MINUTES OF HARRISONBURG PLANNING COMMISSION
June 13, 2012

The Harrisonburg Planning Commission held its regular meeting on Wednesday, June 13, 2012, at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

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

Members absent: Judith Dilts and Bill Jones.

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

Vice-Chair Fitzgerald called the meeting to order and determined there was a quorum with five of seven members in attendance. She then asked if there were any corrections, comments or a motion regarding the minutes from the May 9, 2012 Planning Commission meeting.

Mr. Chenault moved to approve the minutes as presented from the May 9, 2012 regular Planning Commission meeting.

Mr. Da'Mes seconded the motion.

All voted in favor of approving the minutes (5-0).

New Business

Alley Closing – Adjacent to 25-K-1 through 5 and 19 (JMU Real Estate Foundation Inc.)

Vice-Chair Fitzgerald read the agenda item and asked staff to review.

Mrs. Banks said the following land uses are located on and adjacent to the property:

Site:	Paved, 11+/- foot by 203+/- foot alleyway connecting Walnut Lane to undeveloped Kyle Street
North:	Apartment building, zoned R-3
East:	Across Walnut Lane, residential units, zoned R-3
South:	Apartment buildings, zoned R-3
West:	Undeveloped Kyle Street and a parking lot, zoned M-1

The applicant is requesting to close an alleyway that is located between Walnut Lane and an undeveloped portion of Kyle Street. The alley, approximately 11 feet in width and 203 feet in length, primarily functions as part of the adjacent parking and maneuvering area for the neighboring apartment buildings. James Madison University Real Estate Foundation, Inc. is the owner of the six parcels directly abutting the right-of-way and desires to close the alley in order to integrate the land into future development for the University.

There is an active sanitary sewer main, located within a public easement that is parallel to the alley and travels through two of the adjoining parcels. If City Council approves the closing, the Public Utilities Department has requested that the public sanitary sewer easement be extended into portions of the closed alley in order to accommodate continued maintenance to the sewer main.

The City has no plans to develop the alley and does not anticipate any negative consequences from vacating the right-of-way. Staff recommends closing the alleyway with the reserved public sanitary sewer easement extension.

Vice-Chair Fitzgerald asked if there were any questions for staff. Hearing none, she asked if there was anyone wishing to speak regarding this request. Hearing none, she asked for discussion or a motion from Planning Commission.

Mr. Chenault moved to recommend closure of the alley, subject to the reservation by the City for the portion necessary for the utility easement.

Mr. Way seconded the motion.

Vice-Chair Fitzgerald called for a voice vote on the motion.

All voted in favor of the motion to recommend approval of the alley closing (5-0).

Vice-Chair Fitzgerald said this request will move forward to City Council on July 10, 2012 with a favorable recommendation.

Mrs. Banks informed Planning Commission that they would probably be seeing this location again in the near future as JMU begins the process of doing some development at the site.

Preliminary Plat – Sunset Heights, Alexiou Addition

Vice-Chair Fitzgerald read the request and asked staff to review.

Mr. Fletcher 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 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: Undeveloped property, zoned R-1

North: Heritage Oaks Golf Course and single family homes fronting Wyndam Woods Circle, zoned R-1

East: Single family homes fronting Circle Drive, zoned R-1

South: Single family homes fronting Circle Drive and City property including Rocktown Trails, zoned R-1

West: Heritage Oaks Golf Course, zoned R-1

The applicant is requesting to preliminarily subdivide three lots totaling 7.11 +/- acres into 10 single family home lots and to dedicate a public cul-de-sac street. The proposed development site is zoned R-1, Single Family Residential District and has public street frontage on Circle Drive and from a public street "stub" off of Wyndham Woods Circle.

