**Town of Berryville**
Berryville-Clarke County
Government Center
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**BERRYVILLE PLANNING COMMISSION**
**Berryville/Clarke County Government Center – 101 Chalmers Court**
**Main Meeting Room**
**July 25, 2017 – 6:45 PM Site Visit to 40 Cattleman's Lane**
**7:30pm Regular Meeting – Berryville/Clarke County Government Center**

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## AGENDA

1. **Call to Order - Site Visit - 40 Cattleman's Lane** – Doug Shaffer, Chair

2. **Reconvene Meeting – Berryville – Clarke County Government Center – 7:30pm**

3. **Approval of Agenda**

4. **Approval of Minutes** – June 27, 2017

5. **Approval of Comprehensive Plan Committee Minutes** – July 10, 2017

6. **Approval of Senior Facilities Committee Minutes** – July 10, 2017

**PUBLIC HEARINGS**

7. **Public Hearing – Special Use Permit** – *Attachment A*
   **Donald Riesgraf (Owner, DBSR, LLC), is requesting a Special Use Permit in order to allow contractor's establishment and light warehousing with outdoor storage per Section 609.3(a) of the Berryville Zoning Ordinance on the property located at 40 Cattleman's Lane, identified as Tax Map Parcel number 14A3-((A))-26, zoned L-1 Industrial.** SUP 02-17

8. **Public Hearing – Text Amendments** - *Attachment B*
   **The Berryville Planning Commission is sponsoring text amendments to the Berryville Zoning Ordinance in order to remove references to the Town of Berryville Stormwater Management Ordinance and replacing them to reference the Commonwealth of Virginia Stormwater Management Program (VSMP) following the repeal of the Town's Stormwater Management Ordinance.** TA 01-17

Patricia Dickinson, *Mayor* — Harry Lee Arnold, Jr., *Recorder*

*Council Members*
Donna Marie McDonald, *Ward 1* — Allen Kitselman, III, *Ward 2* — Erecka L. Gibson, *Ward 3* — David L. Tollett, *Ward 4*

Keith R. Dalton, *Town Manager*

9. **Public Hearing – Repeal and Readopt Section 322 Erosion and Sediment Control of the Berryville Zoning Ordinance** – *Attachment C*
   **The Berryville Planning Commission is sponsoring text amendments to the Berryville Zoning Ordinance in order to repeal and readopt Section 322 Erosion and Sediment Control updating the ordinance to align with regulations of the Commonwealth of Virginia.** TA 02-17

**REGULAR SESSION**

10. **Citizen's Forum**

11. **Discussion of Public Hearings**

**NEW BUSINESS**

12. **Discussion – Senior Facilities Committee Recommendations** – *Attachment D*

**BUSINESS**

13. **Planning and Zoning Update** – *Attachment E*

14. **Other**

15. **Adjourn**

**PLANNING COMMISSION**
**Berryville-Clarke County Government Center**
**MINUTES OF REGULAR MEETING**
**June 27, 2017**

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A meeting of the Berryville Planning Commission was held on Tuesday, June 27, 2017 at 7:30 p.m. in the Berryville – Clarke County Government Center located at 101 Chalmers Court in Berryville, Virginia.

**ATTENDANCE:** Members of the Planning Commission present: Doug Shaffer, Chair, Kim Kemp, Vice Chair, Dale Barton, Michelle Marino, Krish Mathur, Sheryl Reid, William Steinmetz, Debbie Zimmerman

Member absent: Gwen Malone

Staff present: Christy Dunkle, Assistant Town Manager/Planner

Others present: Dave Tollett (Planning Commission liaison)

Press present: Cathy Kuehner

Chair Shaffer called the meeting to order at 7:30pm.

**APPROVAL OF AGENDA**
Chair Shaffer asked for approval of the agenda. Ms. Reid moved to approve the agenda as presented, seconded by Ms. Zimmerman, the agenda was approved by voice vote.

**APPROVAL OF MINUTES**
Mr. Mathur noted one typographical change to the minutes. Ms. Reid moved to approve the minutes of the March 28, 2017 Planning Commission meeting as amended, seconded by Mr. Steinmetz. The motion passed by voice vote.

**APPROVAL OF COMPREHENSIVE PLAN COMMITTEE MINUTES**
Chair Steinmetz asked for a motion to approve the March 13 and June 5, 2017 meeting minutes. Ms. Zimmerman made the motion to approve both sets of minutes, Ms. Marino seconded, the motion passed by voice vote.

**APPROVAL OF SENIOR FACILITIES COMMITTEE MINUTES**
No meeting was held.

**REGULAR SESSION**
**Citizen's Forum**

Chair Shaffer said no one had signed up to speak and asked if anyone would like to. There were no speakers.

**NEW BUSINESS**
**SET PUBLIC HEARING – Special Use Permit**

> **Donald Riesgraf (Owner, DBSR, LLC), is requesting a Special Use Permit in order to allow contractor's establishment and light warehousing with outdoor storage per Section 609.3(a) of the Berryville Zoning Ordinance on the property located at 40 Cattleman's Lane, identified as Tax Map Parcel number 14A3-((A))-26, zoned L-1 Industrial.** SUP 02-17

Chair Shaffer asked staff to describe the request. Ms. Dunkle said that Mr. Riesgraf has purchased the property at 40 Cattleman's Lane and would like to offer outdoor storage of contractors' supplies and recreational vehicles. Mr. Steinmetz asked about the ownership of the property. There was a discussion about a site visit to the property prior to the meeting on July 25 at 6:45pm. Ms. Reid suggested meeting at Berryville Farm Supply so that those with lower profile vehicles can access the property. Vice Chair Kemp made the motion to set the public hearing for the July 25, 2017 meeting, seconded by Ms. Marino, the motion passed by voice vote. It was determined that Planning Commissioners would meet at the site at 6:45pm.

**SET PUBLIC HEARING – Text Amendments**

> **The Berryville Planning Commission is sponsoring text amendments to the Berryville Zoning Ordinance in order to remove references to the Town of Berryville Stormwater Management Ordinance and replacing them to reference the Commonwealth of Virginia Stormwater Management Program (VSMP) following the repeal of the Town's Stormwater Management Ordinance.** TA 01-17

Ms. Dunkle said that Town Council repealed the Town of Berryville Stormwater Management Ordinance in April per the Planning Commission's recommendation. She said the text amendments before them were references to that ordinance that need to be removed to reflect that change. She recommended that the Planning Commission sponsor the proposed amendments and set a public hearing for the July 25, 2017 meeting.

There being no further discussion, Vice Chair Kemp made the motion to set the public hearing for the July meeting, seconded by Mr. Steinmetz, the motion passed by voice vote.

**SET PUBLIC HEARING – Text Amendments**

> **The Berryville Planning Commission is sponsoring text amendments to the Berryville Zoning Ordinance in order to repeal and readopt Section 322 Erosion and Sediment Control updating the ordinance to align with regulations of the Commonwealth of Virginia.** TA 02-17

Ms. Dunkle said that the Commonwealth has provided an updated model ordinance for use by localities. She said the attached text amendments will update the Town's Section 322 of the Zoning Ordinance. She said that items that were updated include references to sections of the Code of Virginia; the identification of the Virginia Department of Environmental Quality as the regulatory body overseeing the Town's Erosion and Sediment Control program; and the addition of several definitions. She requested that Planning Commission sponsor the amendments and set a public hearing for the July 25, 2017 meeting.

There being no further discussion, Vice Chair Kemp made the motion to set a public hearing for the July 25, 2017 meeting, seconded by Ms. Zimmerman, the motion passed by voice vote.

**OLD BUSINESS**

**PLANNING AND ZONING UPDATE**

Ms. Dunkle reviewed the staff report.

**OTHER**

Chair Shaffer discussed the RV storage Special Use Permit request. He said these vehicles are stored with full fuel tanks and LP tanks. There was a discussion about safety and fire concerns and Commissioners requested that staff contact Mr. Lichty for comment. There was a discussion about current Town Code requirements for parking RV's in residential areas. Ms. Dunkle said she would include Town Code information in the next staff report.

**Adjourn**

There being no further business, Ms. Reid made a motion to adjourn the meeting, seconded by Mr. Steinmetz, the motion passed by voice vote at 7:50pm.

_____ _____

Doug Shaffer, Chair Christy Dunkle, Recording Secretary

**PLANNING COMMISSION**
**Comprehensive Plan Committee**
**MINUTES**
**Berryville-Clarke County Government Center – AB Meeting Room**
**July 10, 2017**

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A meeting of the Berryville Planning Commission Comprehensive Plan Committee was held on Monday, July 10, 2017 at 10:30 a.m. in the Berryville – Clarke County Government Center located at 101 Chalmers Court in Berryville, Virginia.

**ATTENDANCE:** Members of the Committee present: William Steinmetz, Chair, Gwen Malone, Debbie Zimmerman

Absent: Michelle Marino

Staff present: Christy Dunkle, Assistant Town Manager/Planner

Others: None

Chair Steinmetz called the meeting to order at 10:37a.m.

**DISCUSSION – Chapter 9 Future Land Use**
Ms. Dunkle said she had included the draft update of Chapter 9 for Committee Members. Members reviewed the draft document. Ms. Malone asked about the future of Hermitage Phase V and members discussed the process for continuing development. There was a discussion about the maps and including information from the Berryville Area Plan. Chair Steinmetz said there are sufficient references to the Berryville Area Plan per the discussion from the previous Comp Plan Committee meeting.

**Other**
There were no other comments.

**Adjourn**
There being no further business, Chair Steinmetz asked for a motion to adjourn the meeting. Ms. Malone made the motion, seconded by Ms. Zimmerman, the motion passed by voice vote at 11:10a.m.

_____ _____

William Steinmetz, Chair Christy Dunkle, Recording Secretary

**PLANNING COMMISSION**
**Berryville-Clarke County Government Center**
**MINUTES OF SENIOR FACILITIES COMMITTEE**
**July 10, 2017**

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A meeting of the Berryville Planning Commission Senior Facilities Committee was held on Monday, July 10, 2017 at 11:30am in the Berryville – Clarke County Government Center located at 101 Chalmers Court in Berryville, Virginia.

**Attendance:** Members of the Committee present: Dale Barton, Chair, Gwen Malone, Deb Zimmerman

Staff present: Christy Dunkle, Assistant Town Manager/Planner

Others present: None

Chair Barton called the meeting to order at 11:33am.

**Discussion of Senior Facilities**
The Committee reviewed information submitted by staff and Council member McDonald concerning existing senior facilities, identifying Mary Hardesty House, Johnson-Williams Apartments, Greenfield, Rose Hill Nursing Home, and Godfrey House with additional discussion about Washington Square Apartments, Orchard Court, and Country View where a number of seniors reside. Chair Barton questioned whether additional senior units could be supported by existing services in the community. There was a discussion about the need for additional medical office and urgent care facility to accommodate current and future residents of all ages.

**Discussion of Zoning Allowing Assisted Living, Nursing Homes, and Senior Housing**
Ms. Dunkle said she has included portions of the Berryville Zoning Ordinance which identify senior-related uses by right and by special permit. She said she has also included pertinent definitions from Article I of the Zoning Ordinance. There was a discussion about current and future trends in senior living including universal design and aging in place. Ms. Malone suggested review of each of the districts which allow senior facilities. Ms. Dunkle noted that property owners may deed restrict properties to add age restrictions in any zoning district that allows for residential development.

After discussing the matter, committee members recommended the following action:

- Section 202 R-2 Residential, deleting Section 202.2(a) nursing, convalescent, or rest homes, pursuant to Section 311;
- Section 203 R-3 Residential, deleting Section 203.2(a) nursing and/or convalescent homes as set forth in Section 311;
- Section 610 BC Business Commercial, deleting Section 610.2(o) Medical care facilities, licensed;
- Section 611 B Business, deleting Section 611.2(o) Medical care facilities, licensed; and

- Section 613 ITL Institutional, modifying Section 613.3(b) Hospitals and medical care facilities, removing the latter which is defined in the zoning ordinance as skilled nursing facilities licensed by the Virginia Department of Health and replacing it with "urgent care facility".

