



Clarke County Planning Commission

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.

A handwritten signature in black ink, appearing to read 'Brandon Stidham', written over a horizontal line.

Brandon Stidham, Clerk