

MINUTES
BERRYVILLE TOWN COUNCIL
Berryville-Clarke County Government Center
Work Session
November 1, 2021
3:00 p.m.

Town Council: Present--Harry Lee Arnold, Jr., Mayor; Erecka L. Gibson, Recorder; Donna McDonald, Diane Harrison, Grant Mazzarino. Absent--Kara Rodriguez

Staff: Present—Keith Dalton, Town Manager; Paul Culp, Town Clerk; Christy Dunkle, Community Development Director; Neal White, Chief of Police

Also Present—Ed Carter, resident engineer, Virginia Department of Transportation, Edinburg

Press: Mickey Powell, *The Winchester Star*

1. Call to Order

Mayor Arnold called the meeting to order at 3:02 p.m.

2. Approval of Agenda

Mayor Arnold invited a motion to approve the agenda.

Ms. Harrison moved to approve the agenda. The motion passed by unanimous voice vote.

3. Unfinished Business

None.

4. New Business

Mr. Dalton said he had recently discussed traffic matters on U.S. Route 340 with members of the Council, and that he had invited Mr. Carter to provide a briefing and answer questions.

Mr. Carter said the Virginia Department of Transportation cannot reduce truck traffic on a primary route and that traffic is likely to increase as problems in the supply chain are resolved.

With regard to noise from engine brakes, Mr. Carter said engine brakes are safety devices installed at the factory and that muffler systems are legal, and that VDOT cannot restrict the use of engine brakes. He said illegal engine-braking equipment can be restricted only via officers of the Virginia State Police pulling trucks over and inspecting them.

Mr. Mazzarino asked how local officers may be certified to perform this function. Chief White described the process, which he said involves lengthy training at a distant site, and the equipment necessary for inspections, which he said is quite costly. Mr. Dalton said inspections are time-consuming and therefore divert officers from general law enforcement. Chief White added that local officers are no longer permitted to stop motorists for noise violations.

With regard to bicycle lanes on Route 340, Mr. Carter said VDOT had not considered the matter and that a share-the-road plan might be appropriate. He said VDOT planners could examine the possibility.

Ms. Harrison said bicycle traffic on Route 340 as it is now would be too dangerous. Mayor Arnold concurred. Mr. Dalton and Mr. Carter then discussed how bicycle lanes would affect travel lanes.

There was a discussion of whether to designate a portion of Route 7 as a bicycle route. Ms. Harrison mentioned the area between Main Street and the high school. Ms. Dunkle noted that this is a comparatively safe route. Mayor Arnold said he was not interested in designating a bicycle route there, and Mr. Mazzarino concurred. Mr. Dalton noted that contrary to popular belief bicycles may legally be ridden on sidewalks except in the downtown area.

Regarding speed limits on Route 340, Mr. Carter said it might be possible to extend the 25-m.p.h. zone from Hermitage Blvd. to Church Street and that a thirty-day study would be needed. Ms. Harrison said motorists often travel at 45 m.p.h. in the 35-m.p.h. zone before reaching the 25-m.p.h. zone and that measures should be taken to slow them down sooner.

There was a discussion of enhanced fines on primary roads. Mr. Carter said 85 percent of traffic must be traveling at least 10 m.p.h. over the speed limit for such fines to be imposed. Mr. Carter cautioned that people tend to drive at whatever speed is comfortable except when a law enforcement officer is present. Mr. Dalton ascertained that the Council was sufficiently interested in the matter to justify a VDOT study, for which Mr. Carter said there would be no cost.

Regarding trucks on secondary streets, Mr. Carter said the Town has the authority to limit trucks via criteria stipulating acceptable lengths and weights, with the latter being difficult to enforce. He said some streets are exempt. There was a discussion of Josephine and Church Streets and how deliveries could occur if restrictions were implemented.

Mr. Carter and Chief White explained that a truck driver could not be cited for exceeding a stipulated limit unless an officer followed the truck all the way through Town. Ms. McDonald noted that honest mistakes, as opposed to deliberate attempts at violation, sometimes occur.

Mr. Carter noted that length-based restrictions are complex because different types of businesses need different types of trucks. Ms. Harrison cautioned against restricting trucks from the moving industry.

There was a discussion of GPS capabilities, and Mr. Carter noted that sometimes truckers do not obtain GPS updates in a timely manner.

There was a discussion of signage, and Ms. McDonald cautioned against clutter created by excessive signage.

Mr. Carter said VDOT was working on the possibility of turn lanes at the intersection of North Buckmarsh and West Fairfax Streets.

There was a discussion of signals or roundabouts at the intersection of South Buckmarsh and Hermitage. Mr. Carter said a signal would cost \$500,000 to \$600,000 and a roundabout \$3 million to \$6 million. Ms. McDonald said the problem with noise would be exacerbated by trucks stopping at a light and accelerating away. Mr. Carter said the matter must go to the Commonwealth Transportation Board.

There was a discussion of various measures to help pedestrians in the near term.

There was a brief description of the inland port and of four-laning in West Virginia. Mr. Carter said the latter should have no impact on Berryville.

Mr. Dalton commended Mr. Carter for all his efforts and praised the cordial and productive relationship between the Town and VDOT. Mr. Carter reciprocated.

5. Other

No further business came before the Council.

6. Closed Session

There was no closed session.

7. Adjourn

Mayor Arnold requested a motion to adjourn.

Adjournment occurred by unanimous voice vote at 4:02 p.m. on a motion by Ms. Harrison.

Erecka L. Gibson, Recorder

Paul Culp, Town Clerk

MINUTES
BERRYVILLE TOWN COUNCIL
Berryville-Clarke County Government Center
Regular Meeting
November 9, 2021
7:00 p.m.

