

**CLARKE COUNTY PLANNING COMMISSION
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August 30, 2022 Work Session Packet**

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Clarke County Planning Commission

AGENDA – Work Session

Tuesday, August 30, 2022 – 3:00PM

Berryville/Clarke County Government Center– Main Meeting Room

1. **Approval of Agenda**
2. **Review of September 2 Business Meeting Agenda Items**
 - A. Conflicts of Interest
 - B. Agenda Review
 - C. Status of Deferred Applications
3. **Old Business Items**
 - A. Continued Discussion, 2022 Double Tollgate Area Plan Draft
 - B. Continued Discussion, Boundary Line Adjustment Regulations Text Amendment
4. **New Business Items**

-- None Scheduled
5. **Other Business**
6. **Adjourn**



Clarke County Planning Department

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TO: Planning Commissioners

FROM: Brandon Stidham, Planning Director

RE: Conflicts of Interest

DATE: August 24, 2022

Prior to reviewing the agenda items for the September 2 Business Meeting, Staff has included an agenda item regarding conflicts of interest. Two commissioners have conflicts of interest with the upcoming Carter Hall Estate, LLC special use permit and site development plan application (SUP-22-02/SP-22-03) which has been deferred by the applicant for one month to the October Commission meeting. The commissioners will read formal statements disqualifying themselves from consideration of this application.

In the past, commissioners with conflicts of interest have notified the Commission informally either at the Work Session or Business Meeting of the conflict and have verbally recused themselves from participating in the deliberations. Commissioners would sometimes notify the Chair and or Staff of the conflict in advance of the meeting but not in all instances. There is no established procedure for conflicts of interest and the Commission's By-Laws only reference the Code of Virginia provisions for determining conflicts.

Staff recommends that a formal process for declaring a conflict of interest be developed and incorporated into the By-Laws for consideration at the January 2023 Organizational Meeting. This process can include the following steps which commissioners can follow informally until a formal process is added to the By-Laws:

- A commissioner shall notify the Planning Director as soon as a conflict of interest in a matter coming before the Commission is suspected. The Planning Director, in consultation with the County Attorney, will advise the commissioner whether there is an actual conflict of interest.
- If there is a conflict of interest, a statement of disqualification will be prepared for the commissioner to read at the Commission's first public meeting after the application in question has been filed. The Commissioner shall also notify the Chair of the conflict prior to the meeting at which the statement of disqualification is read.
- Once the commissioner has read the statement of disqualification, they are prohibited from participating in all deliberations of the case. The commissioner may remain seated

with the Commission or may choose to sit in the audience at their discretion during deliberations.

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



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TO: Planning Commissioners

FROM: Brandon Stidham, Planning Director

RE: Continued Discussion, 2022 Double Tollgate Area Plan Draft

DATE: August 24, 2022

Item #3A is a continued discussion of the 2022 Double Tollgate Area Plan draft. For the purposes of this discussion, we will continue with the June 28 Initial Draft that was included in your July Work Session packet. If you need an additional hard copy, please let me know.

As we discussed previously, the Area Plan draft follows the updated guidance in the revised 2022 Comprehensive Plan which is currently under review by the Board of Supervisors. After the revised Comprehensive Plan is adopted, the Commission can then schedule public hearing on the Area Plan draft. The Board has scheduled their public hearing on the Comprehensive Plan for September 20 and could adopt the Plan at that meeting. If that occurs, Staff recommends the Commission take action at the October 7 Business Meeting to schedule public hearing on the Area Plan for November 4.

For the upcoming Work Session, Staff is looking for any comments, questions, and edits on the Area Plan draft as we work towards finalizing it for the public hearing. Please let me know if you have questions or concerns in advance of the Work Session.



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TO: Planning Commissioners

FROM: Brandon Stidham, Planning Director

RE: Continued Discussion, Boundary Line Adjustment Regulations Text Amendment

DATE: August 24, 2022

Item #3B is a continued discussion of the proposed changes to the boundary line adjustment regulations in the Zoning and Subdivision Ordinances. This issue was previously discussed at the May 31 Work Session. For the upcoming Work Session, Staff has provided a detailed summary of the proposed changes in text amendment format for your consideration. Comments, questions, and edits are encouraged. If the Commission is comfortable with the draft text amendment, Staff recommends adding an item to the September 2 Business Meeting to schedule public hearing for the October 7 meeting.

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

ZONING AND SUBDIVISION ORDINANCE TEXT AMENDMENT (TA-22-04)
Boundary Line Adjustment Regulations
September 2, 2022 Planning Commission Meeting – SET PUBLIC HEARING
STAFF REPORT – Department of Planning

The purpose of this staff report is to provide information to the Planning Commission and Board of Supervisors to assist them in reviewing this proposed ordinance amendment. It may be useful to members of the general public interested in this proposed amendment.

