

MINUTES OF HARRISONBURG PLANNING COMMISSION
November 13, 2013

The Harrisonburg Planning Commission held its regular meeting on Wednesday, November 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.

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 September 11, 2013 Planning Commission meeting.

Mr. Heatwole moved to approve the minutes as presented from the September 11, 2013 regular Planning Commission meeting.

Dr. Dilts seconded the motion.

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

New Business

Special Use Permit-118 Broad Street, Occupancy other Than Permitted by Right 10-3-40 (7)

Chair Fitzgerald read the request and asked staff to review.

Mrs. Turner said the Comprehensive Plan designates this area as Neighborhood Residential. This designation states that this type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. Infill development and redevelopment must be designed so as to be compatible with the existing character of the neighborhood. These are older neighborhoods, which can be characterized by large housing units on small lots.

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

Site: Single-family dwelling, zoned R-2

North: Across public alleyway, single-family dwelling, zoned R-2

East: Single-family dwellings, zoned R-2

South: Single-family dwelling and vacant lot, zoned R-2

West: Across Broad Street, vacant parcels, zoned M-1 and mixed use building of apartments and professional offices, zoned B-1

The subject property came to the attention of staff after a complaint was filed by a neighbor stating possibly more persons than permitted were occupying the house. Upon investigation, staff discovered there were seven unrelated individuals living in the dwelling. The property owners (applicants) received a certified notice of violation and were given thirty days in which to correct the violation. Three of the tenants moved within the first week. While continuing to work towards compliance the owners decided to apply for a special use permit (SUP) to allow four persons to occupy the house. The owners also submitted an appeal of the thirty day time period for

compliance to the Board of Zoning Appeals (BZA), hoping for a time extension in order to allow the SUP to move through the process, while still allowing the four remaining tenants to stay in the house.

On November 4th, the BZA granted the applicants an extension until January 6, 2014 to bring the property into compliance with the regulations of the R-2 zoning district. The applicants have informed staff that a tenant is moving out of the dwelling during the last week of November and another will be leaving at the beginning of the year; leaving just two tenants and complying with occupancy regulations.

The applicant is requesting a special use permit per Section 10-3-40 (7) of the Zoning Ordinance to allow occupancy other than permitted by right within the R-2, Residential District. The property is located on the eastern side of Broad Street, just north of the intersection with East Elizabeth Street, and is improved with a single-family dwelling. If approved the applicant desires to provide rental housing for four tenants. As required by the SUP, one off street parking space per tenant must be provided. Off street parking for the site can be accommodated in the rear and is accessible from Broad Street or an abutting alleyway to the north.

Broad Street serves as a dividing line between two Comprehensive Land Use designations in this neighborhood; Mixed Use Development Areas to the west and Neighborhood Residential to the east. The subject property lies within the Neighborhood Residential designation, which means this type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. Across Broad Street from the site is a mixed use building of apartments and offices and single family dwellings; one block to the north are more apartment buildings and several single family homes. Given the mixed residential nature in this vicinity, one could argue a multi-tenanted dwelling is compatible with the existing character of the street. Staff, however, does not promote the furthering of this use across Broad Street and into the neighborhood, believing the street is the dividing line as indicated and demonstrated in the Comprehensive Plan.

The subject property is situated along a local street within the northeast neighborhood, with single family homes to the sides and rear of the lot. Parking for most of the adjoining parcels is on the public street; a drastic difference from the most recently approved occupancy SUP along West Market Street, which is an arterial street.

As shown on the submitted survey, the property is 6,360 square feet, which is only large enough to allow for a single family detached dwelling. A duplex structure would allow for occupancy by four persons (two in each unit); however a duplex dwelling requires 11,000 square feet of lot area.

The neighborhood to the east of Broad Street is primarily made up of single family dwellings and a few duplexes. Staff contends there is nothing special about this property to distinguish it from the others in the general area. Increasing occupancy increases traffic, causes parking concerns, more noise, and less accountability than the households that operate as single family homes in this neighborhood.