Committee members requested that staff review the ordinance and identify areas where urgent care facilities would be appropriate. They requested that staff include their recommendations in the upcoming Planning Commission meeting packet for discussion.

**Other**
There was no other business.

**Adjourn**
There being no further business, Ms. Zimmerman made a motion to adjourn the meeting, seconded by Ms. Malone, the motion passed by voice vote at 12:12pm.

Dale Barton, Chair

Christy Dunkle, Recording Secretary

DRAFT

**BERRYVILLE PLANNING COMMISSION** **Agenda Item #7**
**Public Hearing – Special Use Permit**
**July 25, 2017**

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**Donald Riesgraf (Owner, DBSR, LLC), is requesting a Special Use Permit in order to allow contractor's establishment and light warehousing with outdoor storage per Section 609.3(a) of the Berryville Zoning Ordinance on the property located at 40 Cattleman's Lane, identified as Tax Map Parcel number 14A3-((A))-26, zoned L-1 Industrial.** SUP 02-17

PLEASE NOTE: Planning Commissioners agreed to meet at 6:45pm at 40 Cattleman's Lane to discuss the Special Use Permit. The meeting will be called to order on-site at that time. At the conclusion of the site visit, the meeting will recess and reconvene at 7:30pm at the Government Center.

Public hearing notices were published in the Winchester Star on Tuesday, July 11 and Tuesday, July 18, 2017. Adjacent property owners were notified via first class mail on July 10, 2017. No comments were received in the Planning Office.

Mr. Riesgraf is requesting a Special Use Permit in order to allow outdoor storage with "contractor's establishment" and "light warehousing" uses in the L-1 Industrial Zoning District. The Special Use Permit process allows for the ability to set conditions on specific uses and respective parcels which may include hours of operation, site requirements, and items deemed appropriate as recommended by the administrative body and approved by the governing body.

At the June meeting, Commissioners requested that staff include Town Code Section 10-50 *Parking and storage of travel trailers, boats, etc., in residential areas*. This section regulates items related to recreational vehicles including licensure, storage, and parking.

Staff contacted Brian Lichty, Clarke County Fire, EMS, and Emergency Management Director, concerning requirements for RV storage as related to fuel and LP gas on the site. Mr. Lichty said that he did not find any specific requirements concerning this type of storage.

Discussion should occur concerning lighting on the site, particularly where the parcel is adjacent to residentially-zoned property.

As previously discussed, Cattleman's Lane is owned and maintained by Norfolk-Southern Railroad.

The following items are included with this report:

- Special Use Permit application;

- Site Plan (minor amendment);
- Vicinity Map;
- Section 10-50 of the Code of the Town of Berryville Parking and storage of travel trailers, boats, etc., in residential areas;
- Section 609 L-1 Industrial of the Berryville Zoning Ordinance; and
- Section 503 Special Use Permit of the Berryville Zoning Ordinance.

***June 27, 2017 Staff Report***

*Mr. Riesgraf owns the parcel identified above on Cattleman's Lane and would like to have outdoor contractor storage and light warehousing. Sections 609.2(d) and 609.2(l) of the Berryville Zoning Ordinance allow for contractor storage and light warehousing, respectively. Outdoor storage for these two uses may be permitted with an approved Special Use Permit under Section 609.3(a). The owner's intention is to offer storage of recreational vehicles and contractor storage on the site.*

***Site Information***

*The parcel purchased by Mr. Riesgraf is approximately 3.54 acres and is located at the end of Cattleman's Lane. A large building is located on the southern part of the parcel which is currently leased by Lloyd's Transfer. Another building located on the site will be dismantled and removed from the property. Approximately two acres of the parcel will be used for storage area.*

*Cattleman's Lane is owned by Norfolk Southern Railroad and is not a public street.*

***Adjacent Parcel Information***

*Ownership, zoning, and land uses on adjacent parcels are as follows:*

- *West: Norfolk Southern Railroad; L-1 Industrial Zoning; abandoned siding*
- *North: Friant Enterprises; BP Business Park Zoning; undeveloped, located in Annexation Area B*
- *East: Friant Enterprises; DR-2 Detached Residential Zoning; undeveloped, located in Annexation Area B*
- *South: Calliecorp., LLC; C-1 Commercial; hardware store, granite business, future retail/office complex is planned. Thomas Plumbing & Heating, Inc.; L-1 Industrial; equipment storage*

***Zoning Requirements***

*Section 609.11 regulates storage of goods, materials, fuel and refuse. Section 609.11(b) requires that all goods stored outside must be screened from public rights-of-way and contiguous properties that are in land uses other than industrial in nature. The proposed area used for storage is not visible from any public rights-of-way. Contiguous properties are identified under Adjacent Parcel Information above.*

***Staff Comments***

*Staff recommends scheduling a site visit to discuss screening requirements that would be placed as a condition of approval. Future residential development of the Friant parcel to the east should be considered. As a large building is currently located adjacent to the commercially zoned property to the south, screening may not be required for this area.*

*Contractor and recreational vehicle storage will create minimal trip generation on Cattleman's Lane and East Main Street. The property owner has identified a need for the latter due to Town Code regulations for parking RV's within the town limits. The use will not generate noise, light, or noxious materials.*

*The following items are included with this report:*

- *Special Use Permit application;*
- *Site Plan (minor amendment);*
- *Vicinity Map;*
- *Section 609 L-1 Industrial of the Berryville Zoning Ordinance; and*
- *Section 503 Special Use Permit of the Berryville Zoning Ordinance.*

**Recommendation**

Discuss at the meeting. A motion follows this report.

**Town of Berryville**
101 Chalmers Court – Suite A
Berryville, Virginia 22611
Phone: (540) 955-4081 Fax: (540) 955-4524 E-mail: planner@berryvilleva.gov

# SPECIAL USE PERMIT APPLICATION

Please Note: This is an application only. The permit will be issued only if approved by the Berryville Town Council after review and recommendation from the Planning Commission.

*To be completed by Applicant:* Date: 6/13/, 2017

Applicant's Name: DONALD RIESGRAF

Applicant's Address: 12 CATTLEMANS LN BERRYVILLE VA 22611

Use Applied For: CONTRACTOR STORAGE / LT WAREHOUSING

At the following address: 4/6 CATTLEMANS LN

Special Conditions: 703/926 2779 KOR TELINE@VERIZON.NET

Property Owner's Name: DBSR LLC

Property Owner's Address: 12 CATTLEMANS LN BERRYVILLE VA 22611

Owner or Agent: The information provided is accurate to the best of my knowledge. I understand that the Town may deny, approve, or conditionally approve the request for which I am applying. I certify that all property corners have been clearly staked and flagged.
Signature: _____ Date: 6/13/17

Owner: I have read this completed application, understand its intent, and freely consent to its filing. Furthermore, I grant permission to the Town Planning Department and other government agents to enter the property and make such investigations and tests as they deem necessary. I acknowledge that in accordance with Article X of the Subdivision Ordinance I am responsible for costs incurred for review of subdivision and/or development plans by the Town's engineer and that any other required tests or studies will be carried out at owner/agent expense

Signature: _____ Date: 6/13/17

**TO BE COMPLETED BY ZONING ADMINISTRATOR**

Special Use: _____ Zone: _____

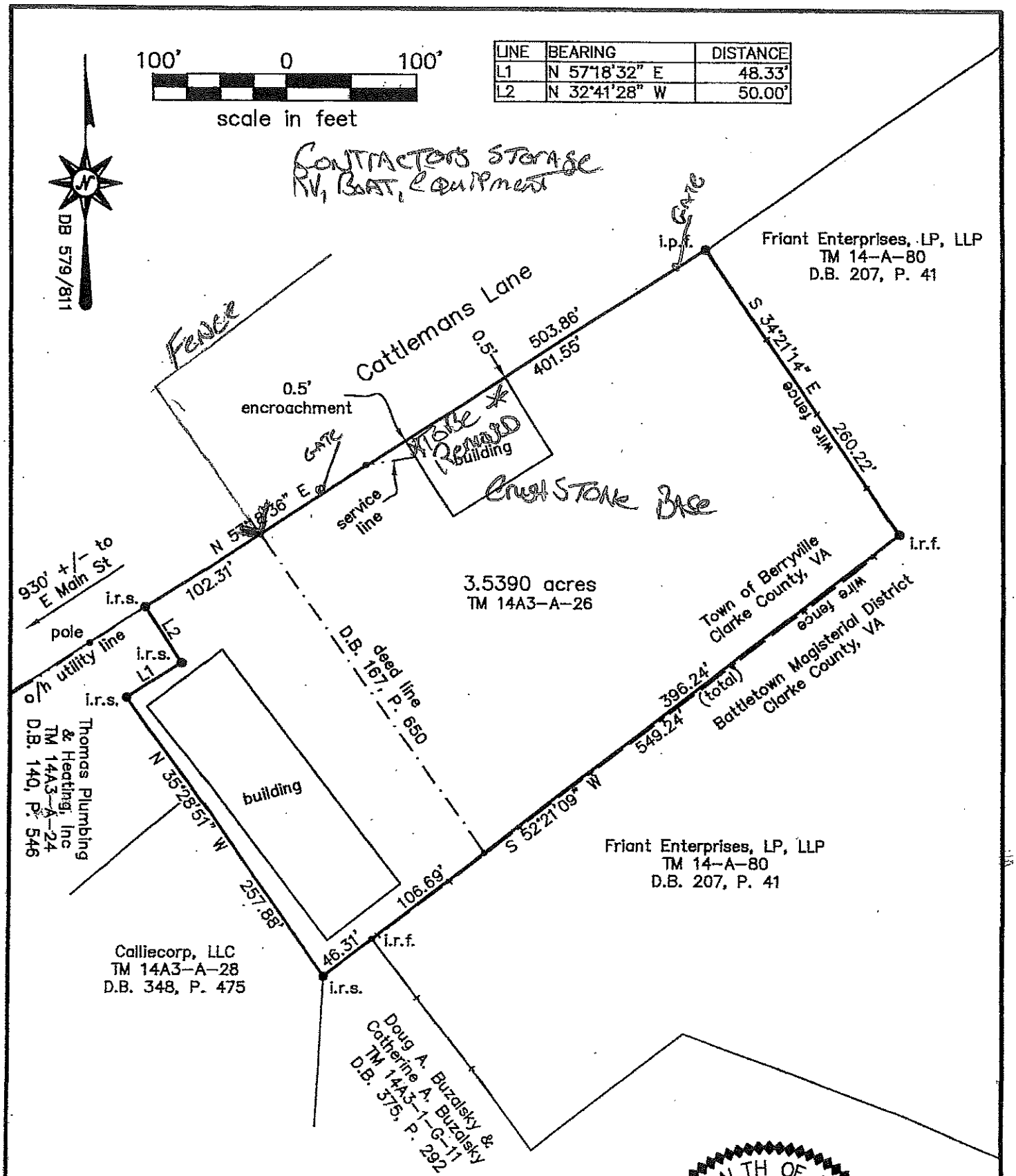
Street Address: _____ Tax Map #: _____

Special Use Permit Fee: _____ Paid: _____

Site Plan Fee: _____ Paid: _____

Signature of Zoning Administrator:

