



Clarke County Planning Commission

AGENDA – Ordinances Committee Meeting

Friday, July 10, 2020 – 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 – October 4, 2019 Meeting**
- 3. Discussion, Additional Policy Issues**
 - a. Commercial Boarding Kennels, Commercial Breeding Kennels, and Veterinary Clinics – Use Regulations as Applied in the Highway Commercial (CH) Zoning District
 - b. Setback Distance for Wireless Communication Facilities
- 4. Old Business**
- 5. Adjourn**

Clarke County

**PLANNING COMMISSION ORDINANCES COMMITTEE
MEETING MINUTES -- DRAFT
FRIDAY, OCTOBER 4, 2019**



A meeting of the Planning Commission's Ordinances Committee was held at the Berryville/Clarke County Government Center, Berryville, Virginia, on Friday, October 4, 2019.

ATTENDANCE

Present: Randy Buckley, Anne Caldwell, Frank Lee, and Gwendolyn Malone

Absent: None

Staff/Others Present: Ryan Fincham (Senior Planner/Zoning Administrator); George L. Ohrstrom, II

CALLED TO ORDER

Mr. Stidham called the meeting to order at 9:54AM.

APPROVAL OF MINUTES

The Committee approved the August 22, August 29, and September 6, 2019 meeting minutes as presented.

Yes: Buckley (moved), Caldwell, Lee (seconded), Malone

No: None

PROGRESS REPORT AND DISCUSSION OF NEXT STEPS – ORDINANCE UPDATE PROJECT

Mr. Stidham stated that we are locked in on the dates of the upcoming joint workshops with the Board of Supervisors and he reviewed the dates for those workshops. Chair Ohrstrom asked Mr. Stidham if he expected good attendance at the workshops to be held after the Business Meetings. Mr. Stidham asked if he meant attendance by Commissioners or Board members. Commissioner Buckley noted that the Board members have all agreed to the workshop dates. Mr. Stidham said that it is a lot to ask Commissioners and Board members to attend four workshops and he noted that the last workshop will likely be for the die-hards that want to discuss the policy and technical issues. He also said that he added the restaurant discussion back on that workshop agenda per the Committee's request, and noted that the workshop will finish up with a discussion of outreach and next steps. He said that anyone who wants to ask questions about specific policy and technical issues will likely do so at the last workshop. Chair Ohrstrom asked about the restaurant discussion and Mr. Stidham replied that this is the technical issue pertaining to restaurants and the current broad definition of the use. He added that we are breaking off new uses for catering and food service as an accessory use to

differentiate them from restaurants. Vice-Chair Buckley asked if this includes food service at convenience stores. Mr. Stidham replied yes and noted that we re-did the entire concept of convenience stores as well. He also stated that we addressed mobile food vendors by emphasizing that the place of business is where the food is prepared and not where it is served. Commissioner Lee added that the Health Department has the authority to determine what aspects of food preparation is regulated. Chair Ohrstrom asked who tells the Health Department what to regulate and Commissioner Lee replied the General Assembly.

Mr. Stidham said that the County Attorney is still reviewing the Subdivision Ordinance and we are hoping to be able to distribute it at the November 1 joint workshop. He added that we do not get into the details of the Subdivision Ordinance until the third workshop on November 14. He also said that he hopes to have the Guidance Manual finished at the latest by the last workshop on December 6. He said that he has the Guidance Manual outline done and has relocated all of the current ordinance provisions that are to be moved to the Manual. Commissioner Lee said that the Guidance Manual might be the most important part of this project, and Commissioner Caldwell added that it helps people who may not be well-versed in reading ordinances.

Mr. Stidham asked the members if the workshop schedule has to be compressed in order to be completed sooner, would they prefer a long meeting with a lunch break on November 1 or schedule an all-day session on a Saturday. Members unanimously preferred a long meeting on November 1. Commissioner Caldwell said there should be a lot of breaks as attention spans typically last an hour and a half. Mr. Stidham said that he will be distributing the workshop binders to the Board on Monday and will also remind them of the workshop schedule. Commissioner Lee asked if we have a commitment from all of the Board members to attend and Mr. Stidham replied yes.

