



# Clarke County Planning Commission

**AGENDA – Ordinances Committee Meeting**

**Friday, September 2, 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 – May 6, 2022 Meeting**
- 3. Old Business**
  - A. Continued Discussion, Waterworks and Sewerage System and Treatment Works Regulations – Zoning Ordinance Section 7.4.5
- 4. New Business**
  - A. Structures Permitted in Required Setback Areas – Zoning Ordinance Section 7.1.2C
- 5. Adjourn**



# Clarke County Planning Commission

## **DRAFT** MINUTES – Ordinances Committee Meeting

Friday, May 6, 2022 – 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)	✓
George L. Ohrstrom, II (Ex Officio)	X		

**STAFF PRESENT:** Brandon Stidham (Director of Planning), Jeremy Camp (Senior Planner/Zoning Administrator)

**CALL TO ORDER:** By Mr. Stidham at 10:09AM.

### 1. Approval of Agenda

Members approved the agenda by consensus as presented by Staff.

### 2. Approval of Minutes – July 10, 2020 Meeting

Mr. Stidham noted that draft minutes were sent to the Committee members for informal review in 2020 and any comments received at that time were incorporated into this current draft. Members voted 3-0-1 to approve the July 10, 2020 meeting minutes as presented by Staff.

Motion to approve July 10, 2020 meeting minutes as presented by Staff:			
Buckley	AYE	Lee	AYE (seconded)
Caldwell	AYE (moved)	Malone	AYE (abstained)

### 3. Discussion Topics

#### A. Proposed Changes to Historic Overlay (H) District Review Criteria

Mr. Camp presented the staff report on this proposed text amendment that was developed in conjunction with the Historic Preservation Commission (HPC). He noted that the text amendment would add new criteria for evaluating demolition projects that require a certificate of appropriateness due to their location in the Historic (H) Overlay District.

Commissioner Caldwell suggested a wordsmithing change to the proposed changes to subsection 4 on Page 11 of 19. She suggested moving the last sentence to the beginning of the changes and then starting a new paragraph with “When considering...” She noted that it does not make sense to include the definition of “demolition” at the end of the subsection and Commissioners Malone and Lee agreed. Mr. Stidham asked if there is a difference between “razing” and “demolishing.” Mr. Camp replied no but added that both terms are used in the Code of Virginia so the HPC decided to keep it in the ordinance text. Commissioner Caldwell said that the text amendment looks fine with this change and that it is ready to go to the full Commission. Commissioner Lee agreed and noted that the criteria needed to be defined better. Mr. Camp added that the change

will better inform property owners of the requirements up from and will also provide the County with a stronger legal position when requiring certificates of appropriateness for demolitions. Commissioner Caldwell cited a complicated past case involving the demolition of a parsonage at 140 White Post Road that came before the HPC. She said that having the regulations in place that are now being proposed would have helped the HPC with that case. Mr. Camp explained that the regulations require an applicant to demonstrate that renovation of a structure is infeasible before authorizing that structure to be demolished.

Mr. Stidham said that Staff will present this text amendment to the full Commission at next month's meeting.

B. Waterworks and Sewerage System and Treatment Works Regulations – Zoning Ordinance Section 7.4.5

Mr. Stidham presented the staff report on this issue. He said that in his ten-year tenure, Staff has not directly applied these regulations to any particular application or situation but there have always been concerns about how the regulations would potentially have to be applied as currently written. He said that the rules were adopted in 1997 to prevent any use in the AOC and FOC Districts from using a water system that would be considered a "waterworks" or a sewage disposal system that would be considered a "sewerage system and treatment works." He noted that these regulations could make some allowable uses infeasible.

