



Clarke County Planning Commission

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.

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

Brandon Stidham, Clerk