

MINUTES OF HARRISONBURG PLANNING COMMISSION

May 11, 2011

The Harrisonburg Planning Commission held its regular meeting on Wednesday, May 11, 2011, at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Charles Chenault, MuAwia Da'Mes, Judith Dilts, Alan Finks, Deb Fitzgerald, Bill Jones, and Henry Way.

Members absent: None.

Also present: Stacy Turner, Director of Planning and Community Development; Adam Fletcher, City Planner; Alison Banks, Planner and Secretary.

Chairman Jones called the meeting to order and determined there was a quorum with all seven members in attendance. He then asked if there were any corrections, comments or a motion regarding the minutes from the April 13th Planning Commission meeting.

Mr. Chenault moved to approve the minutes from the April 13, 2011 Planning Commission meeting.

Mrs. Fitzgerald seconded the motion.

All voted in favor of approving the minutes (5-0). Mr. Finks and Mr. Way abstained because they were not in attendance at the meeting.

New Business

Preliminary Plat – Lady Slipper Court (2011 Submission)

Chairman Jones read the request and asked staff to review.

Mrs. Banks said the Comprehensive Plan designates this area as Medium-Density Mixed Residential. This designation is intended for small-lot single family detached and single-family attached neighborhoods where green spaces are integral design features. Apartments could also be permitted under special circumstances. The gross density of development in these areas should be in the range of 4-12 dwelling units per acre.

The following land uses are located on and adjacent to the property:

Site: Partially developed townhouse development, zoned R-3

North: Dwelling unit, zoned R-3

East: Undeveloped property, zoned R-3

South: Dwelling units, zoned R-3

West: Across Reservoir Street, single-family home, zoned R-3

In September 2005, City Council approved a request to plat 10 townhouse lots on .77 acres of land along Reservoir Street near the City limits. The request, called Lady Slipper Court, included approval of a variance to section 10-2-42(d) of the Subdivision Ordinance, requiring that all lots front on a public street and the dedication of five feet of right-of-way to the City for necessary improvements to Reservoir Street. That preliminary plat expired in September 2006.

City Council approved a revised preliminary plat request for the same project in January 2007. The new plan reduced the number of units from 10 down to nine, included the approval of a variance to

allow lots to not front on a public street and a condition that garages could not be converted into living space. It was also determined that more right-of-way would be needed along this area of Reservoir Street because of proposed changes in the Master Transportation Plan. A total of 90 feet of right-of-way would be necessary for improvements to Reservoir Street to allow for a center turn lane, along with pedestrian and bicycle facilities. Therefore, the applicant proposed a possible future right-of-way dedication of 20 feet and the Public Works Department said the revised preliminary plat provided a sufficient amount of right-of-way for the future widening of Reservoir Street.

On October 2, 2007 a comprehensive site plan for Lady Slipper Court was approved and site work begun. Building permits for the group of first three units were issued in March 2009; these units are completed, however they are not subdivided yet. The approved 2007 preliminary plat for Lady Slipper Court expired in January 2008.

The applicant is requesting approval of a preliminary plat to subdivide .77 acres into nine townhouse lots with a variance to section 10-2-42(d) of the Subdivision Ordinance, requiring that all lots front on a public street. The site is located along Reservoir Street, at 676 – 694 Lady Slipper Court, near the southern City limits. The applicant proposes a group of three townhouse units close to Reservoir Street and the remaining cluster of six units to the rear of the property.

This request is a resubmission of an expired preliminary plat and it is the exact same, except for one item. Previously, the preliminary plat referred to a possible future 20 foot wide right-of-way dedication. The current plat request indicates that a 20 foot right-of-way dedication is proposed. In August 2010 City Council endorsed the Reservoir Street improvements as part of the Master Street Improvement Plan; thus, affirming that at least 20 feet of right-of-way would be necessary in this area of Reservoir Street. Therefore, if this request is approved, the 20 feet of right-of-way would be dedicated to the City as part of the final plat approval for Lady Slipper Court.

