

**MONTGOMERY COUNTY PLANNING COMMISSION
JUNE 11, 2014 @ 7:00 P.M.
Board Room, Government Center
755 Roanoke Street, Christiansburg, VA**

A G E N D A

CALL TO ORDER:

DETERMINATION OF A QUORUM:

APPROVAL OF AGENDA:

APPROVAL OF CONSENT AGENDA:

PUBLIC ADDRESS:

OLD BUSINESS:

NEW BUSINESS:

WORK SESSION:

- Contractor's Service Establishments
- Clean Earth Fill

LIAISON REPORTS:

- Board of Supervisors – Chris Tuck
- Agriculture & Forestal District – Joel Donahue
- Blacksburg Planning Commission – Coy Allen
- Christiansburg Planning Commission – Cindy Disney
- Economic Development Committee – Bryan Rice
- Public Service Authority – Joel Donahue
- Parks & Recreation – Scott Kroll
- Radford Planning Commission – Frank Lau
- School Board – Bryan Katz
- Tourism Council – Vacant
- Planning Director's Report – Karen Drake

MEETING ADJOURNED:

UPCOMING MEETINGS:

- | | | |
|------|----------|--|
| June | 18, 2014 | Planning Commission Regular Meeting (TBD) |
| July | 09, 2014 | Planning Commission Public Hearing (7:00 PM) |
| July | 16, 2014 | Planning Commission Regular Meeting (TBD) |

**MONTGOMERY COUNTY PLANNING COMMISSION
CONSENT AGENDA
JUNE 11, 2014**

A. APPROVAL OF MINUTES

- May 21, 2014

ISSUE/PURPOSE:

The above listed minutes are before the Planning Commission for approval.

AT A MEETING OF THE MONTGOMERY COUNTY PLANNING COMMISSION ON MAY 21, 2014 IN THE BOARD ROOM, SECOND FLOOR, COUNTY GOVERNMENT CENTER, CHRISTIANSBURG, VIRGINIA:

CALL TO ORDER:

Mr. Rice, Chair, called the meeting to order.

DETERMINATION OF A QUORUM:

Ms. Disney established the presence of a quorum.

Present: Bryan Rice, Chair
Frank Lau, Vice-Chair
Coy Allen, Member
Sonia Hirt, Member
Bryan Katz, Member
Scott Kroll, Member
Trey Wolz, Member
Chris Tuck, Board of Supervisors Liaison
Karen Drake, Planning Director
Brea Hopkins, Development Planner
Dari Jenkins, Planning & Zoning Administrator
Marty McMahon, County Attorney
Erin Puckett, Senior Program Assistant

Absent: Joel Donahue, Member
Cindy W. Disney, Secretary

APPROVAL OF AGENDA:

On a motion by Mr. Allen, and seconded by Mr. Lau and unanimously carried the agenda was approved.

PUBLIC ADDRESS:

Mr. Rice opened the public address, however, there being no comments the public address was closed.

PUBLIC HEARING:

An ordinance amending Chapter 10, entitled Zoning, of the Code of the County of Montgomery, Virginia by amending Section 10-31 (3) by allowing a contractor's service establishment as a by right use in M-L Manufacturing Light zoning district and by amending Section 10-61, the definition of contractor's service establishment to clarify that the outdoor storage of equipment and/or materials is prohibited.

Ms. Puckett presented the background information on the uses and the proposed amendment.

Mr. Kroll asked for clarification as to whether storage yards were meant for sale of materials or for contractor's storage and use of those materials.

Ms. Puckett answered that these are generally sites where contractors store their own materials.

Mr. Rice asked if contractor's service establishments were allowed any enclosed storage.

Mr. Katz asked if service establishments could have any outdoor storage, for example, one piece of large machinery. He also asked if the storage yard use is allowed currently in the Manufacturing Light (M-L) district.

Ms. Puckett stated that storage yards are only allowed in Agricultural (A-1) and Manufacturing (M-1) by special use permit (SUP).

Mr. Rice commented that the limited locations may be an issue because they are in areas where neighbors may not want them.

Mr. Katz suggested that there may need to be a use in between the two that would allow for minimal outdoor storage.

Ms. Jenkins commented that adding such a consideration may be hard to enforce and/or to distinguish between the uses. She further confirmed that service establishments could have indoor/enclosed storage.

Mr. Katz asked if contractor's storage yards could be added in M-1 by SUP

Ms. Puckett answered that a subsequent ordinance amendment would be required; however, staff could prepare a proposal if desired.

Mr. Katz stated that he was comfortable with the current amendment; however, would like the option to revisit some of these concerns with an additional amendment.

Mr. Rice suggested that the proposed outdoor storage restriction be left out of the definition at this time to revisit at a later date.