_____ Date: _____




| LINE | BEARING | DISTANCE |
|---|---|---|
| L1 | N 57°18'32" E | 48.33' |
| L2 | N 32°41'28" W | 50.00' |

Boundary Survey of the Land of

*Michael L. Linster*

Deed Book 167, Page 650 Tax Map 14A3-A-26

Town of Berryville, Clarke County, Virginia

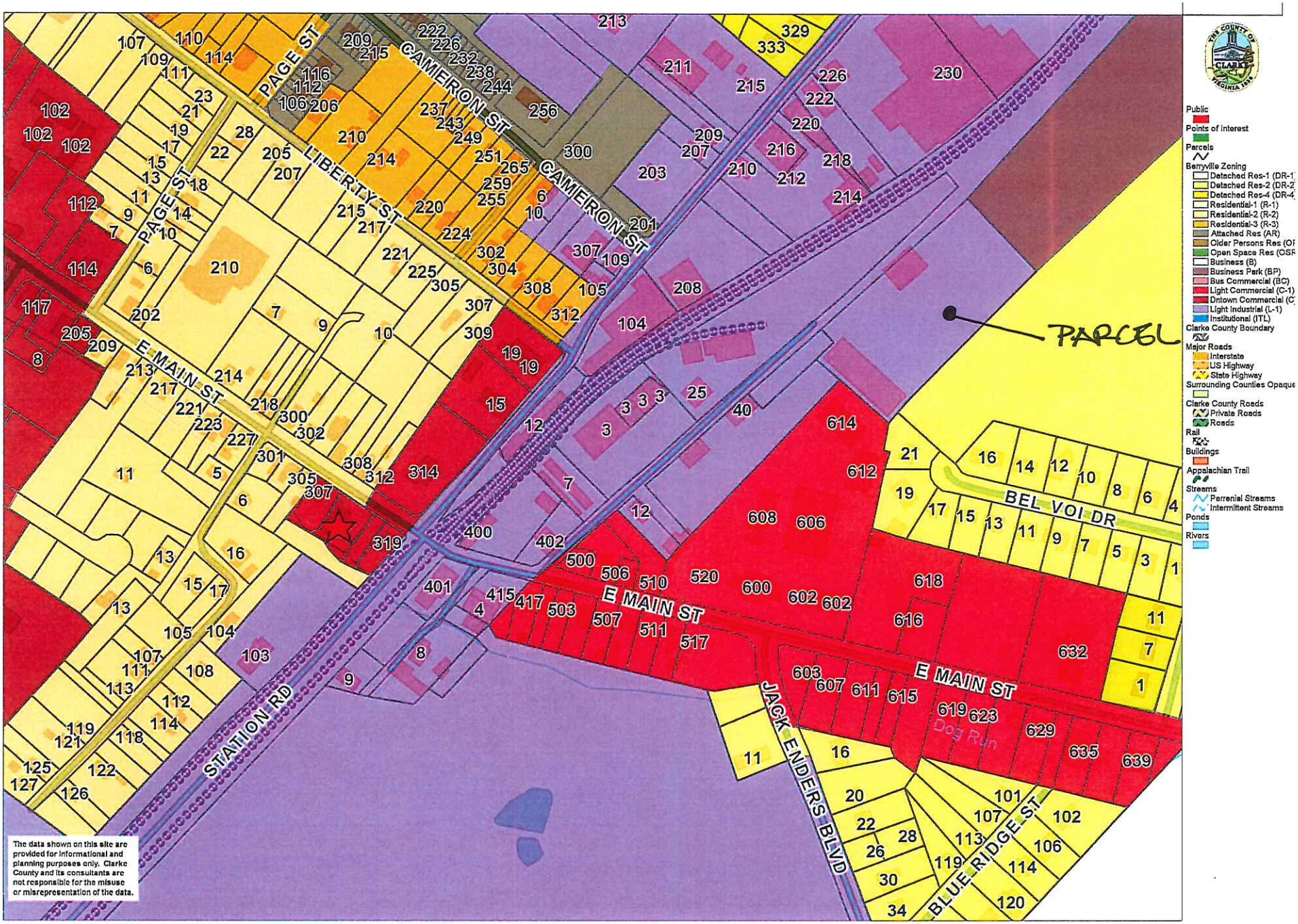
COMMONWEALTH OF VIRGINIA

W. Stuart Dunn

Lic. No. 2000

25 April 2017

LAND SURVEYOR




Printed on 06/22/2017 at 10:17 AM

# Clarke County MapsOnline

Sec. 10-50. - Parking and storage of travel trailers, boats etc., in residential areas.

Any owner of a travel trailer, motor home, boat and/or boat trailer, utility or cargo trailer in excess of ten (10) feet in length, truck camper, habitable bus or recreational vehicle may park or store such equipment in any residentially zoned area of the town provided that:

(1) The vehicle has displayed all required licenses,

(2) The vehicle is located no closer to any street than the principal structure; except that said vehicle may be parked closer to the street than the principle structure for a period not to exceed forty-eight (48) hours when the owner of the vehicle is a resident of the street and is arriving or departing on a journey in the vehicle,

(3) The vehicle does not exceed thirty-two (32) feet in length or nine (9) feet in height, and

(4) The vehicle is not inhabited while parked in said residentially zoned area.

Any violation of this ordinance shall constitute a misdemeanor punishable by a fine not to exceed twenty-five dollars ($25.00).

(Ord. of 6-10-97; Ord. of 2-14-12(2))

## SECTION 609 L-1 INDUSTRIAL DISTRICT

**609.1** PURPOSE AND INTENT

The L-1 Industrial District is established to provide locations within the Town of Berryville for a broad range of general light-industrial uses, recreational and event venues, infill development, and employment-related businesses operating under well-governed performance standards. The specific uses permitted within the L-1 District must be in harmony with the cultural and environmental character of the Town of Berryville. No use should be permitted that might be harmful to the adjoining land uses and the residential ambience of the community at large. Adaptive reuse is encouraged in the L-1 District. Outdoor storage and heavy industrial uses are discouraged but may be permitted by special use and environmental performance review. The L-1 District recognizes and is to be applied to existing conforming industry in the Town of Berryville as of the date of adoption of this District. Existing industrial uses shall be considered as satisfying the purpose and intent of the L-1 District, but expansion of existing industrial uses shall conform to the provisions herein. **(08/16)**

**609.2** PERMITTED USES **(12/94)**

(a) Auction establishments (indoor only) **(5/95)**
(b) Business and professional offices **(7/99)**
(c) Business service, supply and delivery establishments
(d) Contractor's establishments without outdoor storage
(e) Establishments for the production, processing, assembly, manufacturing, compounding, cleaning, servicing, testing and repair of materials, goods or products which conform to applicable Federal, State and local environmental performance standards or other standards referenced by the Town as related to (a) air pollution; (b) fire and explosion hazards; (c) radiation hazards; (d) electromagnetic radiation and interference hazards; (e) liquid and solid wastes hazards; (f) noise and odor standards; and (g) vibration standards.
(f) Existing or expansion of existing industrial uses in operation as of the date of adoption of this Ordinance which conform to the previous industrial zoning district requirements.
(g) Farm supply establishments
(h) Financial institutions
(i) Indoor mini-storage facilities
(j) Light manufacturing, fabrication, testing or repair establishments without outdoor storage
(k) Light warehousing establishments, without outdoor storage
(l) Light wholesale trade establishments, without outdoor storage
(m) Printing and publishing establishments
(n) Private training and vocational schools
(o) Public utilities (sub-stations, pump stations, transmission/receiving facilities and lines for telecommunications and similar uses, storage tanks, etc.)
(p) Sheet metal shops
(q) Small animal veterinary hospitals, exclusive of boarding kennels
(r) Vehicle and machinery service, and parts sales ("service" including but not limited to internal and external repair, body work, paint, car washes, etc.)
(s) Welding shops

**609.3** SPECIAL PERMIT USES

(a) All above permitted uses requiring outdoor storage **(10/94)**
(b) Day care centers **(12/94)**
(c) Eating establishments including microbreweries, wineries, and distilleries **(05/95, 08/16)**
(d) Heliports
(e) Laundry and dry cleaning establishments
(f) Lumber yards and building materials establishments
(g) Motor freight terminals
(h) Retail sales incidental to a manufacturing, production or related use, provided that: a) the gross floor area used for retail purposes (excluding storage) shall not occupy more than five-thousand (5,000) square feet of gross floor area on any one lot, and shall not exceed twenty-five (25) percent of the total floor area for the site; and b) the areas dedicated for retail uses must be indicated on an approved site plan. The provisions of this Section shall not apply to those permitted or special permit uses for which retail sales are a primary activity. **(12/07)**
(i) Scientific research, development, and training establishments
(j) Service stations
(k) Vehicle and machinery sales and rentals
(l) Recreation, commercial indoor **(06/10)**
(m) Retreat and conference centers **(08/16)**
(n) Residential lofts and apartments **(08/16)**
(o) Wholesale/retail food hubs **(08/16)**
(p) Commercial kitchens **(08/16)**
(q) Hotels, motels, and accommodations **(08/16)**

**609.4** PROHIBITED USES

The specific uses which follow shall not be permitted in the L-1 District:

(a) Asphalt mixing plants
(b) Blast furnaces
(c) Boiler works
(d) Bulk storage of flammable materials
(e) Coal, wood or wood distillation
(f) Concrete mixing and batching products
(g) Extraction or mining of rocks and minerals
(h) Garbage incineration
(i) Junk yards
(j) Landfills
(k) Manufacture of ammonia, chlorine, fertilizer, lime, cement, fireworks, explosives, soaps, acids, pesticides, herbicides or insecticides
(l) Metal foundries and smelting
(m) Petroleum, asphalt or related product refining
(n) Rendering plants
(o) Slaughterhouses
(p) Stockyards
(q) Tanning and curing of skins
(r) Any other similar use which in the opinion of the Town Council might be injurious or noxious by reason of odor, fumes, dust, smoke, vibration, noise or other cause

**609.5** MAXIMUM LOT COVERAGE

(12/91) The maximum lot coverage—including buildings, streets, parking spaces, driveways, loading areas and all other impervious surfaces—shall not be greater than seventy-five percent (75%) of the area of an L-1 lot.

**609.6** MINIMUM DISTRICT SIZE

The minimum district size shall be four (4) acres.

**609.7** LOT SIZE REQUIREMENTS AND BULK REGULATIONS

(a) Minimum lot area: 30,000 square feet

(b) Minimum lot width: 125 feet

(c) The maximum building height shall be forty (40) feet, except in particular instances the Town Council may, upon recommendation from the Planning Commission or its agent, modify the maximum building height.

(d) Minimum yard requirements

(1) Front yard: 50 feet

(2) Side yard: 25 feet (except where side yard abuts a public right-of-way the side yard shall be 50 feet) **(5/94)**

(3) Rear yard: 50 feet **(5/94)**

**609.8** OPEN SPACE

(a) An open space plan and landscape design program shall be submitted with applications for any land use governed by this District.

(b) Twenty five percent (25%) of the site shall be landscaped open space. Landscaping may be limited to setback areas and unused portions.

**609.9** PARKING, PARKING ACCESS AND DRIVEWAYS

(a) No parking space shall be located closer than fifteen (15) feet from any common property line.

(b) Where lot is contiguous to property located in any district other than the L-1, I, C-1 or C-2 District, no parking space shall be closer than 40 feet from such property line. **(5/94)**

(c) All parking requirements shall be met by off-street, on-site spaces and shall include designated spaces for the handicapped and elderly.

(d) Refer to Section 305 for additional off-street parking requirements.

**609.10** SETBACK, BUFFERING AND LANDSCAPING

(a) Where an L-1 lot is contiguous to property located in a district other than an L-1, I, C-1 or C-2 District, all buildings shall have a minimum 60-foot setback from lot lines. In particular instances the Town Council may waive the 60-foot setback requirement, upon recommendation from the Planning Commission. **(5/94)**

(b) Where an L-1 lot is contiguous to property located in a district other than an L-1, I, C-1 or C-2 District, a landscaped buffer strip of 30 feet in width shall be provided, with landscape materials and placement subject to final plan approval. Where contiguous to a C-1 or C-2 District property, the landscaped buffer strip shall be 15 feet. Approved fencing or additional buffering may be used in lieu of landscaping. **(5/94)**

**609.11** STORAGE OF GOODS, MATERIALS, FUEL AND REFUSE

(a) The outdoor area devoted to storage, loading and display of goods shall be limited to that area so designated on an approved site plan.

(b) All equipment and materials shall be contained entirely within a building or screened from public rights-of-way and contiguous properties that are in land uses other than industrial in nature.

