

MINUTES OF HARRISONBURG PLANNING COMMISSION
February 13, 2013

The Harrisonburg Planning Commission held its regular meeting on Wednesday, February 13, 2013 at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Richard Baugh, Gil Colman, MuAwia Da'Mes, Judith Dilts, Deb Fitzgerald, Jefferson Heatwole, and Henry Way.

Members absent: None

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

Chair Fitzgerald called the meeting to order and determined there was a quorum with all members in attendance. She then asked if there were any corrections, comments or a motion regarding the minutes from the January 9, 2013 Planning Commission meeting.

Dr. Dilts moved to approve the minutes as presented from the January 9, 2013 regular Planning Commission meeting.

Mr. Colman seconded the motion.

All members voted in favor of approving the January 2013 minutes (7-0).

New Business

Street and Alley Closing – Kin Group, LLC (Collicello North Project)

Chair Fitzgerald read the request and asked staff to review.

Mr. Fletcher began by briefly reviewing the street and alley closing process for new members and for those who may be unfamiliar with the process. He also noted that the closure of a street and/or alley does not become effective until all interested parties have submitted their check to purchase the area, and have submitted a surveyed plat of the property as it is to be divided. Adjoining property owners have thirty days from the date of the City Council public hearing in which to submit their check and survey in order to acquire their requested portion of the right-of-way. (Please note staff was later advised by the City Attorney, and the adjoining property owners were notified, that any property owners interested in purchasing the area adjacent to their property will have ten (10) business days from the date of the hearing to notify the City Clerk of their interest.)

Mr. Fletcher continued saying the following land uses are adjacent to the undeveloped 6th Street right-of-way (descriptions in parentheses are land uses adjacent to the 1,000 sq. ft. portion of the undeveloped alley off of 5th Street):

Site: Undeveloped public street and alley right-of-ways adjacent to property zoned M-1 (Undeveloped alley right-of-way adjacent to property zoned R-2)

North: Business office fronting Virginia Avenue, zoned M-1, undeveloped lots fronting undeveloped Collicello Street, zoned M-1, and an automotive repair shop and a non-conforming single family home, zoned M-1 (Undeveloped extension of the subject alley that was previously approved for closure to be purchased by the applicant)

East: Undeveloped Jackson Street right-of-way, and across Edom Road, graveled lot, zoned M-1 (Single family home fronting Collicello Street, zoned R-2)

South: Vacant property and automotive repair shop, zoned M-1 and undeveloped portions of Collicello Street (Across 5th Street, single family homes, zoned R-2)

West: Across Virginia Avenue, undeveloped portion of 6th Street right-of-way, a duplex, zoned R-2, and a vacant parcel, zoned R-2 (Single family homes fronting Virginia Avenue, zoned R-2)

The applicant is requesting to close a total of 33,058 +/- square feet of multiple, undeveloped public right-of-ways, all of which are located on sheet 40 of the City's tax map records as described above. The applicant intends to acquire this area to then incorporate it among their adjoining properties to later submit a rezoning proposal for an R-7, Medium Density Mixed Residential Planned Community. If the City approves the request, all property owners adjacent to the requested areas for closure will have the opportunity to purchase up to 50 percent of the right-of-way width along the entire length adjoining their property.

The applicant is the same entity that, last year, requested to close a 3,000 square foot portion of the public alley off of 5th Street. That portion is adjacent to tax map parcels 40-H-3 through 16, which is the remaining portion of the public alley that connects 5th Street to undeveloped 6th Street. Staff and Planning Commission recommended approving that request and City Council approved the application in June 2012. To date, the applicant has not purchased that portion of the undeveloped alley.

There are no public water or sewer lines within the subject areas, the areas are not used for trash pick-up, and the City has no plans to improve the right-of-ways for public streets.

Harrisonburg Electric Commission (HEC) and Columbia Gas of Virginia (Columbia Gas) either have infrastructure located in parts of the right-of-way or utilize parts of the right-of-way to access nearby infrastructure. HEC has a guyed power pole at the intersection of Virginia Avenue and the undeveloped 6th Street right-of-way and a power pole near the undeveloped alley off of 5th Street. Columbia Gas has an eight inch and a six inch pipeline located in portions of the undeveloped 6th Street and in the undeveloped portion of Collicello Street. The two pipelines extend from Edom Road southward within the undeveloped Collicello Street right-of-way to the intersection with 6th Street, where the eight inch pipeline goes west in the undeveloped 6th Street, extending across Virginia Avenue, and the six inch line continues south within Collicello Street. The eight inch high pressure pipeline is one of the main feeds to the City and must maintain its service, along with the six inch pipeline. As noted by the letter submitted by the applicant, they are aware of this situation and are already communicating with Columbia Gas regarding this matter.

If the request is approved, it will be the responsibility of the applicant or other purchaser to correctly identify the locations of the infrastructure and to work with HEC and Columbia Gas to identify on a plat where access areas shall be established so appropriate easements can be retained before deeding the property to the new owner.

With easements as described, staff supports the application to close the public street and alley right-of-ways.

Chair Fitzgerald asked if there were any questions for staff.