Ms. Puckett said that the proposed modification to the definition is meant to clarify the Zoning Administrator's interpretation of that service establishment use. It has been interpreted that it does not allow outdoor storage.

Mr. Kroll commented that these uses could still store materials inside.

Ms. Jenkins presented aerial images to clarify the difference between contractor's storage yards and service establishments. The Ferguson Drive service establishment site is very neat and clean with no outdoor storage, while the storage yard on Seven Mile Tree Drive is not.

Mr. Rice opened the public hearing.

Cat White, NRV Homebuilders Association, stated that he has concerns with the change to the definition that would restrict outdoor storage, as he has large vehicles and cannot afford to build a large garage for them.

There being no additional speakers, Mr. Rice closed the public hearing and opened the matter up to discussion among the commissioners.

Mr. Katz reiterated that he is not comfortable with limiting the outdoor storage of items.

Mr. Rice proposed that the commission does not recommend approval of the definition change at this time until the Commission has time to review whether some amount of storage needs to be allowed.

Mr. McMahon commented that the Zoning Administrator has made it clear that the definition's current intent is not to allow outdoor storage. The Commission should consider the amended definition as proposed to allow Ms. Jenkins more power to enforce that use. The definition can be further revised at a later date if necessary.

Mr. Katz asked if outdoor equipment associated with service establishments could be allowed under SUP.

Mr. McMahon said that may be possible.

A motion was made by Mr. Katz, seconded by Mr. Allen to recommend approval of allowing contractor's service establishments as a by-right use in the M-L zoning district, and to allow outdoor storage associated with these uses by SUP in the M-L district.

Ayes: Bryan Rice
Frank Lau
Coy Allen
Sonia Hirt
Bryan Katz
Scott Kroll
Trey Wolz

Nays: None

Abstain: None

An ordinance amending Chapter 10, entitled Zoning, of the Code of the County of Montgomery, Virginia by amending Section 10-21 by allowing the removal or filling of clean earth fill by special use permit in the A-1 Agricultural district, by amending section 10-48 creating certain additional regulations applicable for a special use permit allowing the removal or filling of clean earth fill and by amending Section 10-61 by creating a definition of clean earth fill defining what soil material make-up shall be considered clean earth fill.

Ms. Drake explained that staff has received inquiries about locating fill sites in the county. Staff has also received complaints regarding noise, dust, etc., as related to existing fill sites. She described the proposed amendments, which included adding a definition for clean earth fill, allowing clean fill activities by SUP in the A-1 district, and establishing some associated regulations. She further explained that these regulations do not apply to fill activity which already has an approved building permit or subdivision plat, or is at a volume of less than 200 cubic yards or 1,000 square feet in a twelve (12) month period; i.e., for driveway repair.

Ms. Drake added that Mr. Donahue could not be in attendance; however, suggested that the Commission consider a 300 cubic yard limit (rather than 200).

Mr. Kroll asked about materials that may fall outside of the proposed definition; i.e., chunks of debris or concrete, stating that this proposed amendment may not address all potential issues.

Ms. Drake stated that there are two separate issues. One of these is clean fill, which the proposed amendment is defining. When fill includes concrete and construction materials, it becomes a landfill, which falls under a separate set of regulations under DEQ.

Mr. Kroll commented that the proposed definition addresses a very narrow type of material that most construction sites will not fall into.

Mr. Kroll asked if other stormwater regulations, erosion and sediment regulations, etc. are already enforced, is this amendment necessary.

Ms. Drake explained that E&S permits do not address the land use concerns. If clean fill is allowed under a SUP, it allows the county to determine on a site by site basis whether the use will negatively impact adjoining properties.

Mr. Rice commented that it appears that this amendment would capture all fill and borrowing from permitted uses. There may be a need to differentiate between residential and other uses. The draft amendment also limits time frame to six (6) months after obtaining a building permit; this should be modified to state "active building permit" instead of limiting the time frame.

Mr. Kroll asked if there are situations in which a zoning permit or site plan approval may be obtained but a building permit is not needed.

Ms. Jenkins stated that there are a few examples, such as a parking lot.

Mr. Rice commented that these regulations may make sense for large operations but would put a burden on smaller operations.

Mr. Katz asked how many dump truck loads would be equivalent to 200 cubic yards of fill.

Ms. Drake answered that it would be approximately twelve (12) and stated that she had discussed limitations with the Building Department and County Attorney. Other localities were researched and found to have the 200 cubic yard limit.

Mr. Rice opened the public hearing.

Donny Woods asked at what level these fill operation would fall under county or state codes. He added that certified dump sites have DEQ and DCR approvals, and noted concerns that the proposed county ordinance would conflict with those requirements. He asked if these requirements would override a site's E&S plan.