(c) Any establishment involved with the storage of fuel for sale, or for other purposes, shall be permitted only if the fuel is stored underground, except where otherwise permitted under provisions granted and stipulations required by the Town Council.

(d) All refuse shall be contained in completely enclosed facilities and shall be screened.

**609.12** STREET ENTRANCES

(a) On a corner lot, no street entrance shall be located closer than 60-feet to the curb line extended from the intersecting street. This distance may be increased with respect to the types and turning radii of vehicles using the site.

(b) No street entrance shall be located closer than 30 feet to a side or rear lot line, unless a common street entrance serves adjacent uses, and in no instance shall the distance between separate street entrances serving adjacent uses be less than 60 feet. The maximum width of such street entrances shall not exceed thirty feet (30').

(c) A freestanding use shall have no more than two street entrances on any single right-of-way, and such street entrances shall have a minimum distance of 90 feet between them.

**609.13** SITE PLAN REQUIREMENTS AND PERFORMANCE STANDARDS

(a) All uses shall be subject to final site plan approval.

(b) Any L-1 District land use application which is not in strict compliance with the pre-existing approved master site plan and preliminary plat for the district shall require an amendment to that master site plan and preliminary plat prior to site plan approval of the specific use.

(c) Master site plans and preliminary plats for L-1 Districts shall include provisions for:

(1) adequate public facilities;

(2) development phasing;

(3) stormwater management facilities to address the ultimate development coverage within the district;

(4) lighting and signing; and

(5) other special features and land use considerations deemed necessary to serve the industrial district.

(d) Applications for all uses subject to special use permits shall be accompanied by a report indicating the compliance with and use compatibility issues related to the Town's applicable performance standards.

**609.14** ADDITIONAL REQUIREMENTS

(a) Public Streets within the L-1 District shall be constructed to industrial road standards as determined by the Town Council or its agent. Sidewalks may be required on one or both sides of the street.

(b) Common property ownership agreements and covenants for L-1 District developments shall be reviewed and approved by the Town Council or its agent.

(c) Refer to Section 306 for off-street loading requirements.

(d) Refer to Sections 301-304 for general regulations and other provisions which may supplement those cited herein.

(e) Refer to specific Overlay Zoning districts, where applicable.

**502.2** Prior to the issuance of a Certificate of Occupancy for a new structure, the Zoning Administrator will verify that all property corners have been set with permanent markers by a land surveyor licensed under the laws of the Commonwealth of Virginia. **(11/00)**

**502.3** In addition to any other requirements for the issuance of a Certificate of Occupancy, a Certificate of Occupancy for a structure will not be issued unless (1) the structure is served by public water and sewer, (2) required curb and gutter and sidewalks are in place on the lot on which the structure is located and in place between said lot and an existing publicly maintained street, (3) a functional fire hydrant is located within three hundred (300) feet of the lot on which the structure is located, and (4) the lot on which the structure is located fronts on an existing publicly maintained street or street meeting Town requirements for a publicly maintained street. **(8/01)**

**502.4** In addition to any other requirements for the issuance of a Certificate of Occupancy, after issuance of certificates of occupancy for structures on eighty percent (80%) of the lots in a section of a subdivision, a Certificate of Occupancy for a structure in the section will not be issued unless all public improvements in the section have been completed to Town requirements and all streets have been accepted for maintenance by the Virginia Department of Transportation (VDOT), or a complete application for acceptance thereof has been filed with VDOT. **(8/01)**

**502.5** Upon written application, delayed installation of public improvements described in 502.3 and 502.4 may be considered by the Zoning Administrator. Approval of the application shall only be granted by the Zoning Administrator after consultation with the respective departments or agencies charged with the inspection, acceptance, and maintenance of the improvements, and only upon a further finding that the delayed installation will not be detrimental to the safety and welfare of the residents in the subdivision and the public. A written request for such delayed installation shall set forth the specific improvements sought to be delayed, the justification for the delay, and a committed date for completion of the improvements. A fifty-dollar ($50.00) fee shall be paid with the request. If the Zoning Administrator approves the application for delayed installation of public improvements, the approval shall be subject to the applicant executing an agreement to hold harmless the town for any loss or liability occasioned by the lack of the improvements delayed. **(8/01)**

## SECTION 503 - SPECIAL USE PERMIT

**503.1** PROVISIONS FOR SPECIAL USE PERMITS

(a) In consideration of an application filed with the Zoning Administrator, the Council may, after a public hearing, authorize the establishment of those uses that are expressly listed as Special Permit uses in a particular zoning district.

(b) In addition to all applicable conditions and requirements of this Ordinance, the Council may impose any conditions deemed appropriate in the public interest to secure compliance with the provisions of this Ordinance.

(c) Once a Special Use Permit is granted, the use shall not be enlarged, extended, increased in intensity or relocated unless authorized by the Council.

(d) Whenever a Special Use Permit is granted by the Council, the authorized activities shall be established within two (2) years of the date of approval with an extension of one (1) additional year with Council approval, or such Special Use Permit shall expire without notice. **(4/08)**

(e) Should the owner or operator of the use covered by the Special Permit fail to observe all requirements of law with respect to the maintenance and conduct of the use and all permit conditions, the Council may, after due notice to permit holder and a public hearing, revoke the Special Use Permit.

**503.2** APPLICATIONS

An application for a Special Use Permit may be submitted by the property owner of record, tenant, or contractor owner.

**503.3** APPLICATION REQUIREMENTS

Applications for Special Use Permits shall be accompanied by seven (7) copies of the following items:

(a) Letter of request, signed by property owner and applicant, outlining complete details of special use desired.
(b) Site development plan.
(c) Floor plan, front, side, and rear elevations of proposed new buildings.
(d) Certified house location plat.
(e) Information deemed necessary by the Zoning Administrator.
(f) Applicable filing fee.

**503.4** APPLICATION PROCEDURE

(a) Application submitted to Zoning Administrator, which shall be referred to the Planning Commission for recommendation, and a public hearing shall be scheduled by the Town Council.
(b) Review by the Planning Commission (public hearing if desired) and recommendation to Town Council.
(c) Public hearing by Town Council.
(d) Town Council action (In acting upon the application, the Town Council shall consider the following, among other relevant factors):
    1. The health, safety, and welfare of the general public.
    2. Physical and visual impact on adjoining and abutting properties.
    3. Adequate utilities, drainage, parking, and other necessary facilities to serve the proposed use.
    4. Compliance with the adopted master plan.
    5. Environmental compatibility.
    6. Community sentiment.
(e) Applicant to be notified by Zoning Administrator of Town Council action.

**BERRYVILLE PLANNING COMMISSION**

**MOTION FOR RECOMMENDATION OF SPECIAL USE PERMIT 02-17 TO TOWN COUNCIL**

Date: July 25, 2017

Motion By:

Second By:

I move that the Planning Commission of the Town of Berryville recommend Town Council approve Special Use Permit SUP 02-17 in order to allow outdoor storage for a contractor's supply business and light warehousing on the parcel located at 40 Cattleman's Lane, identified as Tax Map number 14A3-((A))-26 zoned L-1 Industrial [with the following conditions]:

VOTE:

Aye:

Nay:

Absent:

ATTEST:

_____

Doug Shaffer, Chair

**BERRYVILLE PLANNING COMMISSION** **Agenda Item #8**
**Public Hearing – Text Amendments**
**July 25, 2017**

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**The Berryville Planning Commission is sponsoring text amendments to the Berryville Zoning Ordinance in order to remove references to the Town of Berryville Stormwater Management Ordinance and replacing them to reference the Commonwealth of Virginia Stormwater Management Program (VSMP) following the repeal of the Town's Stormwater Management Ordinance.** TA 01-17

Public hearing notices were published in the Winchester Star on Tuesday, July 11 and Tuesday, July 18, 2017. No comments were received in the Planning Office.

Proposed modifications to the Town of Berryville Zoning Ordinance are identified on the following pages. These changes were prompted by the repeal of the Town of Berryville Stormwater Management Ordinance in order to identify the Virginia Department of Environmental Quality as the regulatory authority for stormwater management in the Town.

***June 27, 2017 Staff Report***
*Per the recommendation of the Berryville Planning Commission, Town Council repealed the Town of Berryville Stormwater Management Ordinance in April of this year identifying the Virginia Department of Environmental Quality as the sole regulatory authority for stormwater management in the Town of Berryville. The Town of Berryville, along with most localities in the Planning District including Clarke County, "opted out" of operating its own Virginia Stormwater Management Program (VSMP).*

*References to the now repealed stormwater ordinance have been modified in the following portions of the Berryville Zoning Ordinance (highlighted in red).*

**Recommendation**
Recommend Town Council approve the amendments as presented. A motion follows this report.

## SECTION 305 – MINIMUM OFF-STREET PARKING

**305.1** (a) Parking spaces and access driveways

There shall be provided at the time of erection of any main building or at the time any main building is enlarged, or at the institution or enlargement of any use, minimum off-street parking space with adequate provisions for entrance and exit. All parking spaces and access driveways shall be covered with an all-weather surface, unless as otherwise herein provided and shall be graded and drained to dispose of surface water. Stormwater shall be managed in accordance with ~~the Town of Berryville *Stormwater Ordinance*~~ **Virginia Stormwater Management Program regulations**. All commercial and industrial uses shall have a hard-surfaced or tar and chipped parking area(s) and access driveway(s) or Town-approved stabilized paver system. Please refer to Section 206 Floodplain Conservation Area for additional parking area requirements. **(7/02)**

(b) Parallel parking, dimensions for spaces and aisles **(4/91)**

| Direction of Parking | Stall Width | Depth of Stalls | Aisle Width |
|---|---|---|---|
| One-way aisle (parking on one side) | 9 feet | 22 feet | 12 feet |
| One-way aisle (parking on both sides) | 9 feet | 22 feet | 15 feet |
| Two-way aisle (parking on both sides) | 9 feet | 22 feet | 20 feet |

(c) Angled parking, dimensions for spaces and aisles **(4/91)**

| Parking Angle | Stall Width | Depth of Stalls Perpendicular to Aisle | One-way Aisle | Two-way Aisle |
|---|---|---|---|---|
| 45 degrees | 9 feet | 19 feet | 15.5 feet | 18 feet |
| 60 degrees | 9 feet | 20 feet | 17 feet | 19 feet |
| 90 degrees | 9 feet | 18 feet | 23 feet | 23 feet |

**305. 2** A driveway or parking space shall be at least three (3) feet from a property line and no parking space for multiple-family dwelling shall be less than ten (10) feet from a residential structure on the lot unless as otherwise herein provided for townhouses and apartments.

**305.3** There shall be provided at the time of the erection of any principal building or structure or at the time that any principal building or structure is altered, enlarged, or increased in size, not less than the parking space in the amounts stated herein. Minimum off-street parking space required may be reduced when the capacity and use of a particular building is changed in such a manner that the new use or capacity would require less space than before the change. Should a non-conforming structure or use be enlarged or extended, or should a use or structure be non-conforming because of parking requirements, additional parking need only be based on the requirements for the enlarged or expanded portion.

**309.7** SCREENING

Screening shall be provided of sufficient height and density to screen the site from adjoining residential property whether in R-1, R-2, or R-3 districts. A planting plan specifying type, size, and location of existing and proposed planting material shall be submitted with the application for the permit.

**309.8** PARKING FACILITIES

(a) Off-street parking shall be provided on the premises at the rate of two (2) spaces for each townhouse unit. Each space shall be a minimum of ten (10) feet by twenty (20) feet. Parking shall not be located in any yard area but shall be located in common parking areas only.

(b) Required parking spaces shall be provided on the same lot as the group of buildings served.

(c) Entrance and exit ways to parking areas shall have a minimum width of twelve (12) feet for each lane of traffic entering or leaving the site but shall at no time exceed thirty (30) feet in width at the street line. Parking shall not be permitted in the entranceway.

(d) Parking areas shall be set back at least fifteen (15) feet from the property line of the development.

