to prepare a revised text amendment for consideration in October. |
| October 1, 2021. | Commission voted 10-0-1 (Kreider absent) to schedule Public Hearing for the Commission’s November 5 Business Meeting. |
| November 5, 2021. | Placed on the Commission’s Business Meeting agenda and advertised for Public Hearing. |

Ordinance Amendment Text (Changes shown in red font with strikethroughs where necessary. New proposed text is shown in red italicized font):

To Section 5.2B – Residential Uses:

<i>SHORT-TERM RESIDENTIAL RENTAL</i>	
<i>Permitted Use</i>	<i>AOC, FOC</i>
<i>Accessory Use</i>	<i>AOC, FOC</i>
<i>Special Use</i>	<i>None</i>

Definition:

The rental of a room within or a portion of a single-family dwelling, minor dwelling, or tenant house; or the rental of an entire single-family dwelling, minor dwelling, or tenant house; by the owner to one or more transient renters for lodging purposes for a period of fewer than 30 consecutive days in exchange for a charge.

Use Regulations:

A short-term residential rental may be conducted in a single-family dwelling, minor dwelling, or tenant house subject to the following requirements:

- 1. A short-term residential rental may be occupied as a permitted use or as an accessory use to a single-family dwelling. The property owner is not required to reside on the lot during rental periods.*
- 2. Short-term residential rental uses may be conducted in the single-family dwelling and in any minor dwelling or tenant house located on the same lot so long as each structure used is in full compliance with the zoning permit requirements listed in Subsection 3. Minor dwellings or tenant houses used for short-term residential rental uses shall be fully conforming to all Zoning Ordinance requirements at the time of zoning permit issuance. No short-term residential rental uses shall be permitted in structures other than a single-family dwelling, minor dwelling, or tenant house.*
- 3. A zoning permit is required per Section 6.2.1. Issuance of a zoning permit is subject to the following requirements:
 - a. Maximum occupancy. The maximum occupancy of the single-family dwelling and any accessory dwellings on a lot housing a short-term residential rental use shall not exceed a total of ten persons at any time during the rental period including transient guests and residents of the lot. The maximum occupancy of each single-family dwelling and any accessory dwelling housing a short-term residential rental use shall be further limited by:
 - (1) The maximum occupancy for the structure as allowed by the onsite sewage disposal system permit issued by the Virginia Department of Health (VDH).***

- (2) *The maximum occupancy for the structure as permitted by the Virginia Uniform Statewide Building Code.*

b. Compliance with onsite sewage disposal system requirements.

- (1) *An application for a short-term residential rental that is served by an onsite sewage disposal system shall be reviewed by the Virginia Department of Health (VDH) in conjunction with the zoning permit application review. Written confirmation by VDH that the existing onsite sewage disposal system can support the proposed maximum occupancy of the short-term residential rental shall be a prerequisite to issuance of a zoning permit.*
- (2) *In the event that an onsite sewage disposal system cannot support the proposed maximum occupancy of the short-term residential rental, the system shall be upgraded to current Virginia Department of Health (VDH) regulations including provision of a 100% reserve area before a zoning permit may be issued.*
- (3) *An onsite sewage disposal system shall be maintained and remain in an operable condition for the life of the use. In the event that the system fails as determined by VDH, the Zoning Administrator shall issue a notice of violation to cease the short-term residential rental use until the system is repaired or replaced and is approved in writing by VDH.*

c. Compliance with building code requirements. *All applications for short-term residential rental uses shall be reviewed by the Clarke County Building Department to determine whether a change of use or other building code compliance measures are required. Written confirmation from the Building Department that the structure to be used for the short-term residential rental use conforms to building code requirements shall be a prerequisite to issuance of a zoning permit.*

d. *Issuance of a business license by the Clarke County Commissioner of the Revenue shall be a prerequisite to issuance of a zoning permit. The business license shall also be maintained in good standing throughout the life of the use as a condition of zoning permit approval.*

4. Prohibited activities include:

- *Provision of meals to transient renters*
- *Commercial public assembly activities such as special events, live music, weddings, meetings, conferences, and reunions*
- *Other gatherings of persons that are not transient renters or residents of the single-family dwelling, minor dwelling, or tenant house*

Required Review Processes:

A Zoning Permit is required per Section 6.2.1.

HOME OCCUPATION	
Permitted Use	None
Accessory Use	AOC, FOC, RR
Special Use	None

Definition:

A for-profit or non-profit business or activity conducted in a dwelling unit (or an accessory structure to a dwelling) as a secondary use.

Use Regulations for Specific Types of Home Occupations

1. Bed and breakfast. *A bed and breakfast is a home occupation where lodging, or lodging and meals, is offered for a period of fewer than 30 consecutive days in exchange for a charge subject to the following regulations:*
 - a. *A home occupation bed and breakfast may be conducted in the single-family dwelling and in any minor dwelling or tenant house located on the same lot so long as each structure used is in full compliance with these use regulations. Minor dwellings or tenant houses used for home occupation bed and breakfast uses shall be fully conforming to all Zoning Ordinance requirements at the time of zoning permit issuance. No bed and breakfast use shall be permitted in structures other than a single-family dwelling, minor dwelling, or tenant house.*
 - b. *As a home occupation use, the permit holder shall occupy the lot at all times during bed and breakfast rental periods.*
 - c. *The maximum occupancy of the single-family dwelling and any accessory dwellings on a lot housing a bed and breakfast shall not exceed a total of five bedrooms and ten persons during the rental period including transient guests and residents of the lot. The maximum occupancy of each single-family dwelling and any accessory dwelling housing a bed and breakfast use shall be further limited by:*
 - (1) *The maximum occupancy for the structure as allowed by the onsite sewage disposal system permit issued by the Virginia Department of Health (VDH).*
 - (2) *The maximum occupancy for the structure as permitted by the Virginia Uniform Statewide Building Code.*

~~A bed and breakfast is a home occupation where lodging or lodging and meals are provided for compensation for up to five (5) transient guests.~~

- ~~b. A bed and breakfast may use a maximum of three guestrooms for the conduct of the home occupation, regardless of the floor area of the dwelling unit. Guestrooms may be located in accessory structures located on the same lot subject~~

~~to compliance with Building Code requirements and Virginia Department of Health regulations.~~

d. Compliance with onsite sewage disposal system requirements.

- (1) An application for a bed and breakfast use that is served by an onsite sewage disposal system shall be reviewed by the Virginia Department of Health (VDH) in conjunction with the zoning permit application review. Written confirmation by VDH that the existing onsite sewage disposal system can support the proposed maximum occupancy of the bed and breakfast use shall be a prerequisite to issuance of a zoning permit.*
- (2) In the event that an onsite sewage disposal system cannot support the proposed maximum occupancy of the bed and breakfast use, the system shall be upgraded to current Virginia Department of Health (VDH) regulations including provision of a 100% reserve area before a home occupation zoning permit may be issued.*
- (3) An onsite sewage disposal system shall be maintained and remain in an operable condition for the life of the use. In the event that the system fails as determined by VDH, the Zoning Administrator shall issue a notice of violation to cease the bed and breakfast use until the system is repaired or replaced and is approved in writing by VDH.*

e. Compliance with building code requirements. All applications for bed and breakfast uses shall be reviewed by the Clarke County Building Department to determine whether a change of use or other building code compliance measures are required. Written confirmation from the Building Department that the structure to be used for the bed and breakfast use conforms to building code requirements shall be a prerequisite to issuance of a home occupation zoning permit.

f. Issuance of a business license by the Clarke County Commissioner of the Revenue shall be a prerequisite to issuance of a home occupation zoning permit. The business license shall also be maintained in good standing throughout the life of the use as a condition of zoning permit approval.

***ge.** As an accessory use to a bed and breakfast, breakfast meal service may be provided only for overnight guests.*

***he.** A bed and breakfast is not required to comply with General Use Regulation 4 regarding maximum allowable area within a dwelling or accessory structure for home occupation use.*

To Section 5.2C – Business Uses:

COUNTRY INN	
Permitted Use	CN
Accessory Use	None
Special Use	AOC, FOC

Definition:

A business offering for compensation to the public guestrooms for transitory lodging or sleeping accommodations for a period *of fewer than 30 consecutive days* ~~not to exceed 14 consecutive days~~. As accessory uses to a country inn, meal service and/or permanent place(s) of public assembly may be provided.

Use Regulations:

1. **Maximum occupancy and use of onsite sewage disposal system.**
 - a. A maximum of 15 guest rooms for transitory lodging or sleeping accommodations shall be permitted *subject to compliance with Virginia Department of Health (VDH) regulations for onsite sewage disposal systems if applicable. The maximum occupancy shall not exceed the maximum occupancy allowed by the onsite sewage disposal system permit issued by the Virginia Department of Health (VDH). If the onsite sewage disposal system serving the country inn is shared with another structure or structures, the maximum occupancy of all structures shall not exceed the maximum occupancy allowed by the onsite sewage disposal system permit.*
 - b. *An application for a country inn that is served by an onsite sewage disposal system shall be reviewed by VDH in conjunction with the site development plan application review. Written confirmation by VDH that the existing onsite sewage disposal system can support the proposed maximum capacity of the country inn shall be a prerequisite to approval of a site development plan.*
 - c. *If a country inn is served by an onsite sewage disposal system, that system shall be maintained and remain in an operable condition for the life of the use. In the event that the system fails as determined by the Virginia Department of Health (VDH), the zoning administrator may issue a notice of violation to cease the country inn use until the system is repaired or replaced and is approved in writing by VDH.*
2. The sale of meals or prepared food, which may include beverages and confections, is permitted as an accessory use to a country inn. Approvals or permits by applicable State agencies shall be obtained and remain active for the lifespan of this activity.
3. Assembly activities for compensation are permitted as an accessory use. The maximum number of building occupants during an assembly activity shall not exceed 149, or the

maximum occupancy of the facility as approved by the Building Department, whichever is lesser.

4. One bathroom shall be provided per each bedroom in structures less than 50 years old or one bathroom shall be provided per each two bedrooms in structures 50 years or older.
5. Any need for parking shall be met off the street and other than in a required front yard, and shall conform in all other ways with the provisions of [Section 7.2.5 \(Parking Regulations\)](#).
6. No equipment, process, or vehicles which create unreasonable noise, vibration, glare, fumes or odors which are detectable to the normal sense off the premises shall be permitted.
- ~~7. The use shall comply with all applicable State and local permitting requirements including the Virginia Department of Health's (VDH) regulations for private wells and onsite septic systems. All permits shall remain in good standing throughout the lifespan of the use.~~
78. Regulations for country inns in the AOC and FOC Districts:
 - a. A country inn shall require the use of a dwelling unit right (DUR).
 - b. If a country inn is developed in a structure other than an existing single-family dwelling, the structure shall be designed to resemble a single-family dwelling and constructed to enable the structure to be converted to a single-family dwelling if the country inn use is discontinued. Architectural renderings and construction plans for the proposed structure shall be submitted for review with the special use permit application.
89. Special events shall comply with [Chapter 57 of the Code of Clarke County](#).

DRAFT MOTIONS – TA-21-03

Motion to recommend adoption:

Move to recommend adoption of proposed text amendment TA-21-03 (Short-Term Residential Rental, Home Occupation Bed and Breakfast, and Country Inn) to the Board of Supervisors.

Optional additional language regarding delayed implementation:

This motion includes a recommendation to the Board to consider delaying the effective date of this text amendment for a period of six (6) months. The purpose is to provide a “grace period” for existing operators to work with Planning Department staff to comply with the proposed regulations.

Motion to defer:

Move to defer action on proposed text amendment TA-21-03 (Short-Term Residential Rental, Home Occupation Bed and Breakfast, and Country Inn) for [specify number of months] to the Commission’s [specify month/year] Business Meeting.