Cat White, NRV Homebuilders Association, commented that he is worried about the cost associated with these regulations. He added that this ordinance is probably not meant to regulate small operations but they would probably still fall under these requirements. He stated that several area businesses remove soil from local farms which is then processed into top quality soils. Those operations may fall under new regulations which may be unaffordable. He added that the existing state regulations may already achieve the desired goals.

There being no further comments, Mr. Rice closed the public hearing and opened the issue for discussion among the Commission.

Mr. Rice said the cost of a SUP is currently around \$700, not including the cost to hire an engineer, surveyor, etc. He added that he is concerned that these regulations may place a burden on people for whom this ordinance is not intended.

Ms. Hirt asked if the issue could be tabled and relegated back to staff for additional research.

Mr. Katz agreed but suggested that the Planning Commission give some direction. For example, the time frame may need to be changed, the number of trucks allowed per year, and the threshold for fill (200 cubic yards) under which a SUP is not required. He further stated the limit on fill volume could be relative to lot size.

Mr. Wolz commented that during site visit, the Commission viewed a fill site that is already in violation of multiple regulations. These additional proposed regulations would add another layer of regulation.

Ms. Hirt suggested that staff may need to do more research to come up with a reasonable standard, and that there may be another nearby locality discussing similar issues.

Mr. Rice commented that the proposed regulations do not allow concrete as fill. As it is expensive to dump concrete, there may need to be some provisions for where it can be dumped.

Mr. Kroll asked that staff also look at narrowing down what is not otherwise regulated via existing regulations to ensure that the amendment is not in conflict with other regulations.

Mr. McMahon stated that unless a specific use is listed in a zoning district, it is not allowed. So at this time large fill sites are not allowed. This ordinance is intended to shut down illegal large fill sites and establish what should be allowed by SUP.

Mr. Rice commented that some of the requirements could be determined during the SUP process instead of applying to all of them.

A motion was made by Mr. Allen, seconded by Ms. Hirt to table discussion of the proposed ordinance amendment regarding clean earth fill.

Ayes: Rice, Lau, Allen, Hirt, Katz, Kroll, Wolz

Nayes: None

Abstain: None

OLD BUSINESS:

A request by the City of Radford (Agent: Verizon Wireless) for a Special Use Permit (SUP) on approximately 100 acres in an Agricultural (A-1) zoning district to allow a 199 ft. monopole telecommunications tower. The property is located at 5480 Peterson Drive and is identified as Tax Parcel No. 102-A 16, 17 (Account No. 071097) in the Riner Magisterial District (District D). The property currently lies in an area designated as Rural in the 2025 Comprehensive Plan.

Ms. Jenkins stated that the concerns raised previously by the Planning Commission have been communicated to the applicant. Staff has also provided revised conditions.

Mr. Rice asked if the fourteen (14) day deadline for the county to respond regarding the intent to occupy a colocation space would be sufficient time.

Mr. Kroll asked if there was currently a need to locate Emergency Services in that area of the county.

Ms. Drake said that Neal Turner has no immediate need but does want the right to collocate in case the need does arise.

Mr. Rice asked if the county has approved anything other than flush mount antennas since the Comprehensive Plan telecommunication tower policies were passed.

Ms. Jenkins stated that she is not aware of any platforms being approved, and added that staff's recommendation is to allow a modified flush mount which will allow antennas to be mounted up to 24 inches from the pole.

Mr. Rice invited the applicant to speak.

Mr. Geiger, attorney with Verizon, reviewed some proposed changes to the conditions. He also requested language to allow full array antennas and cables on the outside of the pole if they run out of space within the tower. Mr. Geiger added that if the county approves flush mounted antennas, there will be fewer colocation opportunities. He further requested that microwave dishes be allowed above the tree line. Verizon will remove dishes if/when fiber becomes available.

Mr. Kroll commented that in condition eight, the language does not say "until fiber is available" but "until fiber is located on property", which is a different requirement.

Mr. Geiger assured the Commission that he will expend the money to bring it onsite once available, but he is open to a change in the language if desired. He further noted that if it is not in the area they plan to put out a Request for Proposals.

Mr. Lau commented that a difference of twenty-five (25) feet should not have a large impact on viewsheds, and would prohibit multiple smaller towers. He expressed a desire to approve the 199 foot tower with flush mount antennas.

Ms. Hirt stated that her understanding from the previous meeting is that antenna type is more of a concern to Verizon than height.

Mr. Geiger confirmed this, stating that Verizon would prefer a 150 foot tower with a full array to a 199 foot tower with flush mounted antennas.

Mr. Rice expressed a concern that the propagation maps are created with proprietary software that can be made to look however the user wants.

Mr. Kroll asked for a clarification on how many colocation spots would be available at various heights.