Town Council: Present—Harry Lee Arnold, Jr., Mayor; Erecka L. Gibson, Recorder; Donna McDonald; Diane Harrison; Grant Mazzarino; Kara Rodriguez

Staff: Present--Keith Dalton, Town Manager; Christy Dunkle, Community Development Director; Paul Culp, Town Clerk; Cynthia Poulin, Treasurer; Chief Neal White, Berryville Police Department

Press: Mickey Powell, *The Winchester Star*

Also present: Matt Bass, Clarke County Board of Supervisors

1. Call to Order

Mayor Arnold called the meeting to order at 7:00 p.m.

2. Pledge of Allegiance

3. Approval of Agenda

Recorder Gibson moved to approve the agenda as presented. The motion passed by unanimous voice vote.

4. Presentations/Awards/Recognitions

Mayor Arnold noted the presence of Mr. Bass and then reminded the meeting of the Veterans Day ceremony to be held at the Government Center on November 11 at 11:00 a.m. He also congratulated the Clarke County girls' cross-country team on its regional and district championships, and the football team on its district championship.

5. Public Hearings

Renewal of Lease on 23 East Main Street

Mr. Dalton noted that the Council had advertised the present hearing after discussing the matter in its October meeting and deciding on a three-year lease with the possibility of a one-year extension, and provision of a sublease of two years maximum with the possibility of a one-year extension for the

current tenant as a one-time measure prompted by pandemic conditions. He said new language to that effect would need legal review.

Mayor Arnold opened the public hearing at 7:03 p.m. and in the absence of any comment also closed it at 7:03 p.m.

6. Discussion of Public Hearing Items

The Council engaged in no further discussion.

Recorder Gibson moved that the Council of the Town of Berryville approve the attached lease for 23 East Main Street and that the Council authorize the town manager to make minor amendments to the lease after consultation with legal counsel and to execute the lease on behalf of the Town. The motion passed by unanimous voice vote.

7. Citizens' Forum

No one addressed the meeting.

8. Consent Agenda

The consent agenda comprised the minutes of the October 12 meetings of the Personnel Committee and Town Council, the October 25 meetings of the Community Development and Public Safety Committees, and the October 26 meeting of the Streets and Utilities Committee. The clerk explained three minor corrections made since issuance of the packet and noted copies of the revised consent agenda provided to members.

Recorder Gibson moved to adopt the consent agenda as presented. The motion passed by unanimous voice vote.

9. Unfinished Business

Mr. Dalton said three of the Council's standing committees had adopted budgetary goals for fiscal year 2023: The Community Development Committee had agreed on completion of the Town's wayfinding signage project and provision of seed money for a celebration of the 225th anniversary of Berryville's founding; the Public Safety Committee had agreed on salary increase of at least 5 percent for police officers to address inflation and the need for greater competitiveness in the labor market; and the Streets and Utilities Committee had agreed on completion of infrastructure projects enumerated in the Town's plan for use of funding via the American Rescue Plan Act of 2021.

Ms. Harrison as a member of the Community Development Committee said the committee would like feedback from the Council on the anniversary celebration. Mayor Arnold said he needed more specific information. There was a discussion of past celebrations. Mr. Dalton said he did not know of

any past celebrations other than the Town's bicentennial, for which the Council had provided seed money and appointed a citizen committee.

Mayor Arnold said he considered a celebration worthwhile. Mr. Mazzarino said it would be worth exploring. Recorder Gibson questioned whether the elapse of twenty-five years was enough to justify another celebration, and said she needed more information before agreeing to commit the Council to an expenditure. Mayor Arnold agreed that the Council needed additional information and suggested that the committee consider the matter further and report again.

Ms. Rodriguez said the committee had discussed having only one event, rather than a lengthy celebration with multiple events, in the warm-weather months, with a citizen committee having most of the responsibility. Ms. Harrison said Berryville Main Street should be involved. The mayor suggested multiple events, perhaps three, and said the celebration could be accounted for in the Town budget and not necessarily as one of the goals of the Community Development Committee.

Mr. Mazzarino noted that some towns have anniversary celebrations at frequent intervals and that Berryville had acquired many new residents since its bicentennial. He and Ms. Rodriguez suggested appointing a citizen committee in the near future to expedite the fact-finding process. Ms. Rodriguez said the committee had suggested the use of a special anniversary logo on the Town website.

Mr. Dalton suggested contact with Berryville Main Street and Barns of Rose Hill for their thoughts on the matter.

Ms. McDonald said one event would suffice.

Recorder Gibson said she would like to see a plan before committing herself to an expenditure. Mayor Arnold said the formation of a committee would be necessary for development of such a plan.

The discussion then proceeded to the goals of the Public Safety Committee. Ms. McDonald, the committee chair, said the committee had been discussing the burden the police department had experienced because of the closure of numerous mental health facilities. She said the department also faced potential problems with staffing, having lost one officer and gained a new position not yet filled, hence the committee's goal of a pay increase of 5 to 8 percent for officers.

Mayor Arnold said one resignation in four or five years was not indicative of retention problems. Ms. McDonald said the competitive market creates potential problems. Mr. Mazzarino said the labor shortage and the increasing danger of law enforcement jobs are problematic, and that high inflation is another reason for a pay increase with an eye to retaining current staff.

In response to a question from Ms. Harrison, Mr. Dalton said he is proposing cost-of-living adjustments for all Town staff.

Recorder Gibson moved that the Council of the Town of Berryville approve the standing committee budget goals for FY2023—the wayfinding signage project and the increased compensation for police officers, and completion of infrastructure projects completed under the ARPA implementation plan--and direct the town manager to include funding to meet these goals in a balanced draft budget. The motion passed by unanimous voice vote.