MINOR SUBDIVISION (MS-21-03)

November 5, 2021 Planning Commission Meeting
STAFF REPORT -- Department of Planning

The purpose of this staff report is to provide information to the Planning Commission to assist them in reviewing this proposed minor subdivision. It may be useful to members of the general public interested in this proposed subdivision.

CASE SUMMARY:

Applicant(s)

Jay D. Cecca and Linda Lee Cecca

Location:

- Tax Map Parcel #30-A-30B
- The subject property is a vacant lot on Millwood Road (Route 723)
- White Post Election District (Randy Buckley & Buster Dunning)
- Agricultural Open Space-Conservation (AOC) Zoning District

Request:

The applicant requests approval for a two-lot Minor Subdivision.

Original Lot:

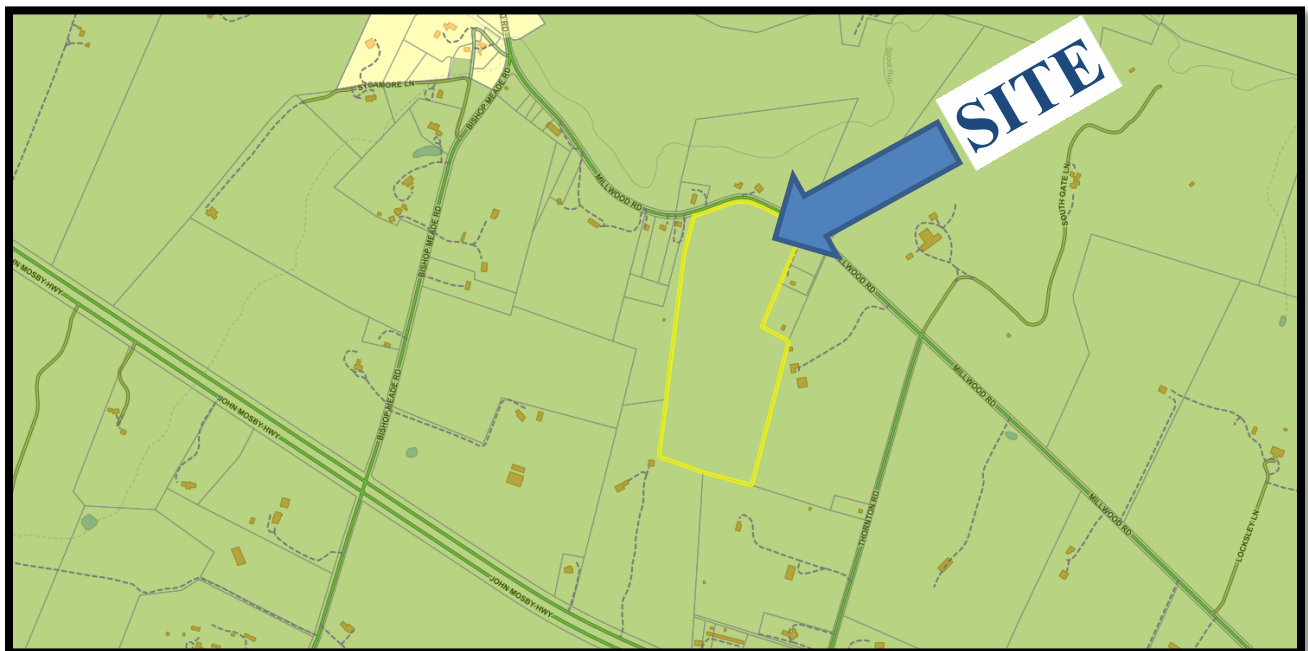
30.9683 acres (0 Dwellings, 2 DURs)

Proposed Lots:

27.9683 – Residue (1 DUR)

3.00 acres -- “Lot 1” (1 DUR)

30.9683 acres -- Total Area



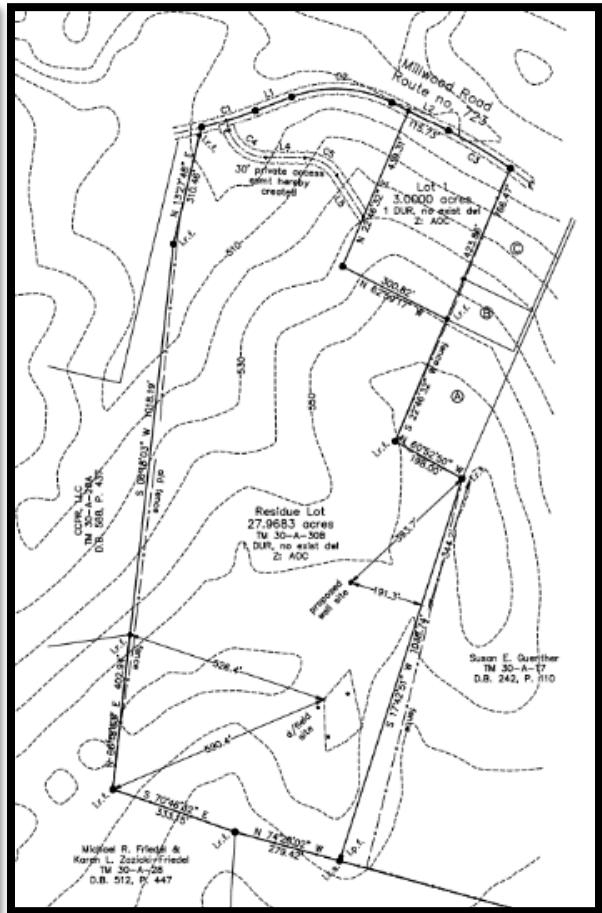
Staff Discussion/Analysis:

Access:

The subject property consists of approximately 30 acres along Millwood Road (Route 723). The division would create one new lot with approximately 300 feet of public road frontage. The remaining property would retain roughly 550 feet of public road frontage. Millwood Road is designated as a scenic road which increases the minimum setback required for new structures on the property. The required setbacks are described on the plat.

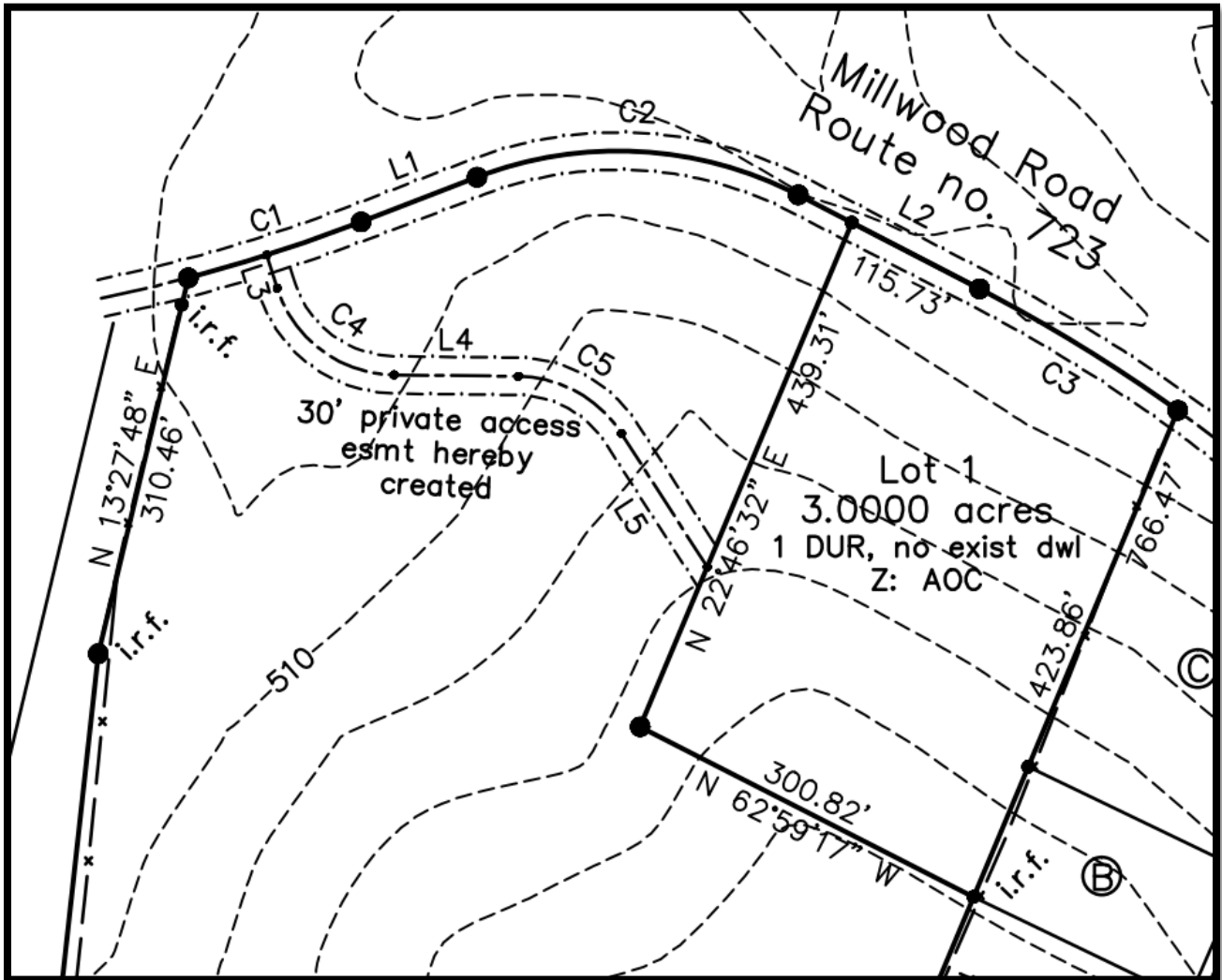


Existing



Proposed

A 30' wide private access easement is proposed for the benefit of the proposed 3-acre lot. This private access easement connects with Millwood Road on the property's western side. The proposed private access easement traverses the proposed residue parcel to the rear of the proposed 3-acre lot (Lot 1). The surveyor reported that the entrance for Lot 1 was placed at its proposed location because VDOT said they would not approve a new entrance further to the east.



Proposed – zoomed-in to new lot and private access easement

VDOT provided comments on the application on September 21, 2021. Most notable, VDOT indicated that the right-of-way for Millwood Road is fee simple, not prescriptive as shown. Below are VDOT’s comments:

We have reviewed the above subject subdivision plat (attached) dated [September 3, 2021](#) by Dunn Land Surveys, Inc. for impacts to the local roadway system. Our comments are as follows:

- The right-of-way for Route 723 is shown as if it were existing prescriptive easement. Our records show that Route 723 is the old Winchester-Berry’s Ferry Turnpike which would be 60’ fee simple right-of-way.
- The proposed private access easement is not wide enough at the state road to accommodate the installation of a VDOT standard private entrance. The easement must be flared at the VDOT right-of-way to accommodate the entrance radii catch points (52’), shoulders, drainage features (ditches, culverts, slopes, etc.), limits of grading, etc... If both Lot 1 and the residual parcel will be accessed from the private access easement then a joint-use maintenance agreement is needed for the driveway and entrance.

- If a future private entrance is desired on the roadway frontage of Lot 1, then a sight distance easement will be required along the front of the residual parcel to obtain and maintain minimum sight distance. This sight distance easement should be dedicated in a way that the property owner's utilizing the entrance legally can and will maintain the required intersection sight distance. If no easements are dedicated on the residual parcel to allow the required grading and vegetation removal to obtain safe sight distance, then a note should be added to the plat that states that no direct access will be allowed on Route 723 from Lot 1, this lot is required to use the easement dedicated across the residual parcel.
- A Land Use Permit shall be obtained before any work is performed on the State's right-of-way. The permit is issued by this office and will require application fees and surety coverage. Once satisfactory application has been made, a permit will normally take 7-14 days to process and issue.

Water and Sewage Disposal:

In regards to both lots, the project OSE located a site for a conventional primary drainfield and TL-3/trench 100% reserve area. The site and soils were field reviewed on September 21, 2021, no outstanding issues were noted. The proposed design is for a four bedroom dwelling and will be served by a private well. VDH has reviewed this application and raised no issues. They did request a new approval letter for the resistivity testing on the residue parcel before signing the plats, which was completed.