Mr. Stidham also noted a near term concern that the rule would be in conflict with the County's efforts to extend public water and public sewer to Double Tollgate to potentially serve future uses on AOC-zoned properties. He said to address this, at a minimum a future text amendment should be developed which states that Section 7.4.5 does not apply to development of new public water or public sewer infrastructure on AOC-zoned properties that is owned and/or operated by a local government entity. He then explained how the County's definition of a "waterworks" applies to any use providing water to the public and listed several allowable uses in the AOC District that would likely provide water to its customers or patrons. Two suggestions he offered included removing the waterworks regulations and defaulting to the State's regulations for waterworks, or by addressing waterworks usage in the regulations for individual uses and for subdivisions.

Regarding the sewerage system and treatment works regulations, Mr. Stidham noted that the Septic Ordinance (Chapter 143) was recently updated and now includes the County's prohibition on the use of mass drainfields. He said that the sewerage system and treatment works regulations in the Zoning Ordinance could be replaced by requiring compliance with the County's Septic Ordinance and applicable State regulations. He concluded his presentation by stating that he is only looking for the Committee to discuss these issues at this point and provide direction on whether Staff should prepare a text amendment.

Commissioner Lee stated that he has spoken with Frederick Water officials and they are more than happy to work with Clarke County to extend water and sewer as part of a regional effort. He also said that the soils in the Double Tollgate area are poor for onsite sewage disposal systems, adding that commercial development will need to have public water and sewer instead

of onsite systems. He said that he is in favor of water and sewer service provided by a governmental entity but has concerns about private systems being used to serve AOC uses. He then asked how much of an impact would the current regulations have on new uses proposed from the list of uses that could potentially serve water to the public. Mr. Stidham replied that he did not think this broad impact was contemplated when the rules were adopted in 1997. He noted as an example that home occupation bed and breakfast uses and country inns provide meal service to public patrons and would have to operate as a waterworks. He said that farm wineries, farm breweries, and farm distilleries were exempted from this requirement via text amendment adopted a few years ago because they would likely operate a waterworks by providing water to customers.

Regarding subdivisions, Mr. Stidham said that language could be added to the Subdivision Ordinance to prohibit the use of privately-operated water systems considered as waterworks for all new subdivisions. He noted that the Well Ordinance currently requires the water supply for a house to be located on the same lot, and that reciprocal language can be added to the Subdivision Ordinance to reinforce the prohibition on shared water systems. He added that the mass drainfield prohibition in the revised Septic Ordinance would prohibit use of mass drainfields to serve a subdivision. Commissioner Lee said that he is fine with the regulations so long as public water and sewer systems are only allowed if owned and operated by a governmental entity. Mr. Camp asked Commissioner Lee what he considered to be a governmental entity and offered Blandy Experimental Farm as an example. Commissioner Lee replied that you may want to spell out the specific municipal utilities that would be allowed to operate. He also reiterated that future development in Double Tollgate can only be possible with public water and public sewer service due to very poor soils. Mr. Stidham suggested using the language “local government entity as authorized by the Clarke County Board of Supervisors” which could include the Clarke County Sanitary Authority, Town of Berryville, or an adjacent locality.

Commissioner Caldwell said that she is worried that a developer may purchase land in Double Tollgate and then attempt to negotiate a deal with Frederick County to extend utilities to serve a higher density residential development on that property instead of a commercial development as planned for the Double Tollgate area. She added that it might be a good idea to include language that public water and public sewer service is not for residential use and Commissioner Lee agreed. Mr. Stidham replied that we need to be careful not to cut off existing residences in the Double Tollgate area who may need to connect to public water and public sewer. Commissioner Lee suggested modifying Commissioner Caldwell’s language to apply to “new residential uses.” Mr. Stidham asked Commissioner Caldwell if she is concerned about a developer rezoning a property to a residential zoning district, adding that we strongly prohibit that. Commissioner Caldwell agreed but noted that the soils in that area are not suitable for septic systems and a property owner may push to connect to Frederick County utilities to develop their land. Mr. Stidham replied that the Board of Supervisors would have to give permission for Clarke County properties to be served and that Frederick County cannot connect their utilities to properties that the Board has not authorized to be served. He added that he would try to come up with language that would limit water and sewer from serving residential uses without casting too wide of a net. Commissioner Lee said he is concerned about a commercial developer wanting to add townhouses to a project. Mr. Stidham replied that we do not allow townhouses or new residential development in the Double Tollgate area. He said an applicant can attempt to file a

residential rezoning application but it would automatically be turned down and they would not be in a position to fight it in court. He also said that language could be added to the Double Tollgate Area Plan to state that new residential uses are not appropriate.