The lot is zoned R-3, Multiple Family Residential District and each unit by right could be occupied by four unrelated individuals. The townhouse units are designed as two and three bedroom units, and each townhome has a single car garage. The approved comprehensive site plan for Lady Slipper Court shows 25 parking spaces, plus the nine garages for a total of 34 parking spaces; eleven more than required. Staff has some concern with the high density, the number of vehicles that could occupy the development, and the fact that no parking is allowed along Reservoir Street; the applicant's willingness to provide the extra parking spaces within the development is appreciated. Staff suggests the applicant provide a restriction within the restrictive covenants for Lady Slipper Court that prevents the conversion of garages into living space.

As mentioned earlier, Lady Slipper Court has an approved site plan and several approved building permits. Currently, most of the infrastructure is in place and three of the nine townhouse units are complete. Staff has a concern with the location of a new fire hydrant along Reservoir Street; within the area to be dedicated as right-of-way. The placement of the hydrant at this location was approved in October 2007 as part of the comprehensive site plan; however, it appears the location may not be suitable when the widening of Reservoir Street occurs. Therefore, the applicant should be made aware that a future easement may be necessary to relocate the hydrant once the Reservoir Street Improvement plans are finalized and approved.

Staff supports the preliminary plat with the variance request.

Chairman Jones asked if there were any questions for staff. Hearing none, he said this is not a public hearing; however, if the applicant or the applicant's representative would like to speak they may do so.

Mr. Daniel Neher, attorney for the applicants, stated he did not have anything to add except that the developer, Mr. Bodkin, is here tonight, and they would be happy to answer any questions.

Chairman Jones asked if there were any questions. Hearing none, he asked for comments, discussion, or a motion on the request.

Mr. Finks said I voted for this the last time; therefore, I am going to move to approve this with the variance, as planning staff recommended.

Dr. Dilts seconded the motion.

Chairman Jones called for a voice vote on the matter.

All voted in favor of the motion to recommend approval of the preliminary plat with the variance request (7-0).

Chairman Jones said this item will move forward to City Council on June 14th.

Special Use Permit – Fence Height 231 Sunrise Avenue 10-3-34 (9)

Chairman Jones read the request and asked staff to comment.

Mrs. Banks said the Comprehensive Plan designates this area as Low Density Residential. This designation states that these areas consist of single family detached dwellings with a maximum density of 1 to 4 units per acre. Low density sections are found mainly in and around well established neighborhoods and are designed to maintain the existing character of neighborhoods and to provide traditional areas for home ownership.

The following land uses are located on and adjacent to the property:

Site: Single-family dwelling, zoned R-1

North: Across Sunrise Avenue, single-family dwellings, zoned R-1

East: Single-family dwelling, zoned R-1

South: Oriental Food Market, zoned B-2 and B-2C

West: Undeveloped building lot and single-family dwelling, zoned R-1

The applicants are requesting a special use permit per Section 10-3-34 (9) of the Zoning Ordinance to allow a fence to exceed the six-foot maximum height requirement. More precise, they would like to construct a fence that reaches twelve-feet in height along the rear of their property, before tapering to a height of five-feet. The site is located at 231 Sunrise Avenue, just west of the intersection of South High Street and Sunrise Avenue.

Located directly behind the subject property is the Oriental Food Market and its associated parking lot. This site was the subject of a 2002 rezoning from R-1, Single Family Residential District to B-2C, General Business District Conditional. As part of the rezoning approval, the owners proffered that a privacy fence would be constructed at a height of six-feet along the northeastern property line to provide screening between the R-1 zoned homes along Sunrise Avenue and the market.

However, after the site grading for the new construction was completed, the topography change was

such that the properties along Sunrise Avenue were much lower than the new building and parking facility. Once installed, the proffered six-foot fence now sits lower than the Oriental Food Market development; not providing the intended visual screening for the adjoining residential neighborhood.

The applicants state that persons visiting the market are able to stand in the parking lot and look directly over the fence. Items are thrown into their yard and their pets are often teased and provoked by persons on the commercial lot. The business is usually open until 11:00 p.m., making it difficult to enjoy and entertain within the rear yard of their home.

Because of this, the applicants would like to install a twelve-foot privacy fence along the back portion of their property. The fence would taper along the side property lines from twelve-feet to a height of five-feet, before connecting into the rear of the dwelling. The fence is described as a heavy duty, vinyl fence; solid from ground to top. Prior to installation of the fence, the applicants would need to obtain a building permit. The applicants also propose to install some trees for landscaping around the property.