10. New Business

The Council briefly discussed the proposed 2022 calendar for committee meetings, and members' attendance at County Board of Supervisors meetings. The consensus was that members should rotate in that capacity rather than designating one member to attend all meetings. Ms. McDonald said she could attend all the 1:00 p.m. sessions.

Recorder Gibson moved that the Council of the Town of Berryville approve the attached Town Council meeting calendar for 2022. The motion passed by unanimous voice vote.

11. Council Member Reports

Ms. Harrison said the Berryville Area Development Authority had met in October and set a public hearing for December 1 on a site plan for construction of three warehouses on Jack Enders Boulevard. None of the other members had anything to report.

12. Staff Reports

Public Works

Nothing was added to the written report.

Public Utilities

Nothing was added to the written report.

Police

Mr. Dalton directed the Council's attention to a draft letter intended for Sen. Vogel and Dels. LaRock and Gooditis concerning the excessive burden placed on law enforcement by the strain of officers managing temporary detention orders following the closure of numerous mental health facilities. Mayor Arnold said he had asked staff to prepare a letter for his signature. He said the situation not only constitutes a strain for police personnel, it also decreases their availability to perform other duties. He said the state should be attending to these problems instead of forcing localities to bear the brunt, noting that localities do not even receive financial assistance in this matter.

Chief White said the problem is not merely one of police resources but also of inhumane conditions for persons detained for up to ninety-six hours in small rooms.

Mayor Arnold noted that the pandemic also made the hospital a hazardous place to be.

Ms. McDonald said the Town's population growth exacerbates the problem, and thanked Chief White for his efforts and those of the department.

Recorder Gibson moved that the Council of the Town of Berryville approve the attached letter to be sent over Mayor Arnold's signature to Sen. Vogel and Dels. LaRock and Gooditis. The motion passed by unanimous voice vote.

Community Development

Ms. Dunkle briefly updated the Council on the activities of the various appointive boards associated with planning, and on construction in the Shenandoah Crossing, Fellowship Square, and Hermitage subdivisions.

Annexation area B-9

Ms. Dunkle said the Town had received no comments from the public since the public hearing in October and that the Planning Commission had approved the proposed annexation. She clarified for Ms. McDonald that Area 3, comprising approximately eleven acres and Bel Voi Farm/Friant Enterprises, is zoned residential.

Ms. McDonald and Mr. Dalton discussed whether the Town Code could be revised for provision of additional buffering. Mr. Dalton said the process would involve the Council and the Planning Commission and at least one public hearing, and that this would not be possible in the limited time before annexation would become effective on January 1, 2022. He suggested that the Council request that the Planning Commission review the matter and report its recommendations.

Mayor Arnold thanked Mr. Bass for his cogent explanation of the proposed annexation when interviewed for a recent *Winchester Star* article, noting that Mr. Bass had also assisted the Town with some persistent difficulties related to the railroad.

Recorder Gibson moved that the Council of the Town of Berryville approve the attached ordinance approving the annexation of the area described as Annexation Area B-9. In a voice vote, Ms. McDonald voted nay, all other members aye.

Recorder Gibson moved that the Council of the Town of Berryville approve the attached ordinance applying Town zoning to the properties within Annexation Area B-9. In a voice vote, Ms. McDonald voted nay, all other members aye.

Recorder Gibson moved that the Council of the Town of Berryville approve the attached ordinance amending the Town election ward boundaries to include the parcels identified in Annexation Area B-9. The motion passed by unanimous voice vote.

Mr. Dalton said staff would amend the boundaries once new census data become available, probably within five or six months.

Administration and Finance

Ms. Poulin added nothing to her written report.

Town Manager

Update on American Rescue Plan Act of 2021

Mr. Dalton said the agreed-upon grant funds for the John H. Enders Fire Company and Barns of Rose Hill had been sent and that the Public Works department was coordinating efforts with residents eligible for assistance with sump pump replacement. He said the next goal would be distribution of the funds for facade improvements in the downtown area.

Blight Abatement

Mr. Dalton said he had met with owners of blighted properties on November 4 and that the thirty-day deadline for owners to submit plans for remediation would fall in late November or early December. He said the process involves the town manager giving the property owner notice of his preliminary finding that the property is blighted, and if after thirty days the owner does not provide a plan, or if the plan is not acceptable, the town manager provides a plan for consideration by the Planning Commission. He recommended that the Architectural Review Board also be involved with properties located in historical areas, and a three-way joint meeting of Town Council, Planning Commission, and ARB.

Ms. McDonald reintroduced the topic of annexation and asked Mr. Dalton how the Town would benefit other than by an increase in tax revenues. She expressed concern about the sufficiency of the Town's roads and police presence.

Mr. Dalton explained the origins of the current annexation in commitments the Town had made to the County in 1989. He said development of the area could occur whether the Town annexed it or not, and noted that new residents in the developed area would patronize businesses in Berryville and stimulate economic activity beyond taxation. He said the Town's infrastructure is sufficient for new development.

Ms. McDonald asked whether the Town had done advance planning for annexation. Mr. Dalton and Ms. Dunkle summarized the Town's anticipatory activity in the realm of infrastructure.

13. Committee Updates

Budget and Finance

Recorder Gibson had nothing to add.

Community Development

Ms. Rodriguez said the committee might meet in December.

Personnel

Mayor Arnold said the Council must make reappointments to the Northern Shenandoah Valley Regional Commission and the Planning Commission.

Recorder Gibson moved that the Council of the Town of Berryville reappoint Harry Lee Arnold, Jr., to the Commission Board of the Northern Shenandoah Valley Regional Commission and that Christy Dunkle be reappointed as the Town's alternate Commission Board member, with terms commencing on January 1, 2022 and expiring on December 31, 2023. The motion passed by unanimous voice vote.