Regarding the list of uses on Page 18 of 19, Mr. Stidham asked the members if they would have a problem with any of the uses being served by a waterworks as permitted by the Virginia Department of Health. He added that if the members are comfortable with defaulting to the State's regulations, then half of the issue is resolved. Commissioner Lee said he thought we should defer to the State's regulations on waterworks. Mr. Stidham then said if the members are comfortable with allowing the Septic Ordinance to regulate onsite sewage disposal systems, the other half of the issue is resolved. Commissioner Lee said he did not have a problem with this.

Vice-Chair Buckley asked how this would relate to a use like L'Auberge Provencale? Mr. Stidham replied that they currently have multiple septic systems to avoid operating a mass drainfield. He added that Georgetown University's facility on the mountain is designed the same way. Vice-Chair Buckley said that the property on which L'Auberge Provencale was built is only 8 acres in size and has challenges for drainfields to serve a use of that intensity. Commissioner Lee said that he agreed with that assessment. Vice-Chair Buckley added that he is concerned about dealing with a major drainfield failure on a property of that size and there is no more room to construct a replacement system. Mr. Stidham asked what the biggest generator of waste is for that business and Commissioner Lee replied the kitchen, noting that it produces much stronger wastewater than produced by the sinks and toilets in the guest rooms. Commissioner Caldwell said that this is a good example of a use that may require connection to public sewer in the future to resolve the septic problem. Vice-Chair Buckley stated that he has always been concerned that a court could require the County to connect L'Auberge Provencale to public sewer if their septic systems ever failed. Mr. Stidham replied that he did not think the County could be forced to extend utilities to remedy a failed system, adding that a property owner assumes the risk if they over-develop on a lot with limited septic system capacity. He added that an interim solution would be for the use to scale back to a level that their onsite system could handle. He also said that if the property owner has destroyed their septic system with overuse, then that is not the County's problem to remedy for them. He did note that it could be a different story if a County sewer line passed through their property. Commissioner Lee said that VDH will push for a use to be connected to public sewer before approving an onsite sewage disposal system, if such a connection is feasible.

Mr. Stidham noted that you can no longer develop a country inn with a restaurant open to the public like L'Auberge Provencale, but a country inn can serve three meals a day to guests occupying up to 15 guest rooms. He asked the members how they feel about this impact, adding that we can continue to address these issues through the site plan review and in conjunction with the Virginia Department of Health review. Commissioner Lee noted that he has designed timed-dosed systems in the past that handle sewage capacities that occur at limited peak periods but this type of system would not be recommended for something like a country inn that is booked every day. He said that L'Auberge Provencale attempted to address their wastewater load by constructing multiple drainfields but he did not think that this was a good solution. He said you will most likely end up with one system overloaded and the other systems under-loaded.

Mr. Stidham said that he will draft a text amendment based on today's discussion for consideration at a future meeting.

**4. Old Business**  
-- None

Mr. Stidham noted that the Commission identified the campground regulations as a new item for review. He asked the members if they wanted to review it or if the Policy & Transportation Committee should review it. Members agreed that it would address policy issues that would be best evaluated by the Policy & Transportation Committee.

**ADJOURN:** Meeting was adjourned by consensus at 11:03AM.

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Brandon Stidham, Clerk



## Clarke County Planning Department

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**TO: Ordinances Committee members**

**FROM: Brandon Stidham, Planning Director**

**RE: Continued Discussion, Waterworks and Sewerage System and Treatment Works Regulations – Zoning Ordinance Section 7.4.5**

**DATE: August 23, 2022**

Old Business Item #3A is a continued discussion about potential changes to the waterworks and sewerage system and treatment works regulations found in Zoning Ordinance Section 7.4.5.