Mr. Geiger presented this information.

Mr. Rice commented that he would prefer flush mount antennas even if more poles would be required in the long run, which is also what the county has normally approved in the past.

Mr. Kroll stated that he agreed with Mr. Lau that towers are becoming a necessity. Taller towers may be more beneficial to citizens in that they provide better coverage and more colocation spots for other carriers. He added that he would be in favor of the original request for a 199 foot with a full array, although some conditions may need to be modified.

Mr. Rice commented that such a tower would be a change from the guidelines established by the Board of Supervisors.

Mr. Kroll commented that those guidelines do not stipulate flush mount antennas. He added that he did not see much of a difference between the full array and flush mount in terms of viewshed impacts. One tower with more equipment may be preferable to many towers.

Mr. Lau, Mr. Wolz and Mr. Allen expressed support for the original proposed tower at 199 feet with a full array.

Mr. Katz added that the location along I-81 may be more appropriate for the larger towers with wider arrays.

Ms. Hirt mentioned that the difference in coverage between 145 and 195 feet was minimal and a full array may be less intrusive at the lower height.

Mr. Katz commented that the taller tower would allow for more colocations and possibly fewer towers overall.

Mr. Lau commented that the Comprehensive Plan is ten years old and technology has changed since the adoption.

A motion was made by Mr. Kroll, seconded by Mr. Lau, to approve the request by the City of Radford (Agent: Verizon Wireless) for a Special Use Permit to allow a 199 ft. monopole telecommunications tower with a full array, subject to the following conditions:

1. Tower shall not exceed a total overall height of 199 ft. inclusive of the proposed lightening rod with a maximum ground elevation of 2,032.6 feet. Tower shall not have lighting unless required by the FAA. Tower pole shall have a base diameter not to exceed 8'-0" and a top diameter not to exceed 4'-6".
2. Site development shall be in substantial conformance with the concept plans entitled, "Peterson Drive, 5480 Peterson Drive, Radford, VA 24141", prepared by Clark-Nexen Architecture & Engineering, revised, January 10, 2014 and received by Montgomery County on February 7, 2014 and any site plan submitted by the applicant prior to construction and approved by the County as required by the County Code.
3. Verizon shall access the site using an existing private driveway off State Route F056 (Peterson Drive).
4. Verizon shall construct a 12 ft. wide gravel access road within a 20 ft. wide access easement to the proposed telecommunications tower site.
5. Tower shall be of a "monopole stealth design". Tower shall be painted matte brown (Umbr). All wiring and cables shall be located inside the pole structure until there is no room left inside for the

wiring and cables. If wiring and cables must be mounted on the outside of the pole structure, then the wiring shall be painted matte brown (Umbra).

6. Existing site vegetation shall not be cleared beyond the proposed lease area, except for that necessary for construction of an entrance road and utilities.
7. Engineering plans signed and sealed by a licensed engineer in the State of Virginia shall be submitted to and approved by the Building Official prior to the issuance of a building permit.
8. Any satellite dish and microwave dish antennas attached to the telecommunications tower pole shall not exceed six (6) feet in diameter and shall be painted matte brown (umbra) with no logos, but dishes are allowed on the tower pole only as long as there is no fiber optic utility line located adjacent to the property.
9. A landscaping screen of a double row of evergreen trees, six ft. in height at the time of planting, shall be provided around the compound fence to provide screening of the ground equipment from any future development of the 100-acre site by the City of Radford.
10. Tower shall meet all regulations found in Section 10-48(6) of the Montgomery County Zoning Ordinance.
11. Backup generator, if applicable, shall not be fueled by a liquid fuel source.
12. Owner/agent shall provide police, fire and rescue services antenna space on the proposed tower pursuant to a non-transferrable "no-rent" license agreement with the tower owner allowing non-commercial use for emergency communication services at the location for Condition 13 below subject to (i) submittal of an application, (ii) the structural capacity of the tower, and (iii) provided that emergency service antennae do not provide radio frequency interference to other antennae located upon the tower, together with related ground space. Emergency Service providers shall provide equipment. Tower owner/agent shall install the antennae at market rate.
13. The second highest collocation space on the tower shall be made available to the County. In the event that Montgomery County has not used this space and another cellular carrier wishes to collocate on the same tower, the tower owner shall give the Montgomery County Administrator fourteen (14) days' notice by Certified Mail of the other cellular carrier's intent to occupy this location and if the Montgomery County Administrator does not respond with an application to occupy such space on the tower, the tower owner may lease such space to the other cellular carrier and, subsequently, the next highest collocation space on the tower shall be made available to the County. The forgoing process may repeat until the County elects to collocate on the tower.