Karst Plan / Resistivity Test:

Resistivity testing results were submitted by the applicant for both lots. The resistivity test proposed for the residue parcel was approved February/March of 2017. The approval letter for this was not but was reissued based on the review consultant's report. The resistivity test proposed for Lot 1 was approved September of 2021.

Other:

Lot 1 is largely devoid of wooded areas, except along the edge of the property line. The residue parcel includes pastures with clusters of wooded areas.

No known sinkholes, streams, or floodplain areas exist on the property. No historic resources are identified on the property.

Recommendation:

Staff recommends to the Planning Commission conditional approval of this minor subdivision application, conditioned that the plat is revised by the applicant to meet VDOT's design specifications, as noted above, including tapering the entrance to the required width. Conditional approval is consistent with the Planning Commission's conditional approval policy. Specifically, number 1 of the policy allows for conditional approval in the following circumstance: *The issue has been informally resolved and only requires final written submission by the applicant and confirmation by Planning Staff and/or the applicable review agency.*

Additional Note: It is understood that there is disagreement between the surveyor and VDOT about whether or not the state road right-of-way is fee simple or prescriptive. As certified by the surveyor it is prescriptive. However, should VDOT contest this the change would not impact compliance with the Clarke County Zoning or Subdivision regulations.

History:

February/March 2017	Resistivity Report Approval – Residue Parcel
September 3, 2021	Application Submitted, scheduled for October 1 PC Meeting.
September 8, 2021	Submission to review agencies
September 15, 2021	Resistivity Report Approval – Lot 1
September 15, 2021	VDH comments that Soil Report is incomplete. Includes Lot 1, not residue parcel
September 17, 2021	Missing documents submitted by applicant to VDH
September 20, 2021	Plats resubmitted by surveyor with correction of minimum setbacks.
September 21, 2021	VDOT Comments received. VDH Comments received. The Applicant’s Surveyor resubmitted the plat to correct an error in the setback note identified by Staff.
September 23, 2021	Application deferred by applicant for one month due to agency comments
October 19, 2021	VDH Comments – residue parcel.
October 25, 2021	Applicant response to VDOT regarding fee simple vs. prescriptive right-of-way issue.
November 3, 2021	Planning Commission Work Session.
November 5, 2021	Planning Commission Meeting – Set Public Hearing

CLARKE COUNTY
LAND DEVELOPMENT APPLICATION



Applicant JAY D CECCA
 Applicant's Address 14205 Milltown Rd.
Lowellville, Va 20180
 City State Zip Code
 Applicant's E-Mail Address JAY D. CECCA @ RCM.COM
 Agent (Contact Person) STUART JUNN Phone 955-3388
 Agent's Company JUNN LAND SURVEYS
 Agent's Address 106 N CHURCH ST
 Current Property Owner JAY D + LINDA LEE CECCA
 Owner's Address _____ Phone _____
 Correspondence to be sent to: Applicant Owner Agent Other
 Tax Map Parcel Number 30-A-308 Magisterial District GREENWAY
 General Project Location MILKWOODS Site size (gross/net acreage) 30.9683

Check Appropriate Request:

PLANNING COMMISSION

- Major Subdivision
- Minor Subdivision (1 or 2 lots)
- Administrative Subdivision (parcels > 100 acres)
- Boundary Line Adjustment
- Site Plan
- Site Plan Amendment
- Erosion & Sediment Plan
- Storm Water Plan
- Maximum Lot Size Exception

PLANNING COMMISSION & BOARD of SUPERVISORS

- Rezoning
- Special Use Permit
- Comprehensive Plan Amendment
- Zoning Ordinance Text Amendment
- Subdivision Ordinance Text Amendment
- Other

BOARD OF ZONING APPEALS

- Administrative Appeal
- Variance
- Special Exception

BOARD OF SEPTIC & WELL APPEALS

- Administrative Appeal
- Variance

BERRYVILLE AREA DEVELOPMENT AUTHORITY

- Site Plan
- Site Plan Amendment

HISTORIC PRESERVATION COMMISSION

- Certificate of Appropriateness

Complete as applicable:

Name of Subdivision, Development, or Proposal JAY D CECCA
 Proposal/Request MINOR SUBDIVISION
 Existing Zoning AOC Proposed Zoning AOC # of Proposed Lots 2

Applicant: The information provided is accurate to the best of my knowledge. I acknowledge that any percolation tests, topographic studies, or other requirements of the Health Official or Zoning Administrator will be carried out at my expense. I understand that the County may deny, approve, or conditionally approve that for which I am applying. I certify that all property corners have been clearly staked and flagged. Applicant's Signature Jay D Cecca Date 9/3/21

Owner: I have read this completed application, understand its intent, and freely consent to its filing. If this application is for the purpose of subdivision, I understand that further subdivision of this property will not be permitted within twelve (12) months of approval of this action, unless an Exploratory Sketch Plan is submitted with this application. Furthermore, I grant permission to the Planning Department and other authorized government agents to enter the property and make such investigations and test as they deem necessary. Owner's Signature Jay D Cecca Date 9/3/21

101 Chalmers Court
Berryville, VA 22611

www.clarkecounty.gov

(540) 955-5132
Fax (540) 955-5180



Clarke County Planning Department

101 Chalmers Court, Suite B

Berryville, Virginia 22611

(540) 955-5132

www.clarkecounty.gov

October 25, 2021

Jay and Linda Cecca
14205 Milltown Rd.
Lovettsville, VA 20180

RE: Resistivity Test
Tax Map#30-A-30; Millwood Rd.

A resistivity test was conducted on the property described above, and a report generated by Forrest Environmental Services, Inc. in February 2017 defined as Project Number 17109. The test results were sent to Piedmont Geotechnical, Inc. for review.

Based on Piedmont's review (Project 2127VA) dated February 25, 2017, of the engineering report, this site passes the resistivity test, and if all other requirements are met, may be issued a permit by the Health Department.

If you have any questions or concerns regarding this information, please call me at 540-955-5134.

Sincerely,

A handwritten signature in black ink that reads "Alison Teetor".

Alison Teetor
Clarke County Natural Resource Planner

c. Clarke County Health Department



Clarke County Planning Department
101 Chalmers Court, Suite B
Berryville, Virginia 22611
(540) 955-5132
www.clarkecounty.gov

September 15, 2021

Jay and Linda Cecca
14205 Milltown Rd.
Lovettsville, VA 20180

RE: Resistivity Test
Tax Map#30-A-30B; Millwood Rd.

A resistivity test was conducted on the property described above, and a report generated by Forrest Environmental Services, Inc. in September 2021 defined as Project Number 17109. The test results were sent to Terracon Consultants, Inc. for review.

Based on the engineer's report and Terracon's review (Project JD197110, Task 40) dated September 14, 2021, this site passes the resistivity test, and if all other requirements are met, may be issued a permit by the Health Department.

If you have any questions or concerns regarding this information, please call me at 540-955-5134.

Sincerely,

A handwritten signature in blue ink that reads "Alison Teetor".

Alison Teetor
Clarke County Natural Resource Planner

c. Clarke County Health Department

Zimbra

jcamp@clarkecounty.gov

Clarke-Rte 723-Jay & Linda Cecca TM 30-A-30B

From : Arthur Boyce <bobby.boyce@vdot.virginia.gov> Tue, Sep 21, 2021 02:15 PM
Subject : Clarke-Rte 723-Jay & Linda Cecca TM 30-A-30B 1 attachment
To : Jeremy Camp <jcamp@clarkecounty.gov>
Cc : Rigglesman, Bradley <bradley.rigglesman@vdot.virginia.gov>, Rhonda Funkhouser <rhonda.funkhouser@vdot.virginia.gov>, Duncan, Travis <travis.duncan@vdot.virginia.gov>, Stuart Dunn <dunnland1@verizon.net>

<<...>>

DEPARTMENT OF TRANSPORTATION

Staunton/Edinburg Land Development

14031 Old Valley Pike

Edinburg, VA 22824

Dear Mr. Camp:

We have reviewed the above subject subdivision plat (attached) dated September 3, 2021 by Dunn Land Surveys, Inc. for impacts to the local roadway system. Our comments are as follows:

- - The right-of-way for Route 723 is shown as if it were existing prescriptive easement. Our records show that Route 723 is the old Winchester-Berry's Ferry Turnpike which would be 60' fee simple right-of-way.
 - The proposed private access easement is not wide enough at the state road to accommodate the installation of a VDOT standard private entrance. The easement must be flared at the VDOT right-of-way to accommodate the entrance radii catch points (52'), shoulders, drainage features (ditches, culverts, slopes, etc.), limits of grading, etc... If both Lot 1 and the residual parcel will be accessed from the private access easement then a joint-use maintenance agreement is needed for the driveway and entrance.
 - If a future private entrance is desired on the roadway frontage of Lot 1, then a sight distance easement will be required along the front of the residual parcel to obtain and maintain minimum sight distance. This sight distance easement should be dedicated in a way that the property owner's utilizing the entrance legally can and will maintain the required intersection sight distance. If no easements are dedicated on the residual parcel to allow the required grading and vegetation removal to obtain safe sight distance, then a note should be added to the plat that states that no direct access will be allowed on Route 723 from Lot 1, this lot is required to use the easement dedicated across the residual parcel.
 - A Land Use Permit shall be obtained before any work is performed on the State's right-of-way. The permit is issued by this office and will require application fees and surety.

coverage. Once satisfactory application has been made, a permit will normally take 7-14 days to process and issue.

We appreciate the County's efforts to include VDOT in the early planning stages for development and the opportunity to provide comments on this subdivision. We ask that you include a copy of this official public record in file for the subdivision. If you have any questions or need further information, please do not hesitate to give me a call.

Sincerely,

Bobby Boyce

VDOT- Land Development Engineer
Shenandoah, Frederick, Clarke, & Warren Counties
14031 Old Valley Pike
Edinburg, VA 22824
(540) 534-3211

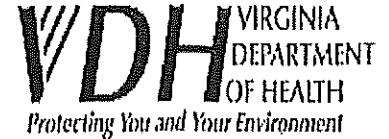
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 **CECCA_SUB2021-Model.pdf**
323 KB



Lord Fairfax Health District

Clarke County Health Department
100 North Buckmarsh Street
Berryville, Virginia 22611
Tel. (540) 955-1033 ~ Fax (540) 955-4094
www.vdh.virginia.gov



September 21, 2021

Jeremy F. Camp
Senior Planner/Zoning Administrator
101 Chalmers Court
Berryville, Virginia 22611

RE: MINOR SUBDIVISION PRELIMINARY REVIEW COMMENTS

Applicant Name: Jay D. Cecca & Linda Lee Cecca
Health Department I.D. #: 043210103
Subdivision Name:
Section or Phase:
Tax Map #: 30-A-30B
Proposed Lots: 1 New Lot

Dear Mr. Camp,

Pursuant to your written request, we have evaluated the aforementioned minor subdivision proposal, and offer the following comments at this point in the review process.

OWNER/APPLICANT ITEMS:

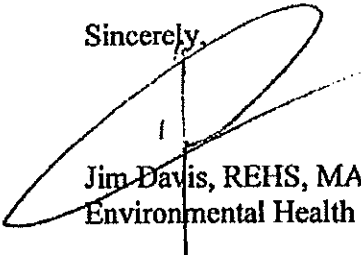
1. The applicants have not yet applied for a Certification Letter for proposed Lot 1 or the Residue Lot as required.
2. Proposed Lot 1 (3.0000 acres) is vacant. The project OSE located a site for a conventional primary drainfield and TL-3/trench 100% reserve area. The site and soils were field reviewed on September 21, 2021, no outstanding issues were noted. The proposed design is for a Four (4) bedroom dwelling and will be served by a private well.
3. The remaining portion of TM# 30-A-30B, Proposed Residue Lot (27.9683 acres) is vacant. The project OSE located a site for a conventional drainfield and TL-3/trench 100% reserve area. The site was field reviewed on September 21, 2021, no outstanding issues were noted. The proposed design is for a Four (4) bedroom dwelling and will be served by a private well.

