

**CLARKE COUNTY PLANNING COMMISSION
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Clarke County Planning Commission

AGENDA – Work Session

Tuesday, May 31, 2022 – 3:00PM

Berryville/Clarke County Government Center– Main Meeting Room

1. **Approval of Agenda**
2. **New Commissioner Introduction – Ronnie “Ron” King**
3. **Review of June 3, 2022 Business Meeting Agenda Items**
4. **Old Business Items**
 - A. Continued Discussion, 2022 Clarke County Comprehensive Plan (Final Draft)
5. **New Business Items**
 - A. TA-22-03, Historic (H) District Review Criteria for Demolitions
 - B. Potential Text Amendment from the Policy & Transportation Committee, Boundary Line Adjustment Regulations
6. **Other Business**
7. **Adjourn**



Clarke County Planning Department

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TO: Planning Commissioners

FROM: Brandon Stidham, Planning Director

RE: Continued Discussion, 2022 Clarke County Comprehensive Plan (Final Draft)

DATE: May 25, 2022

Item 4A is a continued discussion of the final draft 2022 Comprehensive Plan and for the purposes of this discussion, we will be using the clean and redlined drafts that were distributed to you last month. The goals for the Work Session are to discuss commissioners' questions and comments, identify any edits to be made to the draft, and reach a consensus on scheduling public hearing. Commissioners last month expressed an interest in scheduling a special evening public hearing on **Wednesday, June 29**. If commissioners are comfortable with this date, there is an item on the June 3 Business Meeting for formal action to schedule this public hearing. If commissioners have concerns that require additional work on the draft, we can discuss adjusting the timeline moving forward including alternate meeting and public hearing dates.

Below is a summary of the edits requested by the Commission at the May 6 Business Meeting. New language is also included for the Commission's discussion and would be incorporated into the Final Draft for Public Hearing along with other formatting edits identified by Staff.

Berryville Area Plan references

At the May 6 Business Meeting, commissioners expressed concerns about the general public not understanding that a critical element of the County's land use philosophy is to focus growth in the incorporated towns where public infrastructure can be provided in the most cost-effective manner possible. Recent development of the Shenandoah Crossing and Hermitage Phase 5 subdivisions have been mischaracterized by some as uncontrolled or unplanned growth when in reality both developments were planned for and initially approved many years ago. Commissioners suggested including language in the references to the Berryville Area Plan to help people better understand that the Town of Berryville is the County's primary growth area and that new development only occurs in accordance with the Area Plan's guidance.

Staff recommends the following modifications to the address these concerns:

1. Introduction Section, Berryville Area Plan description, page vi:

The Berryville Annexation Area, *which includes lands jointly identified by the Town and County for future development to be served by public water and public sewer, has been identified in the Comprehensive Plan as is* the County's primary designated growth area.

Because the Town of Berryville contains the highest concentration of available public facilities and infrastructure, it is the most appropriate place to direct future growth *in an efficient and cost effective manner*. The Berryville Area Plan ~~provides a guide for~~ *guides* the physical growth of the Annexation Area and ~~for~~ the orderly transition of properties from the County to the Town as development occurs. The primary purpose of this component plan is to ~~encourage~~ *facilitate* development of a safe, vibrant, and distinctive small town environment, while maintaining the unique historical character of the community.

2. Chapter III, pages III-7 – III-8:

The Area Plan also divides Annexation Area B into a series of Sub-Areas, or groups of lots with similar development characteristics. These Sub-Areas were created following an extensive evaluation of historical, environmental, and geological characteristics of each Sub-Area. Based upon these characteristics, recommended use types were assigned to the Sub-Areas with residential or commercial densities based upon the net developable portion of the lots in the Sub-Areas. These densities are captured in a Future Land Use Table depicting the maximum number of residential units recommended for each Sub-Area recommended for residential use, and the maximum floor area per gross leasable area for each Sub-Area recommended for business use. *As new or expanded developments are proposed, each application is evaluated against the applicable Sub-Area's recommendations to ensure consistency with the Area Plan. Each Sub-Area remains subject to the Area Plan's guidance and recommendations until the Sub-Area reaches maximum buildout.*

3. Map 11, page III-10:

Replace current Berryville Area Plan map with a map that shows the current Annexation Area Sub-Areas. This map is similar to the one found in the Berryville Area Plan on Page A-4 and is included at the end of this memo.