Staff does not foresee any negative impact in approving this special use permit request. The applicants have discussed the matter with their neighbors and have several letters of support. Staff recognizes the rationale behind this request and believes it would help make a difficult situation more tolerable. Approval of the special use permit is recommended with the following conditions:

1. The special use shall only be applicable to the proposed fence in this application.
2. There shall be no advertising placed on the fence.
3. If in the opinion of Planning Commission or City Council, the fence becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Chairman Jones asked if there were any questions for staff. Hearing none, he opened the public hearing and asked the applicant or applicant's representative to speak.

Brandon and Gerry Howdyshell, 231 Sunrise Avenue, said they are the owners of the property and are available to answer any questions.

Chairman Jones asked if there were any questions. Hearing none, he asked if there was anyone else wishing to speak in favor of this proposal. Hearing none, he asked if there was anyone wishing to speak in opposition to this proposal. Hearing none, he closed the public hearing and asked for comments or a motion.

Mr. Chenault made a motion to recommend approval of the special use permit request with the three conditions.

Mr. Finks seconded.

Chairman Jones called for a voice vote on the motion.

All voted in favor of recommending approval with conditions of the special use permit (7-0).

Chairman Jones said this will also go to Council on June 14th.

Special Use Permit – 862 North Liberty Street 10-3-97 (10) Rec. Activity

Chairman Jones read the agenda item and asked staff to review.

Mr. Fletcher said the Comprehensive Plan designates this area as General Industrial. This designation states that these areas are composed of land and structures used for light and general manufacturing, wholesaling, warehousing, high-technology, research and development, and related activities.

The following land uses are located on and adjacent to the property:

- Site: Former Pilgrim’s Pride processing facility, where part of the building is used by Finders Keepers as warehousing space and other portions are vacant, zoned M-1
- North: Across Norfolk Southern rail lines and North Liberty Street, industrial uses, zoned M-1
- East: Across Norfolk Southern rail lines, property owned by the City and utilized by HEC, zoned M-1
- South: Dwelling units, zoned R-2, Minnick Education Center (with approved SUP for educational use), and G&W Ambulance Services, zoned M-1
- West: Across North Liberty Street, non-conforming dwelling units, zoned M-1, and dwelling units, zoned R-2

The applicants are requesting a special use permit per Section 10-3-97 (10) of the Zoning Ordinance to allow recreational and leisure time activities within the M-1, General Industrial District. Specifically, the applicants would like to utilize approximately 7,000 square feet of vacant space within the former Pilgrim’s Pride processing facility at 862 North Liberty Street for an exercise/training facility related to mixed martial arts (MMA).

The individuals interested in utilizing this space would like to relocate the existing business, currently known as Rival Fitness Club and MMA Institute, from 1000 South High Street to the subject property. In April 2008, a special use permit was approved by City Council to allow the exercise/training facility to be located in a warehouse portion of the building at the South High Street address. Upon recommendation by staff and Planning Commission, City Council approved the application with the condition that the permit be granted only for a training/exercise facility.

For the current request, staff met with the individuals interested in operating this facility and explained that if the special use permit were approved, they would be required to obtain a change of use permit and other building permits as necessary. During the building permitting process, staff would ensure that all parking requirements have been met for all uses on site. As part of this special use permit application, a parking layout was submitted and is provided within your packet that demonstrates parking spaces could be provided for the proposed and current uses onsite.

Staff has no concerns regarding the proposed use at this location. The property is located within a transitional area of the City, where residential, business, and small-scale industrial uses have co-existed for some time. Staff also believes this a good re-use of this space. Furthermore, although the existing Land Use designation per the 2004 Comprehensive Plan is General Industrial, this property is one of several properties that staff and Planning Commission has recommended for a Land Use designation change within the Draft 2011 Comprehensive Plan. Arguably, the proposed use would already be in conformance with the existing Comprehensive Plan, but if the draft Comprehensive

Plan is approved as was recommended, this property's designation would change from General Industrial to Planned Business and the proposed use would be more in keeping with the desired uses for this area.