The subject property has a history of being evaluated for potential single family home development as far back as 1990. The most recent proposal occurred in 2004 when the City approved a preliminary plat known as "Sunset Heights, Holmes Addition," which planned two, separate sections of development. The first section included 13 single family home lots fronting a public cul-de-sac street. That section was ultimately final platted and constructed and exists now as James Place with multiple single family homes completed and occupied. The second section, the property currently under review, planned 19 single family home lots fronting a public street that stretched the length of the property from its Circle Drive street frontage to the public "stub" along Wyndham

Woods Circle. That section was never final platted and has since been sold to a new owner, who is now presenting the new layout.

As noted above, 10 single family home lots are planned along with the dedication of a public cul-de-sac street. The applicant plans to maintain ownership of lot 16 in Block E and to build and live in a single family home on that lot. Per the recently revised Subdivision Ordinance Section 10-2-41 (e), which states, "Cul-de-sacs and other permanent dead-end streets are prohibited except when permitted by the planning commission in accord with the DCSM," Planning Commission must give approval of this layout for it to comply with the Subdivision Ordinance. Staff has no problem with the permanent cul-de-sac configuration as shown and it appears it would be able to comply with the specifications of the Design and Construction Standards Manual (DCSM). Other than designing a public street configuration similar to the previously approved preliminary plat, which was denser than the planned layout, there are no other realistic alternatives as a public street could not be "stubbed" to the adjacent properties with the intent to extend that street because the adjoining properties include the City's Heritage Oaks Golf Course and the City's Rocktown Trails park. Staff recommends Planning Commission accept the proposed permanent public cul-de-sac street.

Other than Planning Commission consenting to the situation as just described, there are no major issues with the preliminary plat and it complies with all other Subdivision Ordinance requirements. The public street that would ultimately be built would meet minimum City standards including sidewalk on both sides of the street. Upon final platting, the City would accept the street and officially take ownership and provide typical maintenance services (i.e. snow removal, street repair, trash service, etc.).

Planning Commission should be aware of the specifics as listed in the "Notes" section described on the plat; specifically numbers 14 and 15. Although there is no officially recognized stream in this area or issues regarding the floodplain, this property includes a low-lying area that is prone to high volumes of water accumulating on and passing through this acreage. Note 14 explains that minimum floor elevations will be provided during the construction plan approval process for homes planned on the lots that are prone to collecting high volumes of water. Although it is not a subdivision requirement to demonstrate this on the plat, staff wanted it included on the plat for public awareness of this issue and to remind the developer to recognize the potential problems that could occur on those lots. This issue was previously worked out during the comprehensive site plan review process that occurred after the 2004 preliminary plat was approved.

Note 15 describes that the applicant will dedicate either an easement or fee simple property to the City for use as a shared use path as described on page 23 in the City's Bicycle and Pedestrian Plan as the "Circle Drive to Hillandale Park" connection. This connection, which is planned to cut-through this property, is part of a larger concept that would create a bicycle and pedestrian link from Westover Park and Thomas Harrison Middle School to Hillandale Park. The final plat for this development would not be approved until this connection is somehow accommodated, whether on the final plat or some other instrument for recordation.

Staff recommends approving the preliminary plat.

Vice-Chair Fitzgerald asked if there were any questions for staff regarding the preliminary plat request.

Mr. Da'Mes said when you say it meets all subdivision requirements does that include sidewalks along both sides of the street and around the cul-de-sac?

Mr. Fletcher replied yes.

Mr. Da'Mes asked if this included lighting for the cul-de-sac.

Mr. Fletcher said there are no public street standards for lighting with this type of subdivision street; at least none that I am aware of. I do not believe there is even a subdivision requirement for lighting.

Mrs. Turner said Harrisonburg Electric Commission (HEC) would provide the standard poles as part of the process.

Mr. Way asked if staff was comfortable with the arrangements for the bike path.

Mr. Fletcher replied yes.

Mr. Finks said the owner's lot is much larger than the other proposed lots; I question the size of each lot.

Mr. Fletcher said the subdivision meets all the subdivision regulations for an R-1 lot, which is a 10,000 square foot minimum. They would not be able to subdivide if they did not meet those requirements.