**309.9** DRAINAGE

(a) A storm run-off and drainage system shall be installed by the developer in accordance with sound engineering practice so as to adequately drain the project site, to adequately dispose of all run-off and drainage away from the project site, and so as not to permit excess flow of water across streets or adjoining properties. Plans for such drainage systems shall be submitted and approved with the application for the permit.

(b) All provisions of Town ordinance and **Virginia Stormwater Management Program** regulations regarding storm drainage shall be complied with.

**309.10** LIGHTING

Street lighting shall be provided on all public roads and shall be approved by the Town Council.

**309.11** STORAGE OF TRASH AND RUBBISH

Exterior storage areas for trash and rubbish shall be well screened on three (3) sides and contain vermin-proof containers.

**309.12** SITE PLAN REVIEW AND APPROVAL

Site plans drawn in accordance with Section 314 shall be reviewed by the Planning Commission and approved or rejected by the Town Council.

**309.13** FRONTAGE

Each townhouse and/or townhouse parking area access road shall front on a dedicated public street meeting Virginia Department of Transportation and Town standards.

**310.8** SCREENING

Screening shall be provided of sufficient height and density to screen the site from adjoining residential properties. A planting plan specifying type, size, and location of existing and proposed planting material shall be submitted with the application for the permit.

**310.9** PARKING FACILITIES

(a) Off-street parking, whether in a garage or on-lot, shall be provided on the premises at the rate of one (1) space for each apartment unit 1,000 square feet or less and two (2) spaces for each apartment unit greater than 1,000 square feet. **(02/14)**

(b) Required parking spaces shall be provided on the same lot as the building served and shall be reviewed by the Planning Commission and approved by the Town Council.

(c) All access drives shall be at least fifteen (15) feet from any building on the lot and from exterior lot lines.

(d) Parking areas shall not be designed or located so as to require or encourage cars to back into a public street in order to leave the lot.

(e) Entrance and exit ways to parking areas shall have a minimum width of twelve (12) feet for each lane of traffic entering or leaving the site but shall at no time exceed thirty (30) feet in width at the street line.

**310.10** DRAINAGE

(a) A storm run-off and drainage system shall be installed by the developer in accordance with sound engineering practice so as to adequately drain the project site, to adequately dispose of all run-off and drainage away from the project site, and so as not to permit excess flow of water across streets or adjoining properties. Plans for such drainage system shall be submitted and approved with the application for the permit.

(b) All provisions of Town ordinance and **Virginia Stormwater Management Program** regulations regarding storm drainage shall be complied with.

**310.11** LIGHTING

Street lighting shall be provided on all public roads and shall be approved by Town Council.

**310.12** STORAGE OF TRASH AND RUBBISH

Exterior storage areas for trash and rubbish shall be well screened on three (3) sides and contain vermin-proof containers.

**310.13** SITE PLAN REVIEW AND APPROVAL

Site Plan drawn in accordance with Section 314 shall be reviewed by the Planning Commission and approved or rejected by the Town Council.

**310.14** OTHER REGULATIONS FOR ALL APARTMENT CONSTRUCTION

(a) Each apartment structure and/or apartment parking area shall have access on a dedicated public street.

(n) The location, height, type, and material of all fences, walls, screen planting, and landscaping details of all buildings and grounds, and the location, height, and character of all outdoor lighting systems.

(o) The location of all proposed buildings and structures, primary and accessory; number of stories and height; proposed general use of each structure; and the number, size, and type of dwelling units, where applicable.

(p) Provision for the adequate disposition of natural and storm water indicating the location, sizes, types, and grades of ditches, catch basins, detention ponds (showing 10-year and 100-year elevations), and pipes and connections to existing drainage systems. Plans shall be in accordance with the Berryville Stormwater System Master Plan **and Virginia Stormwater Management Program regulations**.

(q) Provisions, plans, and schedules for the adequate control of erosion and sediment, in accordance with the Town of Berryville Erosion and Sediment Control Ordinance.

(r) Proposed finished grading by contour, supplemented where necessary by spot elevations.

(s) Floodplain studies as required by the Agent.

(t) The location, size, height, materials used, orientation, and illumination of proposed signs.

(u) The location, dimensions, and total area of proposed recreation, open space, and required amenities and improvements.

(v) The location of all wooded areas on the site; the location of all other individual trees with a diameter of eight (8) inches or more, measured one (1) foot above the ground; and an indication of which trees are to be retained and which are to be removed.

(w) A landscape plan (same scale as site plan), meeting the minimum landscape standards described below.

(x) Development sequence for phased construction, if applicable.

(y) Building restriction lines.

(z) Distance to nearest school or school site.

(aa) Elevation plans for all exterior facades of proposed structures, showing design features and indicating materials and colors to be used.

(bb) Source of title of the owner of record, including deed book and page reference of the last instrument in the chain of title.

(cc) Total site acreage of individual lots and street rights-of-way.

(dd) Location and acreage to the nearest one-tenth (0.1) acre of Critical Environmental Areas, including the following: slopes between 15 and 25 percent; slopes greater than 25 percent; rock outcroppings; sinkholes; floodplains and floodplain soils; current drainage channels; bodies of water; stormwater management facilities; utilities; and other sensitive areas defined by the Agent. The Agent may require that a geotechnical report be submitted where warranted by soil or water conditions.

(ee) Floor area ratio (FAR) and impervious surface coverage for all structures on the property.

(ff) Maximum number of employees anticipated, if industrial, commercial, or office; net density of dwelling units, if residential.

(gg) Anticipated daily and peak water demand and sewage flows for the site.

**BERRYVILLE PLANNING COMMISSION**

**MOTION FOR RECOMMENDATION OF STORMWATER-RELATED TEXT AMENDMENTS TO TOWN COUNCIL**

Date: July 25, 2017

Motion By:

Second By:

I move that the Planning Commission of the Town of Berryville recommend Town Council amend the attached text to Sections 305, 310, and 314 of the Town of Berryville Zoning Ordinance modifying references to the Town's Stormwater Management Ordinance after its repeal in April, 2017.

VOTE:

Aye:

Nay:

Absent:

ATTEST:

_____

Doug Shaffer, Chair

**BERRYVILLE PLANNING COMMISSION** **Agenda Item #9**
**Public Hearing – Repeal and Readoption of Section 322 Erosion and Sediment Control of the Berryville Zoning Ordinance**
**July 25, 2017**

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**The Berryville Planning Commission is sponsoring text amendments to the Berryville Zoning Ordinance in order to repeal and readopt Section 322 Erosion and Sediment Control updating the ordinance to align with regulations of the Commonwealth of Virginia.** TA 02-17

Public hearing notices were published in the Winchester Star on Tuesday, July 11 and Tuesday, July 18, 2017. No comments were received in the Planning Office.

Changes to the Commonwealth's model ordinance regulating Erosion and Sediment Control has prompted changes to the Town of Berryville ordinance. Section 322 of the Town Zoning Ordinance identifies regulations and requirements for Erosion and Sediment Control. Staff forwarded the draft of the updated Section 322 to the Virginia Department of Environmental Quality for review but has not received any comments.

***June 27, 2017 Staff Report***
*The current Erosion and Sediment Control ordinance under Section 322 of the Berryville Zoning Ordinance was adopted in 2007. Changes at the state level have prompted an update of the original ordinance.*

*Modifications to the existing ordinance include:*
- *Updating Code of Virginia references;*
- *The identification of the Virginia Department of Environmental Quality as the regulatory department in charge of E&S; and*
- *The addition of several definitions.*

*The draft ordinance will be forwarded to DEQ staff for review and comment.*

**Recommendation**
Recommend Town Council approve the repeal and re-adoption of Section 322 of the Berryville Zoning Ordinance. A motion follows this report.

## 322 EROSION AND SEDIMENT CONTROL ORIDINANCE (12/07; 00/17)

### 322.1 TITLE, PURPOSE, AND AUTORITY

This ordinance shall be known as the "Erosion and Sediment Control Ordinance of the Town of Berryville". The purpose of this chapter is to prevent degradation of properties, stream channels, waters and other natural resources of the Town of Berryville by establishing requirements for the control of soil erosion, sediment deposition and non-agricultural runoff, and by establishing procedures whereby these requirements shall be administered and enforced.

This Chapter is authorized by the Code of Virginia, ~~Title 10.1, Chapter 5, Article 4 (§101.1-560 et.seq.)~~ **Title 62.1, Chapter 3.1. Article 2.4**, known as the Virginia Erosion and Sediment Control Law.

### 322.2 DEFINITIONS

**Agreement in lieu of a plan** – a contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

**Applicant** – any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

**Board** – The Virginia ~~Soil and Water Conservation Board~~ **State Water Control Board**.

**Certified inspector** – an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of project inspection, or (ii) is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment.

**Certified plan reviewer** – an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of a plan review, (ii) is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article I (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 **or a professional soil scientist as defined in § 54.1-22** of the Code of Virginia.

**Certified program administrator** – an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of program administration or (ii) is enrolled in the Board's training program for program administration and successfully completes such program within one year after enrollment.

**Clearing** – any activity which removes the vegetative ground cover including, but not limited to, root mat removal or top soil removal.

**Department** – the ~~Department of Conservation and Recreation~~ **Department of Environmental Quality**.

**Development** – means a tract of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

**Director** – means the director of the ~~Department of Conservation and Recreation~~ **Department of Environmental Quality**.

**District** or **Soil and Water Conservation District** – refers to the Lord Fairfax Soil and Water Conservation District.

**Erosion and Sediment Control Plan** or **Plan** – a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, and appropriate soil and water plan inventory, and management information with needed interpretations and a record of decisions and all information deemed necessary by the **VESCP** plan approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

**Erosion impact area** – an area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes.

**Excavating** – any digging, scooping or other methods of removing earth materials.

**Filling** – any depositing or stockpiling of earth materials.

**Grading** – any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.

**Land–disturbing activity** – any ~~land change which~~ **man-made change to the land surface that** may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include:

(1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
(2) Individual service connections;
(3) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surface road, street or sidewalk provided such land-disturbing activity is confined to the area of the road, street or sidewalk which is hard-surfaced;

(4) Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;

(5) ~~Surface or deep mining~~ **Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1 of the Code of Virginia**;

(6) ~~Exploration or drilling for oil and gas including the well site, roads, feeder lines, and off-site disposal areas~~ **Tilling, planting, or harvesting or agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or natural in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.1-1163**;

(7) ~~Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations and agricultural engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, Article 2, (§10.1-604 et seq.) of Chapter 6 or the Code of Virginia, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.1-1163;~~ **Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;**

(8) ~~Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company~~ **Agricultural engineering operations including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (Va. Code §10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;**

(9) Disturbed land areas of less than 10,000 square feet in size**, or less than 2,500 square feet in all areas of the jurisdiction designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations**;

(10) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

(11) Shoreline erosion control projects on tidal waters when all of the land disturbing activities are within the regulatory authority of and approved by local wetlands boards, or the Marine Resources Commission or the United States Army Corps of

Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this ordinance; and

(12) Emergency work to protect life, limb or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan-approving authority.

**Land Disturbing Permit or approval** – a permit issued by the Town of Berryville for clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any ~~purpose set forth herein~~ **other land disturbing activity**.

~~**Local erosion and sediment control program or local control program** – an outline of the various methods employed by the Town of Berryville to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation.~~

**Natural channel design concepts – the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.**

**Owner** – the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

**Peak Flow Rate** – the maximum instantaneous flow from a given storm condition at a particular location.

**Permit, state – an approval to conduct a land-disturbing activity issued by the Board in the form of a State stormwater individual permit or coverage issued under a State general permit.**

**Permittee** – the person to whom the ~~permit authorizing~~ land-disturbing ~~activities~~ **approval** is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

**Person** – any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the Commonwealth, ~~any interstate body, or any other legal entity~~ **governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.**

**Plan-approving authority, VESCP** – the Zoning Administrator responsible for determining the adequacy of a plan submitted for land-disturbing activities on a unit or units or lands and for approving plans.

**Program authority or VESCP Authority** – the Town of Berryville which has adopted a soil erosion and sediment control program that has been approved by the Board.