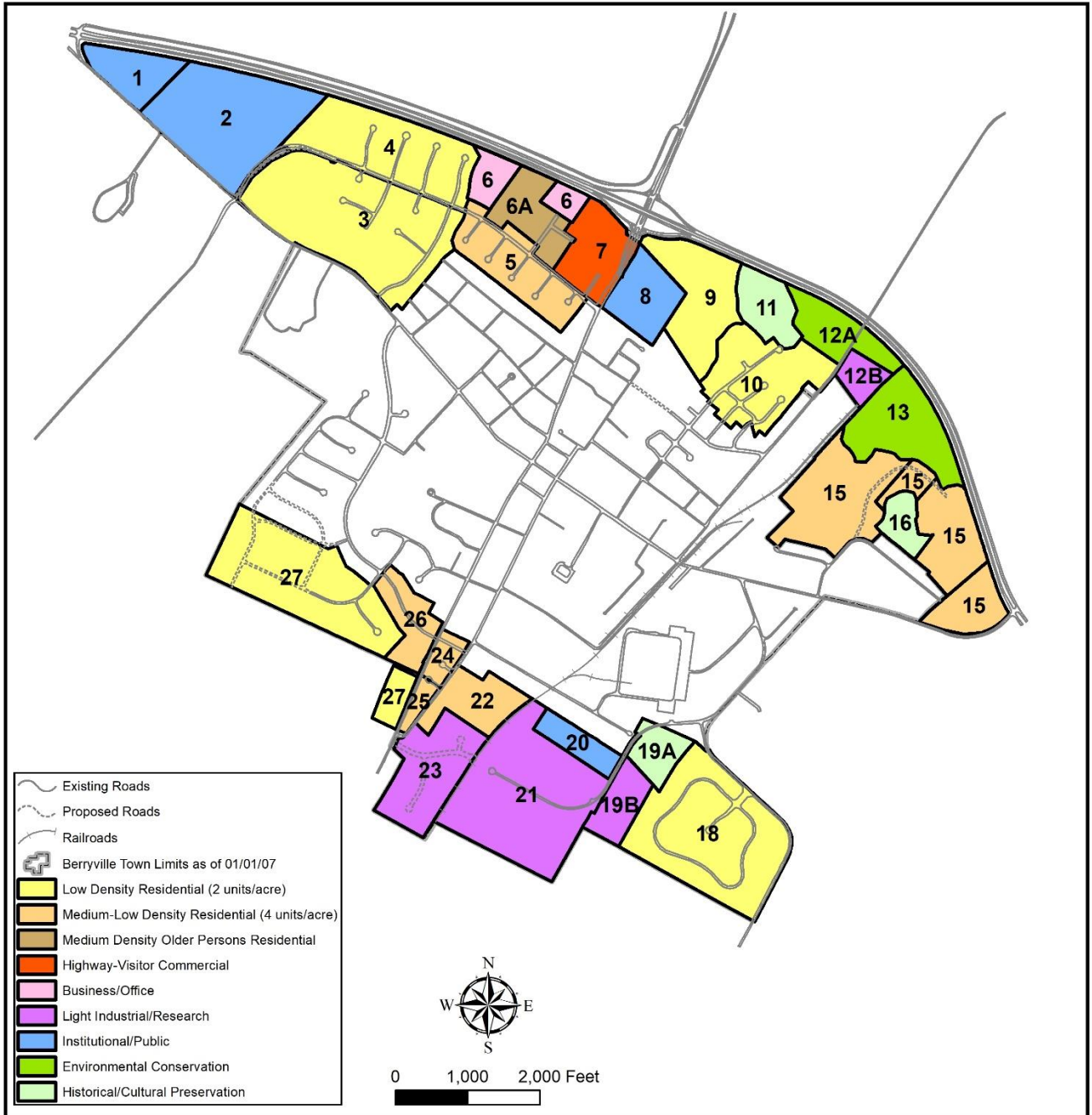
Cost of Community Services Study

Commissioners also requested that the 2018 Cost of Community Services Study be included with a brief description under “Other Relevant Plans and Studies” at the end of Chapter III. Staff proposes adding this as a new Item #6 on Page III-22:

The Cost of Community Services Study was developed in 2018 on behalf of Clarke County by the University of Virginia's Weldon-Cooper Center for Public Service. The Study examines the cost of providing public services for each of the County's different land uses (i.e. agriculture/open space, residential, commercial/industrial). Ratios are used to gauge the demand placed on local government services in comparison to the tax revenue that is generated by the land use. This information compares how existing land uses impact the county budget differently and can be used for county land use and infrastructure planning.

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

MAP 11 - Berryville Area Plan Sub Areas





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TO: Planning Commission

FROM: Jeremy Camp, Senior Planner / Zoning Administrator

RE: TA-22-03, Historic (H) District Review Criteria for Demolitions

DATE: May 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 Ordinance Committee reviewed this draft text amended at their meeting held on May 6, 2022. The committee recommended to forward the draft text amendment to Planning Commission for consideration. For the June 3, 2022 Planning Commission Business Meeting Staff recommends scheduling this text amendment for a future public hearing.

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> Yes – See Subsection B-6 for applications in the H District, and Subsection C-6 for applications in the HAC District
<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: Planning Commissioners

FROM: Brandon Stidham, Planning Director

RE: Potential Text Amendment from the Policy & Transportation Committee, Boundary Line Adjustment Regulations