Mr. Colman asked what is the purpose of purchasing that small section at the intersection of Collicello Street and 6th Street.

Mr. Fletcher said I think it has something to do with the development that the applicant has planned; but, I will let the applicant answer that question.

Chair Fitzgerald asked if there were any other questions for staff. Hearing none, she asked if the applicant would like to come forward and speak.

Dean Weaver said he is one of the operating partners of Kin Group, LLC, the applicants for this request. We would like to re-orient 6th Street a little further south for our plan of development. We hope to move the street up and connect it to Collicello Street. Collicello Street cannot move all the way through to Edom Road because of the elevation changes, so we are going to turn it ninety degrees and run it out to Virginia Avenue. This is a very challenging site.

What you see before you tonight does look rather fragmented; but, I want to assure you that we are running with Urban Principles. We want to tie these streets together and connect this community to the greater community. The streets are not going to be winding and turning; it will be a nice grid. Those are our intentions.

Mr. Da'Mes said I want to complement Dean on the plan that they have envisioned. I know this has been in the works for many years and I look forward to seeing more of this. I have spoken with Mr. Rasuol, an adjoining property owner, regarding the area at the retaining wall where he is considering purchasing some right-of-way. He may intend to purchase more than you have made note of in your letter.

Mr. Weaver said yes, we are trying to solve each other's problems in that area; he needs a little bit and I am willing to take the rest. The same thing at the entrance way; he has put a nice entrance in to his shop and we want to try and enable him to acquire that area while I am willing to take the rest.

I have also been informed by Lisa Shoemaker along the 6th Street right-of-way that she intends to purchase her portion of the right-of-way.

Mr. Da'Mes asked if there were any concerns with the connection of Edom Road to this. My assumption is that there would be an alleyway connecting this and not a public street.

Mr. Weaver said it would act basically how Mr. Rasuol is using it now to get to his business. That entry would only be for six to fifteen basic type homes.

Mr. Da'Mes asked what City Engineering thought of this because it is a somewhat odd connection at Edom Road.

Mr. Fletcher said staff has looked at concepts of the development; however there has not been an official submission of any plan of development for staff to make more formal comments on the design. The comments that we were able to make to Mr. Weaver have already been taken into consideration with his conceptual design.

Mr. Colman asked if the streets would be private or city owned streets.

Mr. Weaver replied that the lower road off of Edom Road would be private. The other two streets, Collicello and 6th Streets, we hope to have as public streets. It also solves some problems for property owners along Collicello Street who have not been able to develop because they cannot afford to build a public street. I have been in contact with everyone along Collicello Street, except for one owner, and they are all okay with this.

Mr. Fletcher said the development of this area, should it occur, also creates the opportunity for water and sewer to be looped in this area.

Mr. Weaver said we are looking very strongly at trying to create net-zero ready homes where we are building smaller homes, very tight standards, so that by the time you put your solar panels on, you can net-zero your energy use. We are working with Secure Futures, who also helped EMU with their solar projects.

Mr. Colman said on the water issue that was brought up, is there enough pressure at this location?

Mr. Weaver replied that he owns the residence at the corner of Collicello Street and 5th Street and can attest that the water pressure is quite adequate; however, I cannot speak directly as to what the numbers are.

Mrs. Turner said there will be a follow-up application with this for a rezoning and master plan or subdivision plat, so many of the concepts that Mr. Weaver has discussed tonight will be further explored at that time. At that point we will have much more information from his engineer regarding water and sewer and street intersections.

Chair Fitzgerald asked if there were any further questions. Hearing none, she asked if there was anyone else wishing to speak on this request. Hearing none, she asked for discussion or a motion for City Council.

Dr. Dilts moved to recommend approval of the street and alley closing for the Kin Group, LLC.

Mr. Da'Mes seconded the motion.

Chair Fitzgerald said we have a motion and a second, she then asked for a voice vote on the motion.

All voted in favor of the motion (7-0) to recommend approval of the street and alley closing.

Chair Fitzgerald said this will move forward to the City Council on March 12, 2013.

Rezoning – 126 and 128 West Bruce Street

Chair Fitzgerald read the request and asked staff to review.

Mrs. Banks said the Comprehensive Plan designates this area as Mixed Use Development. This designation includes both existing and proposed new mixed use areas. These areas are intended to combine residential and non-residential uses in planned neighborhoods where the different uses are finely mixed instead of separated. These areas are prime candidates for “live-work” and traditional neighborhood developments. Live-work developments combine residential and office/service uses allowing people to both live and work in the same area, which could be combined in the same building or on the same street. The gross residential density in areas outside downtown should not exceed an average of 15 units per acre, though all types of residential units are permitted: single family detached, single family attached and apartments. Apartments are permitted only if single family detached and/or attached units are also provided and together cover a greater percentage of the project site. Residential densities in downtown may be higher than an average of 15 units per acre, and commercial uses would be expected to have an intensity equivalent to a Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way.