This issue was last discussed at the May 6 Committee meeting. Members supported Staff's recommendations to remove the current zoning regulations which prohibit AOC and FOC uses from utilizing a waterworks or a sewerage system and treatment works. These regulations would be replaced with references to the County's Septic Ordinance (Chapter 143) and Well Ordinance (Chapter 184). Staff outlined concerns to the Committee that the current prohibition could make some allowable AOC and FOC District uses infeasible to operate. Staff also noted that protections against mass drainfield usage already exist in the Septic Ordinance and that new wording added to the Zoning and Subdivision Ordinance, in addition to current language in the Well Ordinance, would properly regulate the use of private water supply systems.

Below is a summary of text amendment language for both the Zoning and Subdivision Ordinances to address issues and concerns raised by Committee members. The draft text amendment language is included at the end of this memo.

### **Amend Zoning Ordinance Section 7.4.5, Waterworks and Sewerage System and Treatment Works**

- The title of this section would have changed to "Use of Private Wells and Onsite Sewage Disposal Systems; Use of Public Water and Public Sewer."
- All current language regarding the prohibition on the use of a waterworks or sewerage system and treatment works for uses in the AOC and FOC Districts commencing operation after July 1, 1997 would be deleted. This includes the County's definitions of "waterworks" and "sewerage system and treatment works" which both differ from the State's definitions of these terms.
- A new Subsection A would be added to state that private wells and onsite sewage disposal systems shall be designed in accordance with the Septic Ordinance (Chapter 143), the Well Ordinance (Chapter 184), the regulations of the Virginia Department of

Health, and any other applicable regulations. This would establish necessary cross-references between the Zoning Ordinance and these County Code sections.

- A new Subsection B would be added to state that no use in the AOC or FOC Districts shall be served by public water or public sewer provided by the Town of Berryville, Clarke County Sanitary Authority, or other local governmental entity without approval by the Clarke County Board of Supervisors. This addresses the Committee’s concern that a landowner could work out a private deal with an adjoining jurisdiction to provide public water and/or public sewer.

### **Amend Zoning Ordinance Section 7.5, RR District Design Standards and Development Regulations**

- A new Section 7.5.2 would be added titled “Use of Private Wells and Onsite Sewage Disposal Systems; Use of Public Water and Public Sewer.” This section would contain the same language being added to Section 7.4.5. A new Subsection A would establish cross-references to the Septic and Well Ordinances for the RR District that currently do not exist. A new Subsection B would prevent RR-zoned properties from being served by public water and public sewer without approval by the Board of Supervisors.

### **Amend Zoning Ordinance Section 7.2.3B, Public Water and Public Sewer Systems**

- A new Subsection 1 would be added to state that no use shall be served by a public water or public sewer system that is not owned and/or operated by a governmental entity authorized to provide public water service by the Clarke County Board of Supervisors. Similar to language added to the regulations for the AOC, FOC, and RR Districts, this would extend the requirement to all uses requiring a site development plan.
- New language would be added to the current section (renumbered as Subsection 2) to state that all public water and public sewer systems shall be designed to meet or exceed the regulations and specifications of the Clarke County Sanitary Authority and/or any other applicable federal, state, or local agency. This would clarify that all public water and public sewer systems shall be designed to meet the criteria of the local government entities that would be operating and maintaining them. It would include the Town of Berryville and Frederick County for any public water and public sewer systems that they may operate in the County.

### **Amend Subdivision Ordinance Section 4.5.4A, Public Utilities**

- A new Subsection 2 would be added stating that no new subdivision established after the adoption date of this text amendment shall be served by a waterworks (as defined by the Virginia Waterworks Regulations) or a sewerage system and treatment works (as defined by the Sewage Handling and Disposal Regulations, Virginia Administrative Code) that is not owned and/or operated by a governmental entity authorized to provide public water and public sewer service by the Clarke County Board of Supervisors. This new language would prohibit new subdivisions from using private shared water systems and onsite



sewage disposal systems. It would also emphasize that no local government entity (such as the Town of Berryville or Frederick County) can provide public water or public sewer service to a new subdivision without prior approval by the Clarke County Board of Supervisors.