Description:

Proposed text amendment to amend Zoning Ordinance Section 4.1.1A (Agricultural-Open Space-Conservation (AOC) District) and Section 6.2.6C (Maximum Lot Size Exception – Review Criteria and Regulations), and Subdivision Ordinance Section 4.4.1A (Boundary Line Adjustments – Special Regulations). The proposed changes would limit boundary line adjustments between AOC-zoned lots less than 20 acres in size where at least one of the lots is 4 acres in size or less. The proposed changes would also limit any AOC-zoned lot approved with a maximum lot size exception that is also less than 20 acres in size from being reduced in size through boundary line adjustment. Such boundary line adjustments would only be allowed for specific hardship reasons and subject to Planning Commission review and approval.

Requested Action:

Initiate consideration of this text amendment and schedule the proposed text amendment for Public Hearing at the October 7, 2022 Planning Commission Business Meeting.

Background:

This text amendment was developed to address a policy concern that has been raised by the Planning Commission in recent years regarding the creation of lots approximately 20 acres in size in the Agricultural-Open Space-Conservation (AOC) District. Commissioners have contended 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. The Zoning and Subdivision Ordinances do not allow for lots of this size to be created directly through subdivision, however current maximum lot size exception and boundary line adjustment regulations can allow lots to be modified into 20-acre configurations.

Per the Zoning Ordinance, the maximum lot size for new AOC-zoned lots created through subdivision is 4 acres and an average of 3 acres for all lots in the subdivision. A maximum lot size exception can be granted by the Commission for a new lot if it contains a single-family dwelling that existed on the lot prior to October 17, 1980, if the lot is in conservation easement, or if the Commission determines that the lot contains sufficient low quality land to justify exceeding the maximum lot size. There is no maximum lot size requirement for lots in the Forestal-Open Space-Conservation (FOC) District.

Boundary line adjustments in the AOC District are allowed subject to administrative approval and compliance with regulations set forth in the Subdivision Ordinance (Section 4.4.1). In the context of boundary line adjustments, the Subdivision Ordinance defines lots less than 20 acres

in size as “residential lots” and lots 20 acres or greater as “agricultural lots.” These terms do not correlate to the terms “residential” and “agricultural” used in the Zoning Ordinance. Subdivision Ordinance Section 4.4.1 limits boundary line adjustments between residential and agricultural lots as follows:

- Residential lot is increased in size and agricultural lot is decreased in size. A residential lot may be increased in size through boundary line adjustment with an agricultural lot subject to limitations and that the agricultural lot is not reduced below 20 acres. A residential lot can be increased to a maximum of 3 acres. A residential lot that qualifies for land use taxation may be adjusted to a size that makes it an agricultural lot (20 acres or larger). The Commission may also approve a residential lot to be adjusted over 3 acres if the lot is of sufficiently low quality to justify exceeding the maximum lot size.
- Residential lot is decreased in size and an agricultural lot is increased in size. Allowed so long as the resulting residential lot complies with the AOC District minimum lot size requirement.

Section 4.4.1 also allows for boundary line adjustments between residential lots where the total acreage in the subject lots is not increased. This section has been interpreted to allow land to be adjusted between two residential lots so long as additional land is not added from a third lot to increase the total area of both residential lots. As a result, a residential lot can currently be increased in size over the 4 acre maximum lot size through boundary line adjustment with another residential lot.

The issue of creating 20+ acre lots was recently revisited by the Commission in response to a property owner’s recent transactions which resulted in the creation of three lots between 22 and 25 acres in size. Below is a summary of these transactions

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) <i>Lot 3: 6.78 acres (1 DUR) - not included in BLA Residue</i> <i>Lot: 123.37 (5 DUR) – 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) <i>Lot 3: 6.78 acres (1 DUR) - not included in MS Residue Lot: 123.37 acres (5 DURs)</i>	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 began with a 145.37 acre lot containing 1 existing dwelling and 6 dwelling unit rights (DURs). In 2020, the property owner gained approval of a minor subdivision and maximum lot size exception from the Commission 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 that was previously approved with a maximum lot size exception to 12.3 acres. In 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.

Given the Commission's previous concerns with similar transactions producing 20+ acre lots, Staff brought the matter to the Commission's Policy & Transportation Committee. 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 Commission. The resultant text amendment attempts to mitigate the manipulation of lots into 20-acre configurations by creating new limitations on certain types of boundary line adjustments.

Proposed Text Amendment:

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. As noted above, this would allow a residential lot in the AOC District to be increased above the 4 acre maximum lot size through boundary line adjustment with another residential lot.

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 are 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, 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.

Staff Recommendation:

Staff recommends that the Planning Commission initiate consideration of the text amendment and schedule Public Hearing for the October 7, 2022 Business Meeting.

History:

March 4, 2022.

Presented to Commission’s Policy & Transportation Committee for discussion.

May 19, 2022.

Policy & Transportation Committee agreed by consensus to forward issue and Staff’s recommendations to the full Commission for discussion.

May 31, 2022.

Presented to the Planning Commission at their Work Session for initial discussion.

September 2, 2022.

Placed on the Commission’s Business Meeting agenda to set Public Hearing.

Ordinance Amendment Text (changes shown in bold italics with strikethroughs where necessary):

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*