Ayes: Lau, Allen, Hirt, Katz, Kroll, Wolz

Nayes: Rice

Abstain: None

NEW BUSINESS:

None presented

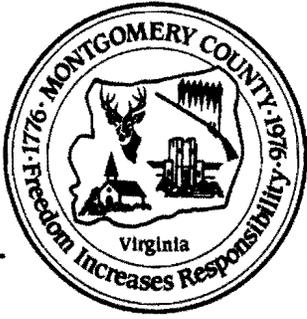
LIAISON REPORTS:

- Board of Supervisors – Chris Tuck reported that the Board discussed the relocation of the Falling Branch Park and Ride. Completion of the project is expected within 1.5 years but the new site has not yet been identified.
- Agriculture & Forestal District – No report.

- Blacksburg Planning Commission – Coy Allen reported that he had attended two meetings. The Commission had approved its annual report and they are currently reviewing two conditional use permit requests, but neither should affect the county. They are currently discussing some issues in the Prices Fork area.
- Christiansburg Planning Commission – No report.
- Economic Development Committee – No report.
- Public Service Authority – No report.
- Parks & Recreation – Scott Kroll reported that Parks and Recreation is having issues with funding and maintenance needs. They have also elected for their meals budget allocation to go to the scholarship fund due to the tax issues associated with meals.
- Radford Planning Commission – Frank Lau reported that there had been a discussion of future housing and issues a mixture of student housing and residential housing.
- School Board – Bryan Katz reported that the School Board met on May 20 to distribute awards and recognition. There was some discussion about the Falling Branch park and ride and the Auburn Middle School completion scheduled for November.
- Tourism Council – Vacant.
- Planning Director's Report – Karen Drake reminded the Commission that Wednesday, May 28th is the annual NRVPC training. She further explained that due to a limited budget, the Planning Department would not be able to offer the upcoming legal seminar to all members at this time. There may be enough money in the budget to pay the registration fee for two members to attend and inquired who was interested in attending. Finally, she mentioned the Planning Commission meeting in June may be canceled if no public hearing cases were submitted and the Planning Department would be short staffed.

MEETING ADJOURNED:

There being no further business the meeting was adjourned at 9:45 PM.



MONTGOMERY COUNTY DEPARTMENT OF
PLANNING & GIS SERVICES

PLANNING
GIS & MAPPING

755 ROANOKE STREET, SUITE 2A, CHRISTIANSBURG, VIRGINIA 24073-3177

MEMORANDUM

TO: Planning Commission

FROM:  Karen Drake, AICP, Planning Director

DATE: June 5, 2014

FOR: June 11, 2014 Planning Commission Meeting – Work Session

SUBJ: Ordinance Amendment – Contractor’s Service Establishments in General Business and Community Business Districts

On May 27, 2014, the Board of Supervisors approved an ordinance amendment regarding contractor’s service establishments in Manufacturing districts, summarized below. Bryan Rice, Planning Commission Chair, has requested that the Commission discuss what ordinance amendments may be warranted to include contractor’s service establishments in General Business and/or Community Business districts.

Background

The following is a summary of the ordinance amendments approved by the Board of Supervisors at their meeting on May 27, 2014.

1. “Contractor’s service establishment” was added as a use permitted by right in the Manufacturing-Light (M-L) zoning district.
2. “Contractor’s service establishment with permitted outdoor storage of equipment and/or materials” was added as a use permissible by special use permit in the Manufacturing (M-1) and Manufacturing-Light (M-L) zoning districts.
3. The definition of “Contractor’s service establishment” was amended as follows:
Contractor’s service establishment: Any establishment from which services are provided for building construction, building repair or building equipment installation or repair, such as, but not limited to flooring, heating and plumbing. The outdoor storage of equipment and/or materials shall be prohibited in a contractor’s service establishment.

4. A definition was added for "Contractor's service establishment with permitted outdoor storage of equipment and/or materials" as follows:

Contractor's service establishment with permitted outdoor storage of equipment and/or materials: Any establishment from which services are provided for building construction, building repair or building equipment installation or repair such as but not limited to flooring, heating and plumbing. Outdoor storage of equipment and/or materials is permitted.

In the Planning Commission meeting on May 21st and the Board of Supervisors meeting on May 27th, Planning Commission members expressed a desire to revisit the contractor's service establishment use and/or related uses to discuss whether these uses should be allowed in other commercial zoning districts, and whether any definitions would benefit from additional modifications.

Next Steps

At the June 11th Planning Commission meeting, there will be a work session to discuss potential ordinance amendments regarding contractor's service establishments and/or related uses as the Commission deems necessary. The attached reference document provides the definitions of these uses as well as the zoning districts in which they are currently located.

Please do not hesitate to contact me if you have any questions or concerns at this time.

