

**CLARKE COUNTY PLANNING COMMISSION
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Clarke County Planning Commission

AGENDA – Ordinances Committee Meeting

Friday, May 6, 2022 – 9:30AM or immediately following Planning Commission Business Meeting

Berryville/Clarke County Government Center – Main Meeting Room

- 1. Approval of Agenda**
- 2. Approval of Minutes – July 10, 2020 Meeting**
- 3. Discussion Topics**
 - A. Proposed Changes to Historic Overlay (H) District Review Criteria
 - B. Waterworks and Sewerage System and Treatment Works Regulations – Zoning Ordinance Section 7.4.5
- 4. Old Business**
- 5. Adjourn**



Clarke County Planning Commission

DRAFT MINUTES – Ordinances Committee Meeting

Friday, July 10, 2020 – 9:30AM or immediately following Planning Commission Business Meeting

Berryville/Clarke County Government Center – Main Meeting Room

ATTENDANCE:			
Randy Buckley (White Post)	✓	Frank Lee (Berryville)	✓
Anne Caldwell (Millwood)	✓	Gwendolyn Malone (Berryville)	X
George L. Ohrstrom, II (Ex Officio)	✓		

E – Denotes Electronic Participation

STAFF PRESENT: Brandon Stidham (Director of Planning), Ryan Fincham (Senior Planner/Zoning Administrator)

CALL TO ORDER: By Mr. Stidham at 10:50AM.

1. Approval of Agenda

The meeting agenda was approved by consensus as presented.

2. Approval of Minutes – August 19, 2019 Meeting

A motion to approve the October 4, 2019 meeting minutes was adopted 3-0-1.

Motion to approve October 4, 2020 Meeting Minutes:			
Buckley	AYE	Lee	AYE (moved)
Caldwell	AYE (seconded)	Malone	absent

Discussion Items

3a. Commercial Boarding Kennels, Commercial Breeding Kennels, and Veterinary Clinics – Use Regulations as Applied in the Highway Commercial (CH) Zoning District

Mr. Stidham presented a Staff Report on this item (memorandum dated July 1, 2020).

Regarding the setback requirements, Chair Ohrstrom stated that you are not going to find many properties in the CH District where you can have a 500 foot setback. He added that the Clarke County Animal Shelter ran into a huge problem dealing with the 200 foot setback that required the building layout to be changed. Mr. Stidham noted that there are no other regulations for CH District uses that require a more restrictive setback or hours of operation. He also noted that single-family dwellings are not an allowable use in the CH District making the requirement that a kennel or veterinary clinic be accessory to a single-family dwelling difficult to apply. Chair Ohrstrom asked whether this would mean that kennels would not be allowed in the CH District. Mr. Stidham replied no and that instead we would need to determine whether one or more of the use regulations would not apply to these uses when in the CH District. Chair Ohrstrom added that the CH District may be a good place to locate a kennel as you typically would have good

access and water and sewer availability. He also said that you would not want to make it an unacceptable use in this zoning district. Commissioner Lee said that he agreed and asked who would be able to fit the use regulations. Vice-Chair Buckley said that a business park setting would be better for these uses than in a strip commercial setting. He added that there could potentially be residential uses near a CH-zoned lot that could be impacted.

Mr. Stidham said that the use regulations would apply to commercial breeding kennels although he did not think someone would want to establish a breeding kennel in the CH District. He also said that use regulation #1 would apply to veterinary clinics. Chair Ohrstrom said that the CH District is also a good place for veterinary clinics. Mr. Stidham asked if there is a general consensus that these use regulations should not be applied to the uses if located in the CH District. Commissioner Caldwell agreed and said that the regulations seem inappropriate to apply in the CH District. Commissioner Lee replied that they are totally restrictive. Mr. Stidham noted that he would make the recommended changes to the Ordinance draft.

3b. Setback Distance for Wireless Communication Facilities

Mr. Stidham stated that the Staff Report on this item (memorandum dated July 1, 2020) suggests modifying the setback for wireless communication facilities (WCFs) by making it the engineered fall zone for the WCF plus an additional 10%. Commissioner Caldwell said that an alternative approach as suggested by Chair Ohrstrom in the past would be to make the setback equal to the height of the tower instead of the engineered fall zone. Chair Ohrstrom agreed but noted that towers are now designed to collapse inward. Vice-Chair Buckley said that if a 100 foot tower has a fall zone of 20 feet, the WCF can be constructed within 20 feet of a property line which is problematic for him. Chair Ohrstrom said that he still thinks the setback should be equal to the WCF height and the 10% add on is a good idea too because tower owners can increase the tower height by 10% after it is built.