The special use is in contrast to the Comprehensive Plan designation of Neighborhood Residential and if approved would set the precedent for other rental properties within the neighborhood to want to exceed the by-right occupancy. Staff recommends denial of the request.

If there is a desire to approve the special use permit, staff recommends the following conditions:

1. The parking spaces shall be screened from the adjacent single family properties to the south and east utilizing the mechanisms as specified in the table within Section 10-3-48.6(b) of the Zoning Ordinance.
2. If, in the opinion of Planning Commission or City Council, the implementation of this special use permit becomes a nuisance, the permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Chair Fitzgerald asked if there were any questions for staff. Hearing none, she asked the applicant to address the Commission.

Alice Long, owner of the property, said her address is 7633 Trail Run Road, Falls Church, Virginia. She presented pictures of the property and neighborhood. Ms. Long said she is concerned the area will continue to deteriorate and emphasized that there are multi-family uses nearby. She said that what makes this property special is that there is ample room for four people in the house and room for parking on the property. She said the tenants share the costs of utilities and that the cost of utilities makes it hard for two people or a family to afford to live there. The current tenants are serious students and the number is now four. As of Thanksgiving, the number will be three and in January only two.

Mr. Colman asked if there had been any complaints about the tenants or the conditions of the property. Mrs. Turner answered no, just the concern about the number of tenants being in violation. Chair Fitzgerald asked if other neighbors have complained and Mrs. Turner said no, just the original complaint.

Mr. Da'Mes asked Ms. Long to explain access to off street parking. Ms. Long said that access to any parking in the rear yard would be from either the carport on her property or by the alley. He asked if she'd have any issues with screening as called for in the staff report. She said no, but that she had just removed some trees and now wishes if that happens she would have left them. Mr. Da'Mes asked Mrs. Turner what the committee considering alleys recommended about this one. Mrs. Turner said she wasn't sure as this alley had not been requested to be closed she had not checked. She reminded that the alley does not continue for the entire distance of the block.

Mr. Colman asked if there had been other special use permits for occupancy in this area. Mrs. Turner said no there were not. Mrs. Long then questioned what about the apartments. Both Mrs. Turner and Mr. Baugh explained that the apartments did not have special use permits but are considered nonconforming uses, meaning they had formerly been permitted by zoning and now were not. As such, they are permitted to continue to be used this way at the occupancy that was previously permitted provided they maintained that use.

Chair Fitzgerald opened the Public Hearing and asked if there were any comments from the public.

Ms. Long addressed the Commission again, asking who will make the decision about this. Chair Fitzgerald explained that the Planning Commission will make a recommendation to City Council who will make the decision. Ms. Long said this is a neighborhood in decline, and to make it hard to rent property will make it decline more. The house next door to her house is home to squatters. She takes pride in her property and made it comfortable. She bought the property because of her daughters being in college and she had no clue of the limit on the number of tenants. She hopes Planning Commission will consider all of this.

Chair Fitzgerald asked if there were any others to speak. Hearing none, she closed the public hearing and asked the Commission for discussion.

Dr. Dilts said she is torn by this request. She knows what conditions Ms. Long is talking about (at this point from the audience, Ms. Long asked whether she was talking about Elizabeth Street or Broad Street and Dr. Dilts said the surrounding area). Dr. Dilts said if it becomes hard to rent then it is hard to get money for upkeep which could mean the area might disintegrate further, but that she feels a strong obligation to the Comprehensive Plan, with Broad Street as the break between use groups. She is inclined to stay with the Plan.

Mr. Colman said he feels the same way as Dr. Dilts about the ability to maintain houses. It seems the special use permit would allow it to be pulled back if they later realized it was the wrong decision, so he is inclined to approve it.

Mrs. Long returned to the podium and said her family has had six to seven cars at one time, so you can have the same problems with a family.

Mr. Way stated he is not inclined to support the request on the basis of precedent setting for the entire northeast neighborhood.