**Responsible Land Disturber or RLD** – an individual ~~from the project or development team, who will be in charge of and~~ **holding a certificate issued by the department who is** responsible for carrying out ~~a~~ **the** land-disturbing activity **in accordance with the approved ESC plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor, or any other project or development team member. The RLD must be designated on the ESC plan or permit as a prerequisite for engaging in land disturbance.** ~~covered by an approved plan or agreement in lieu of a plan, who (i) holds a Responsible Land Disturber certificate of competence, (ii) holds a current certificate of competence from the Board in the areas of Combined Administration, Program Administration, Inspection, or Plan Review, (iii) holds a current Contractor certificate of competence for erosion and sediment control, or (iv) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.~~

**Runoff volume** – the volume of water that runs off the land development project from a prescribed storm event.

**Single-family residence** – a noncommercial dwelling that is occupied exclusively by one family.

~~**State Erosion and Sediment Control Program** or **State Program** – the program administered by the Virginia Soil and Water Conservation Board pursuant to the Code of Virginia, including regulations designed to minimize erosion and sedimentation.~~

**State waters** – all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdictions.

**Town** – the incorporated Town of Berryville.

**Transporting** – any moving of earth materials from one place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

**Virginia Erosion and Sediment Control Program or VESCP – a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and non-agricultural runoff associated with a land-**

**disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in this article, and evaluation consistent with the requirements of this article and its associated regulations.**

**Water quality volume – the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.**

## 322.3 LOCAL EROSION AND SEDIMENT CONTROL PROGRAM

~~A. Pursuant to § 10.1-562 of the Code of Virginia, the Town of Berryville hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the Board for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channel waters and other natural resources. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in but not limited to the "Virginia Erosion and Sediment Control Regulation" and the Virginia Erosion and Sediment Control Handbook, as amended.~~

~~In addition, in accordance with § 10.1-561 of the Code of Virginia, stream restoration and relocation projects that incorporate natural channel design concepts that are not man made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man made channels.~~

~~In accordance with § 10.1-561 of the Code of Virginia, any land-disturbing activity that provides for stormwater management intended to address any flow rate capacity and velocity requirements for natural or manmade channels shall satisfy the flow rate capacity and velocity requirements for natural or manmade channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24 hour period the expected rainfall resulting from the one year, 24 hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2 and 10 year, 24 hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels.~~

~~B. Before adopting or revising regulations, the Town of Berryville shall give due notice and conduct a public hearing on the proposed or revised regulations, except that a public hearing shall not be required when the Town of Berryville is amending its program to conform to revisions in the state program. However, a public hearing shall be held if the Town of Berryville proposes or revises regulations that are more stringent than the state program.~~

~~C. Pursuant to § 10.1-561.1 of the Code of Virginia, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land-disturbing activities shall be conducted by a certified inspector. The Erosion Control~~

~~Program of the Town of Berryville shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.~~

~~D. The Town of Berryville hereby designates the Zoning Administrator as the plan-approving authority.~~

~~E. The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the Zoning Administrator.~~

**Pursuant to § 62.1-44.15:44 of the Code of Virginia, the Town of Berryville hereby establishes a VESCP program and adopts the regulations promulgated by the Board (for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources) and the *Virginia Erosion & Sediment Control Handbook*, third edition. In accordance with § 62.1-44.15:52 of the Code of Virginia, any plan approved prior to July 1, 2014 that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-, 2-, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.**

**A. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements for natural and man-made channels shall be satisfied by compliance with water quantity requirements specific in § 62.1-44.15:28 of the Stormwater Management Act and 9VAC25-870-66 of the Virginia Stormwater Management Program (VSMP) regulations, unless such land-disturbing activities are in accordance with the grandfathering provisions of the Virginia Stormwater Management Program (VSMP) Regulations.**

**B. Pursuant to § 62.1-44.15:53 of the Code of Virginia, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land-disturbing activities shall be conducted by a certified inspector. The Erosion Control Program of the Town of Berryville shall contain a certified program administrator, a certified plan reviewer, and a certified inspector (who may be the same person).**

**C. The Town of Berryville hereby designates the Zoning Administrator as the plan-approving authority.**

**D. The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the Zoning Administrator.**

**322.4 SUBMISSION AND APPROVAL OF PLANS; CONTENTS OF PLANS**

A. Except as provided herein, no person may engage in any land-disturbing activity until he or she has submitted to the Zoning Administrator for the Town of Berryville an erosion and sediment control plan for the land-disturbing activity and such plan has been approved by the ~~plan-approving~~ **VESCP** authority. **No approval to begin land disturbing activity will be issued unless evidence of state permit coverage is obtained where it is required.** Where land-disturbing activities involve lands under the jurisdiction of more than one ~~local control program~~ **VESCP**, an erosion and sediment control plan, at the option of the applicant, may be submitted to the ~~Board~~ **Department** for review and approval rather than to each jurisdiction concerned. Where the land-disturbing activity results from the construction of a single-family residence, an "agreement in lieu of a plan" may be substituted for an erosion and sediment control plan if executed by the plan-approving authority.

B. The standards contained within the "Virginia Erosion and Sediment Control Regulations", the Virginia Erosion and Sediment Control Handbook as amended is to be used by the applicant when making a submittal under the provisions of this ordinance and in the preparation of an erosion and sediment control plan. The plan-approving authority, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines. When the standards vary between publications, the State regulations shall take precedence.

C. The **VESCP** plan-approving authority shall review ~~conservation~~ **erosion and sediment control** plans submitted to it and grant written approval within ~~45~~ **60** days of the receipt of the plan if it determines that the plan meets the requirements of the **Erosion and Sediment Control Law and the** Board's regulations, and if the person responsible for carrying out the plan certifies that s/he will properly perform the ~~conservation~~ measures included in the plan and will conform to the provisions of this ~~article~~ **ordinance**. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of **the responsible land disturber,** ~~an individual holding a certificate of competence~~, to the program authority, as provided by ~~§ 10.1-561~~ **§ 62.1-44.15:52** of the Virginia Erosion and Sediment Control Law, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of ~~an individual holding a certificate of competence~~ **the responsible land disturber** prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance.

D. ~~The plan shall be acted upon within 45 days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving specific reasons for its disapproval. When the plan is determined to be inadequate, the plan-approving authority shall specify such modifications, terms and conditions that will permit approval of the plan. If no action is taken within 45 days, the plan shall be deemed approved by the person authorized to proceed with the proposed activity.~~ **When the plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify such modifications, terms, and conditions that will permit approval of the plan. If no action is taken within 45 days, the plan shall be**

**deemed approved and the person authorized to proceed with the proposed activity.**

E. **The VESCP authority shall act on any erosion and sediment control plan that has been previously disapproved within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.**

F. ~~An approved plan may be changed by the plan-approving authority when~~ **The VESCP authority may require changes to an approved plan when**:

(1) The inspection reveals that the plan is inadequate to satisfy applicable regulations; or

(2) The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this ordinance, are agreed to by the plan-approving authority and the person responsible for carrying out the plans.

G. Variances: The **VESCP** plan approving authority may waive or modify any of the standards that are deemed to be **inappropriate or** too restrictive for site conditions by granting a variance. A variance may be granted under the following conditions:

(1) At the time of plan submission, an applicant may request a variance to become part of the approved Erosion and Sediment Control Plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the plan-approving authority shall be documented in the plan.

(2) During construction, the person responsible for implementing the approved plan may request a variance in writing from the plan-approving authority. The plan-approving authority shall respond in writing either approving or disapproving such a request. If the plan-approving authority does not approve a variance within ten (10) days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.

**(3) The VESCP authority shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.**

H. In order to prevent further erosion, the Town of Berryville may require approval of a plan for any land identified in the local program as an erosion impact area.

I. When a land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.

J. **In accordance with the procedure set forth in § 62.1-44.15:55(E) of the Code of Virginia, any person engaging, in more than one jurisdiction, in the creation and operation of wetland mitigation or stream restoration banks, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of wetland mitigation or stream restoration banks, pursuant to a mitigation banking instrument signed by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland**

**mitigation or stream restoration banks annually with the Board for review and approval consistent with guidelines established by the Board. Approval of general erosion and sediment control specifications does not relieve the owner or operator from compliance with any other local ordinances and regulations including requirements to submit plans and obtain permits as may be required by such ordinances and regulations.**

K. State agency projects are exempt from the provisions of this ordinance except as provided in the Code of Virginia ~~§ 10.1-564~~ **§ 62.1-44.15:56**.

**322.5 PERMITS; FEES; SECURITY FOR PERFORMANCE**

A. Agencies authorized under any other law to issue grading, building, or other permits for activities involving land disturbing activities may not issue any such permit unless the applicant submits with his/her application an approved erosion and sediment control plan**,** ~~and~~ certification that the plan will be followed**, and evidence of state permit coverage where it is required**.

B. No person may engage in any land-disturbing activity until s/he has acquired a land-disturbing permit, unless the proposed land-disturbing activity is specifically exempt from the provisions of this ordinance, and has paid the fees and posted the required bond.

C. An administrative fee of $200.00 shall be paid to the Town of Berryville at the time of submission of the erosion and sediment control plan.

D. No land-disturbing permit shall be issued until the applicant submits with his/her application an approved erosion and sediment control plan **or agreement in lieu of an approved erosion and sediment control plan** and certification that the plan will be followed.

E. All applicants for permits shall provide to the Town of Berryville a performance bond, cash escrow, or an irrevocable letter of credit acceptable to the Zoning Administrator, to ensure that measures could be taken by the Town of Berryville at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation measures required of the applicant by the approved plan as a result of his land-disturbing activity.

The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent of the cost of the conservation action. Should it be necessary for the Town of Berryville to take such conservation action, the Town of Berryville may collect from the applicant any costs in excess of the amount of the surety held. Within sixty (60) days of adequate stabilization, as determined by the Zoning Administrator in any project or section of a project, such bond, cash escrow or letter of credit, or the unexpected or unobligated portion thereof shall be either refunded to the applicant or terminated, based upon the percentage of stabilization accomplished in the project or project section. These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

## 322.6 MONITORING, REPORTS, AND INSPECTIONS

A. **The responsible land disturber, as provided by § 62.1-44.15:52, shall be in charge of and responsible for carrying out the land-disturbing activity and provide for periodic inspections of the land-disturbing activity.** The Town of Berryville may require the person responsible for carrying out the plan to monitor the land-disturbing activity. The person responsible for carrying out the plan will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.

B. The Zoning Administrator shall periodically inspect the land-disturbing activity in accordance with Section ~~4VAC50-30-60~~ **9VAC25-840-60** of the Virginia Erosion and Sediment Control Regulations to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection.

If the Zoning Administrator determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by ~~registered or certified mail~~ **mailing with confirmation of delivery** to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities.

The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this ordinance and shall be subject to the penalties provided by this ordinance.

C. Upon ~~determination of a violation of this ordinance~~ **issuance of an inspection report denoting a violation of Va. Code §§ 62.1-44.15:55, -44.15:56**, the Zoning Administrator may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken.

If land-disturbing activities have commenced without an approved plan, the Zoning Administrator may~~, in conjunction with or subsequent to a notice to comply as specified in this ordinance,~~ issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained.

Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land disturbing activities have commenced without an approval plan or any required permits, such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply.

The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the

enforcing authority or permit holder for appropriate relief to the Circuit Court of the County of Clarke. **The Town of Berryville shall serve such order for disturbance without an approved plan or permits upon the owner by mailing with confirmation of delivery to the address specified in the land records. Said order shall be posted on the site where the disturbance is occurring, and shall remain in effect until permits and plan approvals are secured, except in such situations where an agricultural exemption applies.**

If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the Zoning Administrator may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by ~~registered or certified mail~~ **mailing with confirmation of delivery** to the address specified in the permit application or the land records of the Town of Berryville.

The owner may appeal the issuance of an order to the Circuit Court of the County of Clarke.