Mr. Stidham asked if the fall zone setback were removed, would there be a reason to require a fall zone certification from applicants. Commissioner Caldwell said that she did not think so. Chair Ohrstrom asked if they replaced the fall zone setback with a setback equal to the tower height plus 10%, would this be legally defensible. Mr. Stidham replied that a lot of counties use this method instead of the fall zone method. He added that this would limit where you can locate a tower. He also said that you can have a narrow lot that would be an ideal location for a tower but they cannot meet side setback requirement. Commissioner Lee asked if an applicant could apply for a variance in this situation, and Chair Ohrstrom commented that you would be taking the teeth out of the ordinance if you granted variances. Mr. Stidham replied that he did not think so because the height of the tower almost goes to the nature of the use. Regarding Vice-Chair Buckley's earlier comment, Mr. Stidham commented that he did not think it was realistic to have a 100 foot tower with a 20 foot fall zone but you could have a fall zone that is 50% of the tower height as was proposed in the recent special use application on Mt. Carmel Road.

Commissioner Caldwell said that if you are placing a tower 110 feet from a property line in AOC and FOC zoned areas, it would be a pretty big visual impact. Vice-Chair Buckley added that a tower that close to the property line would be looming over the adjoining property. Mr. Stidham asked the members what the policy issue is that we are attempting to address, adding that the

staff recommendation assumes the policy issue is safety in ensuring that a tower would collapse within the property lines. He also said that if visual impacts are a concern then this is a different policy issue. Commissioner Lee said that if you have a house on an adjacent property, it is a greater liability than if the adjacent property is vacant. Vice-Chair Buckley said that he is concerned with towers on narrow lots and gave the example of lots along Old Chapel Avenue, noting that there are already some towers there. He added that he does not have a problem with towers located on 100-acre lots. Mr. Stidham gave an example from his previous employment of a tower proposed to be located on a narrow lot on which side setbacks could not be met but where the engineered fall zone ensured that the tower would collapse within the property lines. He added that the push back will be centered on whether the locality accepts a fall zone certified by a structural engineer. He also noted that if the setback requirement is in place for safety reasons, then you cannot really rebut an engineer's fall zone certification. He further stated that if the policy issue is reducing visual impact, he did not think that the additional setback requirement would gain you any mitigated visual impact given the size of a typical tower base and compound. He noted that a greater concern is whether the increased setback requirement would interfere with people being able to get broadband access. Commissioner Caldwell noted that we have not been overwhelmed with applications for taller towers and that the future push for broadband may be for something that does not require towers such as electric lines.

Mr. Stidham noted that the setback distance from structures is also the engineered fall zone of the tower. Commissioner Caldwell said that this was the basis of the Board of Zoning Appeals variance case on the most recent tower application on Mt. Carmel Road. Vice-Chair Buckley asked for clarification on the current setback from structures. Mr. Fincham replied that the setback for structures on the same lot as the tower is the engineered fall zone. Mr. Stidham added that there is currently no additional setback for structures on adjacent properties because the fall zone setback would ensure that the tower does not collapse across the property line. He also said that 10% on top of the fall zone setback would provide a buffer. Commissioner Lee said in his experience the State typically will not oppose plans that have been stamped by a professional engineer. He added that this places the onus on the engineer for accuracy.

Commissioner Caldwell suggested a property line setback of the tower height plus 10% and a fall zone setback from all other structures on the property. Mr. Stidham replied that the fall zone is the current setback for existing structures on the same property as the tower. He also stated that if we are proposing to add 10% to the existing fall zone setback for safety purposes, then this is something we can include in the draft Zoning Ordinance. He then said if the goal is to reduce visual impact rather than improve safety, this is a bigger picture question that needs to be discussed on a larger scale. He added that he did not think that making the setback equal to the tower height plus 10% will provide the desired reduction in visual impact. He explained that the maximum allowable height of any tower is 199 feet and if the fall zone is approximately 50%, then you are getting an approximately 90 foot setback. He said that with the tower height you would be doubling that setback distance but asked whether you would be getting the reduction in visual impact that you want. Chair Ohrstrom replied that with an additional 100 feet of setback area you may not be getting a reduction in visual impact. Mr. Stidham said that we still have our landscaping requirements for the base of towers. He added that if these rules are insufficient, then we need to have a larger discussion regarding where towers may be located, how they should be screened, and whether to require a much greater distance from property lines. He also

said that if we go in this direction, it would be like the previous approach of requiring towers to be located in a grove of trees so you cannot see them at all. He noted that people in the past who may have been opposed to new towers may no longer have that opposition because they want better internet access. He concluded by saying that we could start by adding the 10% to the fall zone setback and have a larger discussion in the future, especially if we have applications come in to put the discussion into perspective. Members agreed with this approach. Mr. Stidham said that he will make the recommended changes and keep the bigger discussion for a future meeting. Commissioner Caldwell said that the issue could resolve itself with new technologies that do not require towers along with the fact that the County does not have the residential density to encourage tower construction.

