



Clarke County Planning Commission

MINUTES – Work Session

Tuesday, October 4, 2022 – 3:00PM

Berryville/Clarke County Government Center – Main Meeting Room

ATTENDANCE:			
George L. Ohrstrom, II (Chair/Russell)	XE	Ronnie “Ron” King (Buckmarsh)	✓
Randy Buckley (Vice-Chair/White Post)	✓	Scott Kreider (Buckmarsh)	XE
Matthew Bass (Board of Supervisors)	✓	Frank Lee (Berryville)	✓
Buster Dunning (White Post)	X	Gwendolyn Malone (Berryville)	✓
Robert Glover (Millwood)	X	John Staelin (Millwood)	X
Pearce Hunt (Russell)	✓	Doug Lawrence (BOS alternate)	X

E – Denotes electronic participation

NOTE: George Ohrstrom and Scott Kreider participated electronically but were not eligible to vote or count toward the quorum as they previously participated electronically for personal reasons in 2022.

STAFF PRESENT: Brandon Stidham (Director of Planning), Jeremy Camp (Senior Planner / Zoning Administrator), Kristina Maddox (Office Manager / Zoning Officer)

OTHER PRESENT: Stuart Dunn (Dunn Land Surveyors, Inc.)

CALL TO ORDER: By Brandon Stidham at 3:00PM.

Approval of Agenda

Commissioners had no additions to the agenda.

Review of October 7 Business Meeting Agenda Items

Mr. Camp reviewed **MS-22-04, Louise Elsea (owner) and Chad Elsea (applicant)** and noted the requirements of the Subdivision and Zoning Ordinances have been met and that Staff recommends approval. There were no questions from the Commission.

Mr. Stidham reviewed **TA-22-04, Boundary Line Adjustment Regulation**. He said the first of two major changes is regarding boundary line adjustments between adjoining residential lots. He explained the change would prevent the increase of a four acre lot without Planning Commission approval and only due to hardship reasons. These hardship reasons, he said, include 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 that line or to repair or replace a failing septic system. He continued that the second major change is to the maximum lot size exception regulations regarding boundary line adjustments involving a lot that has been approved by maximum lot size exception and is also less than twenty acres in size. He said those lots would not be able to be reduced in size by boundary line adjustment except with Planning Commission approval for the same hardship reasons previously mentioned.

There were no outstanding concerns or questions from the Commission.

Mr. Camp reviewed SUP-22-03/SP-22-04, **Hecate Energy Gun Barrel Road Solar, LLC; Hecate Energy, LLC (applicants)/Debra Diane Davis, Administrator of the Estate of Montie Wood Gibson, Jr. (owner-deceased)**. Commissioner Lee asked if the stormwater plan was approved as amended. Mr. Camp said that an approved letter from DEQ (Department of Environmental Quality) was received.

Chair Ohrstrom asked if the applicant wants the Commission to set public hearing next month. Mr. Camp said he had date options for the Commission to review but that the applicant would like to schedule public hearing next month if possible. Chair Ohrstrom commented that they should have to go through the entire process. Mr. Stidham replied that they are going through the special use permit and site plan processes with the Planning Commission and also the Board of Supervisors. He said the applicants hoped to make the changes administratively, however, the changes are substantive and the full review process is required. Chair Ohrstrom asked Mr. Stidham if he had concerns about this. Mr. Stidham replied not as far as the process is concerned and that they received DEQ stormwater approval. Commissioner Lee said he agrees with the applicants going through the full process and that he does not have a problem with the project as long as they meet the requirements and receive final approvals.

Mr. Camp provided a visual example of the changes submitted by the applicant where the solar arrays are farther away from Gun Barrel Road. Vice Chair Buckley asked if there were less arrays due to this change as they are using a smaller area. Mr. Camp said he was not certain as to the quantity but he could find out.

Mr. Camp noted the new site plan includes a berm that is close to the adjacent houses. Chair Ohrstrom asked how big the berm is and asked if it was going to create any issues for nearby homeowners. Mr. Camp said that was a staff concern as well and noted it is a three foot tall berm according to the site plan, however, he has asked for clarification from the applicant. He also noted the landscape plan needs to be resubmitted to address the changes.

Commissioner Bass asked if the potentially impacted homeowners are aware of plans to move forward at this point or will they become aware closer to the public hearing date. Mr. Stidham said they are most likely not aware but are required to be informed via notice as a public hearing will be set.