Comment Letter
Jay D. Cecca & Linda Lee Cecca
TM# 30-A-30B
Page 2

4. This office has received a Geophysical Survey from Forrest Environmental Services, Inc. for the drainfield and reserve area identified for proposed Lot 1 and a county approval letter for the ERI.
5. This office has received a Geophysical Survey from Forrest Environmental Services, Inc. for the drainfield and reserve area identified for proposed Residue Lot but we have not received a county approval letter for the ERI.

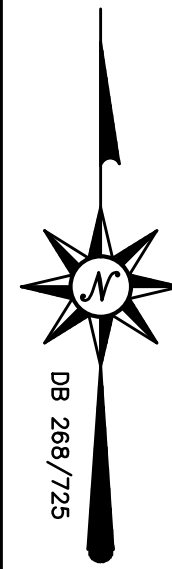
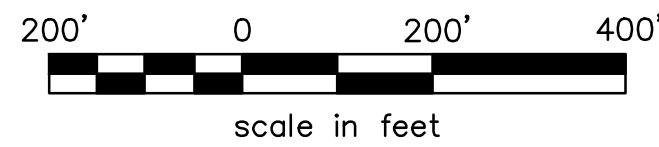
This letter does not serve as an approval of the proposed minor subdivision, or its parts. If you have any questions, please contact me at (540) 955-1033

Sincerely,



Jim Davis, REHS, MAOSE
Environmental Health Supervisor

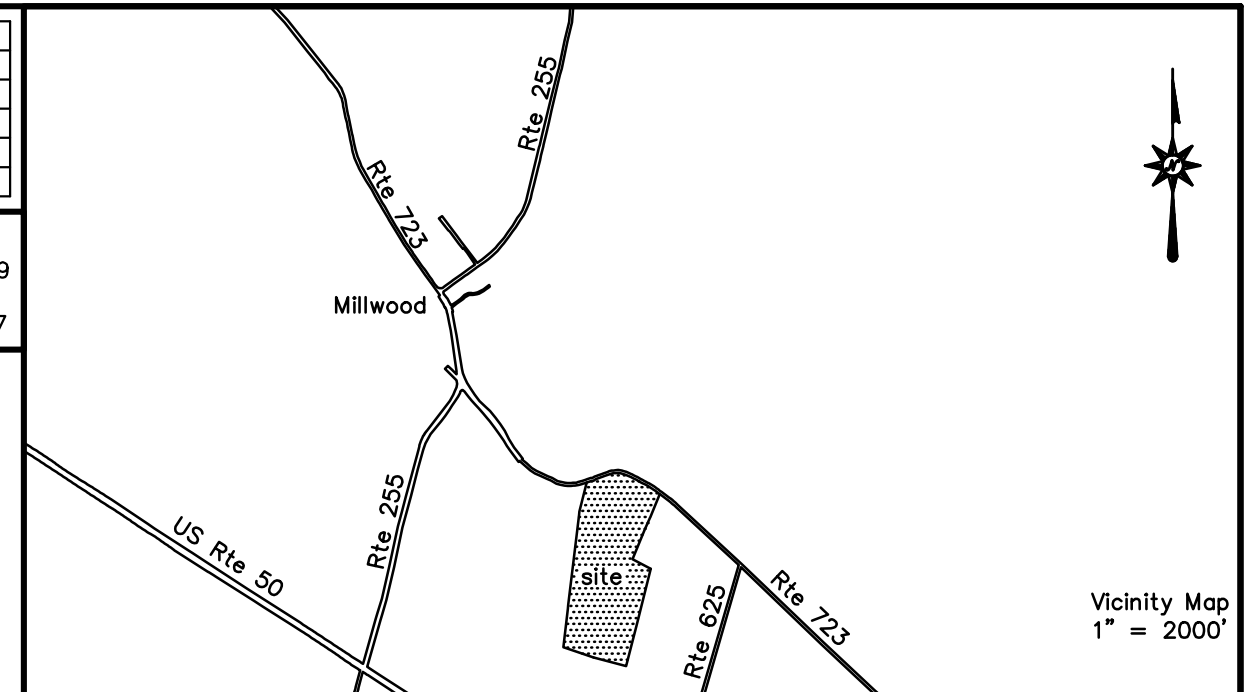
PC: Jay D. Cecca & Linda Lee Cecca, Owners
W. Stuart Dunn, Dunn Land Surveys, Inc.
Stephen J. White, OSE
Health Department File



LINE	BEARING	DISTANCE	CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
L1	S 68°54'11" W	99.93'	C1	1310.00'	146.03'	145.95'	N 72°05'47" E	6°23'13"
L2	N 62°37'49" W	164.15'	C2	315.00'	266.46'	258.59'	N 86°51'49" W	48°28'00"
L3	S 17°34'48" E	27.70'	C3	1290.00'	186.98'	186.82'	N 58°28'41" W	8°18'18"
L4	S 89°19'02" E	99.81'	C4	100.00'	125.20'	117.19'	S 53°26'55" E	71°44'14"
L5	S 32°45'37" E	127.42'	C5	100.00'	98.71'	94.75'	S 61°02'19" E	56°33'24"

Owners' Table:

A	TM 30-A-31A	D & A Properties, LLC	D.B. 416, P. 889
B	TM 30-A-31	Edmonia P. Banks	D.B. 37, P. 609
C	TM 30-A-32	Sadie Bannister Estate	D.B. 195, P. 197



Surveyor's Certificate: I, W. Stuart Dunn, a duly Licensed Land Surveyor in the Commonwealth of Virginia, do hereby certify that the land herein subdivided is in the name of Jay D. Cecca and Linda Lee Cecca, and was acquired by them as stated in the Owners' Certificate. I certify that these tracts of land are properly and accurately described and are within the boundaries of the original tract and are referenced to the meridian established in Deed Book 268, Page 725. I further certify that the monuments designated hereon have been set in accordance with the Subdivision Ordinance of Clarke County, Virginia.

W. Stuart Dunn, CLS #2000
Berryville, Virginia

Owners' Certificate: The undersigned fee simple owners hereby certify that the foregoing Minor Subdivision of 30.9683 acres, being Tax Map 30-A-30B, recorded in the name of Jay D. Cecca and Linda Lee Cecca in deed recorded in Deed Book 615, Page 90, of record in the Office of the Clerk of the Circuit Court of Clarke County, Virginia, is made with the free consent and in accordance with the desires of the undersigned owners of said land and the same is hereby confirmed and submitted for record in the aforesaid Clerk Office.

Jay D. Cecca
14203 Milltown Road, Lovettsville, VA 20180

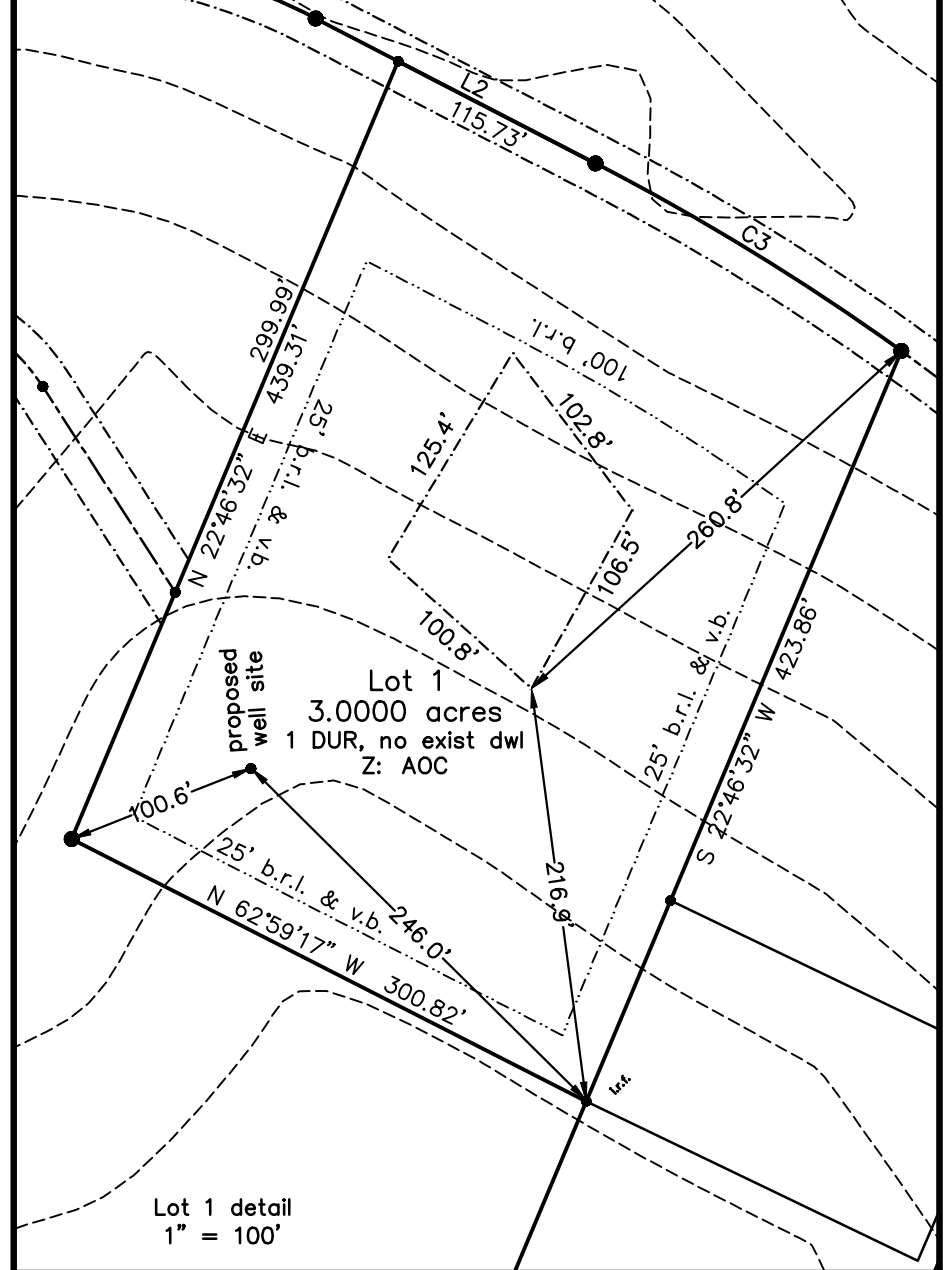
Linda Lee Cecca

State of Virginia, County of _____, to wit: I, _____, a Notary Public for the County of Clarke, in the State of Virginia, do hereby certify that Jay D. Cecca and Linda Lee Cecca, whose names are in the Owners' Certificate, have acknowledged the same before me this day of _____, 2021.