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

Site: Vacant building, zoned M-1

North: Office building, zoned B-1

East: Commercial building, zoned B-1

South: Across West Bruce Street, office building and vacant building, zoned B-1, B-1C and M-1

West: Across C&W railroad tracks, parking lot, zoned M-1

This is a request to rezone a 12,865 +/- square foot parcel from M-1, General Industrial to B-1, Central Business District. The applicant recently purchased the subject property with the intent to repurpose the existing structure for office and/or retail use. In earlier years the property had been used similarly; however, the building has been vacant for more than 24 consecutive months and any non-conformancy it had has since been lost. The site is located downtown, just west of the intersection of West Bruce Street and South Liberty Street. The building on the site basically covers every square inch of the property; thus making it a prime candidate to utilize the B-1 flexibility of no setbacks and no parking requirements.

Usually, when a property owner requests to rezone to the Central Business District classification staff would have some concern regarding parking for the site; especially if the property would be relying completely on public parking. It is apparent this site has mainly relied on public parking and staff has no concerns with continuing this practice for this property. Businesses that rely on on-site parking to operate typically are not attracted to sites with the characteristics of the subject property. There is on-street parking available in front of the building, as well as a public parking deck and a public parking lot within a short walking distance of the site. Staff believes that future tenants will know that no on-site parking exists and therefore, the location will continue to self-regulate what uses operate from the site.

Since 2004 the Comprehensive Plan has designated this entire area along West Bruce Street, east of the rail road tracks, as Mixed Use Development Area which most closely resembles the characteristics of the B-1 zoning district. The proposed redevelopment at this location is very encouraging for the downtown area and helps to provide an economic and social strength for the City's core.

Staff recommends in favor of the requested rezoning to B-1, Central Business District.

Chair Fitzgerald asked if there were any questions for staff.

Mr. Baugh said I was remembering with some of the B-1 rezonings we have asked about proffers for potential residential use. With this rezoning we are opening up the door that the owners could carve up the building for residential uses; have we given any thought to that or the limitation of that?

Mrs. Banks said we did have some conversations regarding occupancy at this location and staff did not have concerns with this building and area being converted to residential.

Mr. Fletcher added the proffer you are referring to is a recommendation that we usually put forward when we have very prominent, older historical structures downtown where we do not want to lose that characteristic by converting it to multiple residential units. This particular structure did not really meet that description.

Mr. Colman asked if it was just one building.

Mrs. Banks replied yes.

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

Barry Kelley said he is the applicant for this request. I hope that Planning Commission supports this request. I think it is long overdue for this building and we will have to find new places for the vandalism. Hopefully, this will stimulate some activity along this area that will be good for the City and allow for some expansion of the downtown area.

Chair Fitzgerald asked if there were any questions for the applicant. Hearing none, she asked if there was anyone wishing to speak in favor of the request. Hearing none, she asked if there was anyone wishing to speak in opposition to the request. Hearing none, she closed the public hearing and asked Planning Commission for discussion or a motion.

Mr. Way said this makes a lot of sense to me in terms of location and what we are trying to see happen in this area of downtown. I make a motion to recommend approval.

Mr. Heatwole seconded the motion.

Chair Fitzgerald said the motion has been made and properly seconded. She then called for a voice vote on the motion.

All voted in favor of the motion (7-0) to recommend approval of the rezoning request to B-1.

Chair Fitzgerald said this item will move forward to City Council on March 12, 2013.

Ordinance Amendment – Business Garden Proposal

Chair Fitzgerald read the request and asked staff to review.

Mr. Fletcher said staff is proposing to modify the Zoning Ordinance Sections 10-3-24 and 10-3-84 and to add Article BB. Business Gardens, which would include multiple sections regulating horticulture-related businesses on residential property. Other than a minor addition to the proposed regulations, the amendments described herein are the same as those previewed by Planning Commission during their regular meeting in January.

The first change necessary within Section 10-3-24 Definitions includes adding and defining “business garden;” the proposed terminology for the horticulture-related business practice. In brief, the definition includes being classified as a home occupation and that only individuals residing on the property may operate the business. Among other defining details, the definition also contains a reference to a proposed new governing article for further regulations and requirements. Section 10-3-24 would be further modified by amending the existing “home occupation” definition by adding text that would allow business gardens to operate outside of a main or accessory building. As currently defined and regulated, all other home occupations must take place wholly within a main building or accessory building.

As mentioned above, the proposed business garden definition refers the reader to “see Article BB. Business Gardens for operating regulations.” The new article contains six new sections titled: Purpose, General Use Regulations and Requirements, Area and Yard Restrictions, Accessory Structures, Storage and Screening, and Abandonment.

The General Use Regulations and Requirements section mandates residents to apply for a home occupation permit prior to operating a business garden. This section also requires the residential character of all parcels involved to be maintained, that compost can only be used to support onsite operations and that onsite transactions, advertising signage, and apiculture and other animal

husbandry are prohibited. Furthermore, all business gardens must be maintained in a healthy growing condition, free of refuse, debris, overgrown weeds, and dead or spent plant materials. A statement is included clearly specifying that business gardens would be subject to the tall grass and weeds ordinance.