Commissioner Caldwell asked about the upcoming election and whether the new Board member that is elected to replace Supervisor Byrd will be sworn in in January. Mr. Stidham replied that they have to be sworn in prior to their first meeting. Chair Ohrstrom said that Supervisor Byrd's term ends on December 31 and Mr. Stidham added that the new Board member cannot be sworn in before Supervisor Byrd's term ends. Mr. Stidham said that the goal is to have a complete set of draft Ordinances in January that the Commission will feel comfortable with scheduling public hearing. Chair Ohrstrom asked if the public hearing should be scheduled for the evening and Mr. Stidham replied yes. Mr. Stidham also said that the earliest the Board would get the draft Ordinances from the Commission would be in March. Chair Ohrstrom said that he has a problem with holding a public hearing and taking action on the same night. Mr. Stidham said that you do not have to do this and can defer action to the next meeting. He added that the only time you are on a deadline is in a situation like the Crown Castle application where there is a mandated review timeframe. Chair Ohrstrom said that it is a problem to receive comments at a public hearing and then immediately take action on the matter. Mr. Stidham suggested that the Commission could schedule the public hearing for February instead of March with the understanding that any action on the Ordinances would not be taken until March. He said another idea would be to have an evening public hearing in February with an informal, VDOT-style public comment session led by Staff before the start of the public hearing. Commissioner Lee said this is a good idea because people are more likely to provide comments and ask questions in a less formal setting. Commissioner Caldwell said the informal public comment

approach was used in developing the Mountain Land Plan. Mr. Stidham said you could also continue the Public Hearing from February to March to allow for even more input.

Chair Ohrstrom asked if we can start the Comprehensive Plan review process before the Ordinance Update project is complete. Mr. Stidham replied that once we get to the Public Hearing process, theoretically Staff should have room in our workload to begin the Comprehensive Plan update project. He added that at the January meeting after the Committees are established for the year, the Commission can determine whether to delegate the Comprehensive Plan update to the Comprehensive Plan Committee or to do it as a committee-of-the-whole like we did it before. He added that the Commission would be adopting the annual work plan at that same meeting.

OLD BUSINESS

None

The meeting was adjourned by consensus at 10:10AM.

Brandon Stidham, Planning Director



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TO: Planning Commission Ordinances Committee members

FROM: Brandon Stidham, Planning Director

RE: Commercial Boarding Kennels, Commercial Breeding Kennels, and Veterinary Clinics – Use Regulations as Applied in the Highway Commercial (CH) Zoning District

DATE: July 1, 2020

Item #3a is a discussion of the current use regulations for commercial boarding and breeding kennels and veterinary clinics in the Highway Commercial (CH) District and how they will be incorporated into the revised Zoning Ordinance.

Commercial boarding kennels are currently allowed by-right in the CH District. They were previously allowed by special use permit in the Agricultural-Open Space-Conservation (AOC), Forestal-Open Space-Conservation (FOC), and Neighborhood Commercial (CN) Districts. A text amendment adopted in 2014 (TA-14-04) eliminated the special use in these districts. Boarding kennels as a home occupation are allowed by-right in the AOC and FOC Districts for less than five canines and/or felines older than six months.

Commercial breeding kennels are allowed by-right as a home occupation (subject to limitations) and by special use permit in the AOC and FOC Districts. They are allowed by special use permit in the CN District and by-right in the CH District. Veterinary services and animal hospitals (combined into a single new use – “veterinary clinic” – in the revised Zoning Ordinance) are also allowed by special use permit in the CN District and by-right in the CH District.

Use regulations are currently located in Section 3-C-2-jj and read as follows:

- 1. Companion animals shall be confined in an enclosed building, which shall be climate controlled and be constructed of sound absorbing materials so as to mitigate animal noise at adjacent property lines. Such an enclosed facility may also include a fenced exercise area. Such enclosed facilities and exercise areas shall be at least 200 feet from any property line. Areas of confinement not fully enclosed (such as dog runs) shall be at least 500 feet from any property line.*
- 2. The hours of operation for kennels and shelters shall not be earlier than 7:00 a.m. or later than 9:00 p.m. In all cases, companion animals shall be confined in an enclosed building from 9:00 p.m. to 6:00 a.m. In exceptional cases, a companion animal may be briefly escorted outside by kennel staff during the hours of enclosed confinement.*

3. *A Breeding Kennel or Commercial Boarding Kennel is allowed only as an accessory use to a Single family Detached Dwelling. Enclosed facilities and exercise areas shall be at least 200 feet from any property line. Areas of confinement not fully enclosed (such as dog runs) shall be at least 500 feet from any property line.*

These regulations were not modified with the 2014 text amendment that removed commercial boarding kennels from the AOC, FOC, and CN Districts.

In the revised Zoning Ordinance, all of the regulations for commercial boarding kennels, commercial breeding kennels, and veterinary clinics are consolidated in new Section 5.2C (Uses, Definitions, and Use Regulations – County Districts/Business Uses). Current use regulations 3-C-2-jj-1 and 2 regarding confinement, setbacks, and hours of operation are included in the revised Zoning Ordinance verbatim for both commercial boarding and breeding kennels. Use regulation 1 only applies to veterinary clinics.