My commission as Notary expires:

Notary Public

- Notes:**
- (1) These lands are in Flood Zone X, established from FIRM Community Panel no. 51043C0141C, effective September 28, 2007.
 - (2) The resulting 27.9683 acres, Residue Lot, have no existing dwelling and 1 DUR. The resulting 3.0000 acres, Lot 1, have no existing dwelling and 1 DUR.
 - (3) Zoned: AOC (agricultural - open space - conservation); use: residential/agricultural.
 - (4) Building setbacks as follows:
Lot 1: 100' from the centerline of Route no. 723 (State Scenic Byway), 25' from from all property lines, 50' from any intermittent stream, 100' from any perennial stream, spring or sinkhole.
Residue Lot: 150' from the centerline of Routes no. 723 (State Scenic Byway), 75' from the edge of the private access easement, 75' from from all property lines, 50' from any intermittent stream, 100' from any perennial stream, spring or sinkhole.
 - (5) These parcels are in the AOC (agricultural - open space - conservation) Zoning District. Agriculture is the primary economic activity of this zoning district. Owners, residents, other users of property in the AOC District may be subjected to inconvenience, discomfort and the possibility of injury to property and health arising from agricultural operations even though conducted with best management practices and/or in accordance with existing laws and regulations of the Commonwealth and County. Such agricultural operations may generate noise, odors and dust, may involve the operation of machinery, including aircraft, the storage and disposal of manure, the application of fertilizer, soil amendments and pesticides. Owners, occupants and users of land in the Aoc District should be prepared to accept such inconvenience or discomfort as a normal and necessary aspect of living in a zoning district in a county with a strong rural character and an active agricultural sector.
 - (6) i.r.s. = iron rod set; i.r.f. = iron rod found; i.p.f. = iron pipe found; dwl = dwelling; DUR = dwelling unit right; esmt = easement; d/field = drainfield; b.r.l. = building restriction line; v.b. = vegetated buffer
 - (7) Vegetated property buffer except for those land uses listed as exempt, existing woody vegetation within 25' of all property lines shall be retained on parcels of less than 20 acres, as per Section 3-A-1-f of the Clarke County Zoning Ordinance.
 - (8) Before fertilizers and pesticides are used for lawn or landscaping purposes, a soil test should be conducted. The application of such chemicals shall be limited due to the potential for groundwater contamination and should not exceed that determined necessary by the soil test.
 - (9) The drainfield tests have been approved for 4 bedroom conventional systems with a maximum capacity of 8 people and 600 gpd.
 - (10) A Resistivity tests have been conducted on these drainfield sites. Results of this test are available at the office of the Clarke County Planning Department.



Approval:

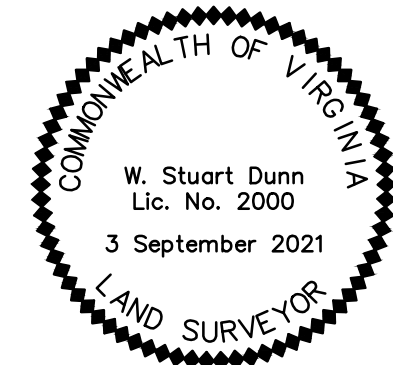
Clarke County Zoning Administrator _____ date: _____

Chairman of Planning Commission _____ date: _____

Clarke County Health Department _____ date: _____

Area Table:

30.9683 acres	area of TM 30-A-30B	no exist dwl, 2 DUR
3.0000 acres	area of Lot 1	no exist dwl, 1 DUR
27.9683 acres	area of Residue Lot	no exist dwl, 1 DUR
0.0000 acres	area dedicated for public use	



Minor Subdivision of the Land of
Jay D. Cecca and Linda Lee Cecca
Deed Book 615, Page 90 Tax Map 30-A-30B
Greenway Magisterial District, Clarke County, Virginia

Dunn Land Surveys, Inc.
106 North Church Street
Berryville, Virginia 22611
Tel: 540-955-3388
September 3, 2021

survey no. 233_F

MINOR SUBDIVISION (MS-21-04)

November 5, 2021 Planning Commission Meeting
STAFF REPORT -- Department of Planning

The purpose of this staff report is to provide information to the Planning Commission to assist them in reviewing this proposed minor subdivision. It may be useful to members of the general public interested in this proposed subdivision.

CASE SUMMARY:

Applicant(s)

John U. Miller, Jr. & John U. Miller, III

Location:

- Tax Map Parcel #24-A-24
- Lockes Mill Road (Route 621)
- Buckmarsh Election District (Commissioners Scott Kreider and Douglas Kruhm)
- Agricultural Open Space-Conservation (AOC) Zoning District

Request:

The applicant requests approval for a three-lot Minor Subdivision.¹

Original Lot:

268.2466 (3 Dwl, 1 Exemption, 5 DURs)

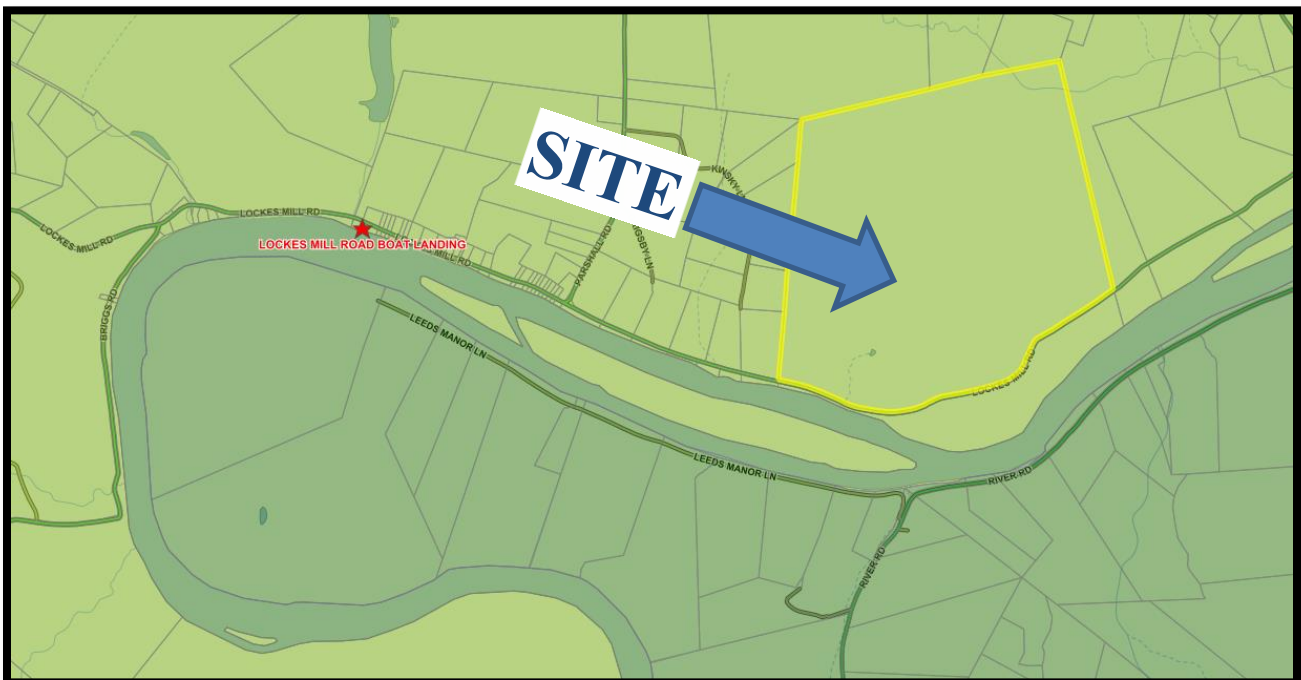
Proposed Lots:

2.8918 – Lot 1 (1 Dwl, 0 DUR)

3.0122 – Lot 2 (1 Dwl, 0 DUR)

262.3 acres – Residue (1 Dwl, 1 Exemption, 5 DUR)

268.2466 acres -- Total Area

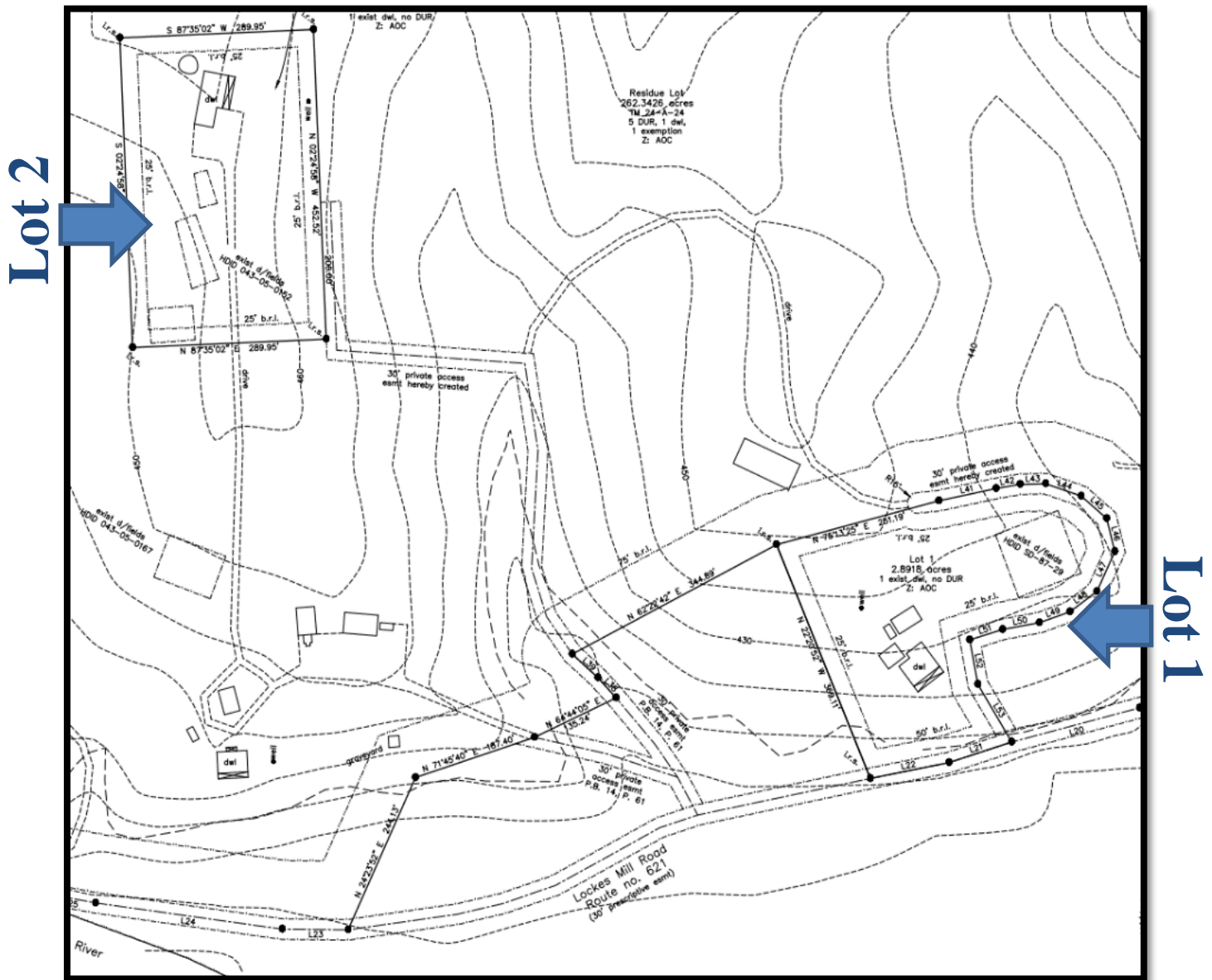


¹ Pursuant to 3.2.1 of the Clarke County Subdivision Ordinance, Minor Subdivisions include divisions of 2 lots, or divisions of 3 lots where the residual lot is 100 acres or more.