KD/ep

Enclosure: Zoning table with definitions

**Contractor's Service Establishment
Zoning Comparison Table and Definitions**

June 5, 2014

Zoning		Use			
District	Acres	Contractor's service establishment	Contractor's service establishment w/ outdoor storage	Contractor's storage yard	Office
GB	672 acres	SUP			By-right
Intended for the conduct of general business to which the public requires direct and frequent access. Activities shall have limited traffic and other impacts on uses in other districts.					
CB	367 acres	SUP			By-right (<3000 sf)
Intended for the provisions of nonintensive and small scale commercial services to rural communities, residential transition, village, village expansion, or urban expansion designated in the comprehensive plan. The scale and character of uses shall be compatible with crossroads settlement and village locations. Activities shall have limited traffic and other impacts on uses in other districts					
M-1	886 acres	By-right	SUP	SUP	
Established to provide for economic development and job opportunities by accommodating a mix of industrial uses and industrial-related business uses. Activities shall have limited traffic and other impacts on uses in other districts.					
M-L	18 acres	By-right	SUP		By-right
Established to provide for economic development and job opportunities by accommodating a mix of light industrial and business uses and related uses in settings outside of industrial parks but designated for industrial use in the comprehensive plan. Activities shall have limited traffic and other impacts on uses in other districts.					

Total acreage (GB, CB, M-1, M-L): 1,943
Total acreage (county): 220,965

Definitions

Contractor's service establishment: Any establishment from which services are provided for building construction, building repair or building equipment installation or repair, such as, but not limited to flooring, heating and plumbing. **The outdoor storage of equipment and/or materials shall be prohibited in a contractor's service establishment.**

Contractor's service establishment with permitted outdoor storage of equipment and/or materials: Any establishment from which services are provided for building construction, building repair or building equipment installation or repair such as but not limited to flooring, heating and plumbing. **Outdoor storage of equipment and/or materials is permitted.**

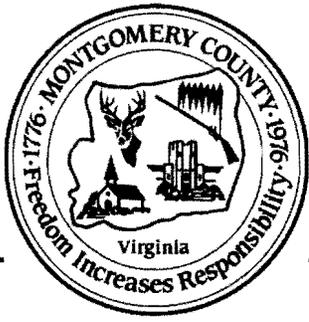
Contractor's storage yard: An area used for the storage of equipment and/or materials used for providing construction-related contracting services, including but not limited to flooring, heating, plumbing, roofing, landscaping and excavation.

Office: The facility in which the administrative activities, record-keeping, clerical work and other similar functions of a business, professional service, industry, or government are conducted, and in the case of professions such as dentists, lawyers or engineers, the facility where such professional services are rendered.

Office, professional: See "Office."

Changes as amended on May 27, 2014 per ORD-FY-14-21 are in red.

Changes as amended on May 27, 2014 per ORD-FY-14-21 are in red.



MONTGOMERY COUNTY DEPARTMENT OF
PLANNING & GIS SERVICES

PLANNING
GIS & MAPPING

755 ROANOKE STREET, SUITE 2A, CHRISTIANSBURG, VIRGINIA 24073-3177

MEMORANDUM

TO: Planning Commission

FROM:  Karen Drake, AICP, Planning Director

DATE: June 5, 2014

FOR: June 11, 2014 Planning Commission Meeting -- Work Session

SUBJ: Ordinance Amendment to allow the removal or filling of clean earth fill in A-1 by SUP and to establish additional regulations and definition for this use

In April, the Board of Supervisors approved a resolution to initiate amendments to the Montgomery County Zoning Ordinance to address the removal and/or filling of excavation material. A public hearing was held at the Planning Commission's May 21st meeting. The proposed ordinance was tabled to allow further Planning Commission discussion at your June 11th meeting.

Background

Planning staff has received multiple complaints from citizens regarding various properties in the county that have been utilized as fill sites. These fill sites have no specific land use associated with the site; instead fill is trucked-in from long-term offsite projects. More specifically, the neighboring property owners voiced concerns regarding noise at all hours of the night, wear and tear on the road from construction vehicles, dust and mud on the roadway, negative stormwater impacts on nearby waterways, and large amounts of material being hauled to and from these sites.

Planning staff has also received multiple inquiries from contractors looking to utilize additional properties within the County as offsite, long-term fill sites for pending construction projects elsewhere in the County or Towns. These proposed fill sites in the County could potentially have the same associated impacts on surrounding properties as existing fill sites.

Summary of Proposed Amendments

The intent of the proposed ordinance amendments is to define clean earth fill sites and allow by special use permit in A-1, Agriculture Zoning District, the large-scale fill or removal operations when the associated use is offsite. At the same time, these regulations should clearly define situations when a special use permit is not required, for example small-scale uses, or projects having approved site plans, subdivision plans, or active building permits.