Recorder Gibson moved that the Council of the Town of Berryville reappoint William M. Steinmetz to the Berryville Planning Commission for a four-year term commencing on January 22, 2022 and expiring on December 31, 2025. The motion passed by unanimous voice vote.

Public Safety

Ms. McDonald had nothing to add.

Streets and Utilities

Ms. Harrison said the committee had met in October and discussed the possibility of an ordinance for dealing with dangerous trees. She said the matter was not urgent but that the committee is asking the Public Safety Committee to address the matter sometime after January. She said the process should be smooth, as the Town attorney has looked at the codes of other jurisdictions and made a recommendation for forwarding to the committee.

14. Closed Session

No closed session occurred.

15. Other

No other business came before the Council

16. Adjourn

The Council adjourned by consensus on a motion by Recorder Gibson at 8:14 p.m.

Erecka L. Gibson, Recorder

Paul Culp, Town Clerk

THIS LEASE, dated the _____ day of _____, 2022,
by and between the TOWN OF BERRYVILLE, VIRGINIA, hereinafter called
the Lessor, and DOWNTOWN BERRYVILLE, INC., a Virginia nonstock
corporation, dba Berryville Main Street, hereinafter called the Lessee.

W I T N E S S E T H:

The Lessor agrees to lease to the Lessee, and the Lessee agrees to lease
from the Lessor, the following described property under the following terms
and conditions:

1. DESCRIPTION:

A. The premises herein leased is a portion of the first and
second floor of the building located at 23 E. Main Street as shown on attached
Exhibit A (“the property” or “the premises”).

B. In addition, the Town Manager may extend written
revocable permission to Lessee to use the 70' by 25.33' parking area as
generally shown on attached Exhibit B and all or a portion of a building (livery
stable) not subject to this Lease for access to the leased premises and/or for
storage use.

2. TERM:

The term of this lease shall be for three (3) years, beginning on the 1st day of March, 2022, and ending on the 28th day of February, 2025.

3. RENT:

A. As rental for the property, the Lessee shall pay the Lessor the sum of \$550.00 per month for the first year of the lease, with the monthly rent increasing by \$20.00 on each March 1 during the term of the lease.

B. Rent shall be payable in advance on the first day of each month, beginning March 1, 2022.

C. If any rental payment is paid after the fifth (5th) day of the month but by the tenth (10th) day of the month, a penalty equal to five percent (5%) of the rental amount shall be due and payable to Lessor in addition to the rental payment. If any rental payment is not made by the tenth (10th) day of the month, a penalty equal to ten percent (10%) of the rental amount shall be due and payable to Lessor in addition to the rental payment. If any rental payment is not paid within thirty (30) days of the due date, the rental amount and penalty amount shall carry interest at ten percent (10%) per annum from the tenth (10th) day of the month in which the rental payment was

due, and, in addition, the Lessor shall have the remedies set forth in Paragraph 16 of this Lease.

4. SECURITY DEPOSIT:

Lessor agrees not to require Lessee to pay a security deposit.

5. ASSIGNMENT:

A. No sublease agreement permitted under this chapter shall have a term that extends beyond the term of this agreement.

B. The Lessee may, without prior written consent of the Lessor, sublet first floor space to retail businesses. Sublet of the first-floor space for any use other than retail business required prior written consent of the Lessor.

C. The Lessee may, without prior written consent of the Lessor, sublet second floor space to businesses for the purpose of business incubation and development, provided that no such lease agreement for such business may have a term greater than twenty-four (24) months.

Notwithstanding the term limitations enumerated in this section, Lessee may extend its lease with its current sublessee for not more than one (1) year.

D. All sublease agreements shall include the following:

(1) Indemnification of the Town of Berryville by sublessee;

and

(2) Naming of the Town of Berryville as an additional insured on sublessee's Commercial General Liability policy.

6. USE:

It is expressly agreed that this lease is executed in order that the Lessee may use the premises for Berryville Main Street offices and other activities to promote Berryville's downtown and the economic development of the Town of Berryville and Clarke County, and the property shall not be put to any other use without the written consent of the Lessor.

7. UTILITIES:

Lessee shall be responsible for all utility services to the premises including, but not limited to, electric, phone, cable, and water and sewer.

Lessee shall also pay all charges for heating oil. Notwithstanding the provisions of paragraph 9, Lessee is responsible for all costs associated with repairs required if the heating oil supply is permitted to be depleted.

8. REPAIRS BY LESSOR:

A. The Lessor agrees that during the term of this lease

and any renewal thereof, Lessor shall do the following:

- (1) Keep the outer walls in proper and substantial repair;
- (2) Keep the roof in proper and substantial repair;
- (3) Make necessary major repairs (repairs in excess of \$700.00 each) to the heating and air conditioning systems.
- (4) Maintain the exterior appearance of the building, except as herein provided.

B. It is agreed by the parties that Lessor is not an insurer and that Lessor's responsibility and liability for each of the items of maintenance and repair set forth above shall be to make the proper repairs within a reasonable time after the necessity, nature, and location thereof has been called to Lessor's attention by Lessee.