Commissioner Lee asked if DEQ addressed the issue of existing sinkholes on their evaluation in relation to stormwater management and drainage on the property. Mr. Camp replied that it was his understanding that the changes made were as a result to DEQ requirements to move further away from the sinkhole areas to create less impervious area. Mr. Stidham noted their original stormwater approval was granted under different regulations that actually changed before their site plan expired. Vice Chair Buckley said he thinks the berm is going to affect their stormwater especially during a rainy season. Mr. Stidham commented there is a large flat area on the site where they are installing check dams across the panel field shown on the plan that he is assuming will channel the water away to the north. Chair Ohrstrom commented that it would also hold any water in between Route 340 and the berm in place. Vice Chair Buckley expressed concerns regarding a possible historic farmhouse on the map that has water issues in between the house and Route 340. Mr. Stidham said Staff is relying on DEQ's review of the stormwater plan to prevent that from happening. Commissioner Lee asked if it was possible to do a site visit on the property as he agrees with Vice Chair Buckley that it seems like a low area and wants to better understand how the applicants plan to deal with the issue.

Chair Ohrstrom asked Mr. Stidham whether or not the applicant is in the queue for a permit to generate electricity. Mr. Stidham replied that according to Patti Shorr (Hecate Energy), the project delays resulted in their permit application to generate electricity being placed in a suspension status. He added that Ms. Shorr stated that the application was restored to the queue in late June/early July of this year and that they have six months to meet certain milestones to remain in the queue for permit approval and to connect to the electricity grid. He said this timeline is why the applicant wanted Staff to expedite the changes. He also noted that he asked Ms. Shorr what the required deliverable is at the first milestone and she replied that they needed to have a building permit approved by September. He added that he advised Ms. Shorr that this would not be possible. He also said that he did not know whether missing this milestone would cause their application to be removed from the queue or whether that determination is made at the end of the six month period.

Mr. Stidham noted that the current special use permit conditions regarding timing to completion give them flexibility but also to keep them moving forward. He said he is considering a more restrictive condition if it is ultimately improved to ensure they move toward construction and complete the project in a shorter timeframe than they were allowed with the original special use permit. Chair Ohrstrom asked if we could request a queue confirmation letter from PJM. Mr. Stidham suggested to ask Ms. Shorr on the record as to the dates that she will be pulling the permits. He added that if those dates are missed, there will be the understanding that the earliest agenda he can get on with the Board of Supervisors Staff will be asking them to revoke the special use permit.

Vice Chair Buckley asked if there would be a bond required for the decommissioning of phase one to which Mr. Camp replied that it has been requested. Mr. Camp said it specifically stated that the bond should not include scrap value as a modifier to it. He said an internal discussion to be had is that they have no idea what the market will be when they decommission the plant which could potentially hurt the county if there is a negative value associated with getting rid of the equipment versus a positive for scrap value. He said that the decommissioning plan was submitted prior to this meeting and that he had not had the opportunity to review it.

Mr. Camp said the Planning Commission has one-hundred days from today to take action but that it could be earlier and that a public hearing is required. Vice Chair Buckley and Mr. Stidham confirmed that the one-hundred days was on the Commission and not the county as a whole.

Chair Ohrstrom suggested having the public hearing in December so the Commission has sufficient review time. Mr. Stidham noted a benefit to having the public hearing in November is that the public hearing could be continued if there are unanswered questions. Commissioner Lee said he prefers to continue the public hearing in December and that he would like to hear from the homeowners. Chair Ohrstrom agreed to the November public hearing with a possible continuation in December.

Mr. Stidham reviewed the item to Schedule Public Hearing on the 2022 Double Tollgate Area Plan. He said the Board of Supervisors adopted the Comprehensive Plan at their September meeting which allows the Planning Commission to move forward with the Area Plan. He also said the only change to the drafts are the addition of photographs and that it is all set for public hearing.

Regarding deferred applications, Mr. Stidham announced that Carter Hall requested a thirty day deferral to the November meeting. He also mentioned that the solar project on the former Salvation Army property on Westwood Road is still under deferral through February. He said they plan to resubmit with

changes so Staff can continue to review as they wait for their stormwater letter. He continued that if the stormwater approvals arrived sooner than expected, they may request to come off the deferral early.

Old Business Items

None scheduled.

New Business Items

Discussion, Interpretation of Maximum Lot Size Exception Regulations

Mr. Camp explained a hypothetical scenario similar to a unique situation that arose recently. He said out of this particular situation, three questions require direction from the Planning Commission. He asked if a lot qualifies for a maximum lot size exception based on the pre-1980 dwelling criteria if the dwelling does not exist at the time of subdivision. Chair Ohrstrom said he believed it does. Mr. Camp then asked if the maximum lot size exception has to be on the same location as where the dwelling was previously located.