4. Old Business

None

ADJOURN: The meeting was adjourned by consensus at 11:11AM.



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TO: Planning Commission Ordinance Committee

FROM: Jeremy Camp, Senior Planner / Zoning Administrator

RE: Proposed Text Amendment: HPC Demolition Criteria

DATE: April 25, 2022

On May 19, 2021, the Historic Preservation Commission (HPC) approved a motion to forward the attached draft text amendment to the Planning Commission to be considered for a future amendment to the Zoning Ordinance. If adopted, this draft amendment would add criteria for evaluating demolition projects that require a certificate of appropriateness. Specifically, the amendment proposes changes to Sections 4.2.4 and 6.2.5 of the Clarke County Zoning Ordinance.

Section 4.2.4 pertains to the Historic (H) Overlay District. Certificates of appropriateness are required under subsection B for certain projects. This includes new construction and major alterations. The draft text amendment includes a minor wording change to this section so that it more clearly requires a certificate of appropriateness for demolition projects. Instead of the assumption that major alterations include demolitions, the proposed language specifically includes demolitions. This is consistent with how Section 6.2.5 identifies demolitions differently from major alterations.

Section 6.2.5 is where all of the requirements for certificates of appropriateness are located in the Zoning Ordinance. This includes code language about when certificates of appropriateness are required, the application review process, and the appeal process. It also includes the criteria used to evaluate applications for certificates of appropriateness.

Presently, the criteria for certificates of appropriateness are found under subsection 6.2.5.B.5. This subsection lists 4 criteria in addition to the Secretary of Interior's Standards for Rehabilitation. The Secretary of Interior's Standards for Rehabilitation are specific to new construction and rehabilitation, but offer little guidance about demolitions. You can view the Secretary of Interior's Standards for Rehabilitation online at the following link: nps.gov/tps/standards/rehabilitation.htm.

HPC's draft text amendment includes new language that adds criteria for evaluating demolition projects. The new criteria will help to fill in the blanks about what applicants need to include in applications for demolition. It will also help establish a consistent method of reviewing such applications. There are eight new criteria proposed by the HPC for demolitions. These are found on the 5th page of the attached document under 6.2.5.B.4.

The HPC's request is being sent to the Ordinance Committee to evaluate the draft text amendment for potential referral to the full Planning Commission.

4.2.4	Historic Overlay District	H
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Purpose:

The intent of this Section is to promote and protect the health, safety, comfort, and general welfare of the community through the preservation and enhancement of buildings, structures, places, and areas that have special historical, cultural, architectural or archaeological significance. It is hereby recognized that the destruction or alteration of said buildings, structures, places, and areas may cause the permanent loss of resources that are of great value to the people of Clarke County, and that special controls and incentives are warranted to ensure that such losses are avoided when possible.

The purposes for establishing a special Historic District zoning classification are:

- To preserve and improve the quality of life for residents of the County by protecting familiar and treasured visual elements in the area.
- To promote tourism by protecting historical and cultural resources attractive to visitors.
- To stabilize and improve property values by providing incentive for the upkeep and rehabilitation of older structures.
- To educate residents on the local cultural and historic heritage as embodied in the Historic District(s) and to foster a sense of pride in this heritage.
- To promote local historic preservation efforts and to encourage the nomination of qualified historic properties to the National Register of Historic Places and the Virginia Historic Landmarks Register.
- To prevent the encroachment of buildings and structures which are architecturally incongruous with their environs within areas of architectural harmony and historic character.

A. Creation of Historic Overlay District

1. A special zoning overlay designation is hereby created for Historic Districts and historic landmarks properties under authority of [Va. Code §15.2-2306](#). Location and boundaries of Historic Districts shall be delineated by the Board of Supervisors upon consultation with the Historic Preservation Commission (“Preservation Commission”), the Planning Commission, residents of proposed Historic Districts and local citizens' groups, and shall be incorporated into the Official Zoning Map as special overlay zones designated as Historic Districts (H).
2. Procedures for Establishing Historic Overlay Districts. The Preservation Commission may initiate a proposal of an amendment to the Ordinance for the establishment of a Historic District (H) by adoption of a resolution proposing the amendment. Prior to the public hearing of the Planning Commission on a petition for the establishment of an Historic District (H), the Preservation Commission shall hold a public hearing on such a petition following the procedures for notice as established in [Section 2.5 \(Public Hearings\)](#). Following the public hearing, the Preservation Commission shall report to

the Planning Commission and the Board of Supervisors its recommendation with respect to the proposed amendment. A Historic District shall not be designated if the owner(s) of record of at least 25% of the lots, shown on the Commissioner of Revenue Tax Maps, within a proposed Historic District filed written objection thereto with the Board of Supervisors prior to commencement of the public hearing before the Board.