Approving the application as presented would open up the possibility for other recreational and leisure time activities to operate on this site without a public hearing and without further review by staff. Thus, staff recommends the same condition be attached to this application as was placed on the permit at the businesses current facility, which is that the permit be granted only for a training/exercise facility that operates similarly to the proposed use.

Staff recommends in favor of the special use permit with the above stated condition.

Chairman Jones asked if there were any questions for staff. Hearing none, he opened the public hearing and asked the applicants or their representative to speak.

Mr. Steve Hill, a commercial property realtor and the owner's representative, said he is here along with the MMA group, Lee Swecker and Chad Brown, and we would be happy to answer any questions.

Mr. Swecker said we are just looking to move the existing business. This location is a good fit for us; the building is wide open, which we need.

Mr. Da'Mes asked if it was a monthly membership once you signed up.

Mr. Swecker replied yes.

Mr. Da'Mes asked do outside organizations come and compete against this group.

Mr. Swecker replied we do not have actual competitions at our gym. Occasionally other gyms will come and train with us. We are actually affiliated with three other schools and train with them regularly; however, it is not a public competition and it is not advertised to the public.

Mr. Da'Mes asked if there were open invitations to the public to come and view or to be a spectator.

Mr. Swecker said we do not compete in our gym. We travel to other locations such as Expoland, Virginia Beach, the DC area, and so on, for the competition portion. We do not have competitions at our gym, it is just for training.

Chairman Jones asked if there were any further questions for the applicants. Hearing none, he asked if there was anyone else wishing to speak in favor of this proposal. Hearing none, he asked if there was anyone wishing to speak in opposition to this proposal. Hearing none, he closed the public hearing and asked for comments or a motion.

Mr. Da'Mes said obviously my concern would be that this could be open to the public and it would be hard to limit occupancy. Is there any way that we could condition this to limit occupancy, or to not allow spectators?

Mr. Chenault said I understand your concerns; however, I am not too worried about it myself. I am somewhat familiar with their history, and have even visited the current location. I have never seen large crowds. I believe their history is to have competitions at other locations. I feel comfortable that they would adhere to what they proposed in the special use permit request and not have large group competitions.

Chairman Jones asked staff when the special use permit for the South High Street location was approved.

Mr. Fletcher replied April 2008.

Chairman Jones said it has been there three years and we have not had any complaints.

Mr. Fletcher said correct, we have not had any concerns. You also need to remember that maximum occupancy is set by the building official based upon the type of use that is occupying the building. For this particular case the occupancy is 70, which is how we derived the parking requirements. There is always a concern for any building to be over occupied; but, it is up to Planning Commission if you wish to recommend a condition regarding parking.

Mrs. Turner said staff is recommending the condition that this special use is only for a facility that operates similarly to the proposed use. The applicants have provided us with a lengthy description and explanation of what the proposed use is and it does not include doing exhibitions or having competitions. I think if they did so, it would be a zoning violation because it is not part of the approved special use permit.

Mr. Da'Mes said could we just say no spectators would be allowed.

Mr. Fletcher said it would be something very difficult to enforce.

Mr. Chenault said what if you said no paying spectators.

Mrs. Turner said then you are opening it up to un-paying spectators; which is not something they have described in their use.

Mr. Finks said we do not want to hamper them from having potential members coming in to see what it is about.

Mrs. Fitzgerald said that is the way new members would probably join; by coming in and viewing what goes on.

Mrs. Turner said I do not believe it would be interpreted that if two or three people stopped by and watched their friend, or if they were interested in a class being offered, we would consider that a violation of the special use permit. If they had 40 plus persons sitting along the side watching a competition we would consider that a violation, regardless if they are paying to watch or not.

Mr. Chenault said in light of that I make a motion to recommend approval of the special use permit request with the conditions as suggested by staff.

Dr. Dilts seconded the motion.

Chairman Jones called for a voice vote on the matter.

All voted in favor of the motion to recommend approval of the request with conditions (7-0).

Chairman Jones said this will move on to City Council on June 14th.

Master Plan Amendment – 2011 Forest Hills Manor

Chairman Jones read the agenda item and asked staff to comment.

Mr. Fletcher said the Comprehensive Plan designates this area as High-Density Residential. This designation states that these areas are intended for high-density development, mostly apartment buildings with densities ranging from 12 to 15 dwelling units per acre.