Regarding current use regulation 3-C-2-jj-3, the first sentence is in conflict with the current regulations as breeding kennels and commercial boarding kennels cannot be an accessory use to a single-family dwelling in the CH and CN Districts because single-family dwellings are not an allowable use in those districts. Since the uses are allowed only on a limited basis as a home occupation in the AOC and FOC Districts and home occupations are an accessory use to a single-family dwelling, there is no need to retain this sentence or the second sentence which is extraneous.

Staff's questions for the Committee are in regards to the application of use regulations 1 and 2 as they pertain to the CH District. Breaking down these regulations in list form, the requirements are as follows:

- Animals are to be confined in a climate-controlled, enclosed building constructed of sound absorbing materials to mitigate noise at property lines.
- May include a fenced exercise area.
- Setback for enclosed facilities and exercise area – 200 feet from any property line.
- Setback for confinement areas not fully enclosed such as dog runs – 500 feet from any property line.
- Hours of operation limited to 7:00AM – 9:00PM. Animals are to be confined in an enclosed building from 9:00PM to 6:00AM. Animals may be briefly escorted outside by kennel staff during the confinement hours in exceptional cases.

Many of these regulations were designed to mitigate compatibility issues and provide additional protections for properties in the AOC, FOC, and CN Districts. The regulations may not be necessary for commercial boarding kennels in the CH District and may actually be an impediment to locating a boarding kennel in that zoning district. Current setbacks for all commercial uses in the CH District are 35 feet from streets and rights-of-way 50 feet or greater

in width (60 feet if less than 50 feet in width); 25 feet from AOC, FOC or RR zoned property lines; 10 feet from other CH zoned property lines; 50 feet from intermittent streams and 100 feet from perennial streams and springs. There are no other uses in the CH District that contain more stringent setback requirements or that have a limitation on the hours of operation.

Staff requests the Committee discuss whether some, all, or none of these use regulations should apply to commercial boarding kennels in the CH District and provide direction to Staff regarding potential changes to the draft Zoning Ordinance provisions. Staff also request the Committee to provide direction as to whether use regulations 1 and 2 should apply to commercial breeding kennels, and whether use regulation 1 should apply to veterinary clinics, in the CH District.

Please let me know if you have any questions in advance of the June 10 meeting.

COMMERCIAL BOARDING KENNEL	
Permitted Use	CH
Accessory Use	None
Special Use	None

Definition:

A business which houses, boards, handles, or otherwise keeps or cares for companion animals in return for compensation.

Use Regulations:

1. Companion animals shall be confined in an enclosed building, which shall be climate controlled and be constructed of sound absorbing materials so as to mitigate animal noise at adjacent property lines. Such an enclosed facility may also include a fenced exercise area. Such enclosed facilities and exercise areas shall be at least 200 feet from any property line. Areas of confinement not fully enclosed (such as dog runs) shall be at least 500 feet from any property line.
2. The hours of operation shall not be earlier than 7:00 a.m. or later than 9:00 p.m. In all cases, companion animals shall be confined in an enclosed building from 9:00 p.m. to 6:00 a.m. In exceptional cases, a companion animal may be briefly escorted outside by staff during the hours of enclosed confinement.

Required Review Processes:

1. Site Development Plan review is required per [Section 6.2.2](#).
2. Certificate of Appropriateness review is required per [Section 6.2.5](#) for lots located within the Historic Access Corridor (HAC) Overlay District.

COMMERCIAL BREEDING KENNEL	
Permitted Use	CH; AOC and FOC as home occupation (see limitations below)
Accessory Use	None
Special Use	AOC, FOC, CN

Definition:

A business which houses or handles more than ten canine animals older than six months for the purpose of breeding for sale in return for compensation.

Use Regulations:

1. Canines shall be confined in an enclosed building, which shall be climate controlled and be constructed of sound absorbing materials so as to mitigate animal noise at adjacent property lines. Such an enclosed facility may also include a fenced exercise area. Such enclosed facilities and exercise areas shall be at least 200 feet from any property line.

Areas of confinement not fully enclosed (such as dog runs) shall be at least 500 feet from any property line.

2. The hours of operation shall not be earlier than 7:00 a.m. or later than 9:00 p.m. In all cases, canines shall be confined in an enclosed building from 9:00 p.m. to 6:00 a.m. In exceptional cases, a canine may be briefly escorted outside by kennel staff during the hours of enclosed confinement.
3. Regulations for the AOC and FOC Districts:
 - a. A commercial breeding kennel for a maximum of ten canines older than six months is allowable as a home occupation with approval of a Zoning Permit per [Section 6.2.1](#).
 - b. A commercial breeding kennel is allowed only if located on the same lot as a single-family dwelling and shall be located not more than 200 feet from the single-family dwelling.