The Area and Yard Restrictions section specifies that individuals residing on the property may use as much as 50 percent of the total area of the parcel involved including the total area of all adjoining parcels under the same ownership. Cultivation in accessory structures such as hoopouses, green houses, cold frames, and related structures and areas used for exterior activities such as storage, compost and disposal areas must be included in the allowable area. On the other hand, activities on or within principal buildings including covered and uncovered porches and decks, enclosed accessory storage structures, upon rooftops, and vertical growth areas are exclusive of the allowable area. With regard to setback regulations, business garden operations must be setback at least five feet from all property lines unless the operations are enclosed with a wall or fence of at least three feet in height, which does not have to be opaque.

The proposed area and yard restrictions will affect properties differently based upon the characteristics of the parcels involved. For example, it would be possible to have business garden operations in every yard area of a property if such areas are fenced and the parcel is improved with a dwelling that occupies 50 percent or more of the lot area. Conversely, individuals residing on parcels improved with dwellings that consume much less than 50 percent of a parcel's lot area would still have what some consider a traditional yard. For consistency and to be able to equitably implement the 50 percent rule, once a property has an established business garden, staff would calculate all garden areas, whether for personal or business garden use, toward the parcel's allowable 50 percent business garden space.

The Accessory Structures section mandates that all accessory structures associated with business gardens would be governed by Section 10-3-114; the section of the Zoning Ordinance that provides the standard regulations for accessory buildings. Since last month, the Building Official has confirmed with Planning staff that building permits and sub-trade permits would not be required for work associated with business gardens because the State prohibits localities from requiring permits for farm buildings and structures. The Virginia Construction Code considers many activities within the definition of farm buildings and structures, and as proposed, buildings associated with business gardens would be included. With this in mind, staff has proposed an additional subsection within Accessory Structures that would simply require all structures to be securely affixed to the ground. Although there will be no inspection of these structures, it is hoped the regulation will be a reminder to those using these structures to secure them.

The Storage and Screening section specifies that equipment, materials, and compost and disposal areas shall be inside a principal or accessory building or screened from general public view and adjoining properties. For all intents and purposes, the screens referred to in this section shall be opaque and the areas shall not be generally seen by the public and shall not be seen from the ground level of adjacent properties.

The last section of the business garden regulations addresses abandonment of such areas and stipulates that if business gardens cease permanent operation, then the areas must be cleared, all structures removed, and the area re-vegetated in no less than 30 days or no less than 90 days if an extension is granted by the Zoning Administrator.

To be inclusive of all areas in the City where individuals can reside by-right, staff is also proposing to amend Section 10-3-84 Uses Permitted By-Right of the B-1, Central Business District by adding “home occupations” as a use permitted by-right. It may seem odd to add home occupations to a zoning district that allows many other businesses by-right, but because individuals can live in the B-1 district, and because business gardens would be defined as a home occupation, this amendment is necessary to allow those residents the ability to operate a business garden. If an individual or entity wanted to operate something like a business garden but wanted to be able to operate like other business in the B-1 district such as having on-site transactions, advertising signage, and employing individuals that do not reside on the parcel, then they would be desiring to operate something that is not currently defined or allowed by the Zoning Ordinance. As advised by Planning Commission in January, staff will soon be investigating allowing farming/horticulture-type businesses in the B-1, B-2, and M-1 zoning districts.

Staff supports approving the proposed amendments to Section 10-3-24 and 10-3-84 and creating Article BB. Business Gardens in the Zoning Ordinance.

Along with the Zoning Ordinance amendments, staff is also proposing to modify the City Code Title 16 Offenses, specifically Section 16-6-58 Weeds, etc. on Lots, commonly known as the tall grass and weeds ordinance. This modification would work in unison with the proposed business garden regulations to clarify that business gardens would be subject to the tall grass and weeds ordinance. Unlike amendments to the Zoning Ordinance, no public hearing is required by Planning Commission to amend Section 16-6-58. However, the Commission should offer a recommendation to City Council regarding this proposed modification.

Staff also supports the necessary changes to the tall grass and weeds ordinance Section 16-6-58 Weeds, etc. on Lots.

Chair Fitzgerald asked if there were any questions for staff.

Mr. Way said within Article BB, Section 10-3-190 (7), the compost information, does that capture what you mean when you say compost will be used only to support onsite operations. You do not want to say used and stored perhaps?

Mr. Fletcher said I believe it is implied. It really is to say if you are using it onsite, you are creating it onsite, and cannot be selling it or mass producing it. The compost is only to support that particular garden.

Mr. Way said we have a letter provided that because of an increase in mice, snakes, hawks, and a fox this individual is opposed to the business garden proposal. Have you seen any studies anywhere regarding the potential increase in this type of wildlife because of this type of gardening?

Mr. Fletcher replied no.

Mr. Colman said it seems to me that would be the case no matter who is gardening; the personal garden or the business garden.

Dr. Dilts said of course the larger garden would have more organisms. I assume that the City’s yard waste service would still be available for the business garden use.

Mr. Fletcher said yes, it is still a residence.

Mr. Da'Mes said for clarification on the tall grass and weed ordinance you are proposing an amendment. If Business Gardens were to go through and become more pervasive within the community, where would be the deciding factor in terms of tall grass and weeds violations?