The following land uses are located on and adjacent to the property:

- Site: Forest Hills Manor apartments, zoned R-4
- North: Single family homes within Forest Hills Subdivision, zoned R-1
- East: University Fields apartments (previously known as Ashby Crossing), zoned R-4
- South: Sections of University Fields apartments, zoned R-4 and the Campus Corner retail center, zoned B-2C
- West: Townhomes along Village Lane, zoned R-4 and Single family homes along Greenbriar Drive and Oak Hill Drive, zoned R-1

The owner of Forest Hills Manor apartments, a student housing complex located off of Devon Lane, has submitted a request to amend a 2008 approved 68-unit master plan. In brief, approving the amendment would allow the owner to have two additional units for a total of 70 apartments. The property is served by two, private streets: Sully Drive and Usman Circle. The existing units were developed under the Glenside Master Plan, which was approved in 2003. Although 60 units currently exist, the approved 2008 plan permits a total of 68 units. The master plan process is not a public hearing and requires approval by Planning Commission only.

Last summer, the owner submitted the same amendment request, which was originally reviewed by Planning Commission in July 2010 when the applicant submitted a plan that illustrated 10 units to be built in the same area that had originally been designed to accommodate eight units. They realized that by utilizing a different design they could build two additional units, thus they submitted the master plan amendment to move ahead with that design. During that review period, the property had non-compliance issues with their existing master plan with unsuitable dumpster screening and other violations including the accumulation of junk, rubbish, and/or garbage and for having tall grass and weeds. The applicant tabled the request for one month to rectify the violations and added detail to their master plan by submitting additional information including landscaping specifics and particulars regarding general property maintenance. During the August review, the application continued to receive negative comments—mostly regarding property upkeep. Ultimately, the applicant withdrew the request.

For the current master plan amendment request, the proposed site layout has not changed from last year's review. The applicant continues proposing to build 10 units on the northwestern side of the property, adjacent to the single family homes fronting Greenbriar Drive. As stated above, the property is currently improved with 60 units and the existing master plan allows the owner to build eight more apartments. Despite the property owner's desire to build the two additional units, they have continued to move forward with the development of the site because they have an approved comprehensive site plan for the construction of their remaining eight units under their approved master plan. The development of that site plan can be seen today as the property is currently under construction. Since the two additional units would be built in the same location, if the master plan is approved as presented, they would be required to submit an amendment to their comprehensive site plan and make the appropriate adjustments to continue moving forward.

The development already exceeds the parking requirements and they would continue to exceed those requirements even if they receive approval to build the two additional units; however, the applicant is proposing to add an additional 13 parking spaces. The request continues provisions of the existing master plan, which includes a six foot solid fence along the northern and northwestern

property line and evergreen trees planted adjacent to the fence. No decks or patios will be installed on any of the units that would be adjacent to the single family home neighborhood—a specification that is included on the existing master plan.

Additions to the master plan, specifics that were also included in last year's request, include a bicycle path connecting the subject property to Village Lane townhomes and details concerning property landscaping consisting of additional trees and shrubbery. The additional landscaping should enhance the overall aesthetics of the site. As shown on the site layout, numerous deciduous trees, evergreen trees, and shrubs would be planted. If this request is approved, these improvements would become governing aspects of the master plan, thus the property owner must maintain and/or replace all of the landscaping as illustrated and described; otherwise it would be a violation of the plan and thus, a violation of the Zoning Ordinance.

As briefly mentioned above, even though they have an approved comprehensive site plan for a very similar layout, if this request is approved, they will have to go back through the comprehensive site plan review process for the changes to the site. During this resubmission, the applicant's engineer should make the appropriate grade changes near the rear of units 65-70 for emergency response access as they have already discussed with the Fire Chief. The applicant shall receive approval to make these changes from the adjoining property owners group, of which he is a member.

The proposed master plan change is ultimately increasing its density by only two units, arguably negligible due to the location and because of the existing units in this area of the City. Furthermore, the proposed and existing use is in conformance with the Comprehensive Plan's High Density Residential land use designation and in compliance with the existing zoning density. Since the original submission of this application last year, not only does the property look significantly better but the details of the master plan have improved with the property owner's self-imposed responsibilities. Staff believes the property owner has made noteworthy efforts to improve their site and believes this master plan has more teeth for enforcement to ensure the property is kept in good condition. Staff recommends in favor of the master plan amendment.