9. OPERATION/REPAIR/MAINTENANCE BY LESSEE:

In regard to the use and occupancy of the premises, Lessee shall (i) maintain the premises in good condition; (ii) except such repairs as is the responsibility of the Lessor as set forth above, make all necessary repairs to the premises, including, without limitation, plumbing repairs and minor repairs (repairs up to \$700.00 each) to the heating and air conditioning systems;

provided, however, the cost of necessary repairs paid by Lessee in excess of \$1,400.00 per lease year shall be reimbursed by Lessor if prior written approval for the repairs was given by Lessor; (iii) be responsible for prompt snow and ice removal from the sidewalk in front of the premises; (iv) keep the inside and outside of all glass in the doors and windows of the premises clean; (v) keep all exterior store front surfaces of the premises clean; (vi) replace promptly, at Lessee's expense, any cracked or broken plate or window glass of the premises with glass of like kind and quality; (vii) maintain the premises in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; (viii) keep any garbage, trash, rubbish or refuse in closed containers; (ix) repair promptly at its expense any damage to the premises caused by bringing into the premises any property for Lessee's use, or by the installation or removal of such property, or caused by any act or omission of Lessee, their agents, employees, contractors or invitees; (x) keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the premises; (xi) comply with all laws, ordinances, rules and regulations of governmental authorities and all recommendations of the Fire Underwriters Rating Bureau now or hereafter in effect; and (xii) conduct Lessee's business in all respects in a dignified manner.

10. EXTERIOR DESIGN AND SIGNS:

The Lessor shall have control of the exterior design of the premises and Lessee shall not paint or decorate any part of the exterior of the premises without first obtaining the written approval of Lessor. The Lessee shall have the right to erect and maintain on the exterior of the premises, at Lessee's own expense, signs, advertising matter, or a logo, including lettering or other advertising matter on the glass of the premises, necessary or appropriate to the conduct of the business of Lessee; provided, however, that no such signs or other matters shall be erected without the prior approval of Lessor as to design, size, color, and location, and without any necessary approval from the appropriate agency of the Town of Berryville.

11. ALTERATIONS AND IMPROVEMENTS BY LESSEE:

A. Lessee, prior to making any improvements or alterations to the premises, shall submit to the Lessor plans and specifications for such work (the "Construction Documents"), including, but not limited to, all electrical, plumbing, mechanical, and architectural plans and specifications. Lessor shall review the Construction Documents submitted by the Lessee, and, if same are approved by Lessor, Lessee shall submit such Construction Documents to the appropriate governmental agencies together with an

application for all permits and licenses necessary to commence such construction work. Lessor shall not be liable for any delay in obtaining such permits or licenses. The cost of any such permits or licenses shall be the responsibility of Lessee. Lessee shall be entitled to commence work in the premises upon receipt of all necessary permits and licenses.

B. In the event the Construction Documents submitted by Lessee are not acceptable to the Lessor or the appropriate governmental agencies for any reason, Lessor and Lessee shall cooperate in revising such Construction Documents to a point where they will be acceptable to Lessor and the appropriate governmental agency.

C. All improvements made by Lessee shall be considered a part of the real estate and as such the property of Lessor, except for items of tangible personal property not affixed to the demised premises.

12. PROCEDURES FOR LESSEE'S ALTERATION AND IMPROVEMENT WORK:

A. Prior to the commencement of any improvement work in the premises, Lessee shall:

(1) Obtain Lessor's written approval of the Construction Documents as set forth above;

(2) Have in its possession the permits and licenses necessary for the improvement work;

B. Lessee shall conduct the improvement work in the premises in accordance with reasonable rules and regulations promulgated by Lessor or its agent, including, but not limited to, the following:

(1) All work by Lessee shall conform to the Construction Documents as approved by Lessor and shall conform to all local, state, and national codes, laws, rules and regulations;

(2) Lessee shall not permit its construction activities to interfere with the quiet enjoyment of the building in which the demised premises are located, or of the adjoining buildings.

(3) Lessee shall, at Lessee's expense, remove from the premises and adjoining areas all trash and debris as same accumulates;

(4) Lessee shall not use or permit the use of any areas outside the premises for any construction activities unless expressly consented to in writing by Lessor; and

(5) Lessee shall, at all times, enforce strict discipline and good order among their contractors, subcontractors, and employees.

C. In the event Lessee shall fail to perform the improvement work in accordance with the rules and regulations of Lessor, Lessor shall have the right to either (a) perform the obligation which Lessee have failed to perform, or (b) repair any damage caused by Lessee's failure to comply, including, without limitation, the correction of any deviation from the Construction Documents and the correction of any defects, and Lessee shall pay to Lessor on demand, all of Lessor's costs associated therewith. Lessee shall be responsible and liable for any and all damage to the premises caused either directly or indirectly by Lessee's construction activities.

13. ANTICIPATED WORK BY LESSOR

A. Lessor anticipates completing two projects on or adjacent to the premises within the next ten (10) years and hereby notifies Lessee of these projects. Lessor anticipates completing projects to:

(1) Stabilize and improve the livery stable; and

(2) Construct a vestibule outside of the second-floor

bathroom of the premises.

B. Lessee agrees that it will utilize the rear occupancy of the second floor of the premises for its offices and sublet the front occupancy of the premises for business incubation and development.

C. Lessee agrees that with thirty (30) days prior written notice, Lessor may cause the second-floor vestibule project to begin.

14. DEFAULT:

A. If any rent shall be due or unpaid for a period of thirty (30) days, or if default shall be made in any of the conditions or covenants herein contained, or if the said premises or any part thereof shall be vacated by the Lessee during the term granted by this lease, the Lessor may recover and resume possession of said property, either by force or otherwise, without being liable to prosecution therefor, remove all persons and property therefrom, relet the said premises as agent for the Lessee, receive and collect the rents thereof, applying the same first to the payment of such expenses as the Lessor may have incurred in recovering the possession of the said property and reletting the same, secondly to the payment of any costs or expenses that the Lessor may have incurred, either for repairs or by reason of any condition or covenant being unfulfilled on the part of the Lessee, and then to the payment of any rent due or to become due under the terms of this lease, with interest, and the Lessee agrees to pay any deficiency which may arise.