Vice-Chair Fitzgerald said there is no requirement for a public hearing for this request; however, the applicant or the applicant's representative is invited to speak.

Mr. Jerry Brunk, with Brunk and Hylton Engineering, said he is representing Michael Alexiou this evening regarding the preliminary plat. I will be glad to answer any questions you may have; I think staff has done a sufficient job on describing our request.

Hearing no further comments or questions, Vice-Chair Fitzgerald asked for discussion or a motion on the request.

Mr. Chenault moved to recommend approval of the preliminary subdivision plat. I think we are always grateful for R-1development within the City. As well, we in the cycling community are very appreciative of Dr. Alexiou's efforts in working with us over the years and look forward to riding these trails.

Mr. Finks seconded the motion.

Mr. Da'Mes said he did have one question for staff. I know the concept of a bike trail connection through this neighborhood was somewhat opposed by neighbors in previous years. Has there been some type of discussion with the neighbors and is this trail acceptable.

Mr. Chenault said this is actually a different area and is not part of the prior area that was in controversy.

Mr. Da'Mes said thank you, because this is critical; since we have passed the Bicycle and Pedestrian Plan connectivity is important between the parks and the schools.

Vice-Chair Fitzgerald said there is a motion on the floor and it has been properly seconded; she then called for a voice vote on the matter.

All voted in favor of the motion to recommend approval of the preliminary plat (5-0).

Vice-Chair Fitzgerald said this request is therefore approved by this body.

Special Use Permit – 1777 South Main Street

Vice-Chair Fitzgerald read the request and asked for staff to review.

Mrs. Banks said the Comprehensive Plan designates this area as Commercial. This designation states that these areas include uses for retail, office, wholesale, or service functions. These areas are generally found along the City's major travel corridors and in the Central Business District of the City.

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

Site: Commercial rental/retail business, zoned B-2

North: Market, restaurant, and auto sales lot, zoned B-2

East: Retail stores, zoned B-2

South: Financial institution and business office, zoned B-2

West: Extended stay hotel, zoned B-2 and single-family homes, zoned R-1

The applicants are requesting a special use permit (SUP) per section 10-3-91 (6) of the Zoning Ordinance in order to operate a building material sales and storage yard within the B-2, General Business District. The 2.31 +/- acre site, approximately 250 feet north of the intersection of South Main Street and Pleasant Hill Road, is currently the home of Rockingham Rent All. The property includes a 9,000 square foot building with a showroom, an additional 4,200 square foot building, and a fenced, outdoor storage area to the rear of the property.

Hajoca Corporation, a plumbing, heating, and industrial supply business, currently located in an M-1, General Industrial District along Waterman Drive, desires to relocate their business to the subject property at 1777 South Main Street. The proposed site provides extra warehouse and storage space for the business, along with a larger showroom, office area, and it would be a more visible and convenient location for customers.

The site is located along a busy, north-south corridor of the City, and is shown as part of the Corridor Enhancement Area within the Comprehensive Plan. The quality and character of these routes strongly influence the City's attractiveness and economic vitality; therefore, careful consideration should be given to uses, streetscapes, and access to the property. Staff has concern with outdoor storage and displays along this passageway, and suggests placing a condition on the SUP to prohibit storage or display of materials within the front and south side of the property.

Because of its proximity to the traffic signal at Pleasant Hill Road, there may be potential ingress/egress problems for customers at the site. Staff has discussed these concerns with the applicant and expressed to them the City will not be making modifications to traffic signal timings, street markings, or increased signage at their entrance (i.e. "Do Not Block" entrance signage) should this proposal be approved.