Requiring a special use permit for large-scale fill or removal operations sites would help mitigate the associated negative land use impacts such as noise, dust, and traffic. The intent is not to impose additional environmental regulations already required and monitored by the Virginia Department of Environmental Quality (DEQ) or local erosion and sediment control measures or stormwater regulations monitored by the Montgomery County Building Department. An additional copy of the draft ordinance reviewed and discussed in May is attached for your reference.

Next Steps

At your June 11th meeting, the goal is for the Planning Commission to discuss and identify details that impact the scale and scope of this proposed ordinance. Once the desired extent of the proposed ordinance is identified, staff can revise the draft ordinance language for review at the July 9, 2014 Planning Commission Public Hearing.

Based on your May 21st discussion, listed below are questions to start the Planning Commission discussion on June 11th. Additional questions and discussion items are welcome.

- 1.) Section 10—61 Definitions. Should the definition of Clean Earth Fill be broadened by increasing the percentage or size of rock fragments allowed in Clean Earth Fill?
- 2.) Section 10-48 8 (a) Removal or Filling of Clean Earth Fill. The draft ordinance exempts fill activities when they are incidental to another use, such as construction for which a building permit has been issued, grading for a subdivision, or when the volume of fill placement or removal is less than 200 cubic yards per year.
 - a. What additional exemptions be added, such as approved site plans?
 - b. Requiring an active building permit?
 - c. A local farmer contacted the Planning Office to voice concerns that this ordinance should not impact farmers moving dirt within their farm property boundaries. As drafted it does not. Are there other scenarios that need to be considered?
 - d. Should the threshold for sites requiring a special use permit be regulated by the number of trucks allowed per year or limit the fill to 200 cubic yards per year? And if the threshold limit is 200 cubic yards per year, should this limit be increased?
- 3.) Section 10-48 (8) (b) & (c) Removal or Filling of Clean Earth Fill. For clean earth fill sites that do require a special use permit, what requirements need to be added or removed from Sections B and C? What information needs to be submitted when applying for a Special Use Permit that is relevant and will identify how the negative impacts of the fill site land use will be mitigated?

Please don't hesitate to contact me if you have any questions regarding the proposed ordinance

KD/ep

Enclosure: Draft ordinance amendments

AN ORDINANCE AMENDING CHAPTER 10, ENTITLED ZONING,
OF THE CODE OF THE COUNTY OF MONTGOMERY, VIRGINIA
BY AMENDING SECTION 10-21 BY ALLOWING THE REMOVAL OR FILLING
OF CLEAN EARTH FILL BY SPECIAL USE PERMIT
IN THE A-1 AGRICULTURAL DISTRICT, BY AMENDING SECTION 10-48
CREATING CERTAIN ADDITIONAL REGULATIONS APPLICABLE
FOR A SPECIAL USE PERMIT ALLOWING THE REMOVAL OR
FILLING OF CLEAN EARTH FILL AND
BY AMENDING SECTION 10-61 BY CREATING A DEFINITION OF
CLEAN EARTH FILL DEFINING WHAT SOIL MATERIAL MAKE-UP
SHALL BE CONSIDERED CLEAN EARTH FILL

BE IT ORDAINED, by the Board of Supervisors of the County of Montgomery, Virginia, that Chapter 10, entitled Zoning, Section 10-21, 10-48 and 10-61 of the Code of the County of Montgomery, Virginia shall be amended and reordained as follows:

Section 10-61 Definitions.

Clean Earth Fill: Fill that consists of any soil material that occurs naturally on the surface of the earth which can be dug, plowed or planted, that can be classified as a soil in accordance with the “unified soil classification system”, which contains less than twenty-five (25) percent combination of rock fragments, asphalt and/or concrete all no greater than three inches in diameter and that contains less than five (5) percent by volume natural wood materials embedded in the soil. Clean earth fill shall be free of:

- 1) any contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations; and
- 2) construction debris, demolition waste, and other materials not found in naturally occurring soils.

Section 10-21 A-1 Agricultural District.

- (4) (i) Uses permissible by special use permit. The following uses may be permitted by the board of supervisors as special uses, subject to the requirements of this chapter and all other applicable regulations:
 - (a) Accessory structures greater than twelve hundred (1,200) square feet in area and/or eighteen (18) feet in height when part of an application requesting a rezoning or other use permitted by a special use permit from the board of supervisors.
 - (b) Bed and breakfast inn.
 - (c) Boarding house.