B. Any and all remedies provided to Lessor for the enforcement of the provisions of this Lease are cumulative and not exclusive,

and Lessor shall be entitled to pursue either the rights enumerated in this Lease or remedies authorized by law, or both. Lessee shall be liable for any breach of this Lease and for any costs or expenses, including attorneys fees, incurred by Lessor in enforcing the terms of this Lease, or in pursuing any legal action for the enforcement of Lessor's rights.

15. LIABILITY:

The Lessor shall not be liable for any injuries to any person or for any damages to any property on or about the demised premises. The foregoing shall apply to injuries or damages to any property of Lessee, except such injuries or damages as directly result from Lessor's failure to comply with the provisions of Paragraph 8 of this lease.

16. INDEMNITY:

Lessee shall indemnify Lessor against all expenses, liabilities, and claims of every kind, including reasonable counsel fees, by or on behalf of any person or entity arising out of either (1) a failure by Lessee to perform any of the terms or conditions of this lease, (2) any injury or damage happening on or about the demised premises, (3) failure to comply with any law of any governmental authority, or (4) any mechanic's lien or security interest filed against the demised premises or equipment, materials, or

alterations of buildings or improvements thereon, for property owned by or work done by Lessee.

17. DAMAGE OR DESTRUCTION:

If the demised premises shall, without fault of Lessee, be destroyed or be so damaged as to become wholly or partially untenable by fire or by providential means, then, if the Lessor shall elect to rebuilt or repair, this Lease shall remain in force and Lessor shall rebuild or repair the premises within a reasonable time after such election, putting premises in as good condition as they were at time of destruction or damage, and for that purpose they may enter said premises, and rent shall abate during time the premises are untenable; but if Lessor does not elect as aforesaid to rebuild or repair, then Lessor shall have possession of the premises hereby let, and Lessee shall deliver and surrender to Lessor such possession, and this Lease shall become void and the term hereby created end; and on such delivery and surrender being made or on the recovery of said premises by Lessor the Lessee shall receive a prorate refund of prepaid rent, or the obligation to pay rent shall cease, as applicable.

18. INSPECTION AND ACCESS:

A. The Lessor and its agents shall have the right during

the term of this Lease to visit, inspect, and make necessary repairs to the leased premises at any reasonable hour.

B. The Lessor shall have the right during the term of the Lease to access the site in order to enter portions of the building not subject to the lease. Lessee agrees that such access must occur through leased space and agrees to provide access at any reasonable hour. The Lessee agrees to park only in identified spaces and not to block access to the rear of the building.

19. INSURANCE:

A. Minimum Insurance Coverage Requirements: Lessee shall, at its own expense, keep in full force and effect during the term of this lease, and during the term of any extension of this lease, insurance coverage's in the following amounts:

Commercial General Liability:

\$1,000,000 each occurrence (Bodily Injury and Property Damage)
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 per person or organization (Personal and Advertising Injury)
\$1,000,000 each (CGL/AL/EL) occurrence/\$2,000,000 Annual Policy
Aggregate

Workers Compensation as required by Code of Virginia.

B. Lessee shall have the aforesaid insurance coverage apply to Lessee's use of non-leased premises pursuant to paragraph 1.B.

C. The Town shall be named as an additional insured on any policy obtained by Lessee pursuant to this paragraph. Lessee shall annually furnish the Town with a Certificate of Insurance documenting that the aforesaid insurance coverage has been obtained.

20. ENTIRE AGREEMENT:

This Lease constitutes the entire agreement among the parties and may not be amended except by written instruments executed by each of the parties.

21. CONSTRUCTION OF THE LEASE:

This Lease shall be construed and interpreted according to the laws of the Commonwealth of Virginia.

22. COMPUTATION OF TIME:

If the time period or date by which any right, option, or election provided under this Lease must be exercised, or by which any act required hereunder must be performed, expires or occurs on a Saturday, Sunday, or legal, bank, or Clarke County Circuit Court Clerk's Office holiday, then such time period or date shall be automatically extended through the close of business on the next regularly scheduled business day.

23. BINDING:

The Lease shall inure to the benefit of, and be binding upon, the successors and assigns of the parties.

24. RIGHT TO RE-LEASE:

If the demised premises is to be available for lease by Lessor at the expiration of the three-year term of this Lease, or at the expiration of any subsequent one-year term, the Lessor shall give the Lessee the first right to re-lease the premises for a term of one (1) year, upon the same conditions, except the amount of rent, as contained in this Lease. If Lessee should desire to re-lease the premises at the expiration of the three-year term or any subsequent one-year term, Lessee shall so notify the Lessor in writing at least ninety (90) days prior to the expiration of term, and upon being so notified the Lessor shall inform the Lessee in writing at least sixty (60) days prior to the expiration of said term of the amount of rent for the new term. The Lessee shall then notify the Lessor in writing at least thirty (30) days prior to the expiration of said term as to whether or not the Lessee will elect to re-lease the premises.

25. NOTICES:

All notices, demands, or other communications that may be necessary or proper hereunder shall be deemed duly given if personally

delivered, sent via certified mail, return receipt requested, or sent overnight courier service, such as Federal Express, UPS, or Airborne, addressed respectively as follows:

If to Lessor:

Town of Berryville, Virginia
ATTN: Town Manager
101 Chalmers Court, Suite A
Berryville, VA 22611

DBI / Berryville Main Street
ATTN: President
23 East Main Street
Berryville, VA 22611

TOWN OF BERRYVILLE, VIRGINIA, Lessor

BY: _____(SEAL)
Keith R. Dalton, Town Manager

DOWNTOWN BERRYVILLE, INC, Lessee

BY: _____(SEAL)

(Printed Name) (Position)

**Berryville Town Council Item Report Summary
November 9, 2021**

Item Title

New Business - Approval of Town Council Meeting Calendar for 2022

Prepared By

Paul Culp, Town Clerk

Background/History/General Information

The proposed schedule of meetings for the coming year is as follows:

Regular meetings of the Council will continue to be on the second Tuesday of each month at 7:00 p.m.
Work sessions will be on the first Monday at 3:00 p.m.
Community Development Committee fourth Monday at 9:00 a.m.
Streets and Utilities Committee fourth Monday at 10:00 a.m.
Public Safety Committee fourth Monday at 3:00 p.m.
Personnel Committee fourth Tuesday at 9:00 a.m.
Budget and Finance Committee fourth Tuesday at 10:00 a.m.