The applicants have expressed they would have outdoor storage in the fenced rear portion of the site. Going beyond the intentions of the applicant, staff is suggesting all outdoor storage be within the rear of the property. The rear of this property abuts an R-1, Single-family Residential District where a dense landscaping and fencing buffer currently exists. However, staff has concern with the close proximity to the homes. There may be noises associated with this type of outdoor storage area, such as trucks loading and unloading throughout the day, creating problems for the adjacent home owners. Staff realizes there are other permitted uses which could locate here and also create noise issues for the abutting properties; however, those uses would require a setback for buildings

and/or for parking. Staff is suggesting an additional condition that all outdoor storage is setback at least 30-feet from the rear property line, allowing for some additional space between the homes and this typically industrial use.

The Comprehensive Plan recognizes this area as Commercial and staff feels this particular use is not so intense that it would be incompatible with the other uses along this corridor, with the appropriate conditions. Staff recommends in favor of the request with the following conditions:

1. There shall be no outside storage or display of materials between the 9,000 square foot, showroom building and the front and south-side property lines;
2. All outdoor storage is setback at least 30-feet from the rear property line;
3. If in the opinion of Planning Commission or City Council, the building material storage yard 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.

Vice-Chair Fitzgerald asked if there were any questions for staff. Hearing none, she opened the public hearing and asked the applicant or the applicant's representative to speak.

Mr. John Colonna said he is the branch manager of Hajoca in Harrisonburg. Thank you very much for your time and thank you to staff for coming to check out our building and operation. I definitely want to understand all the restrictions that are being placed on the special use permit. Therefore, one thing that I want to ask is for some clarification regarding these cargo containers that are currently on the site, along the back. We intend to keep these containers, plus it would be costly to move them, is this condition (no storage within thirty-feet of rear property line) for new storage in the back or for all storage.

After Mr. Colonna spoke, the group discussed and questioned where the storage containers were located on the site. The current owner, Mr. Wayne Rothery, described the containers and their location to the Planning Commission.

Vice-Chair Fitzgerald asked what would happen with the containers if they were to remain on the site.

Mrs. Banks said they would have to sit back thirty-feet.

Mr. Fletcher said based on the condition the containers would have to be moved thirty-feet interior to the property.

Mr. Rothery said as pointed out in the staff report there is a double fence along the back of the property and the area is completely covered with overgrowth; you cannot see the houses to the rear. If you have to move everything in thirty-feet, you are wasting thirty-feet of usable area.

Mrs. Turner asked if these containers should have been setback thirty-feet from the rear property line when they were placed many years ago.

Mrs. Banks said that is correct, if they are set as permanent structures they should be thirty-feet from the rear property line, because that side of the property abuts a residential zoning district.

Mr. Fletcher agreed and said technically, those containers were located there illegally. He continued by stating the thirty-foot setback is not something we came up with arbitrarily, it is a required setback when B-2 and M-1 properties are adjacent to a residential district. Also, it was not necessarily the sight of the storage within thirty-feet, it was mostly the noise related to the storage.

Mr. Da'Mes asked what would be the setback if the storage were moved along the north property boundary.

Mr. Fletcher replied ten feet.

Mr. Da'Mes asked what are the containers placed on currently; some type of concrete slab.

Mr. Rothery said probably concrete blocks.

Mr. Way asked if there was anyone present tonight that lives in the residential district behind this property.

Mr. Richard Myers and Mary Alison D'Silva said they own one of the homes on Tamela Court that backs up to the property in question. To answer your question regarding noise, it is not terrible. There are times with the equipment and storage next to us that we hear noise from stuff being moved around or when trailers are being hitched or unhitched.

Mr. Myers continued saying the photo you have showing fencing in the rear of the property is not like that at our property. We do not have solid fencing, only the chain link fence. In the fall and winter when there are no leaves on the trees, we can look directly at the parking and storage area for Rockingham Rental.

Mr. Way asked Mr. Myers if he would support a thirty-foot buffer.

Mr. Myers replied we would honestly be happier with a tall, solid fence and doing away with the thirty-foot buffer. However, the six-foot requirement would not be high enough. Eight feet is somewhat on the low side because of the slope in the topography, but we could live with it.