Mr. Fletcher said if I understand your question correctly, that answer would be that our inspectors make their best judgments. We try not to be arbitrary or capricious on our determinations and do the best we can.

Mr. Da'Mes said if staff is advising a home business garden in terms of how to maintain it regarding tall grass and weeds; what is compliance for tall grass and weeds within a home business garden?

Mr. Fletcher said it would be the unkempt appearance of tall grass and weeds. Our inspectors would have to use their best judgment and say that is a garden or that is not a garden. If the garden is covered with overgrown weeds and grass; then yes we would consider it a violation. We would do the best we can.

Mr. Way said with the area restriction portion of the amendment you have fifty percent of the parcel or parcels involved; did staff consider varying that percentage for different zoning districts? I am thinking particularly of the UR district where the houses tend to take up more of the lot. Was this ever considered, or are we just trying to keep it simple.

Mr. Fletcher replied staff did not think about doing different proportions for different zoning classifications. It sounds like your question is would there be a larger impact on those types of lots because they are smaller lots with bigger homes; fifty percent could take up the entire yard. We did try to keep it simple and consistent across the board. It is not so much being proportionate to the zoning classification; but proportionate to the site characteristics.

Mr. Colman asked if the regulation allowed for rotation of the garden.

Mr. Fletcher said yes, we are not regulating the rotation of the garden area. As long as fifty percent of the lot area is not exceeded it is fine.

Dr. Dilts said I have a philosophical question. When does a garden become a farm? If I plant my entire fifty percent in all corn, is that a garden or a farm?

Mr. Fletcher said by our proposed definition it would be a business garden because it does not exceed fifty percent. This is very similar to the question asked last month about extending the percentage to seventy-five percent on larger lots. At that point you are at a much greater proportion of the property and it starts to edge into that farming agricultural type use. Fifty percent to staff is proportionate to the characteristics of the neighborhood. Neighborhoods generally do not all look alike and are not the same size. There are certain expectations of what that neighborhood is going to look like. Therefore, if you have fifty percent of a lot area on Smithland Road and fifty percent on Franklin Street, they are going to be two totally different operations. There are going to be expectations from the neighbors about how those business gardens are going to operate. Smithland Road already has non-conforming farming operations going on; whereas Franklin Street does not. This is an ordinance that is very self regulating, we are not out checking and inspecting for these; it is very much like most of our zoning regulations. If a complaint comes in and it appears you are not meeting the regulations for the business gardens, we will set up an appointment to meet with the individuals so that they can explain their business gardens operations.

I also want to clarify that if someone has a home occupation business garden that is what it is – a business garden. You cannot have a business garden and a separate personal garden; there is no way for us to be able to delineate what is the difference. You have one or the other, you do not have both.

Mrs. Turner said in response to the garden and farm question – we do not use the word farm in our zoning ordinance anywhere. Therefore, we do not need to have a distinction between when something is a business garden and when it is a farm. If someone wants to call their business garden a farm; that is their choice. Our choice of using the term business garden was really an arbitrary thing; we could have called it a residential lot farm. In our mind farm kind of denotes a bit more of an intense agricultural use; because many times it brings in the concept of having animals as well as plants.

Mr. Baugh said I want to make certain that I understand the existing draft correctly. If a homeowner is not selling the produce, they could convert all of their yard into a garden. The entire parcel could be covered in corn.

Mr. Fletcher said that is correct; and I am glad you pointed that out. I feel there is a misconception that we are trying to keep people from growing fruits and vegetables and having their own source of food; but that is not the case. This is about operating a business in a residential district.

Mr. Baugh agreed and said this amendment is about a commercial use within a residential area only.

Mr. Da'Mes said most of these situations are probably going to be for organic planting and fertilizer may not be much of an issue; but, did you run into any questions regarding a limit on fertilization, perhaps runoff and contamination of a neighbor's property because of fertilization.

Mr. Fletcher replied we are not experts in that area and I cannot recall specifically if any of the different ordinances we looked at even spoke to that issue. It is not something that we wanted to include within the zoning ordinance for the City.

Dr. Dilts said you have to remember many, many lawns are fertilized today; that is the same issue.

Mr. Colman asked about sediment runoff and is there a potential for sediment runoff.

Mrs. Turner said when we asked the City Engineer, who is also the Erosion and Sediment Control Administrator for the City, about runoff he replied that agricultural activities are currently exempt from the State Regulations regarding runoff. This could change. Staff discussed this and decided if you could have a large scale farming operation that is exempt; then we did not need to place any more stringent regulations on something smaller.

We will keep up with the State Regulations on this issue and if the regulation changes and could possibly affect this we will look in to it.

Dr. Dilts said when the plants are growing you should not have any problems because you have all of the roots to help hold the soil. It would only be when it is new or just planted. Also, it is not to their advantage to allow the soil to erode away.

Mr. Way said thank you to staff for putting together such a well balanced proposal between neighborhood interest and the desire to pursue this interest.

Chair Fitzgerald asked if there were any further questions for staff. Hearing none, she opened the public hearing and asked if there was anyone wishing to speak in favor of the amendment.