3. Criteria for Designation of Historic Districts. The Board of Supervisors may designate one or more Historic Districts provided that any such District conforms to the definition of Historic Areas set forth in [Va. Code §15.2-2201](#), and that any such District meets one or more of the following criteria:
 - a. It is associated with a particular person, event, activity, or institution of local, state or national historical significance.
 - b. It contains buildings whose exterior design or features embody or exemplify the distinctive design characteristics of one or more historic areas, styles, materials, or construction methods, or exemplify the work of an acknowledged master or masters.
 - c. It possesses an identifiable character that reflects the cultural or architectural heritage of Clarke County.
 - d. It contains qualities and/or artifacts that significantly contribute to present-day knowledge and understanding of lifestyles, activities, events or experiences of a previous area.
 - e. Its unique location or physical characteristics represents an established and familiar pattern or unique visual feature of the County.

B. Certificates of Appropriateness

A Certificate of Appropriateness shall be required for the erection of any building ~~or structure, or the major alteration or restoration of a contributing building or structure, within the boundaries of a Historic Overlay District,~~ structure, or sign; the major alteration or restoration of a contributing building or structure; or the razing, demolishing, or moving of any historic landmark, building, or structure. The requirements for the application, review, and approval of certificates of appropriateness are set forth in [Section 6.2.5 \(Certificate of Appropriateness\)](#).

C. Penalties for Noncompliance

Any violation of this section shall be subject to the provisions for violations and penalties set forth in [Section 10 \(Enforcement\)](#) of this Ordinance.

D. Special Overlay District Regulations – Uses

Class 5 wireless communication facilities (WCFs) and co-location on existing structures may be permitted subject to compliance with the requirements of this Section. Class 1, 2, 3 and 4 WCFs shall be prohibited.

6.2.5	CERTIFICATE OF APPROPRIATENESS (CA)	
Certificate of Appropriateness review is required to ensure that proposed construction, alteration, and restoration projects in the Historic (H) Overlay and Historic Access Corridor (HAC) Overlay Districts are compatible with the historic character of these historic preservation areas.		
<u>Approval Authority:</u>	<ul style="list-style-type: none"> • Historic (H) Overlay District properties – Historic Preservation Commission (HPC); HPC Executive Committee in limited situations (see Subsection B) • Historic Access Corridor (HAC) Overlay District properties – <ul style="list-style-type: none"> ○ Berryville Area Development Authority (BADA) if located in Berryville Annexation Area ○ Planning Commission if located outside Berryville Annexation Area 	<u>Time Limit for Review:</u>
<u>Pre-Application Meeting Required:</u>	No	<u>Public Hearing Required:</u> Yes if reviewed by full HPC, BADA, or Planning Commission
<u>Other Applicable Deadlines:</u>	None	<u>Expiration:</u>
		Yes, for certificates issued in the Historic Overlay District – See Subsection B-7

A. When Required.

1. Properties Located in the Historic (H) Overlay District. A certificate of appropriateness shall be required for the following activities:
 - Erection of any building, structure, or sign
 - The major alteration or restoration of a contributing building or structure
 - Razing, demolishing, or moving any historic landmark, building, or structure
2. Properties Located in the Historic Access Corridor (HAC) Overlay District.
 - a. No structure or building to which the HAC District applies shall be erected, reconstructed, altered, or restored unless a Certificate of Appropriateness is approved.
 - b. Single family detached dwellings or any structures existing as of January 1, 1995 that are expanded by not more than 100% of their heated square footage as of

January 1, 1995 are excluded from the requirement for a Certificate of Appropriateness.

- c. If any part of a structure to be erected, altered, or restored is located within these boundaries, the entire structure shall be governed by this ordinance.
- d. Any structure proposed to be erected, altered, or restored within a lot, which is partly located within the HAC District, shall be exempt from this ordinance, if said structure is located entirely outside the HAC District.
- e. Signs. A certificate of appropriateness shall be required only for signs proposed on lots located within in the HAC District and the Berryville Annexation Area.
- f. The provisions of this ordinance shall not apply to the regular maintenance of structures within the HAC District. For the purposes of this section, changing the exterior color and/or materials of a structure or building shall be deemed an alteration and not regular maintenance.

B. Review Procedures and Criteria – Historic (H) Overlay District.

1. Review Procedures. The Executive Committee of the Historic Preservation Commission (HPC), comprised of the Commission’s Chair and the Vice-Chair, shall review a certificate of appropriateness application before any of the following activities may occur within the boundaries of the H District:
 - Any degree of alteration or restoration of a non-contributing building or structure.
 - Minor alteration or restoration of a contributing building or structure.
 - The erection of a sign.