Mr. Da'Mes asked the applicant if they would be willing to do a solid fence in lieu of removing the containers and providing the thirty-foot buffer.

Mr. Colonna said if that is a compromise we could make, yes I would be very much for it.

Mr. Way asked staff if they saw any problems with a solid fence rather than a buffer.

Mrs. Banks said it is more of a height question for the fence.

There was discussion regarding where the existing fence was located and where a solid fence would need to be located.

Mr. Fletcher clarified the discussion to this point. First, you should be aware that next month staff will be bringing to you a proposed Zoning Ordinance amendment to modify the fencing regulations. There has been some misinterpretation of how certain language has been read and applied. The particular section currently states "in business and industrial districts walls and fences which are clearly used for safety or security purposes may be superseded by other height regulations". There are some wording issues with this section regarding the superseding and other height regulations that do not really make sense; but, it has been interpreted for years that B-2 or M-1 property can erect a fence that is taller than six-feet in height if it is used for safety or security purposes. The condition for which we are discussing this evening is not a safety or security reason; it is an aesthetic buffer, it does not enclose the property for safety or security purposes. Therefore, my question for staff is, does Planning Commission have the capability to suggest a condition to City Council that allows a fence to be erected taller than what is regulated by the Zoning Ordinance.

Mr. Chenault said I thought one of the reasons for the fencing that is being discussed tonight was for the noise issue, even as much as the visual. I take noise to be as much of a safety issue for the residents of the adjoining property and that is a reasonable interpretation in my mind.

Vice-Chair Fitzgerald said I think noise can be a quality of life issue as well as a safety issue.

Mr. Chenault said if we are trying to pigeon hole the ordinance, than it was probably not what they intended when they enacted that section of the ordinance. In my mind it is not too far of a stretch to justify it.

Mrs. Turner said I do not know that on preference Planning Commission can authorize a taller fence than what the ordinance currently allows as a condition to the SUP. If we want to say the noise is a safety issue; is it so noisy that we feel there is a problem with safety in this area. Then I suppose you are allowing it not as a condition, but because it is a fence that is meeting the safety and security reasons. The only other thing I can think of is that it abuts a residential neighborhood and the use could be an attractive nuisance for children in the neighborhood. But children could get there by walking around the corner if the fence is constructed across the rear.

Mr. Myers said if he could add to the conversation regarding security, the installation of a solid fence behind our property would complete fencing, of any type, all around the back of the property. Right now there is chain link, but there is a gap in that fencing. Therefore, completing it would cut-off access between the business property from the residential property.

Mr. Paul Keppel, agent for the owner of the property, asked if this could be accomplished with landscaping or some type of natural materials. Right now there are deciduous trees there that essentially lose their leaves and expose the property. If we can finish securing the perimeter of the property with some type of fencing that is acceptable to the neighbor and to the Planning Commission and provide some type of natural sound and viewshed protection, would that not serve to allow the extra thirty-feet to operate within the back of the business.

Mr. Fletcher said to be clear, if Planning Commission and City Council do not believe it is necessary to have the thirty-foot buffer, then materials can be stored within thirty-feet, but you could not have a structure there.

Mr. Keppel said this is a big site; however businesses need room to operate and maneuver. That thirty-foot is valuable to the perspective tenant. If we can accommodate what the adjoining property owners desire, a viewshed and a noise barrier, with a portion of solid fencing and some type of natural landscaping, such as a species of evergreen tree.

Mr. Way said if I understand staff is saying that Planning Commission has no discretion to say whether or not something is a valuable thing for safety and security.

Mrs. Turner said you would need to have some solid reasoning to go behind that idea.

Mr. Way questioned whether the completion of the rear fencing so that it is the same style all along the back was enough.

Mrs. Turner said you would then need to have a reason as to why the completion of a fence is a necessary security or safety measure.

Mr. De’Mas said I think on behalf of the owner of the site it is a security issue. You have a lot of inventory stored back there.