Chairman Jones asked if there were any questions for staff.

Mr. Finks asked about emergency access to the new building.

Mr. Fletcher said the Fire Department did not have any concerns about the actual access to the location. However, I am glad you asked the question because during site work there will be some grading done in the area between Village Lane and the proposed new building to allow for the fire truck to access the new site from this area. The Fire Department and the applicant's engineer have already had discussions regarding this issue.

Dr. Dilts asked what was the height of the building in the previous approved plan.

Mr. Fletcher said I do not know the exact height of the building, perhaps the applicant's representative may know. Regardless, it will be confirmed that the building height meets the zoning requirements.

Dr. Dilts asked how do you enter into the section of the building housing the three stacked units.

Mr. Fletcher said it is difficult to describe. These are not three separate units, they are attached with a breezeway, making this an entire building complex of ten units. To enter you would come into the breezeway area and then up or down steps to the units.

Dr. Dilts said essentially the west side is the back of the units.

Mr. Fletcher replied yes, that would be the rear.

Mr. Way asked if the bike/foot path had been endorsed by the Village Lane developers.

Mr. Fletcher replied before you is a letter that the owners are acknowledging that the multiuse path could be built on the Village Lane site. This letter also includes the permission to do site grading on the adjoining property for the proposed Forest Hills project.

Mr. Da'Mes said a year ago I recused myself from this particular request because of a relationship with one of the partners in this development; that relationship no longer exists. Therefore, I am not recusing myself from this request.

Chairman Jones asked if there were any further questions for staff. Hearing none, he said this is not a public hearing; however, if the applicant or the applicant's representative would like to speak they may do so at this time.

Mr. Ed Blackwell of Blackwell Engineering said he is representing the developers of this site. A year ago there was some concern about the upkeep of the property and so the owner withdrew the request, and spent the past year really pushing the landscaping and upkeep of the site. They are proffering some of the landscaping that you see on the drawings; but the owner has actually already been installing it with, or without, this approval. This development actually has a line item in their budget towards landscaping now.

Mrs. Fitzgerald agreed that there was a big difference when they viewed the site this time as compared to last year.

Mr. Blackwell said this is the same plan as before. There will be an architect that would design the new ten unit building. I believe one of the questions dealt with building height – the section that is towards the left is like two stacked units. There will be a basement and three levels. Everything along the breezeway side has three levels. Also, there is a height restriction that would have to be met.

Mr. Fletcher said the height restriction is 40 feet.

Dr. Dilts asked if the current units were 40 feet high.

Mr. Blackwell said that varies on topography and unit style.

Dr. Dilts said are the new ones going to be larger than the existing ones, the drawing makes them look larger.

Mr. Blackwell said the foot print is a little larger. The existing units are three stories for one unit and the new units would be two stories per unit. I have not seen the final architectural plans. This is a very uniquely shaped building and the architect said he can get it in this space.

Chairman Jones asked if there were any further questions for the applicant's representative. Hearing none, he asked for discussion or a motion.

Mr. Finks said the fact that the owners are doing something on the site to make it look better is something that strikes me. I move to favorably recommend for this request to add two units.

Mrs. Fitzgerald seconded the motion.

Chairman Jones called for a voice vote on the motion.

All voted in favor of the motion to recommend approval of the Master Plan Amendment (7-0).

Chairman Jones said this ends here at Planning Commission and does not move forward to City Council.

Mr. Fletcher reminded the applicant that a revised comprehensive site plan would need to be submitted.

Unfinished Business

None.

Public Input

None.

Report of secretary and committees

Mr. Chenault said last night at City Council the Comprehensive Plan was approved. Everybody expressed their gratitude to each and every one of you for all your hard work. Also, to staff for their time spent on the plan.

Mrs. Banks said proactive zoning inspectors visited Pleasant Hill Acres where they found 17 violations consisting of inoperable vehicles and discarded materials. Next month, they will be targeting the Avalon Woods area.

Other Matters

None.

Adjournment

The meeting was adjourned at 8:00 p.m.

Chairman William L. Jones, Jr.

Secretary, Alison Banks