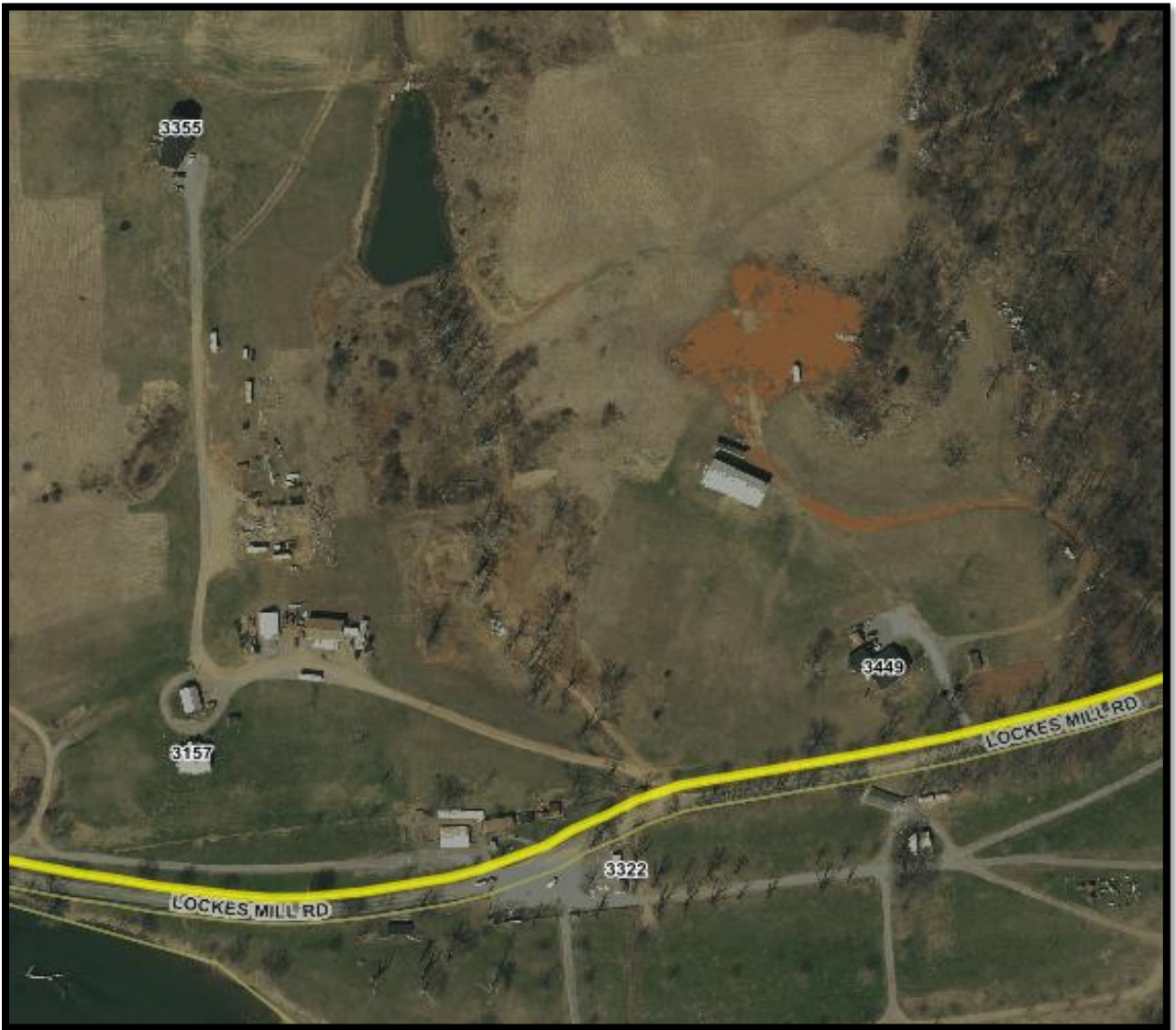
Staff Discussion/Analysis:

Access:

The subject property consists of approximately 268 acres along Lockes Mill Road (Route 621). This property includes 4 existing dwellings (3 DWL, 1 Exemption). The same owners own the adjoining lot adjacent to the river where Watermelon Park Campground is located. The campground lot is not impacted by this subdivision. Lot 1 and Lot 2 are proposed around existing houses and 30' access easements are proposed along existing driveways to access these lots and the residual lot. VDOT did not report any comments on the application.



Proposed Minor Subdivision Lot Layout



Aerial of Property

Water and Sewage Disposal:

The two new lots have no remaining development rights and are not proposing any changes to the water or sewer disposal system. The existing drainfields are shown on the plats but it does not specify the location of the required 100% reserve area.

Karst Plan / Resistivity Test:

Resistivity testing was not required because the two new lots will not have new dwellings based on this application. The existing drainfields are shown on the plats for these lots and the residual lot.

Other:

No known sinkholes are known to exist on the property. A small intermitted stream is located on the western portion of the residue lot. The Shenandoah River is located to the south and is adjacent to certain portions of the residual lot. The floodplain is located on small portions of the residue lot adjacent to the Shenandoah River.

The existing dwelling with the address of 3157 Lockes Mill Road is categorized as a historic structure by Clarke County records.

No DURs are being used from the original parcel because the new lots are only being created around existing houses and no DURs are being transferred.

Recommendation:

Staff recommends deferral of this application until the applicant demonstrates that the two residential lots have the required 100% reserve area.

History:

October 1, 2021	Application Submitted, scheduled for November 5, 2021 PC Meeting.
October 6, 2021	Submission to review agencies (VDH and VDOT)
October 12, 2021	Comments received from VDH. No issues.
November 3, 2021	Planning Commission Work Session.
November 5, 2021	Planning Commission Meeting – Set Public Hearing

CLARKE COUNTY
LAND DEVELOPMENT APPLICATION



Applicant JOHN U MILLER JR
 Applicant's Address 3322 LOCKER MILL RD
BERRYVILLE VA 22611
 City State Zip Code
 Applicant's E-Mail Address J.MILLER@40700VIRGO.COM
 Agent (Contact Person) STUART JENN Phone _____
 Agent's Company JENN LAND SURVEYS
 Agent's Address 106 N CHURCH ST
 Current Property Owner JOHN U MILLER JR
 Owner's Address SAME Phone _____
 Correspondence to be sent to: Applicant Owner Agent Other
 Tax Map Parcel Number 24-A-2A Magisterial District BATTLE TOWN
 General Project Location SE OF BERRYVILLE Site size (gross/net acreage) 268.2460

Check Appropriate Request:

PLANNING COMMISSION

- Major Subdivision
- Minor Subdivision (1 or 2 lots)
- Administrative Subdivision (parcels > 100 acres)
- Boundary Line Adjustment
- Site Plan
- Site Plan Amendment
- Erosion & Sediment Plan
- Storm Water Plan
- Maximum Lot Size Exception

PLANNING COMMISSION & BOARD of SUPERVISORS

- Rezoning
- Special Use Permit
- Comprehensive Plan Amendment
- Zoning Ordinance Text Amendment
- Subdivision Ordinance Text Amendment
- Other

BOARD OF ZONING APPEALS

- Administrative Appeal
- Variance
- Special Exception

BOARD OF SEPTIC & WELL APPEALS

- Administrative Appeal
- Variance

BERRYVILLE AREA DEVELOPMENT AUTHORITY

- Site Plan
- Site Plan Amendment

HISTORIC PRESERVATION COMMISSION

- Certificate of Appropriateness

Complete as applicable:

Name of Subdivision, Development, or Proposal _____
 Proposal/Request APPROVAL OF MINOR SUBDIVISION
 Existing Zoning AOC Proposed Zoning AOC # of Proposed Lots _____

Applicant: The information provided is accurate to the best of my knowledge. I acknowledge that any percolation tests, topographic studies, or other requirements of the Health Official or Zoning Administrator will be carried out at my expense. I understand that the County may deny, approve, or conditionally approve that for which I am applying. I certify that all property corners have been clearly staked and flagged. Applicant's Signature John U Miller Date 10/1/21

Owner: I have read this completed application, understand its intent, and freely consent to its filing. If this application is for the purpose of subdivision, I understand that further subdivision of this property will not be permitted within twelve (12) months of approval of this action, unless an Exploratory Sketch Plan is submitted with this application. Furthermore, I grant permission to the Planning Department and other authorized government agents to enter the property and make such investigations and test as they deem necessary. Owner's Signature John U Miller Date 10/1/21

101 Chalmers Court
Berryville, VA 22611

www.clarkecounty.gov

(540) 955-5132
Fax (540) 955-5180

Zimbra**jcamp@clarkecounty.gov**

Re: MS-21-04 / Tax Map 24-A-24 / (Lockes Mill Road) Rt 621 - Request for Review Comments

From : Davis, Walter <jim.davis@vdh.virginia.gov> Tue, Oct 12, 2021 02:45 PM
Subject : Re: MS-21-04 / Tax Map 24-A-24 / (Lockes Mill Road) Rt 621 - Request for Review Comments
To : Jeremy Camp <jcamp@clarkecounty.gov>

Got it. It looks good to me.

Thanks

Jim Davis, REHS, MAOSE

Environmental Health Supervisor

Clarke, Frederick/Winchester & Warren Offices

jim.davis@vdh.virginia.gov

On Wed, Oct 6, 2021 at 1:41 PM Jeremy Camp <jcamp@clarkecounty.gov> wrote:
sure. I'll send over one set.

From: "Walter Davis" <jim.davis@vdh.virginia.gov>
To: "Jeremy Camp" <jcamp@clarkecounty.gov>
Sent: Wednesday, October 6, 2021 1:33:12 PM
Subject: Re: MS-21-04 / Tax Map 24-A-24 / (Lockes Mill Road) Rt 621 - Request for Review Comments

Can you send paper copies to the office? I can't print large sheets to a suitable scale.

Thanks

Jim Davis, REHS, MAOSE

Environmental Health Supervisor

Clarke, Frederick/Winchester & Warren Offices
November 9, 2021 Planning Commission Business Meeting Packet

Page 49 of 56

jim.davis@vdh.virginia.gov

On Wed, Oct 6, 2021 at 9:23 AM Jeremy Camp <jcamp@clarkecounty.gov> wrote:

Hello Gentleman,

Attached is an application for a minor subdivision of the property commonly referred to as watermelon park, owned by the Miller family.

Please review and provide comment for consideration by the Planning Commission.

Thank you

Jeremy F. Camp, Senior Planner / Zoning Administrator
Department of Planning
Clarke County, VA

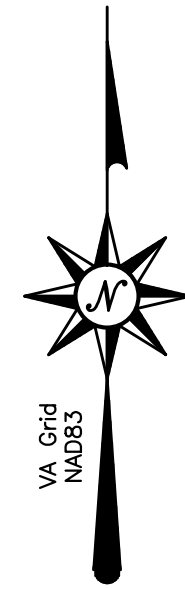
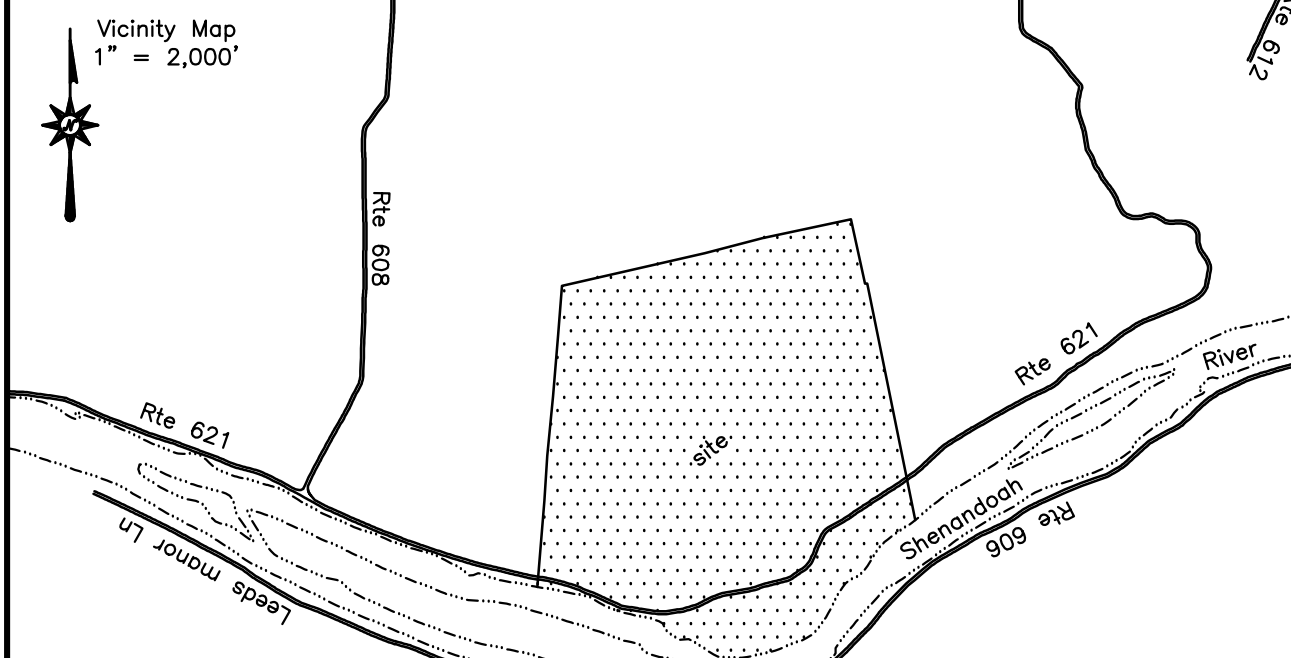
101 Chalmers Court, Suite B
Berryville, VA 22611
540-955-5131

--

Jeremy F. Camp, Senior Planner / Zoning Administrator
Department of Planning
Clarke County, VA

101 Chalmers Court, Suite B
Berryville, VA 22611
540-955-5131

400' 0 400' 800'
scale in feet



Surveyor's Certificate: I, W. Stuart Dunn, a duly Licensed Land Surveyor, do hereby certify that the lands herein subdivided is in the name of John U. Miller, Jr and John U. Miller, III (Life Estate), and was acquired by them as stated in the Owners' Certificate. I further certify that these parcels are properly and accurately described and are within the boundaries of the original tracts and are referenced to Virginia Grid North Zone, NAD83. I further certify that the monuments designated hereon have been set in accordance with the Subdivision Ordinance of Clarke County, Virginia.