Mr. Baugh said he believes the Comprehensive Plan is clear and that Planning Commission has taken a generally dim view of increasing residential densities where they had not planned to do so, especially in areas recommended as neighborhood residential. If there are things in this application that make points relative to the whole neighborhood, there may be a big picture issue relative to the Comprehensive Plan that the Commission should address. The pictures shown to the Commission were some of the worst in the area, not the best, but the area is a mixed bag. Ms. Long stated at this time that they were pictures like the entire area, with Mr. Baugh assuring that he was familiar with the area himself. Mr. Baugh said he feels it is best to stay with the Comprehensive Plan.

Ms. Long returned to the podium and said not many houses in the area have enough space to park on their lots, so not many could do this.

Mr. Colman said he understands the bigger picture and that with so many nonconforming uses; maybe it needs to be expanded to allow different uses.

Mr. Baugh said as he's been involved in the last decade in these decisions, he thinks it tended to be historical practice that when an area was a mixed bag the governing bodies tended to say who cares, but that he thinks we have done a good job of moving away from that. This type of change doesn't happen overnight. He thinks holding the line and sticking with the Plan is a better alternative.

Dr. Dilts made a motion to recommend denial of the special use permit for 118 Broad Street.

Mr. Way seconded the motion.

Chair Fitzgerald asked if there was any further discussion. Hearing none, she asked for a voice vote on the motion.

All voted in favor of the motion to recommend denial of the special use permit for 118 Broad Street (7-0).

Chair Fitzgerald said this item will move forward to City Council on December 10, 2013.

Alley Closing-Adjacent to 18-L-1, 2 &3 and 18-V-7 (Catholic Campus Ministry)

Chair Fitzgerald read the request and asked staff to review.

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

- Site: An approximate 20-foot wide by 183-foot in length public alley right-of-way adjacent to 18-L-1, 2, & 3 and 18-V-7
- North: Public alley right-of-way incorporated into parking lot area for James Madison University, zoned B-2
- East: Single-family dwelling, zoned R-1
- South: Across Maplehurst Avenue, single-family dwellings, zoned R-1
- West: Catholic Campus Ministry facilities, zoned R-1 and James Madison University facilities building, zoned B-2

The applicant is requesting to close a 3,647 +/- square foot alley that is located off of and perpendicular to Maplehurst Avenue. The approximately 20-foot wide alley travels 183-feet north from its intersection with Maplehurst Avenue, before its terminus at an abutting alleyway which is currently used as parking for James Madison University (JMU). Catholic Campus Ministry (CCM) owns three of the four properties directly adjacent to the area requested for closure. The remaining parcel is owned by JMU and they have determined they are not interested in purchasing any portion of this alley.

The alleyway is paved and at present is used by the applicant as access into parking for their properties and is not used for City services such as trash pick-up or emergency access. Harrisonburg Electric Commission (HEC) has an overhead power line and other utilities running through the alley and requests the area have the appropriate easements in place before selling the public right-of-way.

As noted by letter submitted with the application, CCM hopes to purchase the alley with the optimism of creating more off street parking for the facility. Staff discussed with the applicant's representative that any new parking spaces for the site, or a redesign to create a new parking lot layout, would require the project to meet the parking lot landscaping requirements per Section 10-3-30.1 of the Zoning Ordinance. Staff noted there may not be enough area to create new parking and meet landscaping requirements; however, the applicant further noted the alley right-of-way would be needed at a future date should the applicants decide to enlarge the existing facility, or build a new one. Any enlargement of the facility would be required to comply with the City's off street parking requirements.

The City does not anticipate any negative consequences from vacating the alleyway. If approved the applicant would need to submit a revised plat showing how the alley would be divided among the adjoining properties. Staff recommends closing the alley with the condition of reserving an easement for HEC.

Chair Fitzgerald asked if there were any questions for staff. A Commissioner asked which properties the Catholic Campus Ministries owns. Mrs. Turner reviewed the three adjacent properties owned by the applicant, Catholic Campus Ministries, and the other adjacent parcel owned by James Madison University which also owns property at the end of the alley and utilizes an adjoining alley as part of its parking lot.

Chair Fitzgerald explained that although this is not required to be a public hearing that if the applicant or others had comments they could address the Commission.