Chair Ohrstrom allowed Mr. Stuart Dunn of Dunn Land Surveys, Inc. to address this issue. Mr. Dunn suggested the intent of the paragraph was to say, “dwellings in existence are taxed as such before October 17, 1980 and may be located on a lot that exceeds a maximum area requirements or a proposed dwelling with a building permit issued before October 17, 1980 may be located on a lot that exceeds the maximum area requirements.” He said he did not think the building still had to be standing.

Commissioner Bass said his interpretation of the existing dwelling language is to remove potential hardship from the applicant because a building may have been in existence and then may subsequently have been demolished or a similar fate does not mean that the footprint on land is not there.

Mr. Stidham said if an owner tears down their pre-1980 dwelling that is documented as a pre-1980 dwelling, the owner’s DUR does not vanish. He said that it becomes a floating DUR meaning that someone could build a new dwelling in another location on the lot. Overall, he said, the question is are we treating it differently when the property owner is asking for a maximum lot size exception. He said getting the Planning Commission’s thoughts on this issue will ultimately help to create a text amendment to clarify.

Chair Ohrstrom asked for clarification on question two in the memo. Mr. Stidham clarified that the second question should read “was on” rather than “will be on” and also that the sentence should end with “used on any lot in the subdivision.”

Vice Chair Buckley said he has two of the pre-1980 homes himself – one that is not inhabited and one that burned in the early 1980s and he believes that if there is some type of proof there was a house there including walls, that it is still considered a building. Chair Ohrstrom agreed with the statement but also said he is contemplating question two. Commissioner Kreider said he believes one should be allowed to rebuild but that it should go back into the same location and not be moved to a different lot.

Commissioner Lee commented that it may not be applicable to rebuild in the same location due to meeting current well and septic regulations and believes some flexibility should be allowed.

Commissioner Bass agreed and said the potential of the pre-existing structures has the potential to cause the same hardship trying to build a new building.

Mr. Stidham said Staff found examples where maximum lot size exception was allowed but the pre-1980 house went on the residual instead of the maximum lot size exception lot.

Chair Ohrstrom left the meeting at 4:00pm.

Commissioner Lee asked about the taxes on the building since 1980 to which Mr. Stidham responded that you have to check if it is being taxed as a dwelling or as an accessory structure. Mr. Stidham noted that it may have been a renovated barn or outbuilding and turned into a house which would make it a pre-1980 dwelling. He said it has to be in existence on that date but also have been used as a dwelling as evidence by how it was being taxed. Commissioner Lee then asked how an older uninhabited dwelling is taxed. Mr. Stidham said he was not sure how many people question the taxation of their old derelict buildings back then or even knew they could convert it to something else. Commissioner Lee said he is interested to know how the county has taxed derelict housing in the past on a piece of property in 1980.

When Vice Chair Buckley asked what Staff wanted from the Commission on this today, Mr. Camp replied it was just a discussion and to gather the thoughts of the Commission for direction. He said the language needed to be cleaned up and that Staff would work on it. Mr. Stidham said Staff will take the direction and apply it to this application. Commissioner Lee responded that it seems they can move the house site and they can also apply for a maximum lot size exception.

Discussion, Waterworks and Sewerage System and Treatment Works Regulations Text Amendment – Zoning Ordinance Section 7.4.5

Mr. Stidham said that if the Commission was comfortable enough at the end of the discussion of the next few items, they can be added to the Business Meeting agenda for Friday to set public hearing for November.

Mr. Stidham reviewed the staff memo on this proposed text amendment developed by the Ordinance Committee

Mr. Stidham said Staff and the Ordinance Committee recommends adding new language to specify that section 7.4.5 does not apply to development of new public water public sewer infrastructure to serve those uses, owned and or operated by local government entity on AOC centered properties.

Commissioners had no questions or comments and unanimously agreed when Mr. Stidham asked if they were comfortable with putting this on the upcoming Business Meeting agenda.

Discussion, Structures Permitted in Required Setback Areas Text Amendment – Zoning Ordinance Section 7.1.2C


Mr. Stidham reviewed the staff memo for this proposed text amendment to allow encroachments of certain structures and features into setbacks including architectural features, above or inground swimming pools, and mechanical equipment.

Commissioner Lee said he was comfortable with the proposed language as long as the applicants have the option to ask for a variance if needed. Mr. Stidham said a variance option will always be available as an option. Commissioners agreed to add this to the Business Meeting agenda to schedule public hearing.

Other Business

None scheduled.

ADJOURN: The October 4, 2022 Planning Commission Work Session adjourned by consensus at 4:25PM.


George L. Ohrstrom, II (Chair)


Kristina Maddox (Clerk)