W. Stuart Dunn, CLS #2000
Berryville, Virginia

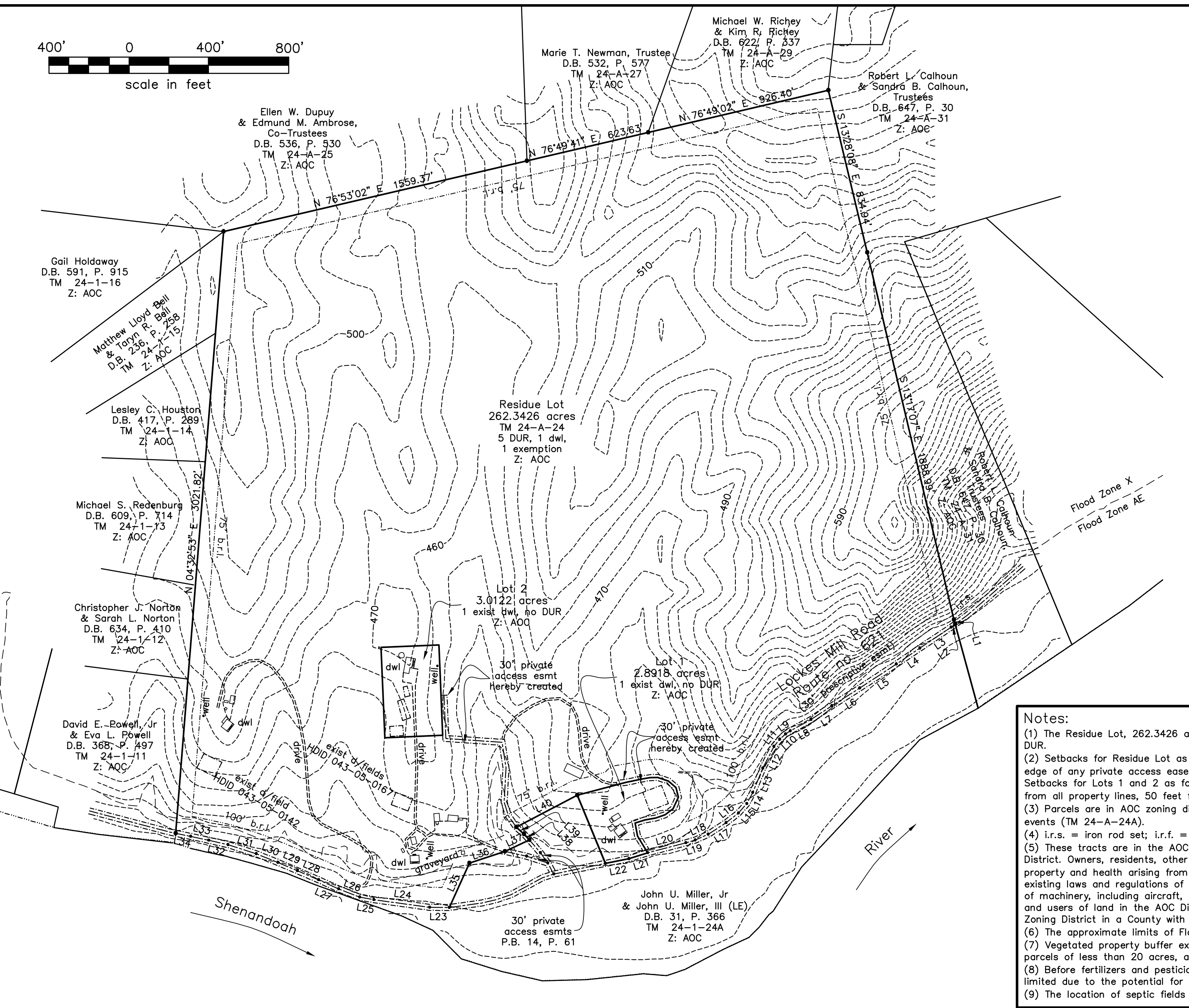
Owners' Certificate: The undersigned fee simple owners hereby certify that the foregoing Minor Subdivision of 268.2466 acres, Tax Map 24-A-24, recorded in the name of John U. Miller, Jr and John U. Miller, III (Life Estate) in deeds recorded as Will Book 54, Page 194, Deed Book 31, Page 366, and Plat Book 14, Page 61, of record in the Clerk's Office of the Circuit Court of Clarke County, Virginia, is made with the free consent and in accordance with the desires of the undersigned owners of said land and the same is hereby confirmed and submitted for record in the aforesaid Clerk's Office.

John U. Miller, Jr John U. Miller, III (Life Estate)
3322 Lockes Mill Road, Berryville, VA 22611

State of Virginia, County of Clarke, to wit:
I, _____, a Notary Public for said County of Clarke, do hereby certify that John U. Miller, Jr and John U. Miller, III, whose names are signed in the Owners' Certificate, have acknowledged the same before me.

My commission expires:
Notary Public:
Given under my hand this _____ day of _____, 2021.

- Notes:
- (1) The Residue Lot, 262.3426 acres, TM 24-A-24, has 3 existing dwellings, 1 exemption and 5 DUR. Lots 1 and 2 each have one existing dwelling and no DUR.
 - (2) Setbacks for Residue Lot as follows: 100 feet from the center of Lockes Mill Road, Route no. 621, 50 feet from all property lines, 75 feet from the edge of any private access easement, 50 feet from any intermittent stream, 100 feet from any perennial stream, spring and/or sinkhole. Setbacks for Lots 1 and 2 as follows: 50 feet from the center of Lockes Mill Road, Route no. 621, 25 feet from any private access easement, 25 feet from all property lines, 50 feet from any intermittent stream, 100 feet from any perennial stream, spring and/or sinkhole.
 - (3) Parcels are in AOC zoning district (agricultural - open space - conservation); use is agricultural/residential (TM 24-A-24) and campsite and special events (TM 24-A-24A).
 - (4) i.r.s. = iron rod set; i.r.f. = iron rod found; i.p.f. = iron pipe found; dwl = dwelling; DUR = dwelling unit right; esmt = easement; d/field = drain field
 - (5) These tracts are in the AOC (agricultural - open space - conservation) zoning district. Agriculture is the primary economic activity of this Zoning District. Owners, residents, other users of property in the AOC district may be subjected to inconvenience, discomfort and the possibility of injury to property and health arising from agricultural operations even though conducted in accordance with best management practices and/or in accordance with existing laws and regulations of the Commonwealth and County. Such agricultural operations may generate noise, odors and dust, may involve the operation of machinery, including aircraft, the storage and disposal of manure and the application of fertilizer, soil amendments and pesticides. Owners, occupants and users of land in the AOC District should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in a Zoning District in a County with a strong rural character and an active agricultural sector.
 - (6) The approximate limits of Flood Zones AE and X were established from FIRM Community Panel no. 51043C0152D, effective September 28, 2007.
 - (7) Vegetated property buffer except for those land uses listed as exempt, existing woody vegetation within 25' of all property lines shall be retained on parcels of less than 20 acres, as per Section 3-A-1-f of the Clarke County Zoning Ordinance.
 - (8) Before fertilizers and pesticides are used for lawn or landscaping purposes, a soil test should be conducted. The application of such chemicals shall be limited due to the potential for groundwater contamination and should not exceed that determined necessary by the soil test.
 - (9) The location of septic fields was established from both data available at Clarke County Health Department and information provided by owners.



Area Table:		
268.2466 acres	area of TM 24-A-24	(3 exist dwl, 1 exemption, 5 DUR)
2.8918 acres	area of Lot 1	(1 exist dwl, no DUR)
3.0122 acres	area of Lot 2	(1 exist dwl, no DUR)
262.3426 acres	area of Residue Lot of TM 24-A-24A	(1 exist dwl, 1 exemption, 5 DUR)

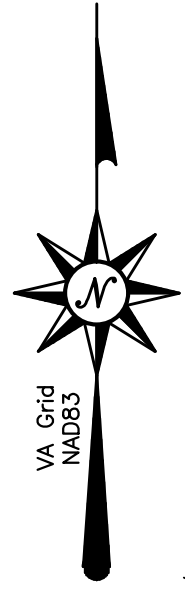
Approval:

Clarke County Zoning Administrator	date:
Clarke County Health Department	date:
Chair of Board of Supervisors	date:

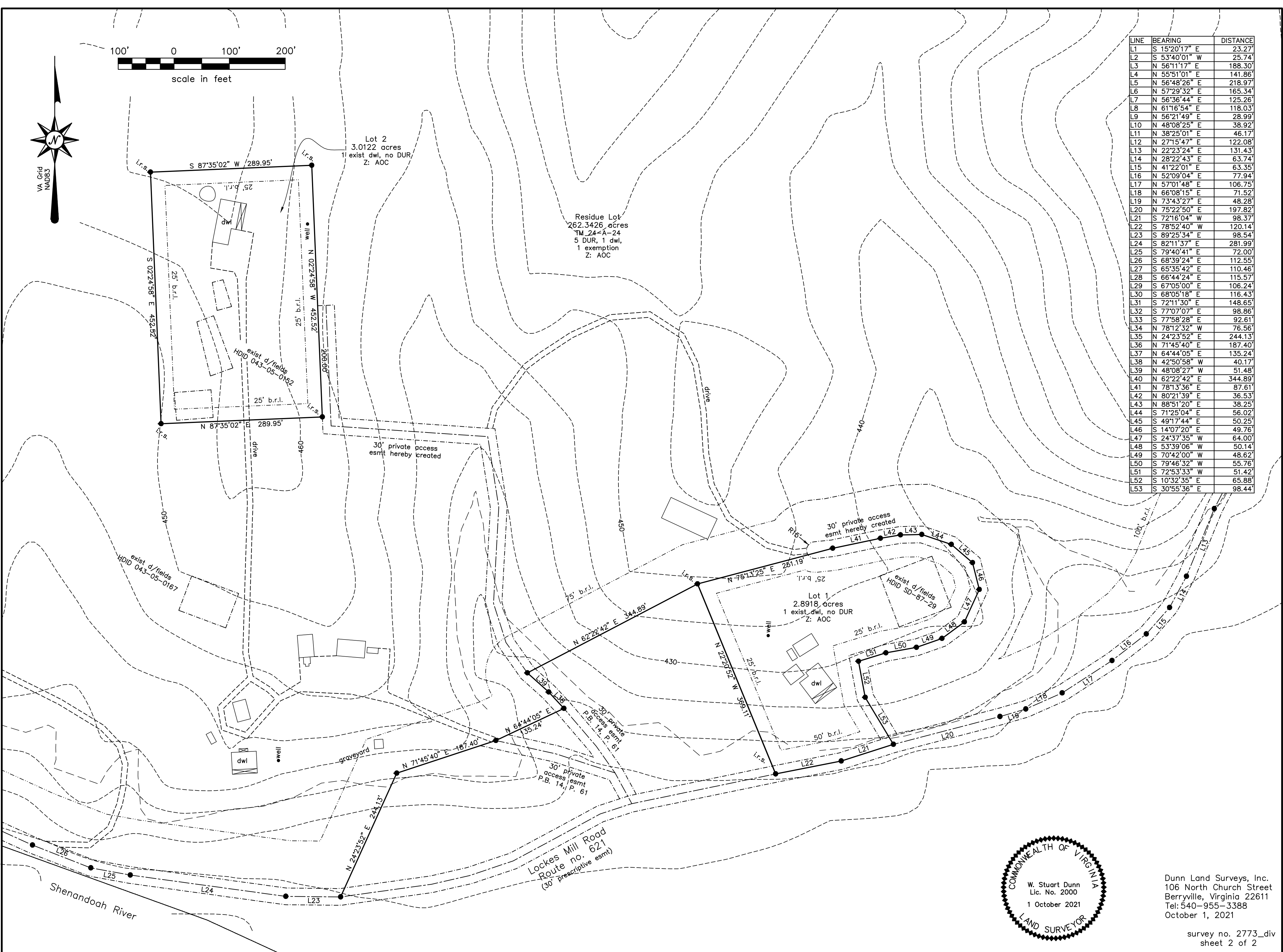
Minor Subdivision of the Land of
John U. Miller, Jr
and **John U. Miller, III** (Life Estate)
Deed Book 31, Page 366 Will Book 54, Page 194
Plat Book 14, Page 61
Tax Map 24-A-24
Battletown Magisterial District, Clarke County, Virginia