Mr. Keppel said I am not talking about going above the six feet with the fence, I am saying you plant trees along with the fence.

Vice-Chair Fitzgerald said you are stating two separate issues here; the fence for the security and the landscaping for the noise.

Mr. Keppel said correct. You close up the back with the fence that meets the current code and then we provide landscaping that would take care of the problems for the adjoining property owners. If this is suitable for Mr. Myers and suitable for Planning Commission, then I think we could take care of that.

Mr. Fletcher said legally, yes, they could do what is being proposed.

Vice-Chair Fitzgerald asked if this worked for the adjoining property owner.

Mr. Myers said there would be a solid fence the rest of the way across; but, it would only be six feet in height. I would appreciate a fence taller than six feet. Landscaping is good; but, it may take awhile for it to grow in to be a significant benefit.

Mr. Colonna said we would build a taller fence if that is possible.

Mr. Da'Mes said you could if you say it is for security purposes to secure inventory within the back.

Mrs. Turner said the Zoning Administrator would have to concur with your concern that it is needed to be there for security reasons. I would say that if the existing solid fence is not taller than six foot; but yet you think there needs to be one taller than six foot near the Myers property, then probably there needs to be a taller fence at the neighbor's house as well. But the Zoning Administrator would need to determine if this was for a valid safety and security purpose.

Mr. Colonna said in terms of security I could have over $500,000 worth of inventory in the rear storage yard. Therefore, from my end as a businessman, I would like to keep it secure. I would also like to say that once the outdoor storage of pipe is in place, it is loaded only by hand; there is not a fork lift operating throughout the day in the back of the property.

Mrs. Banks said that is a valid point. It is security for the business that is operating.

There was discussion regarding the current fencing and what portions of the property the fence enclosed.

Mr. Finks said it appears to me that these two, Mr. Myers and the applicant, are going to come together on some type of a compromise and what Planning Commission needs to decide is whether or not it is legal.

Mr. Fletcher said from what I have heard so far from the discussion, it is legal. We just need to decide whether or not you believe it is enough.

Mr. Chenault said my position is that I believe it is enough. It is a security fence. We have two competing interests that I feel we need to protect; the adjoining property owner and the applicant's interest. I do not have a problem with saying that the fence would provide security for both property owners. I do not even have an issue with the fence going around the entire property or not. There are many commercial properties in town that only fence in portions of their property, knowing well that anybody could get into that property and steal, but still you try to do the best that you can for security. If we need an interpretation from the Zoning Administrator, then what I am hearing is that it is legal, and I am willing to buy into that interpretation.

Mr. Da'Mes said what I have not heard is what type of fence. Are we specifying a solid fence?

There was agreement among the Commissioners that it would be a solid fence extending the length of the rear of the property.

Mrs. Banks said to clarify we are saying removal of the chain link fence along the back and construction of the solid fence to replace it, from the property corner to the existing building; all along the adjoining R-1, Single-Family Residential properties.

Mr. Da'Mes said we are talking about a solid fence, six feet in height, correct? Along with an evergreen buffer and the thirty-foot buffer?

Mr. Way said I was under the assumption that if we did the fence and evergreen buffer we were not going to condition the thirty-foot buffer for storage.

Mr. Colonna said for our business it would be very valuable to have that extra thirty foot space.

Mr. Chenault said as I understand it Planning Commission could require a fence taller than six feet and that being the case I would like to see an eight foot fence. That I believe it would do away with the need for any planting requirements.

Vice-Chair Fitzgerald said what about the issue of the thirty foot buffer.

Mr. Way said I was assuming that the noise and issues associated with it would be taken care of with the fence rather than the thirty foot buffer.

Mr. Colonna said I would like to say as well that I feel our business, Hajoca, will be an improvement for the neighbors to the rear in terms of the noise; we are not opened on the weekends and our hours are 7a.m. until 4p.m.

Mr. Chenault asked if deliveries were made at night.

Mr. Colonna replied no.