Staff recommends that the Committee discuss these proposed changes and provide direction to Staff on whether to forward this draft text amendment to the full Commission for consideration. Please advise if you have questions or concerns in advance of the meeting.

## Zoning Ordinance

### 7.4 AOC AND FOC DISTRICT DESIGN STANDARDS AND DEVELOPMENT REGULATIONS

#### *7.4.5 Use of Private Wells and Onsite Sewage Disposal Systems; Use of Public Water and Public Sewer* ~~Waterworks and Sewerage System and Treatment Works~~

*A. Private wells and onsite sewage disposal systems proposed for use shall be designed in accordance with Code of Clarke County Chapter 143 (Septic Ordinance) and Chapter 184 (Well Ordinance), the regulations of the Virginia Department of Health, and any other applicable regulations.*

*B. No use in the AOC or FOC Districts shall be served by public water or public sewer provided by the Town of Berryville, Clarke County Sanitary Authority, or other local governmental entity without approval by the Clarke County Board of Supervisors.*

~~A. Installation of waterworks or sewerage system and treatment works. No use in the AOC or FOC Districts commencing operation after July 1, 1997 shall result in the installation of waterworks or sewerage system and treatment works. The prohibition on waterworks usage shall not apply to farm breweries, farm wineries, and farm distilleries allowed as permitted uses in Section 5.2 (Uses).~~

~~B. Definition of waterworks. A waterworks is 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, treatment, and distribution of pure water (except the piping and fixtures inside the building where such water is delivered).~~

~~C. Definition of sewerage system and treatment works.~~

~~1. Sewerage System. 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, and~~

~~2. Treatment Works. 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 of 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.~~

## **7.5 RR DISTRICT DESIGN STANDARDS AND DEVELOPMENT REGULATIONS**

### ***7.5.2 Use of Private Wells and Onsite Sewage Disposal Systems; Use of Public Water and Public Sewer***

- A. Private wells and onsite sewage disposal systems proposed for use shall be designed in accordance with Code of Clarke County Chapter 143 (Septic Ordinance) and Chapter 184 (Well Ordinance), the regulations of the Virginia Department of Health, and any other applicable regulations.***
- B. No use in the RR District shall be served by public water or public sewer provided by the Town of Berryville, Clarke County Sanitary Authority, or other local governmental entity without approval by the Clarke County Board of Supervisors.***

## **7.2 SITE DEVELOPMENT PLAN DESIGN STANDARDS AND DEVELOPMENT REGULATIONS**

### **7.2.3 Public Utilities; Use of Private Wells and Onsite Sewage Disposal Systems**

#### **B. Public Water and Public Sewer Systems.**

- 1. No use shall be served by a public water or public sewer system that is not owned and/or operated by a governmental entity authorized to provide public water service by the Clarke County Board of Supervisors.***
- 2. All public water distribution and public sewer collection systems shall be designed to accommodate normal and peak demand loads. All such systems shall be designed to meet or exceed the **regulations and** specifications of the **Clarke County Sanitary authority and/or any other applicable federal, state, or local agency** Berryville Area Water and Sewerage Program. ~~Regulations of the Virginia Department of Health and other state agencies shall also be met, as applicable.~~***

## Subdivision Ordinance

### 4.5 SUBDIVISION AND CONSTRUCTION PLAN DESIGN STANDARDS

#### 4.5.4 Public Utilities and Utility Easements

##### A. Public Utilities.

1. Where public water and/or public sewer facilities are available or required by the Clarke County Zoning Ordinance or the Code of Clarke County, or may be reasonably required by the approval authority in the interest of the public health, safety and general welfare, the service shall be extended to all lots within a subdivision and shall meet *or exceed* ~~all~~ *the* regulations and specifications of the Clarke County Sanitary Authority and/or any other applicable federal, state, or local agency.
2. *No new subdivision approved after [INSERT ADOPTION DATE] shall be served by a waterworks (as defined by the Virginia Waterworks Regulations) or by a sewerage system and treatment works (as defined by the Sewage Handling and Disposal Regulations, Virginia Administrative Code) that is not owned and/or operated by a governmental entity authorized to provide public water service by the Clarke County Board of Supervisors.*

