

COUNTY CODE TEXT AMENDMENT (CC-22-08)

Chapter 184 -- Wells

**November 22, 2022 Board of Supervisors Meeting – SCHEDULE 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 Code of Clarke County Chapter 184 (Wells), Sections 184-9 (Location of Water Supplies) and 184-15 (Appeals and Variances). The purpose is to require all wells to be located within the boundaries of the lot that they are intended to serve unless a variance is obtained from the Board of Septic and Well Appeals. The text amendment also incorporates detailed language regarding the review of appeals and variances which is currently referenced in the appeals and variances section of Chapter 143 (Septic Systems).

Requested Action:

Schedule Public Hearing for the December 20, 2022 Board of Supervisors meeting.

Staff Analysis:

Current Section 184-9 (Location of Water Supplies) limits new wells from serving structures that are located on a different lot:

E. Any new well which is the water source for a private water supply system shall be located within the boundary of the lot it serves.

The text amendment would delete the word “new” in Subsection E, effectively requiring all wells associated with private water supply systems – both new and existing – to be located on the same lot as the structures they serve. This change would apply both to offsite wells serving structures via easement and to wells that are shared by structures on two or more lots. The policy justification for this prohibition is to ensure that the water source for structures is under the full control of the lot owners who use it.

A new sentence would also be added to Subsection E to state that an easement for use of an off-site well may be approved if a variance to this regulation is granted by the Board of Septic and Well Appeals. As with all variances to Chapter 184, the applicant must show that the variance is needed to address a clearly demonstrable hardship approaching confiscation and not to address a self-imposed convenience or option sought by the applicant. For example, a property owner could be eligible for a variance if there is no viable well site on the lot and they provide technical studies to prove this condition. A property owner who prefers an offsite well location when there is a viable onsite well location, or if the offsite well would produce a better yield, likely would not be eligible for a variance.

The text amendment would also expand upon the appeals and variances language in Section 184-15. This section currently references the appeals and variances section found in Chapter 143

(Septic Systems) as the procedures to follow for an appeal or variance to Chapter 184. This language from Chapter 143 would be modified for relevance to Chapter 184 regulations and added to Section 184-15.

Proposed text amendment language is included at the end of this report.

Staff Recommendation:

Staff has no outstanding concerns with the adoption of this text amendment.

History:

November 22, 2022. **Placed on the Board of Supervisors’ meeting agenda to schedule Public Hearing.**

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

184-9, Location of Water Supplies

E. Any ~~new~~ well which is the water source for a private water supply system shall be located within the boundary of the lot it serves. ***Easements for use of a well located outside of the boundary of the lot it is intended to serve shall only be permitted with approval of a variance in accordance with Section 184-15, Appeals and Variances.***

184-15, Appeals and Variances

~~Refer to Chapter 143 Septic Systems § 143-11. Appeals & variances. of the Code of Clarke County.~~

- A. Board of Septic and Well Appeals. The Board of Septic & Well Appeals, as described in Code of Clarke County Chapter 143 (Septic Systems), shall hear appeals of administrative interpretations and applications for variances to this chapter.***
- B. Appeals***
 - 1. Any appeal shall be filed within 30 days of the issuance date of the order, requirement, decision, or determination.***
 - 2. Any person seeking an appeal shall apply in writing to the Board. Such application shall include:***

- a. A citation to the order, decision, determination or regulation to which an appeal of interpretation or application is requested;*
 - b. Any relevant analytical results, including results of tests conducted pursuant to the requirements of this article;*
 - c. Other information, if any, deemed pertinent by the applicant; and*
 - d. Such other information as the Board may require.*
- 3. The Board shall act on any appeal request within 60 calendar days from the Board's first review.*
- 4. All appeals shall be consistent with the intent of this article. The Board may attach reasonable conditions consistent with the intent of this article in granting appeals.*
- 5. No appeal may be heard except after notice and hearing as required by Code of Virginia §15.2-2204.*
- 6. An appeal of a decision of the Board shall be made within 30 days to the Board of Supervisors. Any appeal of the decision of the Board of Supervisors shall be made within 30 days to the Circuit Court of Clarke County.*
- 7. The concurring vote of two members shall be necessary to reverse any order, requirement, decision, or determination of an administrative officer, or to decide in favor of the applicant on any matter upon which the Board is required to pass under this chapter, or to effect any variance from the regulations of this chapter.*

C. Variances

1. Variance Criteria.

- a. In order to be eligible for a variance, the private water supply system for which the variance is requested serves or is planned to serve one of the following:*
 - i. An existing single-family dwelling or structure serving an existing business*
 - ii. An existing single-family dwelling or structure serving an existing business that has been destroyed by circumstances beyond the control of the owner or occupant of the building within one year of the variance application.*
 - iii. A building that is eligible to be on the Virginia Landmarks Register or the National Register of Historic Places or is eligible to be a contributing property in an historic district listed in the Virginia Landmarks Register or the National Register of Historic Places.*
 - iv. The variance is requested so as to provide for new private water supply systems replacing existing systems that are more consistent with the*

regulations of this article. An existing single-family dwelling or structure serving an existing business must be located on the property with the existing water supply system.

v. *The entire parcel of land has been placed under a permanent conservation easement.*

2. *Variances shall be approved to alleviate a clearly demonstrable hardship approaching confiscation involving existing single-family dwellings or structures serving an existing business as distinguished from a special privilege or self-imposed (elective) convenience or option sought by the applicant.*

3. *Variance Procedure.*

a. *Any person seeking a variance shall apply in writing to the Board. Such application shall be in writing and shall include:*

i. *A citation to the order, decision, determination or regulation from which a variance is requested.*

ii. *Identification of which of the variance criteria in paragraph C(1) applies;*

iii. *The nature of the variance requested.*

iv. *Any relevant analytical results, including results of tests conducted pursuant to the requirements of this article.*

v. *Statements or evidence why the public health and welfare as well as the groundwater resources would not be degraded if the variance were granted.*

vi. *Suggested conditions that might be imposed on the granting of a variance that would limit the detrimental impact on public health and welfare or groundwater resources.*

vii. *Other information, if any, deemed pertinent by the applicant.*

viii. *Such other information as the Board may require.*

b. *The Board of Septic and Well Appeals shall act on any variance request within 60 calendar days of receipt of the request.*

c. *The Board may attach reasonable conditions consistent with the intent of this article in granting variances. Compliance with conditions shall be required for the life of the system for which the variance is issued, unless specified otherwise by the Board.*

d. *No variance may be granted except after notice and hearing as required by Code of Virginia §15.2-2204. Posting and notification of adjacent property owners are waived for existing failed systems requiring emergency repairs, which alter the configuration of the existing system as determined by the county Health Department.*

- e. *A denial of a variance, or an appeal from the terms and conditions set forth in the variance, shall be made within 30 days to the Board of Supervisors. Any appeal of the decision of the Board of Supervisors shall be made within 30 days to the Circuit Court of Clarke County.*