If the Executive Committee finds that the proposed activity is not compatible with the Historic District, as described in [Subsection 5](#), the matter shall be referred to the full HPC for consideration. A decision by the Executive Committee to approve a certificate of appropriateness may be appealed to the full HPC by any aggrieved party (except as noted below) within 10 working days of the decision. A decision of the HPC may be appealed to the Board of Supervisors per [Subsection 8](#). The Chair shall inform the HPC of any Executive Committee approvals in writing, within five working days of the action. A member of the HPC may request, in writing, that the full HPC review any approval by the Executive Committee. Such request for review must be submitted to the Zoning Administrator within five working days of action notification.

2. A major alteration of a building or structure shall include any work that requires a building permit, or the repair or replacement of windows or roofs. A minor alteration of a building or structure does not require a building permit or does not involve the repair or replacement of windows or roofs.

3 Approval of a certificate of appropriateness certifies that such erection, reconstruction, alteration or restoration is compatible with the historic landmarks, buildings, or structures within the District, based upon criteria listed in [Subsection 5](#). This section shall not be construed as to include normal repairs and maintenance such as repainting, provided such repair and maintenance activity does not include any architectural changes or alterations.

4. Razing, Demolition or Moving Within the H District. No historic landmark, building, or structure within the H District shall be razed, demolished, or moved until a certificate of appropriateness is issued by the HPC, or upon appeal, by the Board of Supervisors. However, approval of such a certificate of appropriateness for demolition of a non-contributing structure within the H District may be delegated by the HPC to the Zoning Administrator (following the criteria and notice set forth in this ordinance), with appeal to the HPC, and with subsequent appeal to the Board of Supervisors. When considering a request for razing, demolishing, or moving, the criteria of [Subsection 5](#) shall apply. In addition, the following criteria shall be considered:

- a. How the historic landmark, building, or structure contributes to the District.
- b. If the proposed demolition impacts the architectural and historic integrity of the District.
- c. What alterations have been made in the past.
- d. If the building or structure provides significant historic context to the local community.
- e. The impact of the proposed demolition on the visual continuity of the streetscape.
- f. If it is feasible to stabilize the historic landmark, building, or structure. A structural engineer's report may be required.
- g. If rehabilitation is feasible instead of demolition. A cost analysis may be required that details the cost of rehabilitation in comparison to the market value.
- h. If the plans for the proposed replacement building (if any) meet the design criteria of the District.

For purposes of this subsection, demolition is defined as removal of forty percent (40%) of a building or structure's total exterior wall or roof structure.

5. Criteria for Approval of Certificate of Appropriateness. In reviewing a request, the HPC shall not approve a certificate of appropriateness unless the applicant's proposals are architecturally compatible with the motif and character of the H District. The HPC shall base its decision on whether the proposed action conforms to the criteria set forth by the [Secretary of the Interior's Standards for Rehabilitation](#). The HPC shall also consider the following factors:

- a. The extent to which the project will affect the overall character, visual fabric, rhythm, and continuity of the District.
- b. Whether the height, proportion, openings, spacing, roofs, walls, fences, landscaping, ground cover, scale, and directionality of the proposed work are visually compatible with the surrounding community.

- c. Whether the materials, textures, and colors planned for use are compatible with the District's character.
 - d. In the case of a building to be razed, demolished, or moved, the extent to which the loss of said building will detract from the Historic District and the purposes of this Section.
6. Action on Certificate of Appropriateness Application. The HPC shall conduct a Public Hearing in accord with [Section 2.5 \(Public Hearings\)](#) of an application for a certificate of appropriateness for any activity that is initially heard by the full HPC. Public notice is not required before action by the Executive Committee.

The HPC shall act to approve, approve with conditions, or deny the requested certificate of appropriateness within 60 days of the initial Public Hearing on the request. Failure of the HPC to act within this 60-day period shall be deemed approval of the request unless the HPC and the applicant agree upon an extension of the time period. The Executive Committee shall act to approve, approve with conditions, or refer to the HPC the requested certificate of appropriateness within 30 days of the first meeting of the HPC on the request. Failure of the HPC to act within this 30-day period shall be deemed approval of the request unless the HPC and the applicant agree upon an extension of the time period.

7. Approval Expiration. Unless a final certificate of occupancy has been issued for the structure or structures described in the certificate of appropriateness, an approved certificate of appropriateness shall no longer be valid after five years from the date of issuance by the HPC. Upon application of the developer filed before expiration of the certificate of appropriateness, the HPC may grant one or more extensions of such approval for additional periods as the HPC, at the time the extension is granted, determines to be reasonable. Such extensions shall take into consideration:

- Whether a building permit has been issued;
- Whether substantial construction work has been completed;
- The size and phasing of the project; and
- The laws, ordinances, and regulations in effect at the time of application for the extension request.