Alex Smith said he came this evening to support the business garden proposal as did many of the folks here tonight.

Sam Frere and Daniel Warren we would like to speak in support of this amendment. We would also like to thank the Planning staff for putting it together. Could you reiterate the last point made regarding how this amendment interacts with the B-1 and the Industrial zones.

Mr. Fletcher said the B-1, B-2, and M-1 zoning districts do not list home occupations as a permitted use. Because this proposal defines business gardens as being a home occupation, you could not legally operate a business garden from any of these districts. The proposal would add home occupations to the B-1 zoning district; therefore making it legal to have a business garden in the B-1 district.

Mr. Baugh said the whole idea of home occupations apply to residential zoning only. By adding it to B-1 we are covering all residential areas.

Mr. Fletcher agreed and said you cannot reside in a B-2 or M-1 zoning district. There are no such things as a home occupation outside of a residential district. This change will allow those folks residing in B-1 to apply for a business garden home occupation. Of course if we come back at a future date with a proposal that allows urban business garden type uses that are grander in scale where you could sell and advertise from the site, then you could do that in a B-1 zoning district as well.

Mr. Frere said my question was I just do not understand the relation of that to this amendment.

Mrs. Turner said to clarify if you live in an apartment, by right, in the downtown area which is the B-1 zoning district and you wanted to have a business garden you could not. You could have other type businesses because they are allowed; but a business garden is specifically defined as a home occupation and home occupations are not listed as a permitted use. This change would allow home occupations as a permitted use; therefore allowing business gardens in the B-1.

Mr. Warren said thank you that makes it clear. How are nurseries zoned in the City and how do they operate as businesses right now.

Mr. Fletcher said greenhouses and nurseries are allowed within the B-2 and the M-1 zoning districts. Often times you find nurseries that are associated with landscaping businesses located within the M-1 zoning district; but, you cannot live in the M-1 district.

Mr. Frere asked if there is a working definition for agricultural use, beyond the scope of this amendment.

Mr. Fletcher said there is not a definition for agriculture in the zoning regulations. If we need to define it at some time then we would do so.

Mr. Frere said would it not be clearer to define it now; because it is a restricted use within the City.

Mr. Fletcher said we would take that into consideration.

Mr. Warren said thank you again for all the hard work.

Mr. Way said does this amendment go somewhere towards what you were hoping to see happen.

Mr. Frere said it is as close as we need it to be.

Mr. Warren said it is broad enough; yet it has plenty of narrowing so that people would not get carried away with it. I do question the on-site compost; but we can live with it.

Chair Fitzgerald asked if anyone else would like to speak in favor of the amendment. Hearing none, she asked if there was anyone wishing to speak in opposition of the proposal.

Diane Gray said she is the person that wrote the letter with the concerns of the mice, the hawks, etc. Hearing you discuss this tonight, you say that it is going to be self regulating; that has been the issue in our neighborhood. We have already had commercial gardens in our neighborhood; in fact they were hiring people to work the garden. That finally got stopped. I do not have a study on this; but, I can tell you that I have seen the mice. I have seen snakes; I have lived there for 38 years and have never dealt with this number of snakes before. It is a constant reminder of the vegetation. The same thing with the hawks, they are attracted by the mice and whatever else is running around in these gardens. That does not strike me as a family neighborhood; it is a business.

These gentlemen at least checked into it first, because the other neighbors, quite frankly, did not. I appreciate this, but I have some real concerns about how it will be regulated. I do not want to be the person on the phone every week calling the City about weeds.

Mr. Way asked if there had been a noticeable increase in traffic as well.

Mrs. Gray said yes we did have an increase in traffic. We had people stopping in the neighborhood to purchase vegetation and to barter back and forth with the owners.

Dr. Dilts said are you talking about this particular operation (referring to Sam and Dan).

Mrs. Gray replied no, I am talking about a situation on the same street; but a different owner and property. The property I am referring to was probably using 95 percent of the property for garden. Much of it is still in vegetation, but the commercial part of the garden has stopped. All this has definitely increased the critters to the neighborhood and that is my concern.

Chair Fitzgerald asked if there was anyone else wishing to speak against the proposal.

Gareth Herman said he supports the gardens and asked everyone in support to please stand-up at this time. That is all, thank you very much.

Chair Fitzgerald asked if there was anyone else wanting to speak. Hearing none, she closed the public hearing and asked Planning Commission for a motion or discussion on the amendment.

Mr. Way said I move to recommend approval of this. I think this is a very good initiative that pushes the opportunities in Harrisonburg in a good direction, from an environmental standpoint and from a community standpoint. I think staff has balance neighborhood concerns with this action.

Dr. Dilts seconded the motion.