DATE: May 25, 2022

This memo outlines a potential text amendment developed by the Policy & Transportation Committee and Staff to address an issue that was originally identified by the Plans Review Committee. The issue arose from a series of transactions that a property owner recently completed, including minor subdivisions and boundary line adjustments, resulting in the creation of three lots between 22 and 25 acres in size. These transactions are summarized below:

1 Original Parcels <u>Parent Parcel:</u> 145.37 acres (1 Ex.Dwl., 6 DURs) <u>Lot 3:</u> 6.78 acres (1 DUR)	3 Boundary Line Adjustment 21-06 (June 2021) <u>Lot 1:</u> 12.30 acres (1 Ex.Dwl., 0 DUR) <u>Lot 2:</u> 9.69 acres (1 DUR) <u>Lot 3:</u> 6.78 acres (1 DUR) - <i>not included in BLA Residue</i> <u>Lot:</u> 123.37 (5 DUR) – <i>not included in BLA</i>
2 Minor Subdivision 20-03 (Sept 2020) <u>Lot 1:</u> 19.00 acres (1 Ex.Dwl., 0 DUR) <u>Lot 2:</u> 3.00 acres (1 DUR) <u>Lot 3:</u> 6.78 acres (1 DUR) - <i>not included in MS</i> <u>Residue Lot:</u> 123.37 acres (5 DURs)	4 Boundary Line Adjustment 21-14 (Jan 2022) <u>Lot 1:</u> 25.39 acres (1 Ex.Dwl., 0 DUR) <u>Lot 2:</u> 22.64 acres (1 DUR) <u>Lot 3:</u> 22.06 acres (2 DUR) <u>Residue Lot:</u> 82.05 acres (4 DUR)

In this series of transactions, the property owner gained approval of a minor subdivision and maximum lot size exception from the Commission in 2020 to create a 3 acre lot, a 19 acre lot, and a 123.37 acre residual lot. In 2021, the property owner gained approval of a boundary line adjustment from Staff to increase the 3 acre lot to 9.69 acres by reducing the 19 acre lot (approved with a maximum lot size exception) to 12.3 acres. In January 2022, the property owner gained approval of another boundary line adjustment from Staff to increase the 12.3 acre lot to 25.39 acres, the 9.69 acre lot to 22.64 acres, and an existing 6.78 acre lot to 22.06 acres by reducing the size of the 123.37 residual lot to 82.05 acres.