8. Appeal. Any decision made under the provisions of this Section may be appealed to the Board of Supervisors by any party aggrieved by such decision and may be further appealed pursuant to [Va. Code §15.2-2306](#). In lieu of an appeal to the Board of Supervisors of a decision to deny a request to demolish an historic structure, [Va. Code §15.2-2306](#) provides a procedure to allow a property owner to demolish an historic structure after it has been offered for sale “at a price reasonably related to its fair market value:”

- a. Such price shall be not more than 120% of the assessed value of the property as set by the County Commissioner of the Revenue.

- b. If the property owner does not believe that a price that is not more than 120% of the assessed value is reasonable, he or she may obtain a value from a certified appraiser at his or her expense. If the value determined by the property owner's appraiser exceeds 120% of the assessed value, the appraiser and the Commissioner of the Revenue shall establish a mutually agreed upon price. If the appraiser and the Commissioner are unable to establish a mutually agreed upon price, the County shall obtain the services of a certified appraiser to establish a third value. The cost of this appraiser to establish a third value shall be paid by the property owner. The price reasonably related to fair market value shall then be the average of the assessed value, the value established by the appraiser hired by the property owner, and the value established by the third appraiser.

C. Review Procedures and Criteria – Historic Access Corridor (HAC) Overlay District.

1. Reviewing Boards. The architectural review board responsible for the administration of this ordinance and approval or denial of certificates of appropriateness for activity in Annexation Area B shall be the Berryville Area Development Authority (BADA). The architectural review board responsible for the administration of this ordinance and approval or denial of certificates of appropriateness for activity outside of Annexation Area B shall be the Planning Commission.
2. Applications. Applications for certificates of appropriateness shall be made on forms provided by the Zoning Administrator, who shall serve as agent for the architectural review board. Applications for new construction shall be submitted with the applications for site plan approval and shall be considered in conjunction with the site plan. Other applications shall be submitted at least 15 calendar days before the next regularly scheduled meeting of the architectural review board. The Zoning Administrator may require a revised application with a new application date when alterations or modifications are made to the accepted application.

Except as further provided, when filing an application of a certificate of appropriateness, applicants must submit the following information for consideration by the architectural review board:

- Architectural elevations of all building facades and structures, drawn to scale, identifying all colors and materials to be used (a set of samples shall be submitted wherever practical), and showing spatial relationships with neighboring properties (use of photographs or drawings relating the proposed project to the surrounding streetscape is encouraged).
 - Approved or proposed site plans.
 - Landscaping plans, with signage, and lighting systems (including analysis of impacts on nearby lots).
3. Applications for Signs. When filing an application for a certificate of appropriateness for signs, applicants must submit the following information:
 - A scale drawing of the proposed sign.

- Proposed materials for the sign, including supports, and the lighting method to be used.
 - A sketch or photograph showing the proposed location of the sign on the building or site.
4. Waiver of Application Requirements. Upon written request from the applicant, the Zoning Administrator may waive any of the requirements in the previous section, deemed not to be necessary for review of the application. The architectural review board may overrule these waivers if additional information is determined to be required by the board at its meeting to consider the application. The Zoning Administrator may promulgate rules and procedures for the filing application under this ordinance not in conflict with the provisions of this ordinance.
 5. Public Hearing Required. The architectural review board shall conduct a Public Hearing in accord with [Section 2.5](#) of an application for a certificate of appropriateness.
 6. Action on Application. In response to applications for certificate of appropriateness, the architectural review board shall vote and announce its decision to approve, deny, or approve with conditions that modify the application. Action on any matter properly before the architectural review board shall be taken not later than 45 days after the conclusion of the public meeting on the matter, unless the time is extended by mutual agreement between the architectural review board and the applicant. All decisions of the architectural review board in granting or denying a certificate of appropriateness shall be in writing, a copy of which shall be sent to the applicant and a copy filed with the agent. In the case of denial of a certificate of appropriateness, the architectural review board shall state the reasons for such denial in writing. In citing the reasons for denial, the architectural review board may make suggestions that would assist the applicant in the resubmitting of an application.
 7. Design Guidelines for development in the HAC District are set forth in [Section 7.6 \(Historic Access Corridor \(HAC\) Overlay District Design Standards\)](#).
 8. Approval Expiration. Unless a final certificate of occupancy has been issued for the structure or structures described in the certificate of appropriateness, an approved certificate of appropriateness shall no longer be valid after five years from the date of issuance by the Planning Commission. Upon application of the developer filed before expiration of the certificate of appropriateness, the Commission may grant one or more extensions of such approval for additional periods as the Commission, at the time the extension is granted, determines to be reasonable. Such extensions shall take into consideration:
 - Whether a building permit has been issued;
 - Whether substantial construction work has been completed;
 - The size and phasing of the project; and
 - The laws, ordinances, and regulations in effect at the time of application for the extension request.