Chair Fitzgerald said I have had the experience over the last couple of weeks as this has been more publicized, of hearing some negative stuff about this; people who are not in favor of this amendment. It does concern me a little bit that the press that it has received has generally been very favorable; but I suspect that there are folks out there that this is flying completely below their radar. When it moves forward to City Council you may hear more people speaking out in opposition than we have at Planning Commission. I have received some emails and had some conversations about this, and to me the issues against it are critters, as Ms. Gray put it. There are questions about this increasing traffic, logistics, and a value aesthetic judgment that is underlying this whole issues; people being concerned with what they had expected their neighborhood to look like. When you

buy a property and you move there you think a neighborhood looks like this “thing”. This “thing” for many people does not include corn in your front yard. I just want to put out there as part of this discussion that there are folks out there who are not in favor of this at all and you may think that the value judgment that lawns are fine is something you disagree with; but, there are people out there that really bought into the idea of a neighborhood looking a particular way. I think as this amendment moves forward through the process we will hear more from those folks.

Dr. Dilts said I agree with you. I have not actually heard from anyone regarding the amendment; but, some may feel this effects property values when you plant right up to the property line with nothing more than a picket fence between. What we are really asking folks to do is rethink what it means to have a residential community; because, residential says one thing to some and something else to others. It makes me think of the change in what a lawn meant when I was growing up to what a lawn means today. It used to be clover and dandelions because that is what grew in your yard. Today it is grass, and it is usually a monoculture, and that is what everyone thinks is beautiful; it is manicured and controlled. What we are being asked to do is to re-imagine residential and we may not be at a place where we can do so.

Mr. Colman said my concern is more with failed gardens. A garden that was begun and now the owners cannot keep up with it or just do not care.

Mr. Baugh said as the one person who gets to vote on this issue twice, I think for now I am in support of this; however, I think some valid points have been raised regarding public input. This is an evolving area and this is true of every ordinance that you ever pass. While we put a lot of effort, study, and input into this and do the best we can to get it right, we are not carving out anything in stone here. As this moves forward I certainly intend to be open, and I would hope everyone else on Council would be, that looking six or eighteen months down the road and feel this needs to evolve further, then we go back and revisit it. I continue to be persuaded by the fact that under our existing regulations people can do this anyway. Maybe that is not what people think the existing rules are; but the fact is right now, unless you live in a neighborhood with restrictive covenants that would restrict such, your neighbors can already plant all the vegetables they want. This is solely the issue of selling the vegetables you grow.

Chair Fitzgerald said I am not so certain I agree. As an economist, we recognize that incentives matter and the incentive being able to earn from your residential property is very different than growing fruits, vegetables, flowers for your own consumption. Money changes everything.

At this time Chair Fitzgerald asked if there was any further discussion. Hearing none, she called for a roll call vote on the motion to recommend approval of the ordinance amendment.

Commissioner Way – yes.

Commissioner Da’Mes – yes.

Commissioner Dilts – yes.

Commissioner Jefferson – yes.

Commissioner Colman – yes.

Commissioner Baugh – yes.

Chair Fitzgerald – yes.

Chair Fitzgerald said the motion to recommend approval passed with a 7-0 vote and will move forward to City Council on March 12, 2013.

Unfinished Business

None.

Public Input

Kyle McCory said I have a question about how gardens are currently allowed; is there anything in the current regulations that could prevent someone from growing produce and selling it off site?

Mr. Baugh said that right now it is technically not allowed.

Mr. McCory asked is there a way that the City actually enforces that.

Mr. Fletcher replied we are not going to know unless someone makes a complaint to the City. What got this whole business issue started was that Mr. Frere and Mr. Warren tried to do the right thing by obtaining a business license and a home occupation permit. Because their business did not meet the definition of a home occupation, we could not give them a home occupation permit and they could not obtain a business license.

Chair Fitzgerald asked if there was any one else with public input.

Mr. Poti Giannakouros, 98 Emery Street, I think that the proposal that you have just forwarded is an excellent opportunity for learning within the community and for members of the community getting to know and understand different ways of life. A number of things have come up that I think are great opportunities for us to move forward on the basis of sound research, rather than just “going with our gut.” In particular I would say property values, as an economist I will warn you it is a very complicated issue and it is not automatic that property values will go down because somebody has a garden or is doing something on the cutting edge within their yard. It may actually cause your property values to go up. Property value is a loaded term and I hope we do some research on that as a community.

Second, with regard to “critters”, if somebody was raising chickens or livestock I could imagine that mice would be very interested in sharing their feed; but this proposal has taken great care to limit that type of activity. I think it would be good to look at some of the ecological research when we think about critters and how we want to relate with them.

Overall I think this is an excellent opportunity for us to learn to get to know each other and to learn some of the science behind some of the things we are discussing.

Chair Fitzgerald asked if there was anyone else wanting to speak. Hearing none, she asked for a report from the secretary.

Report of secretary and committees

Mrs. Banks said Zoning Inspectors visited the Spotswood Acres area of the City where eight violations were found. These violations consisted of inoperable vehicles and discarded materials. Next month our inspectors will be in the Jefferson Street area.

Mr. Baugh said at City Council last night everything was approved as recommended. I would like to bring up the conversation of large structures. You may be familiar with the media attention

regarding a large structure that has been constructed on Central Avenue. A three car garage, detached structure has been constructed; it is huge and as close to the property line as allowed. It is totally permitted by the regulations; the owners did everything they needed to do in order to construct this garage. It is my understanding that they have not just communicated with staff; but, they have thoroughly communicated with staff to make sure that they remained within the regulations regarding the structure.