Mr. Finks said we are agreeing on an eight foot, solid fence with no thirty foot buffer.

Mrs. Banks clarified that there could be storage within the thirty foot setback, but the trailers would need to be moved to meet the required setback.

Mr. Colonna said if we can use the extra thirty feet, we will gladly move the trailers. The trailers are nice to have, but they are not essential to the business.

Mrs. Turner said the condition would be to erect and maintain the solid fence, is that correct?

Planning Commission concurred.

Mrs. Banks said to review; the condition would be for an eight foot, solid fence all along the property boundary abutting the R-1, Single Family Residential District. There is not a thirty foot setback requirement for any material storage; however, if you want to keep the structures they would need to be moved and staff can discuss that further with the applicant. There is a building permit requirement in order to construct a fence greater than six feet in height, so when you are ready to install the fence, you will need to pull permits.

Vice-Chair Fitzgerald said we are still in the middle of a public hearing, so if there is anyone else wishing to speak regarding this request you may do so at this time. Hearing none, she closed the public hearing and asked Planning Commission for further discussion or a motion.

Mr. Finks said we have discussed this completely and I move to recommend approval of the request with the condition of the eight foot solid fence across the back, remove the thirty foot storage setback, and include the other remaining conditions proposed by staff.

Mr. Chenault seconded the motion.

Vice-Chair Fitzgerald called for a voice vote on the motion.

All voted in favor of the motion to recommend approval of the special use permit with conditions (5-0).

Vice-Chair Fitzgerald said this request will move forward to City Council on July 10th with a favorable recommendation.

Zoning Ordinance Amendment – Portable Restroom Facility (10-3-24, 58.4, 85, 91, and 97)

Vice-Chair Fitzgerald read the agenda item and asked staff to review.

Mr. Fletcher said staff is proposing to amend the Zoning Ordinance to manage the use of portable restroom facilities to allow them only by special use permit in certain zoning districts. In doing so, staff has drafted a definition of "portable restroom facility" to be inserted into the Zoning Ordinance and is recommending the use be a special use permit within the MX-U, Mixed Use Planned Community District; B-1, Central Business District; B-2, General Business District; and M-1, General Industrial district.

This proposed amendment resulted from two, separate entities recently inquiring with the City about installing portable restroom facilities, on private property, as a permanent means for providing a bathroom for the individuals that work for their operations and for the customers that patronize their businesses. The types of businesses and operations that are currently interested in having these facilities are not required to provide restrooms for their employees or for customers to the businesses.

In discussing the proposals, staff has concluded there are no City Codes or other relevant codes that prohibit a property owner from locating a portable restroom facility on their property and using it indefinitely. At this time, it is not public information to who has discussed the intent to install these facilities, and thus it is appropriate to maintain confidentiality; however, staff can communicate that both locations are in the City's downtown area. Although staff has concerns about permanently locating these types of facilities anywhere in the City, arguably the downtown area causes the greatest concern due to its pedestrian nature and close-quarters environment.

Up to this time, the City has not regulated the use of portable restroom facilities as they are mainly used on a temporary basis at active construction sites and at festivals and other special events. The intended use as a permanent fixture, however, creates concern for issues such as security, general maintenance, health and sanitation matters, and concerns regarding site aesthetics.

When reading the proposed legislation, note that it would not prohibit active construction sites from using portable restroom facilities by-right nor would it require groups or individuals to obtain a special use permit to use them for festivals or special events so long as they are not located for more than three consecutive days.

Staff recommends the following statement be included in the Zoning Ordinance Section 10-3-24 to define "portable restroom facility:"

> A movable restroom facility including but not limited to single portable toilets, portable sinks, trailer-mounted toilets, and restroom trailers that may include showers and tubs.

Staff also recommends the following statement be included within Sections 10-3-58.4, 85, 91, and 97, which is the special use permit sections of MX-U, B-1, B-2, and M-1, respectively:

> Portable restroom facilities, other than at active construction sites, for a period of more than three (3) consecutive days.