Dunn Land Surveys, Inc.
106 North Church Street
Berryville, Virginia 22611
Tel: 540-955-3388
October 1, 2021

survey no. 2773_div
sheet 1 of 2



LINE	BEARING	DISTANCE
L1	S 15°20'17" E	23.27'
L2	S 53°40'01" W	25.74'
L3	N 56°11'17" E	188.30'
L4	N 55°51'01" E	141.86'
L5	N 56°48'26" E	218.97'
L6	N 57°29'32" E	165.34'
L7	N 56°36'44" E	125.26'
L8	N 61°16'54" E	118.03'
L9	N 56°21'49" E	28.99'
L10	N 48°08'25" E	38.92'
L11	N 38°25'01" E	46.17'
L12	N 27°15'47" E	122.08'
L13	N 22°33'24" E	131.43'
L14	N 28°22'43" E	63.74'
L15	N 41°22'01" E	63.35'
L16	N 52°09'04" E	77.94'
L17	N 57°01'48" E	106.75'
L18	N 66°08'15" E	71.52'
L19	N 73°43'27" E	48.28'
L20	N 75°22'50" E	197.82'
L21	S 72°16'04" W	98.37'
L22	S 78°52'40" W	120.14'
L23	S 89°25'34" E	98.54'
L24	S 82°11'37" E	281.99'
L25	S 79°40'41" E	72.00'
L26	S 68°39'24" E	112.55'
L27	S 65°35'42" E	110.46'
L28	S 66°44'24" E	115.57'
L29	S 67°05'00" E	106.24'
L30	S 68°05'18" E	116.43'
L31	S 72°11'30" E	148.65'
L32	S 77°07'07" E	98.86'
L33	S 77°58'28" E	92.61'
L34	N 78°12'32" W	76.56'
L35	N 24°23'52" E	244.13'
L36	N 71°45'40" E	187.40'
L37	N 64°44'05" E	135.24'
L38	N 42°50'58" W	40.17'
L39	N 48°08'27" W	51.48'
L40	N 62°22'42" E	344.89'
L41	N 78°13'36" E	87.61'
L42	N 80°21'39" E	36.53'
L43	N 88°51'20" E	38.25'
L44	S 71°25'04" E	56.02'
L45	S 49°17'44" E	50.25'
L46	S 14°07'20" E	49.76'
L47	S 24°37'35" W	64.00'
L48	S 53°39'06" W	50.14'
L49	S 70°42'00" W	48.62'
L50	S 79°46'32" W	55.76'
L51	S 72°53'33" W	51.42'
L52	S 10°32'35" E	65.88'
L53	S 30°55'36" E	98.44'



Dunn Land Surveys, Inc.
 106 North Church Street
 Berryville, Virginia 22611
 Tel: 540-955-3388
 October 1, 2021

survey no. 2773_div
 sheet 2 of 2



Clarke County Planning Department
101 Chalmers Court, Suite B
Berryville, Virginia 22611
(540) 955-5132

TO: Planning Commission

FROM: Jeremy F. Camp, Senior Planner / Zoning Administrator

SUBJECT: Agricultural & Forestal District (AFD) 6-Year Review

DATE: October 28, 2021

The Clarke County Agricultural & Forestal District (AFD) is a voluntary program authorized by state and local law that promotes agriculture. Property owners that apply and qualify for membership to the program receive certain benefits and restrictions during the district term. The district term in Clarke County is 6 years. Additional information about the AFD is provided in the attached information flyer.

In accordance with certain procedural requirements, the AFD can be continued for an additional 6 years if authorized by the Board of Supervisors prior to the expiration of the district. As part of the renewal process, the district is reviewed by the Agricultural & Forestal District Advisory Committee and the Planning Commission. During this renewal process, property owners may elect to withdraw from the district, or may apply to be added to the district.

On October 27, 2021, the Clarke County Agricultural & Forestal District Advisory Committee approved a motion to recommend renewal of Clarke County Agricultural and Forestal District for a period of 6 years with no changes except for the removal of the parcels referenced below. These parcels were requested by the property owners for removal.

- 27-A-18 Knowles Partnership LC
- 27-A-6 L Seven Farm, LC
- 27-A-7 “
- 27-A-8 “
- 27-A-8B “
- 27-A-8C “
- 13-A-70 Westwood Farm, Incorporated
- 13-A-58 “
- 13-3-1 “
- 13-3-3 “
- 7-A-122 JC Hardesty Family, LLC
- 7-A-129B “

During the advisory committee’s review there were three meetings held. Notices were sent to property owners within the AFD, as well as property owners that were in the land use tax program.

Pursuant to Chapter 48 of the Code of Clarke County, and Chapter 43 of the Code of Virginia, and in addition to the advisory committee, the Planning Commission has the responsibility of reviewing the Agricultural & Forestal District (AFD) during the 6-year review process. Staff will provide a presentation of the AFD during the November Planning Commission meeting to begin the review process. Concluding the Planning Commission's review of the AFD, a recommendation for termination, modification or continuation can be provided to the Board of Supervisors.

Staff recommends that the Planning Commission schedule a public hearing for December for the 6-year review of the AFD.

Attachment: Information Flyer on the Clarke County Agricultural & Forestal District

CLARKE COUNTY

Agricultural and Forestal District (AFD) Program Information Flyer



WHAT IS THE AFD?

The Agricultural and Forestal District (AFD) is a voluntary program that places benefits and restrictions on land. The intent of the AFD is to protect the rural character of the community by preserving agricultural, forestal, and open space land and by providing safeguards against the adoption of local ordinances that unreasonably restrict farm structures, farming, or forestry practices unless the restrictions are directly related to health, safety, and welfare. The District was established in 1980 for a six-year term that has been renewed several times, most recently in 2016. The County is currently undergoing a renewal review of the District and is inviting landowners to apply to add new land to the District. County landowners to date have enrolled approximately 37,051 acres in the AFD program.

The AFD program provides certain benefits to landowners including automatic qualification for the Land Use Assessment Program. For landowners already in Land Use, participation in the AFD program ensures that land use valuation will continue for the District term even if the Land Use Assessment Program is discontinued. District membership also offers special protections against eminent domain actions. Acquisition of land for power lines, roadways, and other infrastructure within a District is subject to a special public review process. Also, the expenditure of public funds for non-farm related purposes in a District is subject to a special review process.

FREQUENTLY ASKED QUESTIONS

Who can join the Agricultural and Forestal District? Any landowner in the Agricultural Open Space Conservation (AOC) Zoning District (most properties west of the Shenandoah River) who has either 5 acres of unimproved land or 6 acres of land that contains a dwelling and any landowner in the Forestal Open Space Conservation (FOC) Zoning District (most properties east of the Shenandoah River) who has either 20 acres of unimproved land or 21 acres of land that contains a dwelling.

How do you apply for inclusion into the District? Contact the Clarke County Planning Department and ask to be included. There is a simple application form to fill out and the County will do the rest. Property owners wishing to include their land in the District may do so at the time of renewing the District or annually. Although the State allows localities to charge an application fee, Clarke County has chosen not to charge a fee.

Do you have to include all of my properties? No, however it is important to provide detailed property information on the application form to ensure that the properties desired to be included are accurately noted.

Is acceptance into the District automatic? No. Each application must be reviewed by County Staff, the AFD Advisory Committee, Planning Commission, and Board of Supervisors for compliance with program requirements. Both the Planning Commission and Board of Supervisors are required by State law to hold public hearings on all new applications. This process can take approximately 4-5 months to complete.

CLARKE COUNTY

Agricultural and Forestal District (AFD) Program

Information Flyer



What do I have to do if I want my property to remain in the District? Those who are already in the District and wish to remain in the District are not required to take any action.

Suppose I want to withdraw my property from the District? During the District review process, current District landowners may withdraw their properties at their discretion by providing written notice to the County. However, during the District term there are limited options for requesting land to be withdrawn. This includes death of the property owner or financial hardship approaching confiscation.

Are there restrictions placed on land in an Agricultural and Forestal District? Yes. Although a property owner can continue to use the land as they always have and can sell it at any time during their inclusion in the district, the property owner agrees not to do more than a one lot subdivision or to reduce the area of their property by boundary line adjustment during the District term. There are also limitations on certain special uses that may be applied for that would conflict with the character and purpose of the District. It is recommended that potential applicants discuss these restrictions with County Staff to determine whether they may conflict with the applicant's future plans for the properties.

Do I have to be in an AFD in order to farm my land, have livestock, etc? No. The Zoning Ordinance governs the uses of your property. Enrollment in an Agricultural and Forestal District provides some additional right-to-farm protections beyond what the Zoning may allow.

If I sell my property do I need to inform the new owner about the AFD? Yes. Agricultural and Forestal Districts run with the land. Selling or transferring ownership does not remove this encumbrance. It is very important that the new owner understand they are bound to the same restrictions and will receive the same benefits of all property in the District. Many new buyers think they can create a subdivision and then learn they cannot due to restrictions imposed by inclusion in the District. They may incur expensive subdivision costs with no chance of completing the division until the District term expires.

Does being in the District automatically reduce my taxes? No. Clarke County has a Land Use Assessment Program (LUAP) that provides for the deferral of real estate taxes on properties that qualify for agricultural, horticultural, forestry, or open space uses. Any status change to a parcel enrolled in the LUAP is subject to rollback taxes, penalties, and interest. Contact Commissioner of the Revenue's office at 540-955-5108 for further information on the Land Use Program.

Am I required to be in an AFD to qualify for the Land Use Assessment Program? No. The Land Use Assessment Program is a separate program from the Agricultural and Forestal District Program. A landowner must apply for the Land Use Assessment Program and must meet certain qualifying criteria that can be explained by the Office of the Commissioner of Revenue at 540-955-5108.

For more information contact:

Jeremy Camp, Senior Planner/Zoning Administrator / 540-955-5132 / jcamp@clarkecounty.gov
Clarke County Department of Planning - 101 Chalmers Court, Suite B, Berryville, VA 22611