Findings/Current Activity

Slightly modified from this year, the new schedule should minimize the number of times members must come to the Government Center and also will limit lag-time between meetings on any given morning.

Financial Considerations

None.

Schedule/Deadlines

Prompt approval is recommended in order to secure room reservations.

Other Considerations

None.

Attachments

Recommendation

Approval.

Sample Motion

I move that the Council of the Town of Berryville approve the proposed schedule of Council meetings for 2022.

The Council of the Town of Berryville respectfully requests the attention of you and your colleagues to a crisis that is affecting jurisdictions all across Virginia. The impact of providing mental health services to those in acute crisis is taking an extreme toll on communities of all sizes across the Commonwealth, and we call upon you to advocate for serious and extensive discussions about this matter in upcoming legislative sessions before any further harm befalls our communities.

This is not a new predicament, but one that has been neglected for far too long at the expense of a multitude of Virginians who suffer on a daily basis. The problem has been exacerbated by the COVID-19 pandemic as well as extreme bed and staffing shortages at state-operated mental health facilities. The current pandemic only highlighted the deficiencies in this system that were previously glaringly obvious to those who provide assistance to persons in acute mental health difficulties, such as law enforcement officers, community mental health services providers, and clients themselves.

These law enforcement officers, local service providers, and clients now find themselves lingering in an emergency department room of a local hospital for days waiting for a mental health bed to become available, without receiving any mental health services, only to be released back to their previous environments because the legally permitted period of involuntary detention had expired. These are the scenarios that are becoming increasingly the norm as opposed to the exception, and that is why the Council of the Town of Berryville implores you to take on this complex and demanding problem that requires immediate and thoughtful legislative action.

This broken system is placing law enforcement officers in local emergency departments boarding mental health clients instead of patrolling the streets of our communities, which puts the safety and welfare of the community in jeopardy. It also places much needed mental health services out of reach to those clients who so desperately need them during a time of crisis.

The vital importance of this topic cannot be understated. Throughout our nation, one in four individuals suffer, often in silence, from a mental health disorder, so this is not a matter that touches just a few. As you head back to chambers for the upcoming legislative session, please know that reform to the mental health system in the Commonwealth is a top priority and concern for our community and the Commonwealth.

EFFECTIVE DATE OF ORDINANCE

This Ordinance shall be in force and effective as of 12:01 a.m., January 1, 2022.

APPROVED this _____ day of _____, 2021.

SIGNED: _____

Harry Lee Arnold, Jr., Mayor

I hereby certify that the foregoing Ordinance was duly adopted by the Council of the Town of Berryville, Virginia, in a meeting duly assembled _____ 2021.

ATTEST: _____

Erecka L. Gibson, Recorder

CERTIFICATE

COMMONWEALTH OF VIRGINIA,
TOWN OF BERRYVILLE, CLARKE COUNTY, to wit:

I, Harry Lee Arnold, Jr., Mayor of the Town of Berryville, a Virginia Municipal Corporation, hereby certify that ERECKA L. GIBSON, whose name is signed to the foregoing Certificate, is and was at the time of signing the same, Town Recorder of the Town of Berryville, Virginia, duly qualified; that her attestation is in due form of law; that his signature is genuine, and all his official acts entitled to full faith and credit.

Given under my hand, this _____ day of _____, 2021.

SIGNED: _____

Harry Lee Arnold, Jr., Mayor
Town of Berryville, Virginia

COMMONWEALTH OF VIRGINIA,
TOWN OF BERRYVILLE, CLARKE COUNTY, to wit:

I, Erecka L. Gibson, Town Recorder of the Town of Berryville do hereby certify that HARRY LEE ARNOLD, JR., whose name is signed to the foregoing Certificate, is, and was at the time of signing same, Mayor of the Town of Berryville, Virginia, duly qualified.

Given under my hand, this _____ day of _____, 2021.

SIGNED: _____
Erecka L. Gibson, Recorder
Town of Berryville, Virginia

COMMONWEALTH OF VIRGINIA,
TOWN OF BERRYVILLE, CLARKE COUNTY, to wit:

I, the undersigned, a Notary Public in and for the aforesaid Jurisdiction do hereby certify that Harry Lee Arnold, Jr. and Erecka L. Gibson, whose names are signed to the foregoing instrument, bearing date of _____, 2021 have appeared before me and acknowledged the same in my aforesaid jurisdiction.

Given under my hand this _____ day of _____, 2021.

Notary Public

My Commission Expires: _____

DRAFT

**ORDINANCE APPLYING TOWN OF BERRYVILLE ZONING
TO ANNEXATION AREA B-9**

BE IT ORDAINED by the Town Council of the Town of Berryville amend the Zoning Map to apply Town Zoning to Annexation Area B-9 in the following manner:

For the approximate 9-acre area as described above as Area 1, currently zoned Institutional (ITL) by Clarke County, is proposed to be zoned Institutional (ITL) by the Town of Berryville.

For the approximate 10-acre area as described above as Area 2, currently zoned Detached Residential-2 (DR-2) by Clarke County, is proposed to be zoned Detached Residential-2 (DR-2) by the Town of Berryville.