- (d) Campground.
- (e) Camp, boarding.
- (f) Civic club.
- (g) Contractor's storage yard.
- (h) Country club.
- (i) Country inn.
- (j) Custom meat cutting, processing and packaging.
- (k) Day care center.
- (l) Disposal facility, landfill.
- (m) Exploratory activities associated with extractive industries.
- (n) Extractive industries and accessory uses including, but not limited to, the mining of minerals and the operation of oil and gas wells.
- (o) Game preserve.
- (p) Garden center.
- (q) General store or specialty shop, provided gross floor area is two thousand (2,000) square feet or less.
- (r) Golf course.
- (s) Golf driving range.
- (t) Grain mill, feed mill.
- (u) Home business.
- (v) Junkyard, automobile graveyard.
- (w) Kennel, commercial (refer to use limitations in subsection 7).
- (x) Landfill (see Disposal facility).
- (y) Livestock market.
- (z) Park, lighted.
- (aa) Playground, lighted.
- (bb) Public utility plant, other.
- (cc) Public utility substations.
- (dd) Public utility plant water or sewer (not including distribution or collection lines).
- (ee) Recreational vehicle park.
- (ff) Recycling collection points.
- (gg) Repair shop, automotive (refer to use limitations in subsection 7).
- (hh) Restaurant, provided gross floor area is two thousand (2,000) square feet or less.
- (ii) Removal or filling of Clean Earth Fill. (Refer to additional regulations in Section 10-48 (8)).
- ~~(ii)~~(jj) Rural resort.
- ~~(jj)~~(kk) Sawmill.
- ~~(kk)~~(ll) Shooting range (as principal use or accessory to a gun shop). (Refer to use limitations in subsection 7).
- ~~(ll)~~(mm) Slaughterhouse.
- ~~(mm)~~(nn) Solid waste collection point.
- ~~(nn)~~(oo) Stable, commercial.
- ~~(oo)~~(pp) Structures, nonresidential, totaling in excess of twenty thousand (20,000) gross square feet.
- ~~(pp)~~(qq) Structures over forty (40) feet in height.
- ~~(qq)~~(rr) Telecommunications tower, freestanding.

~~(rr)~~(ss) Transition house.

~~(ss)~~(tt) Flea market (also subject to requirements of article VI of the County Code).

~~(tt)~~(uu) Stone engraving and sales.

~~(uu)~~(vv) School of special instruction.

Section 10-48 Additional Regulations for Special Uses

(8) Removal or Filling of Clean Earth Fill.

(a) The removal or filling of clean earth fill shall be allowed only in zoning districts where such use is a permitted use by right or by Special Use Permit except under the following circumstances:

(i) When such removal or placement of clean earth fill is necessarily incidental to or in connection with the following:

(1) construction on the same site of a structure for which a building permit has been issued within the past six months, or

(2) for grading pursuant to an approved subdivision

(ii) when such removal or placement of clean earth fill includes less than 200 cubic yards or less than 10,000 square feet during any twelve month period.

(b) The applicant shall set forth the following in addition to the written application required for applying for a Special Use Permit:

(i) name and address of Applicant;

(ii) name and address of the Owner, if other than Applicant;

(iii) description and location of the land in question, including the tax map and lot number;

(iv) the purpose or reason for moving, filling or removal of the clean earth fill;

(v) the nature and quantity in cubic yards of soil to be removed or filled;

(vi) the place to which the soil is to be removed or placed;

(vii) the proposed date of completion of the soil removal or fill.

(c) In addition to the written application for a Special Use Permit and the information required under 10-48 (8) (b) above the applicant shall submit a plan that addresses the following:

- (i) Procedures and measures that will be taken by the applicant to ensure that noise and dust problems are held to a minimum.
- (ii) Procedures and measures that will be taken by the applicant to assure lateral support of remaining soil and the prevention of erosion, floods and siltation of water courses during the active life of the operation and after the soil removal or fill operation ceases.
- (iii) Procedures and measures that will be taken by the applicant that will protect adjoining and downstream properties from the affects of the soil removal or fill operation.
- (iv) The routes over which the material will be transported, the method of traffic control and the ability of the road network to handle the amount and type of traffic generated by the soil removal or fill operation.
- (v) The type, capacity and description of each piece of equipment to be used during the soil removal, fill and movement operation.
- (vi) A topographical map shall be included prepared and certified by a professional engineer or land surveyor. The map shall show the following:

- (1) the present grades on a one-hundred foot grid layout using ten foot contour intervals;
- (2) the proposed finished grades using ten-foot contour intervals;
- (3) the quantity in cubic yards of soil to be removed or filled and the areas where the operation will take place;
- (4) the grades of all streets and lots within 100 feet of the property in question;
- (5) proposed sloped and lateral support;
- (6) present and proposed surface water drainage;
- (7) a plan for the restoration of the site when soil removal or fill operation ceases.

(d) The applicant shall comply with all applicable Stormwater and/or Erosion and Sediment Control regulations.