The policy concern raised, which has been addressed by the Planning Commission in the past, is the creation of 20-acre lots in the Agricultural-Open Space-Conservation (AOC) District. Some commissioners contend that 20-acre lots are usually not farmed or otherwise used for agriculture and are more likely to be developed residentially. Commissioners are also concerned that some landowners are using “loopholes” in the current regulations to create 20-acre lots when there is no process in the Zoning or Subdivision Ordinances to create a 20-acre lot directly.

Staff identified two potential problems with our current regulations to aid in framing the issues for discussion by the Policy & Transportation Committee:

1. Do we need to change the rules for boundary line adjustments to be less flexible and more restrictive on boundary line adjustments that significantly alter the layout of lots? If so, what issues should be targeted in the process of creating new regulations?
2. Do we need stricter rules to prevent the transfer of land between residential lots where it would result in residential lots above the maximum lot size or maximum average lot size?

Following review of the transactions described by Staff and discussion of the current regulations, Committee members asked Staff to look for ways to prevent the creation of lots in the 20-acre range and also to limit or prevent minor subdivision lots from being altered through boundary line adjustment without additional review and approval by the Planning Commission. Staff identified two potential text amendments which the Committee reviewed on May 19 and recommended for full Commission review.

Boundary Line Adjustments between Adjoining Residential Lots

Subdivision Ordinance Section 4.4.1A-4 allows boundary line adjustments between adjoining residential lots so long as the total acreage in the subject lots is not increased. In other words, boundary line adjustments between residential lots can be done to increase or decrease lot sizes without restriction so long as land from a third lot is not included in the transaction.

The first proposed change would establish a new limitation on boundary line adjustments between residential lots where at least one of the lots is 4 acres in size or less and zoned AOC. The new rule would prevent such lots from being increased in size above 4 acres through boundary line adjustment without approval by the Planning Commission and only for the following hardship reasons:

- To correct a minor encroachment of a driveway, fence, or other structure onto an adjoining lot up to a maximum of 10% of the total area of the lot
- To repair or replace a failing onsite sewage disposal system located on the lot

The current maximum lot size in the AOC District for a new lot created through minor or major subdivision is 4 acres. The policy justifications for including this proposed rule would be to ensure that the AOC District maximum lot size is not exceeded through boundary line adjustment, and to give the Planning Commission – as the approval authority for the original subdivision – the authority to approve a lot size increase for specific hardship reasons. A cap of 10% on adjustments is recommended to ensure that the boundary line adjustment is done only to correct the encroachment. The lot size adjustment for onsite sewage disposal system repairs or replacements would be dictated by the total land area needed as approved by the Virginia Department of Health (VDH).

This change is only proposed to be applied to AOC-zoned lots because there is no maximum lot size requirement for FOC-zoned lots. Language would be added to both the Zoning Ordinance

(Section 4.1.1A) and the Subdivision Ordinance (Section 4.4.1A-4) as the change affects both the AOC lot size requirements and the boundary line adjustment requirements.