#### 4.5.6 Private Wells and Onsite Sewage Disposal Systems

##### B. Use of Private Wells.

1. *Private wells proposed to serve new lots shall be designed in accordance with Code of Clarke County Chapter 184 (Well Ordinance), the regulations of the Virginia Department of Health, and any other applicable regulations.*
2. If lots less than 40 acres in size are to be served by an individual onsite water well, the well site for each lot shall show the distance and bearing to one corner of the well from two property corners. The final plat shall indicate Health Department approval of such sites, pursuant to a certificate of approval signed by the Health Official evidencing conformity with VDH requirements with respect to individual on-site subsurface septic systems and potable water supply systems, as applicable.

##### C. Use of Onsite Sewage Disposal Systems.

1. *Onsite sewage disposal systems proposed to serve new lots shall be designed in accordance with Code of Clarke County Chapter 143 (Septic Ordinance), the regulations of the Virginia Department of Health, and any other applicable regulations.*

2. If lots less than 40 acres in size are to be served by an individual onsite sewage disposal systems, the primary and reserve drain field areas for each lot so served shall show the distance and bearing to one corner of the drainfield from two property corners. The final plat shall indicate Health Department approval of such areas, pursuant to a certificate of approval signed by the Health Official evidencing conformity with VDH requirements with respect to individual on-site subsurface septic systems and potable water supply systems, as applicable.

**Other Editorial Changes (Zoning Ordinance references to waterworks and sewerage system and treatment works)**

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**TO: Ordinances Committee members**

**FROM: Brandon Stidham, Planning Director**

**RE: Structures in Setback Areas – Zoning Ordinance Section 7.1.2C**

**DATE: August 23, 2022**

New Business Item 4A is a discussion regarding potential technical changes to Zoning Ordinance Section 7.1.2C which contains a list of structures and building features that may be located within a required setback area.

Structures and building features that may be located in a setback area without restriction include:

- Driveways or patios with an elevation that is no more than 24 inches above grade.
- Fences and walls up to seven (7) feet in height or hedges.

“Building elements” may project into a required setback area but not more than 50% of the required setback. These include:

- Porches, balconies, and decks that do not have more than 36 square feet and do not have roofs
- Steps without roofs
- Bay or bow windows
- Projecting roof elements without columns
- Chimneys
- Eaves
- Architectural features
- Swimming pools (above or in ground)
- Mechanical equipment

Gasoline pump canopies are also allowed to project into a setback area but cannot be closer than 10 feet to any property line or right of way.

Staff has identified concerns with some of the items in this section. One concern is the scope of the term “mechanical equipment” which is currently undefined but could apply to any of a building’s mechanical systems including heating, cooling, electrical, water, or sewer/sewage disposal systems. A common application would be an outdoor heat pump or a window air conditioning unit – equipment that is typically attached to or located freestanding in close proximity to the building it serves.

In recent years, Staff has encountered situations in which mechanical equipment located away from a building has qualified for a 50% setback reduction. Freestanding solar panels serving a single-family dwelling are considered to be mechanical equipment and can be located a significant distance from the dwelling. A structure used to house an outdoor wood furnace or backup generator could also qualify for the 50% setback reduction if used exclusively for the mechanical equipment.

Staff is concerned that this interpretation may not be consistent with the original intent of this section to provide relief for “building elements.” All of the items in the list of building elements are features which are part of or attached to a structure with the exception of “swimming pools (above ground or in ground)” – the issue of pools is addressed later in this memo. Freestanding solar panels and outbuildings housing mechanical equipment including backup generators are more recent structures likely not contemplated when this section was originally created.