It has been interesting to see how many people have contacted me regarding this. It is obvious that their being able to do this runs seriously counter to the neighbors expectations of what would be allowed within a neighborhood. This did come up and Council asked if I would bring this back for discussion at the Planning Commission level. I know that we have got a number of other issues on our to-do list at this time; but perhaps we could add this on.

I believe the size limitation on accessory structures currently is just based on footprint.

Mrs. Turner said the only real limitation on size is that it cannot take up more than 30% of your required rear yards.

Mr. Baugh said one of the things that has been suggested is whether the accessory structure could be limited to something more commensurate with the single-family homes in the neighborhood. Of course in this particular case they had a second lot where the structure was built. That is another issue that makes it an atypical situation. They could have built a house on the lot, presumably larger than the garage; but, they could not have built it as close to the property line. So there are some issues that maybe could be discussed.

Chair Fitzgerald asked staff what was at the top of the Planning Commissions to-do list. Is it telecommunications?

Mr. Fletcher replied it is a mix of items. There is telecommunications and the agricultural discussion we had last month. These are items we are able to focus on when we are not doing the monthly agenda items. Telecommunications does not necessarily have precedence over other items; it would be up to Planning Commission as to what we looked into next. Are there any suggestions?

Mr. Way asked if the accessory structure issue was more pressing than telecommunications.

Mr. Da'Mes suggested it may take less time to visit the accessory structure issue first, rather than telecommunications.

Mr. Baugh said it is really not as easy as perceived and I do not want for us to just put a band-aid over the issue. As I have discussed with Mrs. Turner, the City does not put a whole lot of restrictions on property owners and what they can do with their yards regarding how they park their vehicles. Someone could pave or gravel their entire front and side yard. That type of behavior is likely to elicit the same type of opposition from the neighborhood. So if we are going to go down the path of accessory structures; we need to be prepared to think through all the different angles.

Mrs. Turner said sometimes people may be building a large accessory building to house their boat, RV, or larger vehicles that otherwise may have been parked out in open view. Does the neighborhood prefer to have those things parked on the lot and in open view or do they prefer to have a large accessory structure? We get complaints about people parking their RV and campers on their lot.

Mr. Baugh said I am a neighbor that would probably prefer these things be in an accessory building. If this becomes anything other than a garage for personal vehicles, there is the potential that we could regulate it.

Mr. Colman said the question arises if a different type of screening or a buffer can be required.

Chair Fitzgerald asked Planning Commission as to what they would like to work on next.

Mr. Baugh said I happen to think that telecommunications is an important issue. I have actually been one of the advocates for saying we ought to look at this and see if we can come up with a better way of factoring in relevant things on telecommunications. I cannot say that everyone on Council feels the same.

Chair Fitzgerald said telecommunications does not generate a lot of complaints; it is not something that people notice in their neighborhoods.

Mr. Fletcher said probably what would come to Planning Commission regarding telecommunications would be more opportunities for the telecommunications businesses; not more regulations. There would be regulations regarding how they look, or where they could be, or how tall, etc.; but right now we only allow them in B-1, B-2, and M-1 zoning districts. Perhaps something by special use permit in residential districts would be appropriate.

Dr. Dilts said part of this conversation has to be how rapidly telecommunications is going to change. We may be talking about telecommunications poles now, and talking about little cylinders that mount on a rooftop in the future. I suggest telecommunications be looked at next.

There was a general consensus that Planning Commission would look into telecommunications next.

Other Matters

Mr. Fletcher said he apologizes for not getting the annual reports in the packets; however, they are in front of you now. The Planning Commission Annual Report is everything that you have done in 2012. It includes street and alley closings, rezonings, special use permits, preliminary plats, everything you have reviewed. I would hope that it is possible for us to take a quick look at this and make a recommendation on it in order to forward it on to City Council. If you do take the time after tonight to look over this and see some inaccuracy, please contact staff. Essentially, this is the recordings of our actions. The report has been completed for weeks and we simply forgot to include it within your packets.

The other annual report does not move forward to City Council, it is what staff has been doing; land use items that you do not necessarily hear about. It includes minor subdivision, final plats, violations, proactive zoning enforcement. Again, this report does not go on to Council.

Chair Fitzgerald asked if there was a motion regarding the Planning Commission Annual Report.

Dr. Dilts moved to forward the Planning Commission Annual Report on to the City Council.

Mr. Way seconded the motion.

Chair Fitzgerald called for a voice vote on the motion.

All voted in favor (7-0) of forwarding the 2012 Planning Commission Annual Report on to City Council.

Mr. Fletcher reminded the Commission about the joint public hearing with City Council on March 12th at 7 p.m. We will be reviewing the rezoning request for Cassco Ice property and an ordinance amendment which will effect this development; but is something staff has had on their radar for some time. It deals with small scale manufacturing in the B-1 and B-2 districts.

Adjournment

The meeting was adjourned at 9:00 p.m.

Chair Deb Fitzgerald

Secretary, Alison Banks