For the approximate 112-acre area as described above as Area 3, the portion currently zoned Open Space Residential (OSR) by Clarke County, is proposed to be zoned Open Space Residential (OSR) by the Town of Berryville; the portion currently zoned Business Park (BP) is proposed to be zoned Business Park (BP) by the Town of Berryville; the portion currently zoned Detached Residential-1 (DR-1) is proposed to be zoned Detached Residential-1 (DR-1) by the Town of Berryville; and the portion currently zoned Detached Residential-2 (DR-2) is proposed to be zoned Detached Residential-2 (DR-2) by the Town of Berryville.

A Zoning Map showing zoning districts in the Town of Berryville, including zoning in Annexation Area B-9, is attached hereto as Exhibit A.

This ordinance shall become effective beginning January 1, 2022.

SIGNED: _____ DATE: _____
Harry Lee Arnold, Jr., Mayor

I hereby certify that the foregoing ordinance was duly adopted by the Town Council of the Town of Berryville, Virginia, in a meeting assembled **November 9, 2021**.

ATTEST: _____ DATE: _____
Erecka L. Gibson, Recorder

**DRAFT
WARD BOUNDARY ORDINANCE**

AN ORDINANCE ESTABLISHING BOUNDARIES FOR THE DIVISION OF THE TOWN OF BERRYVILLE INTO FOUR WARDS PURSUANT TO SECTION 1.3 OF THE CHARTER OF THE TOWN OF BERRYVILLE, VIRGINIA

WHEREAS, The Charter of the Town of Berryville, Chapter 1, Section 1.3, provides that the Town of Berryville shall be divided into four Wards, and further, that the boundaries of such wards shall be established by the Town Council by Ordinance; and

WHEREAS, The Charter of the Town of Berryville, Chapter 3, Section 3.1 provides, in pertinent part, that the Mayor and Recorder shall be elected from the Town at large, and further that the four Council members shall reside one in each ward of the Town, but shall be elected at large by all of the qualified voters of the Town; and

WHEREAS, federal and/or state constitutional requirements and legislation require that the ward boundaries effect an even distribution of population within a permitted deviation of plus or minus five percent of such population within each such ward; and

WHEREAS, The Town Council of the Town of Berryville finds it necessary to revise the boundaries of the four wards in town to include the one-hundred and thirty acres, plus or minus, of the territory of Clarke County, Virginia, identified as Annexation Area B-9, contiguous to the corporate limits of the Town of Berryville, such Annexation effective as of 12:01 a.m. on January 1, 2022;

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Town of Berryville, that the boundaries of the four Wards of the Town of Berryville shall be, and hereby are established as set forth herein following and as set forth on the map of the Town of Berryville attached hereto (Exhibit A):

WARD ONE (1): All that property contained herein: beginning at the northeastern corner of the corporate limits and extending southward along the corporate limits to Business Route 7 (Main Street) then extending west along the northern side of Main Street to the corporate limits on the southern side of Main Street at the rear property lines of lots fronting on the east side of Blue Ridge Street then crossing Main Street then extending west on Main Street to the western boundary of Station Road then extending north along First Street to Cameron Street then extending west along Cameron Street to Page Street then extending south along Page Street to Liberty Street then extending west on Liberty Street to Price's Lane then extending north along Price's Lane to Osborne Street then extending west along Osborne Street to Church Street then extending north on Church Street to Bundy Street then extending west along Bundy Street to Buckmarsh Street then extending north along Buckmarsh Street to Bypass

Route 7 following the corporate limits along an easterly route to close the loop at the northeastern corporate boundary.

WARD TWO (2): All that property contained herein: beginning at the corporate boundary at the intersection of Church Street and Buckmarsh Street and extending north along Buckmarsh Street to Academy Street then extending east along Academy Street to Church Street then extending north along Church Street to Osborne Street then extending east along Osborne Street to Price's Lane then extending east along Liberty Street to Page Street then extending north along Page Street to Cameron Street then extending east along Cameron Street to First Street then extending south along First Street to Main Street then extending east along Main Street to the rear property lines along lots fronting on the east side of Blue Ridge Street then extending in a generally southern direction along the corporate boundaries to the southeast corporate boundary and then extending in a generally western direction to close the loop at the corporate boundary at the intersection of Church Street and Buckmarsh Street.

WARD THREE (3): All that property contained herein: beginning at the southwestern corner of the corporate limits and extending generally in a northerly direction along the corporate limits to Business Route 7 (Main Street) then extending east along the south side of Main Street to Dorsey Street then extending north along the east side of Dorsey Street to Treadwell Street then extending east along the south side of Treadwell Street to Smith Street then extending south along the western side of Smith Street to Academy Street then extending east along the south side of Academy Street to Buckmarsh Street then extending south along the west side of Buckmarsh Street to close the loop with the southwestern corner of the corporate limits.

WARD FOUR (4): All that property contained herein: beginning at the northwestern corner of the corporate limits and running east along the corporate limits parallel with Bypass Route 7 then extending south then east along the corporate limits to Buckmarsh Street then extending south along the western side of Buckmarsh Street to Bundy Street then extending east along Bundy Street to Church Street then extending south along Church Street to Academy Street then extending west along Academy Street to Smith Street then extending north along Smith to Treadwell Street then extending west along Treadwell Street to Dorsey Street then extending south along Dorsey Street to Main Street then extending west along Main Street to the corporate boundary then closing the loop by extending west and north to the north western corner of the corporate limits.

Approved this 9th day of November, to be effective as of 12:01 a.m. on January 1, 2022.

SIGNED: _____
Harry Lee Arnold, Jr., Mayor

I hereby certify that the foregoing ordinance was duly adopted by the Town Council of the Town of Berryville, Virginia, in a meeting assembled November 9, 2021.

ATTEST: _____
Erecka L. Gibson, Recorder