Staff is also concerned about the possibility that an accessory structure approved for a 50% setback reduction could be used for storage or other purposes and not just to house mechanical equipment. In one example, a property owner had an illegally located and unpermitted accessory structure (pergola). The structure was converted into a support structure for solar panels which allowed it to be legally located within the 50% reduced setback area but it also resulted in the pergola having a roof. Staff included a condition on the zoning permit, affirmed by the applicant, that the structure could not be used for any other purposes such as a carport or storage. This and other similar situations could result in ongoing issues with permit compliance especially with subsequent owners.

Staff recommends adding language to “mechanical equipment” to clarify that the 50% setback reduction would not apply to equipment “housed within or supported on a separate, freestanding structure such as an outdoor wood furnace or solar panels.” If adopted, these structures – including freestanding solar panels – would have to comply with the standard setback requirements for an accessory structure. If an applicant has trouble complying with the standard setback requirement, they may still be eligible to apply for a variance.

Staff also recommends deleting “swimming pools (above or in ground)” from the list of structures eligible for a 50% setback reduction. A swimming pool is not a “building element” and, as with freestanding structures housing mechanical equipment, can be located a significant distance from the primary dwelling. A swimming pool can also have a greater visual impact depending upon its size, decking, and mechanical equipment than a small accessory structure not eligible for a 50% setback reduction would have. As with the proposed change to “mechanical equipment,” an applicant may be eligible to apply for a variance if they cannot comply with the standard setback requirement.

Additional changes are also recommended for clarity purposes:

- Modifications to the section title and introduction to clarify that this section applies to “structures” and not to “uses” as there are no uses (as enumerated in Zoning Ordinance Section 5) included in this section. Also replacing “shall” with “may” to clarify that items in this section may be allowed in the setback area if the applicant demonstrates full

compliance with ordinance requirements.

- Add “freestanding” to “walls” to make it clear that this does not refer to a wall of a building or other structure.
- Delete “hedges” as a listed feature that can be in a setback area. Specifically allowing hedges to be located within a setback area could result in conflicts with Section 7.1.1F which prohibits vegetation – including hedges – from being placed or allowed to grow to produce a sight distance impediment. This is the only context in which the Zoning Ordinance currently regulates “hedges.” Since “hedges” are not considered to be structures, they would be allowed in setback areas whether or not they are specifically listed in Section 7.1.2C unless they constitute a sight distance impediment.

Proposed text amendment language is included at the end of this memo. Staff recommends that the Committee discuss these issues and provide direction to Staff on whether to advance this text amendment to the full Commission. Please advise if you have questions or concerns in advance of the meeting.



**PROPOSED TEXT AMENDMENT LANGUAGE:**

**C. ~~Uses and~~ Structures or Portions of Structures Permitted in Required Setback Areas.**

No ~~structure or~~ portion of any ~~building structure~~ shall be permitted in any required setback area, however, the following ~~uses and~~ structures ~~shall~~ **may** be permitted in required setback areas, subject to the limitations established below.

1. Driveways or patios with an elevation that is no more than 24 inches above grade.
2. Fences and **freestanding** walls up to seven feet in height ~~or hedges~~.
3. Building elements as enumerated below. Such elements or equipment may project into any required setback area, but shall be set back from property lines at least 50% of the minimum setback requirement:
  - Porches, ~~balconies,~~ ~~or~~ decks ~~that do not have more than~~ **with a maximum area of** 36 square feet and ~~do not have~~ **without** roofs
  - Steps without roofs
  - Bay or bow windows
  - Projecting roof elements without columns
  - Chimneys
  - Eaves
  - Architectural features
  - ~~Swimming pools (above or in ground)~~
  - Mechanical equipment **essential to the building's heating, cooling, electrical, water or sewer/sewage disposal systems. This provision shall not apply to mechanical equipment housed within or supported on a separate, freestanding structure such as an outdoor wood furnace or solar panels.**
4. Gasoline pump canopies shall not be closer than 10 feet to any property line or right-of-way.