9. Appeals. Any decision made under the provisions of this Section may be appealed to the Board of Supervisors by any applicant aggrieved by such decision and may be further appealed pursuant to [Va. Code §15.2-2306](#).

10. Conformance with Certificate of Appropriateness.
 - a. Before the issuance of building permits for any work that has been approved by the architectural review board, the Zoning Administrator shall require applicants to submit plans that accurately reflect any changes or conditions imposed by the architectural review board in its approval of projects.

 - b. All work performed pursuant to issuance of a certificate of appropriateness shall conform to the approved plans and specifications and to any modifications required by the certificate of appropriateness. In the event work is performed not in conformance with the certificate of appropriateness, the Zoning Administrator shall notify the responsible person or firm in writing of the violations and shall take the necessary legal steps to ensure that the work is performed in conformance with the certificate of appropriateness. Any violation of this section shall be

subject to the provision for violations and penalties set forth in [Section 10 \(Enforcement\)](#) of this Ordinance.

 - c. Any change in the approved plans subsequent to the issuance of the certificate of appropriateness shall be promptly submitted to the Zoning Administrator prior to construction of the modified feature. The Zoning Administrator may administratively approve non-substantial modifications with notice thereof to the architectural review board at its next meeting. Copies of any proposed revisions deemed substantive by the Zoning Administrator shall be forwarded to the architectural review board, accompanied by additional application materials as determined necessary by the Zoning Administrator and the architectural review board to render a decision.



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TO: Ordinances Committee members

FROM: Brandon Stidham, Planning Director

RE: Waterworks and Sewerage System and Treatment Works Regulations – Zoning Ordinance Section 7.4.5

DATE: April 29, 2022

Item 3B on your meeting agenda is an initial discussion about potential changes to the waterworks and sewerage system and treatment works regulations found in Zoning Ordinance Section 7.4.5. This memo provides background information on these regulations and identifies issues that may require a text amendment.

Background

The purpose of Section 7.4.5 is to prohibit uses in the AOC and FOC District that began after July 1, 1997 from using a “waterworks” or a “sewerage system and treatment works.” A waterworks is defined in Section 7.4.5 as:

A system that serves piped water for drinking or domestic use for:

- *The public, or*
- *At least 15 connections, or*
- *An average of 25 individuals for at least 60 days out of the year.*

A waterworks shall include all structures, equipment, and appurtenances used in the storage, collection, purification, and distribution of pure water (except the piping and fixtures inside the building where such water is delivered).

A sewerage system is defined as:

Pipelines or conduits, pumping stations, and force mains and all other construction, devices and appliances appurtenant thereto, used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal.

A treatment works is defined as:

Any device or system used in the storage, treatment, disposal or reclamation of sewage or combinations of sewage and industrial wastes, including, but not limited to, pumping, power and other equipment and appurtenances, septic tanks and any works (including land) as components of a mass drainfield, that are or will be:

- *An integral part of the treatment process or*
- *Used for ultimate disposal or residues or effluent resulting from such treatment.*

This term does not include subsurface drainfields smaller than mass drainfields. A mass drainfield is a subsurface drainfield that has loading rates in excess of 1,200 gallons per day for any acre and consists of more than 2,000 linear feet of percolation piping.

These regulations were added to the Zoning Ordinance in 1997 however there is limited background information in the form of staff reports or discussion in meeting minutes regarding the specific reasons for developing the regulations. Some likely reasons based on the County's land use philosophy include:

1. To prevent AOC and FOC uses from connecting to public water and public sewer.
2. To limit the scope of some AOC and FOC uses by capping the volume of usage for a private well and by capping the maximum size of an onsite sewage disposal system that can be installed – including preventing the use of “mass drainfields.”
3. To prevent the development of new privately-owned/operated water systems (such as the private system that serves Shenandoah Retreat) and new privately-owned/operated sewage treatment systems for AOC and FOC uses.

It should be noted that the State's definition of waterworks differs from the Zoning Ordinance definition in that a waterworks is a system that serves water for “human consumption” rather than only for “the public.” Some examples of existing AOC and FOC uses on private property that are currently permitted for a “waterworks” by the Virginia Department of Health (VDH) include:

- Berryville Moose Lodge
- Calcagnini Contemplative Center/Georgetown University
- Grafton School
- Keystone Baptist Church
- L'Auberge Provencale
- Northern Virginia Lions Youth Camp
- Shenandoah Retreat (private water system)
- River Park (private water system)
- Watermelon Park

The definitions used by the State for sewerage system and treatment works also differ from the Zoning Ordinance definition with the main difference being the exclusion of language regarding mass drainfields. The State's definition for a “mass sewage disposal system (“mass drainfield”) also does not include Section 7.4.5's language that the system also consists of more than 2,000 linear feet of percolation piping.