Vice-Chair Fitzgerald asked if there were any questions for staff.

Mr. Chenault said I appreciate staff picking this up. I am familiar with one of the proposed projects downtown and I believe it is something we need to have within our ordinance. It would help protect downtown from just having portable restrooms wherever. It does not prohibit them; it still allows them by special use permit. I am in favor of this.

Mr. Way said I know we spoke about this earlier this week; the three days is the most appropriate length of time you determined, is that based on conversations with other communities or what.

Mr. Fletcher said it was basically internal discussions allowing it to go three days over a weekend for times when you may have weekend events, such as Court Days. The facility could be located on site on a Friday, be there Saturday and Sunday, and then picked up on Monday. This would not be such a huge issue. If there is some type of violation associated with this, it would be a violation that would have to be rectified within thirty days. But the three days was just internal conversation that we felt made the most sense.

Vice-Chair Fitzgerald said at this time I will open the public hearing and ask if there is anyone wishing to speak in favor or in opposition of this amendment. Hearing none, she closed the public hearing and asked Planning Commission for further discussion or a motion on the request.

Mr. Finks said I too think this is a good idea. We are a college town and I am sure if they were allowed by right downtown they would become a target for someone to knock over.

Mr. Da'Mes said I was thinking up to this point there has not been an issue with this type of facility. What accommodations are we making for those that need this type of facilities; are we just imposing on the local businesses.

Mrs. Turner said this amendment would not keep someone from having this type of facility; they would just need to obtain the permission first.

Vice-Chair Fitzgerald said do you have some sense as to why this is an issue. Is there something in particular that has made this become an issue?

Mr. Fletcher said there are two different types of uses that are proposing this for downtown. The uses that are proposing to use the portable bathroom facilities as permanent facilities were not required by building code, or by any code for that matter, to provide a permanent structure. The locations where these facilities were proposed were not some place that was desirable in the downtown because of its aesthetic appearance and unsightliness. We felt that if there was no other option other than this type of facility, then we could provide the special use permit opportunity that would give it the opportunity on a case-by-case basis with conditions if necessary. Also, if it is not within any of the listed zoning classifications it is illegal.

Mrs. Turner said on public property these facilities are permitted.

Mr. Chenault moved to recommend approval of the zoning ordinance amendment dealing with the portable restroom facilities.

Mr. Way seconded the motion.

Vice-Chair Fitzgerald called for a voice vote on the motion.

All voted in favor of the motion to recommend approval (4-0).

Mr. Da'Mes said he was abstaining from voting on this matter.

Vice-Chair Fitzgerald said this matter will move forward to Council on July 10th with a favorable recommendation.

Unfinished Business

None.

Public Input

None.

Report of secretary and committees

Mrs. Banks said during the month of May, inspectors were in the Northeast Neighborhood for proactive zoning where they found 29 violations consisting of inoperable vehicles and discarded materials. This month they will be visiting the Exit 243 area of the City.

Mr. Chenault said at City Council last night we enacted a provision to create two additional revitalization zones within the City. One is on South Main Street on the west side of South Main Street from Pleasant Hill Road to the City limits. The other is in the Valley Mall area from Interstate 81 bounded by Market Street and Reservoir Street, just behind the Valley Mall. Basically, what these zones allow are waiver of real estate tax for rehabilitation of over one million dollars on retail use properties for up to a period of five years. It also provides relief from the BPOL tax up to a period of a year. This is to try to encourage some recycling, redevelopment, and revitalization of some of the retail and commercial properties within these areas.

To give you an example we have heard that the people who bought the Valley Mall are thinking of putting a couple of million dollars of work into the mall. These types of incentives could encourage others to do the same as well. It is very similar to what we have in the downtown.

Other Matters

Mr. Fletcher said for next month we have a public utilities application, a preliminary plat, a street closing request and a zoning ordinance amendment.

Adjournment

The meeting was adjourned at 8:30 p.m.