Any person violating or failing, neglecting or refusing to obey an order issued by the Zoning Administrator may be compelled in a proceeding instituted in the Circuit Court of the County of Clarke to obey same to comply therewith by injunction, mandamus or other appropriate remedy.

Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.

Nothing in this section shall prevent the Zoning Administrator from taking any other action authorized by this ordinance.

## 322.7 PENALTIES, INJUNCTIONS, AND OTHER LEGAL ACTIONS

A. Violators of this ordinance shall be guilty of a Class I misdemeanor.

B. Any person who violates any provision ~~of this ordinance shall~~ **of Va. Code §§ 62.1-44.15:55. 62.1-44.15:56 shall**, upon a finding of the District Court of the County of Clarke be assessed a civil penalty. The civil penalty for any one violation shall ~~be~~ **not be less than** $100 **nor more than $1,000**, except that the civil penalty for commencement of land-disturbing activities without an approved plan shall be $1,000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of ~~$3,000~~ **$10,000**, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of $10,000. **Any such civil penalties shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection A of § 62.1-44.15:63.**

~~Note: The adoption of civil penalties according to this schedule shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor und subsection A of this section. Refer to Code of Virginia, Section 10.1-562 J.~~

C. The Zoning Administrator or the owner or property which has sustained damage or which is in imminent danger of being damaged, may apply to the Circuit Court of the

County of Clarke to enjoin a violation or a threatened violation of ~~this ordinance~~ **of Va. Code §§ 62.1-44.15:55, -44.15:56**, without the necessity of showing that an adequate remedy at law does not exist. However, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the local program nor the program authority has taken corrective action within fifteen days to eliminate the conditions which have caused, or crate the probability of causing, damage to his property.

D. In addition to any criminal penalties provided under this ordinance, any person who violates any provision of this ordinance may be liable to the Town of Berryville in a civil action for damages.

E. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed $2,000 for each violation. A civil action for such violation or failure may be brought by the Town of Berryville.

Any civil penalties assessed by a court shall be paid into the treasury of the Town of Berryville except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

F. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this ordinance, **or order of the VESCP authority** the Town of Berryville may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Subsection E of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Subsection **B or** E.

G. The Commonwealth's Attorney shall, upon request of the Town of Berryville ~~or the permit issuing authority~~, take legal action to enforce the provisions of this ordinance.

H. Compliance with the provisions of this ordinance shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.

## 322.8 APPEALS AND JUDICIAL REVIEW

~~A. Any applicant under the provision of this ordinance who is aggrieved by any action of the Town of Berryville or its agent in disapproving plans submitted pursuant to this ordinance shall have the right to apply for and receive a review of such action by by the Town Council provided an appeal is filed within 30 days from the date of the action. Any applicant who seeks an appeal hearing before the Town Council shall be heard at the next regularly scheduled Town Council public hearing provided that the Town Council and other involved parties have at least 30 days prior notice. In reviewing the agent's actions, the Town Council shall consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the Town Council may affirm, reverse or modify the action. The Town Council's decision shall be final, subject only to review by the Circuit Court of the County of Clarke.~~

~~B.~~ **A.** Final decisions of the Town of Berryville under this ordinance shall be subject to review by the County of Clarke Circuit Court, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land disturbing activities.

**BERRYVILLE PLANNING COMMISSION**

**MOTION FOR RECOMMENDATION TO TOWN COUNCIL OF REPEAL AND READOPTION OF SECTION 322 EROSION AND SEDIMENT CONTROL OF THE BERRYVILLE ZONING ORDINANCE**

Date: July 25, 2017

Motion By:

Second By:

I move that the Planning Commission of the Town of Berryville recommend Town Council repeal and readopt Section 322 Erosion and Sediment Control of the Town of Berryville Zoning Ordinance, as attached, in order to conform to changes to the Code of Virginia.

VOTE:

Aye:

Nay:

Absent:

ATTEST:

_____

Doug Shaffer, Chair

**BERRYVILLE PLANNING COMMISSION** **Agenda Item #12**
**Discussion – Senior Facilities Committee Recommendations**
**July 25, 2017**

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As you will see in the minutes for the Senior Facilities Committee included in this packet, members reviewed current zoning regulations which permit nursing homes, assisted living facilities, and senior housing. As you may recall, Recorder Jay Arnold had requested that the Planning Commission review the ordinance for current senior-related zoning and make recommendations to Council on any modifications that should occur.

Committee members recommended the following action:

- Section 202 R-2 Residential, deleting Section 202.2(a) nursing, convalescent, or rest homes, pursuant to Section 311 (Special Use Permit);
- Section 203 R-3 Residential, deleting Section 203.2(a) nursing and/or convalescent homes as set forth in Section 311 (Special Use Permit);
- Section 610 BC Business Commercial, deleting Section 610.2(o) Medical care facilities, licensed (by right);
- Section 611 B Business, deleting Section 611.2(o) Medical care facilities, licensed (by right); and
- Section 613 ITL Institutional, modifying Section 613.3(b) Hospitals and medical care facilities, removing the latter which is defined in the zoning ordinance as skilled nursing facilities licensed by the Virginia Department of Health and replacing it with "urgent care facility" (Special Use Permit).

Section 204 C General Commercial allows for nursing homes, hospitals, convalescent homes, and rest homes as a use by right.

Section 614 of the Berryville Zoning Ordinance regulates Older Person Residential development. This district would continue to allow for senior housing (e.g., multifamily, two-family, single-family) by right (Section 614.2(c)) and medical care facilities, licensed as a Special Permit use (Section 614.3(e)). Section 614 OPR Older Person Residential is included with this report.

Committee members requested that staff review the ordinance and identify areas where urgent care facilities would be appropriate. Areas currently allowing medical offices include R-2 Residential (Special Permit, under Professional Office use); R-3 Residential (Special Permit, under Professional Office use); C General Commercial (by right, Personal and Professional Services use); C-1 Commercial (by right, Business and Professional Office use); L-1 Industrial (by right, Business and Professional Office use); BC Business Commercial (by right, Offices, business or professional); B Business (by right, Offices, business or professional); and ITL Institutional (by Special Permit, hospitals and medical care facilities). Discussion should take place at the meeting about these

locations and clarification of "medical care facilities" and "medical care facilities, licensed".

A discussion should occur at the meeting about current and future trends in senior living including universal design and aging; the ability of the community to serve and facilitate additional senior housing; and available services specifically for seniors including the Clarke County Senior Center, Meals on Wheels and other programs, and the Shenandoah Area Agency on Aging.

**Recommendation**
Discuss at the meeting.

## SECTION 614 - OLDER PERSON RESIDENTIAL (OPR)

**614.1** PURPOSE AND INTENT

The Older Person Residential (OPR) District is created to provide for residential, office, and service uses for people over 55 years old at locations compatible with the Comprehensive Plan's goals for residential development in the Town of Berryville and within the precincts of the Berryville Area Plan. Maximum densities are established in this district to allow the various types of uses at a scale compatible with the general character of the Town and the nature of the uses. This district may be applied to development with the intent of preserving natural features and vegetation, promoting excellence in site planning and landscape design, and encouraging development with compatible scale, materials and architectural character. Development in the OPR District shall be sensitive to land physiography, provision of adequate public infrastructure, and development of high-quality transportation improvements while achieving optimal siting of dwellings, services, recreation areas, community facilities, and open space.

**614.2** PERMITTED USES

(a) Accessory structures less than one hundred fifty (150) square feet in size

(b) Community buildings and association facilities, public and private, including recreation areas and other common area improvements associated with residential developments

(c) Housing for Older Persons Residential: Single Family Detached; Single Family Attached – Duplexes, Tri-plexs, Quad plexs, Townhouses, and Multi-family Apartments (including personal service uses of less than 500 square feet) **(10/16)**

(d) Public utilities

(e) Recreation facilities (indoor or outdoor), including parks, playgrounds, golf courses, swimming pools, tennis courts, etc.

**614.3** SPECIAL PERMIT USES

(a) Day care centers

(b) Government and other public buildings (including police, fire, library, museum, and postal facilities)

(c) (Deleted 2016)

(d) (Deleted 2010)

(e) Medical care facilities, licensed

(f) Places of worship

(g) Schools, public and private, including nurseries, playgrounds, and related uses

**614.4** AGE REQUIREMENT

An age restriction enforcement plan shall be submitted with each subdivision or site plan application so as to ensure that all occupants of dwelling units conform to the age restrictions established for Housing for Older Persons. Such enforcement plans shall include:

(a) the covenants, management regulations, or other similar legal instruments with enforcement by the property owner, homeowners association, or other private entity;

(b) the identity of the private entity which shall be held responsible for any violation of the age restrictions for Housing for Older Persons;

(c) a provision for an annual report to the Town of Berryville as to age status of the occupants of each unit; and

(d) a provision which states that no person under nineteen (19) years of age shall reside in any unit for more than ninety (90) days in any calendar year.

**614.5** MAXIMUM DENSITY

A Master Plan shall be submitted with a request for OPR zoning showing a general arrangement of uses and density for the subject property and all adjacent areas intended for OPR uses. The Master Plan shall show that the public service needs are no greater for the OPR uses than the public service needs for the uses planned for that sub-area. The number of average daily vehicle trips generated, the amount of sewage generated, the amount of water used, and demand on emergency services will be no greater with the proposed number of older person residential units and service uses than that generated by the maximum density of uses allowed by a property's land use designation. However, not more than two hundred (200) Older Person Residential units (including not more than one hundred twenty (180) multifamily units) shall be allowed in Annexation Area B as shown on approved subdivision plats or site plans. **(10/16)**

**614.6** MINIMUM DISTRICT SIZE

Minimum district size: three (3) acres

**614.7** MAXIMUM BUILDING HEIGHT

Maximum building height: forty (40) feet

**614.8** REGULATIONS FOR SINGLE FAMILY DETACHED DWELLINGS

(a) Minimum lot size: 7,500 square feet

(b) Minimum lot width: 60 feet

(c) Minimum yard requirements

- (1) Front Yard: 20 feet
- (2) Side yard: 10 feet, except for corner lots, the side yard facing the side street shall be 20 feet or more for both main and accessory buildings
- (3) Rear yard: 40 feet

(d) Accessory structures of less than 150 square feet: 5 feet from side and rear lot lines

(e) Parking Requirements The number of required off-street parking spaces shall be a total of 2 per unit.

**614.9** REGULATIONS FOR TWO FAMILY DETACHED (DUPLEX) DWELLINGS

(a) Minimum lot size: 10,000 square feet for total duplex structure
4,500 square feet each separate unit within a duplex

(b) Minimum lot width: 75 feet per duplex structure
35 feet for each unit of a duplex.

(c) Minimum yard requirements
Front yard: 20 feet
Side yard: 10 feet, except for corner lots, the side yard facing the side street shall be 20 feet or more for both main and accessory buildings.
Rear yard: 40 feet

(d) Accessory structures of less than 150 square feet: 5 feet from side and rear lot lines

(e) Where a lot is to be subdivided into individual lots for the sale of single-family attached units, lot lines shall conform with party wall centerlines.

(f) Maximum lot coverage: 35 percent

(g) Open Space Requirements
1. An open space plan shall be submitted with a subdivision application.
2. At least 10% of the net site area shall be open space dedicated to common usage and ownership.
3. Refer to Section 615.2 regarding critical environmental area and open space requirements

(h) Parking Requirements
The number of required off-street parking spaces shall be a total of 2 per unit.

**614.10** REQUIREMENTS FOR SINGLE FAMILY ATTACHED DWELLINGS (TRIPLEX & QUADPLEX AND TOWNHOUSES, 5 TO 8 UNITS PER STRUCTURE)

(a) Minimum lot area per dwelling
Interior lot: 2,000 square feet
Corner lot: 2,400 square feet
Condominium: Not regulated

(b) Minimum lot width
Interior lot: 20 feet
Corner lot: 35 feet
Condominiums: subject to site plan review and applicable performance zoning criteria

(c) Minimum yard requirements
Front yard: 15 feet
Side yard: 15 feet
Rear yard: 30 feet

(d) No side yard requirement shall be applied where dwellings share a party wall.