Maximum Lot Size Exception Regulations (Zoning Ordinance Section 6.2.6)

The second proposed change is to prevent any lot approved with a maximum lot size exception and less than 20 acres in size (a “residential lot” per Subdivision Ordinance requirements) to be reduced in size by boundary line adjustment without approval by the Planning Commission and only for the following hardship reasons:

- To correct an encroachment of a driveway, an onsite sewage disposal system, or a structure
- To aid in the repair or replacement of a failing onsite sewage disposal system located on an adjacent lot

Maximum lot size exceptions apply only to AOC-zoned lots and are approved by the Commission subject to specific criteria outlined in Zoning Ordinance Section 6.2.6C. Since current Subdivision Ordinance Section 4.4.1A-4 allows boundary line adjustments between residential lots so long as land from a third lot is not included in the transaction, a lot approved with a maximum lot size exception can currently be reduced in size without Commission approval. The proposed change would create a new limitation on reducing the size of a lot approved with a maximum lot size exception. It would also give the Commission – as the approval authority for the original subdivision and maximum lot size exception – the authority to approve a reduction in size of a maximum lot size exception lot only for specific hardship reasons.

It should be noted that these two proposed changes do not directly address the issue of creating 20-acre lots through a series of land use transactions although they would have the effect of limiting them. If the Commission is comfortable with the proposed changes, action can be taken at a future meeting to schedule public hearing. If the Commission is concerned that the issue of 20-acre lots is not being directly addressed, Staff does not recommend scheduling a public hearing on these changes. Instead, the Commission and Staff should study the complex issue of 20-acre lots specifically and the potential significant changes to our ordinances and land use philosophy that may need to take place.

A draft of the proposed text amendment language is included below for your reference. Please let me know if you have questions or concerns in advance of the meeting.

PROPOSED TEXT AMENDMENT LANGUAGE

Boundary Line Adjustments between Adjoining Residential Lots

Subdivision Ordinance Section 4.4.1A (Boundary Line Adjustments – Special Regulations)

4. Adjustments of boundary lines between adjoining residential lots where the total acreage in the subject lots is not increased *except in the following situations:*
 - a. *AOC-zoned lots 4 acres or less in size. No residential lot of 4 acres in size or less and zoned Agricultural-Open Space-Conservation (AOC) may be increased in size above 4 acres through boundary line adjustment without approval by the Planning Commission for one or both of the following hardship reasons:*
 - *To correct a minor encroachment of a driveway, fence, or other structure onto an adjoining lot to a maximum of 10% of the total area of the lot*
 - *To repair or replace a failing onsite sewage disposal system located on the lot*

Zoning Ordinance Section 4.1.1A (Agricultural-Open Space-Conservation District)

3. *AOC-zoned lots 4 acres or less in size. No residential lot of 4 acres in size or less and zoned Agricultural-Open Space-Conservation (AOC) may be increased in size above 4 acres through boundary line adjustment without approval by the Planning Commission for one or both of the following hardship reasons:*
 - *To correct a minor encroachment of a driveway, fence, or other structure onto an adjoining lot to a maximum of 10% of the total area of the lot*
 - *To repair or replace a failing onsite sewage disposal system located on the lot*

Maximum Lot Size Exception Regulations (Zoning Ordinance Section 6.2.6)

Zoning Ordinance 6.2.6C (Maximum Lot Size Exception – Review Criteria and Regulations)

New Subsection 5

5. *No lot approved with a maximum lot size exception shall be reduced in size by boundary line adjustment without approval by the Planning Commission for one or both of the following hardship reasons:*

- *To correct an encroachment of a driveway, onsite sewage disposal system, or a structure located on an adjacent lot*
- *To aid in the repair or replacement of a failing onsite sewage disposal system located on an adjacent lot*

Subdivision Ordinance Section 4.4.1A (Boundary Line Adjustments – Special Regulations)

4. Adjustments of boundary lines between adjoining residential lots where the total acreage in the subject lots is not increased *except in the following situations:*
- b. Lots approved with a maximum lot size exception. No residential lot approved with a maximum lot size exception per Zoning Ordinance Section 6.2.6 shall be reduced in size by boundary line adjustment without approval by the Planning Commission for one or both of the following hardship reasons:*
- *To correct an encroachment of a driveway, onsite sewage disposal system, or a structure located on an adjacent lot*
 - *To aid in the repair of a failing onsite sewage disposal system located on an adjacent lot*