Required Review Processes:

1. Special Use Permit Review is required per [Section 6.3.1](#) for breeding kennels housing more than 10 canines. If operating as a home occupation, a Zoning Permit is required per [Section 6.2.1](#). Special Use Permit Review is not required for uses in the CH District.
2. Site Development Plan Review is required per [Section 6.2.2](#) unless operated as a home occupation.
3. Certificate of Appropriateness review is required per [Section 6.2.5](#) for lots located within the Historic Access Corridor (HAC) Overlay District, and for lots located within the Historic (H) Overlay District, unless operated as a home occupation.

VETERINARY CLINIC	
Permitted Use	CH
Accessory Use	None
Special Use	AOC, FOC, CN

Definition:

A facility for the medical care and treatment of animals including companion animals and agricultural animals. Such facilities may provide grooming and boarding services as well as limited retail sales of pet-related merchandise.

Use Regulations:

1. Companion animals shall be confined in an enclosed building, which shall be climate controlled and be constructed of sound absorbing materials so as to mitigate animal noise at adjacent property lines. Such an enclosed facility may also include a fenced exercise area. Such enclosed facilities and exercise areas shall be at least 200 feet from any

property line. Areas of confinement not fully enclosed (such as dog runs) shall be at least 500 feet from any property line.

Required Review Processes:

1. Special Use Permit Review is required per [Section 6.3.1](#) for uses in the AOC, FOC, and CN Districts.
2. Site Development Plan Review is required per [Section 6.2.2](#).
3. Certificate of Appropriateness Review is required per [Section 6.2.5](#) for lots located within the Historic Access Corridor (HAC) Overlay District, and for lots located within the Historic (H) Overlay District.



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TO: Planning Commission Ordinances Committee members

FROM: Brandon Stidham, Planning Director

RE: Setback Distance for Wireless Communication Facilities

DATE: July 1, 2020

Item #3b was requested for consideration by Commissioner Caldwell and was also raised as a discussion point recently in the special use permit application for Crown Castle on Mt. Carmel Road (SUP-19-01).

As you are aware, the regulations for Wireless Communication Facilities (WCFs) were significantly overhauled with a text amendment adopted in 2017 (TA-17-02). In conjunction with this text amendment, a new setback requirement for Class 1-4 WCFs was established in Section 6-H-12-a-5-a:

Class, 1, 2, 3, and 4 WCFs shall be set back from all property lines and structures a distance equivalent to the WCF's fall zone, or the WCF's fall zone and required perimeter buffer area, whichever distance is greater. The WCF's designed fall zone shall be described in the applicant's site development plan. For parcels located adjacent to the Appalachian National Scenic Trail Corridor, WCFs shall be set back a minimum of 400 feet from the footprint of the Appalachian Trail.

These setback requirements are included as currently written in the revised Zoning Ordinance under Wireless Communication Facility (WCF) Design Standards, Section 7.3B-1.

The discussion point for the Ordinances Committee is whether the WCF setback requirements should be modified to be measured from the WCF's fall zone plus ten percent of the WCF's proposed height. The "fall zone" is the maximum distance from the structure base of a WCF that the WCF is designed to fall in the event of a structural failure and collapse. A WCF's fall zone is determined by a licensed structural engineer and is depicted on a sealed schematic that must be provided with the site development plan application.

To put this proposed change into perspective using the Crown Castle proposed WCF as an example:

- Proposed Height – 185 feet
- Setback (Equal to Fall Zone) – 92 feet
- Setback (Equal to Fall Zone plus 10% of WCF height) – 110.5 feet

The purpose of the change would be to ensure that if the WCF were to collapse, there would be additional distance beyond the fall zone to ensure that the entire structure would be contained within the property lines. It should be noted that since the maximum height of a Class 4 WCF is 199 feet, the maximum additional setback that could result from the proposed change would be 19.9 feet.

With the change, the proposed language in revised Zoning Ordinance Section 7.3B-1 would read as follows:

1. *Setback requirements from property lines and structures. Class, 1, 2, 3, and 4 WCFs shall be set back from all property lines and structures a distance equivalent to the WCF's fall zone **plus 10 percent of the WCF height**, or the WCF's fall zone **plus 10 percent of the WCF height** and required perimeter buffer area, whichever distance is greater. The WCF's designed fall zone shall be described in the applicant's site development plan. For parcels located adjacent to the Appalachian National Scenic Trail Corridor, WCFs shall be set back a minimum of 400 feet from the footprint of the Appalachian Trail.*

Staff is looking for direction as to whether the proposed change should be included in the next draft of the revised Zoning Ordinance. Please let me know if you have any questions in advance of the June 10 meeting.