(e) Accessory structures of less than

150 square feet: 5 feet from side and rear lot lines.

(f) Where a lot is to be divided into individual lots for the sale of single family attached dwelling units:

1. Lot lines shall conform with party wall centerlines.
2. Privacy yard, having a minimum of two hundred (200) square feet, shall be provided on each lot.
3. Privacy yards shall include screening, fencing, patio paving and/or special landscaping treatment.

(g) Open Space Requirements

1. An open space plan shall be submitted with a site plan application.
2. 25% of the net site area shall be open space dedicated to common usage and ownership.
3. At least 20% of the required open space (5% of the net site area) shall be designed and developed as recreational and active community open space.
4. Refer to Section 615.2 regarding critical environmental area and open space requirements.

(h) Site Plan Requirements

1. A site plan, which shall govern all development, shall be submitted for approval per Section 6.
2. Site plans shall include provisions for:
   A. Adequate public facilities, development phasing.
   B. Storm water management facilities to address the ultimate development coverage within the district, lighting and signing.
   C. Building placement and lot configuration, screening, buffering, and landscaping, and other special site features and land use considerations deemed necessary to serve the district.
   D. Any site plan application which is not in strict conformance with a pre-existing approved master plan for the district shall require an amendment to that master plan and preliminary plat, if necessary, prior to site plan approval of the specific use.
   E. All uses shall be subject to final site plan approval.

(i) Parking and parking access

1. The number of required off-street parking spaces shall be a total of 1.5 per unit and shall be located not more than one hundred (100) feet from the individual dwelling served.
2. Parking bays shall be no closer than twelve (12) feet to any adjoining property line.
3. Off-street parking spaces shall be accessed via private driveways and shall not be directly accessed from public rights of way.

(j) Driveways

1. Attached dwelling units shall have access to a private driveway with a minimum width of twenty-three (23) feet. The paved street shall be constructed according to Virginia Department of Transportation standards.
2. No attached dwelling unit may be accessed directly from a public street unless approved by a special use permit.

3. No private driveway shall be located within twelve (12) feet of any property line.

(k) Setback, yards, buffering, separation and grouping of units

1. Where adjacent properties are zoned to a district other than the OPR District, all single family attached dwellings shall be set back at least forty (40) feet from the common property line(s).
2. Where single family attached dwellings are adjacent to a private drive, parking area, and/or walkway intended for the common use of the development's occupants, there shall be a minimum building setback of 15 feet from that drive, area, and/or walk.
3. Adjacent groupings of single family attached dwellings with their accompanying lots shall be separated from one another by a minimum of fifteen (15) feet. This separation shall allow an unobstructed fire lane on all sides of the structure.
4. No more than four attached dwellings shall be included in any one physically contiguous grouping.

(l) Maintenance of improvements, covenants and required improvements

1. All common improvements (including open space, recreational facilities, private streets, walkways, parking areas, and other community facilities) shall be maintained by and be the sole responsibility of the property owner until such time as the owner conveys such common area to a nonprofit (homeowner's) entity consisting of at least all of the individual owners of the dwelling units in the development.
2. Deed restrictions and covenants shall be included with the conveyance to include, among other things, that assessments, charges and costs of maintenance of such common areas shall constitute a pro-rate share lien upon the individual dwelling lots, such lien inferior only to taxes and recorded trusts. Covenants shall specify the means by which the nonprofit entity shall govern and manage itself and maintain building exteriors, landscaping, lighting, recreation areas, walkways, parking areas, snow removal, and travel ways.
3. All deed restrictions, covenants, nonprofit (homeowner's) entity incorporation documents, and information related to conveyance programs shall be submitted with the plat and plans, and reviewed by the Berryville Town Attorney.

(m) General Regulations

1. All refuse shall be contained in completely enclosed and screened facilities.
2. On-site lighting, signing, and mailboxes shall be of compatible scale, materials, and colors to the primary structures.

(n) Condominiums

1. Any condominium development under the Condominium Laws of Virginia shall be subject to the following provisions:
   A. Minimum lot size and yard and open space requirements of the district shall be met as if lot lines existed.

B. A site plan shall be required and subject to review by the Berryville Area Development Authority. The site plan shall govern the location of all structures and improvements.

C. Setbacks, density and other district provisions shall be met.

**614.11** REGULATIONS FOR MULTI-FAMILY AND NON-RESIDENTIAL USES:

(a) Maximum Floor Area Ratio (FAR): .60 of net developable area

(b) Minimum lot area: 20,000 square feet

(c) Minimum lot width: 100 feet

(d) Minimum yard requirements

| | |
|---|---|
| Front yard: | 25 feet |
| Side yard: | 25 feet |
| Rear yard: | 25 feet |

(e) Where a lot is contiguous to a property located in any residential district, a public right of way with limited access or a railroad right of way, all buildings shall have minimum setback of forty (40) feet from common property lines.

(f) Open Space

1. A landscape and buffer plan shall be submitted with any application for site plan approval.
2. At least twenty-five percent (25%) of the gross site area shall be landscaped open space.
3. Refer to Section 615.2 regarding critical environmental area and open space requirements.

(g) Site Plan Requirements

1. A site plan, which shall govern all development, shall be submitted for approval per Section 6.
2. Site plans shall include provisions for:
   A. adequate public facilities, development phasing, stormwater management facilities to address the ultimate development coverage within the district, lighting and signing, building placement and lot configuration, screening, buffering, and landscaping, and other special site features and land use considerations deemed necessary to serve the district.
3. Any site plan application which is not in strict conformance with a pre-existing approved master plan for the district shall require an amendment to that master plan and preliminary plat, if necessary, prior to site plan approval of the specific use.
4. All uses shall be subject to final site plan approval.

(h) Parking Access and Private Drives

1. A minimum of one parking space per unit shall be provided and shall be located not more than one hundred (100) feet from the individual dwelling served.
2. Off-street parking spaces shall be accessed via private driveways and shall not be directly accessed from public rights of way.
3. Parking bays and private drives shall be no closer than twelve (12) feet to any adjoining property line.

(i) Buffering and Landscaping

1. Where a parcel is contiguous to a residential zoning district or public right of way with limited access, a landscaped buffer strip fifteen (15) feet in width shall be provided.
2. Landscape materials and their placement shall be subject to final site plan approval. With the approval of the administrative body, walls, fences, or wider buffer strips may be used in lieu of landscaping.

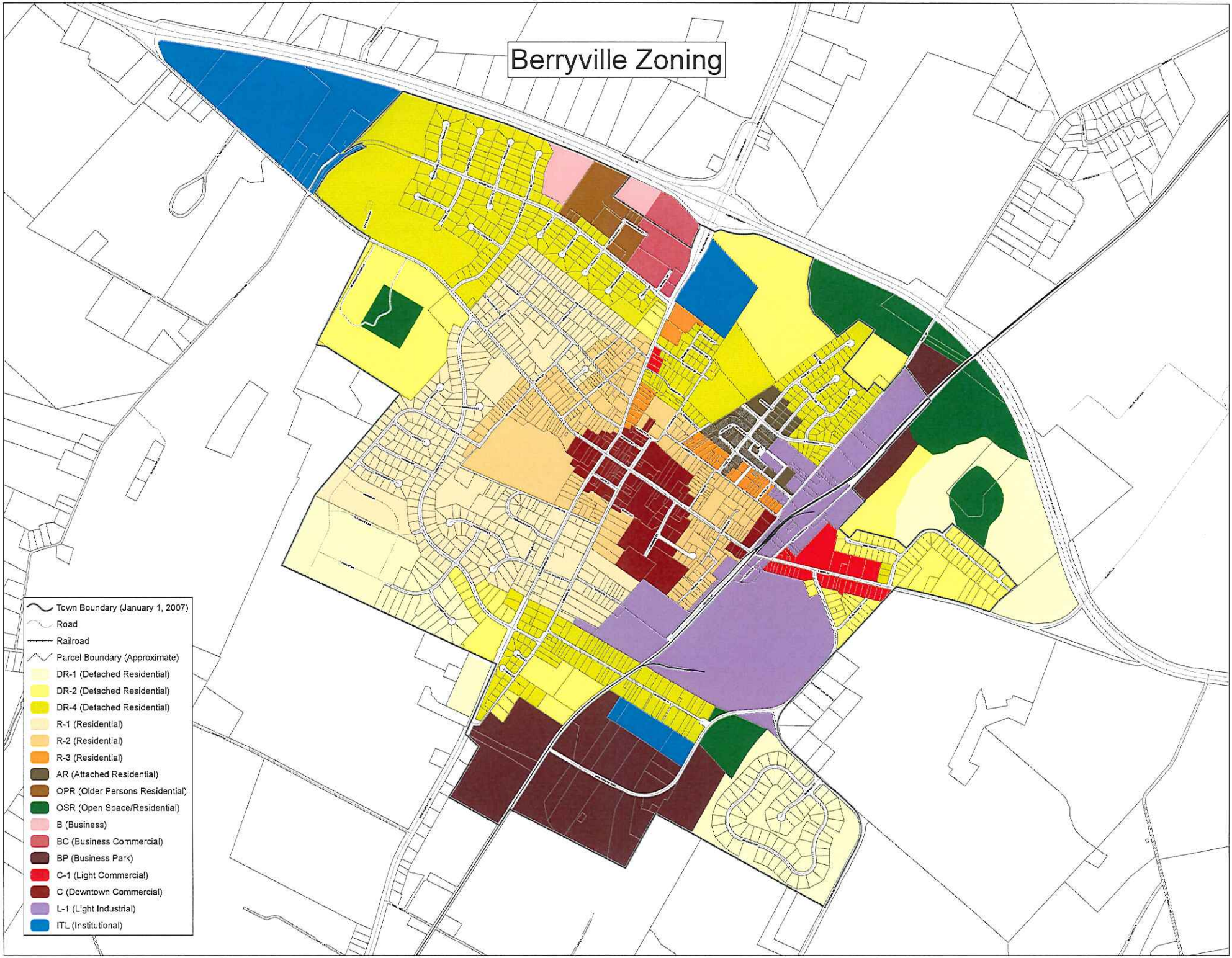
(j) Storage of Materials and Refuse

1. All refuse containers shall be screened by a solid wall or fence.
2. Any establishment involved with the storage of any fuel for sale, for on-site use, or for any other purposes, shall be permitted only if the fuel is stored underground, except where otherwise permitted under provisions granted and stipulations required by the administrative body.
3. All storage shall be conducted within the principal structure, which is to be completely enclosed.
4. There shall be no outdoor storage and/or display of goods, with the exception of retail display such as plant materials associated with nurseries.

(k) Uses, Facilities, and Improvements

1. All business services (and storage) shall be conducted within the principal structure which is to be completely enclosed.
2. Signing, mailboxes, site lighting and architectural materials shall be provided and installed by the property's owner-developer and shall be consistent and compatible with the scale and character of the development.
3. Private driveways, street lighting, sidewalks, curbing and gutters, and parking bays shall be constructed to standards specified by the administrative authority or its agent.

# Berryville Zoning



**BERRYVILLE PLANNING COMMISSION** **Agenda Item #13**
**Planning and Zoning Update**
**July 25, 2017**

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**Town Council**
Town Council held a meeting on Tuesday, July 11, 2017. They discussed water tank maintenance. Meeting minutes and agendas for Town Council meetings and for committee meetings are available on the Town's web site www.berryvilleva.gov.

**Berryville Area Development Authority**
The BADA held a meeting on Wednesday, June 28 at 7:00pm. They approved a Boundary Line Adjustment between four parcels in the Battlefield Estates subdivision.

The Authority is awaiting final approval by the Virginia Department of Environmental Quality on stormwater management comments for the assisted living facility slated for development on Mosby Boulevard.

**Architectural Review Board**
The Architectural Review Board did not hold a July meeting. Their next meeting is scheduled for Wednesday, August 2, 2017 at 12:30pm.

**Board of Zoning Appeals**
The Board of Zoning Appeals has not held a meeting since the last Planning Commission meeting.