Issues for Discussion

Public Water and Public Sewer in AOC

Section 7.4.5 recently came under evaluation in the context of the County's efforts to extend public water and public sewer from Frederick County to the Double Tollgate plan area and potentially to the adjacent AOC-zoned properties owned by various State agencies. In consultation with the County Attorney, it was determined that Section 7.4.5 could be interpreted to prohibit extension of a public water or public sewer system (owned or operated by a local government entity) into AOC-zoned properties.

To address this concern, Staff recommends that text amendment language be developed to specify that Section 7.4.5 does not apply to development of new public water or public sewer infrastructure, owned and/or operated by a local government entity, on AOC-zoned properties. This would not create a risk of private landowners in the AOC District gaining access to public water and public sewer as the Board of Supervisors has ultimate authority over which County properties may be served.

Staff is not recommending including the FOC District in this language as there currently is no public water and sewer infrastructure on or planned to be extended into FOC District properties.

Application of Waterworks Regulations

As noted above, Section 7.4.5 would prohibit AOC and FOC uses that provide water for drinking and domestic purposes to:

1. The public, OR
2. At least 15 connections, OR
3. An average of 25 individuals for at least 60 days out of the year

This presents a challenge to developing some AOC and FOC uses that propose a public service component in which water is provided – most commonly some form of meal service. The Zoning Ordinance was amended in 2016 specifically to exclude farm wineries, farm breweries, and farm distilleries from the waterworks prohibition. There are still other AOC/FOC uses that could be impacted by this prohibition – potentially making the use infeasible as we previously noted in 2016 with farm wineries, farm breweries, and farm distilleries. These uses include:

- Home occupation bed-and-breakfast
- Wholesale or retail sale of agricultural products
- Community services facility (special use)
- Minor commercial public assembly (special use)
- Country inn (special use)
- Day care center (special use)
- Campground (special use)
- Churches and other places of worship (special use)
- Community center (special use)

- Private club (special use)
- Summer camp (special use)
- Retail business (special use)

Staff recommends that the Committee discuss the merits of modifying Section 7.4.5 to remove the blanket waterworks prohibition for AOC and FOC uses. If this is desired, language can be included to require such uses to maintain waterworks approval with VDH in good standing for the life of the use. Failure to do so can be grounds for revocation of zoning approval.

The current language of Section 7.4.5 is not clear in regards to shared private water systems such as the existing systems in Shenandoah Retreat and River Park subdivisions. While it is clear that a waterworks cannot serve water to the public, it also states that a waterworks cannot serve 15 or more connections. One could make the argument that a small subdivision can be served by a private water system by virtue of having less than 15 lots, by not providing water to the public, and by not serving an average of 25 people for at least 60 days out of the year.

To remedy this concern, specific language can be added to the Subdivision Ordinance to prohibit AOC and FOC subdivisions from utilizing a private water system. Language should also be included to ensure that this regulation does not prevent new homes from connecting to existing private water systems such as in Shenandoah Retreat and River Park, subject to VDH approval.

As an additional amendment, language can be added to link to County Code Chapter 184 which governs the construction and use of new wells.

Application of Sewerage System and Treatment Works Regulations

In December 2021, the Board of Supervisors adopted significant revisions to the County's septic system regulations found in County Code Chapter 143. One new provision that was included is a prohibition on the use of mass drainfields throughout the County (Section 143-3D).

Previously, the only reference to prohibiting use of mass drainfields was in Section 7.4.5 and its earlier iterations. Chapter 143 also applies the State's definition of "mass sewage disposal system" which does not include reference to the "more than 2,000 linear feet of percolation piping" language in Section 7.4.3.

With the inclusion of this new language in County Code Chapter 143, retaining the current language in Section 7.4.5 may be redundant. Staff recommends that the Committee discuss the merits of removing the sewerage system and treatment works regulations in favor of defaulting to the requirements of Chapter 143. New language could be added to require all onsite sewage disposal systems to comply with the requirements of Chapter 143 including a notation that mass drainfields are prohibited. This change would provide clarification by consolidating all septic system regulations in Chapter 143 and would link the two ordinances with the new reference.

Staff recommends that the Committee discuss these issues and provide direction to Staff on potential development of text amendment language and/or additional necessary research. Please advise if you have questions or concerns in advance of the meeting.