Hearing no further comments, she asked if there was further discussion or a motion.

Mr. Heatwole made a motion to recommend approval of the request to close the alley adjacent to Catholic Campus Ministry and perpendicular to Maplehurst Avenue.

Dr. Dilts seconded the motion.

Chair Fitzgerald asked if there was any further discussion. Hearing none she asked for a voice vote on the motion.

All voted in favor of the motion to close the alley adjacent to Catholic Campus Ministry and perpendicular to Maplehurst Avenue (7-0).

Chair Fitzgerald said this request will also move forward to City Council on December 10, 2013.

Preliminary Plat-Collicello North R-7 (Kin Group, LLC)

Chair Fitzgerald read the request and asked staff to review.

Mrs. Turner said as the Commission is very familiar with this site, and the request is for a subdivision as the zoning request was already approved, she is not going to show slides of the surrounding area. She said Kin Group, LLC is applying to preliminarily subdivide their 3.06-acre, R-7 master planned property known as Collicello North. The property is located at the top of the hill along undeveloped portions of Collicello Street bounded by 5th Street, Virginia Avenue, undeveloped 6th Street, and Edom Road. The applicant is requesting to preliminarily plat the entire subdivision, which includes creating 36 parcels and the dedication of the planned extension of the Collicello Street public street right-of-way (ROW). As was anticipated during the rezoning process, the applicant is requesting two Subdivision Ordinance variances per Sections 10-2-41 (a) and 10-2-42 (c).

City Council approved the R-7, Medium Density Mixed Residential Planned Community District master plan in July of this year. In brief, Collicello North planned 15 detached units and 20 attached units (one duplex structure and three sets of six townhouse unit buildings) while allowing for the ability to provide for more residential units, including multi-family units, if the final design and density allows. The zoning of Collicello North allows the maximum 10 percent non-residential uses permitted by the district. The intent behind Collicello North's conceptually approved street layout is to utilize narrow street widths combined with streetscape planting to create traffic calming measures for a safer environment for automobiles, pedestrians, and bicyclists. As required by the district, Collicello North has at least 15 percent open space.

One noted difference when comparing the master plan to the plat is that one less attached unit is being platted. The developer decided to increase the number of bedrooms within the Type D townhouse units that front the proposed Chloe Lane (private street), which increased the parking requirement and thus reduced the number of units that could be built in this section of the development as there is not enough space to provide the minimum required parking spaces for the six originally planned units.

With regard to the requested variances, Section 10-2-42 (c) requires all parcels to have public street frontage. Only two lots of Collicello North will have public street frontage. The two commonly owned parcels will have the required frontage, and the other parcels abut this common area. As staff supported this concept for the master plan, we are supporting the requested variance to allow 34 lots to not have public street frontage. Many of the units within Collicello North will have frontage along private streets/parking lots. These areas will not be maintained by the City, and therefore, will

not receive City trash services or receive public snow removal services. Public school bus services would be provided as is determined necessary.

The other requested variance is from Section 10-2-41 (a), which requires streets to conform to the design standards and specifications that are outlined in the Design and Construction Standards Manual (DCSM). Section 10-2-41 (a) of the Subdivision Ordinance states:

Proposed streets shall conform to the standards and specifications outlined in the Design and Construction Standards Manual except that variances to the standards for streets, alleys, blocks, easements, sidewalks, and all such related features may be approved on a case-by-case basis by the City Council when:

- (1) the proposed alternative would better achieve the walkable, pedestrian and bicycle-oriented environment the City desires;
- (2) the particular conditions of the site and surrounding street network would allow the proposed alternative without causing undue inefficiencies for service vehicles, nor an excessive reduction in pedestrian safety due to pedestrian-vehicle movement conflicts; and
- (3) the proposed alternative would better balance the needs of pedestrians and vehicles, and better achieve the goals of the comprehensive plan.

Included within the packet is a statement from the applicant addressing why he believes the proposed development meets the three criterion for variance approval as outlined above.

The proposed design of the street does not conform to several sections of the DCSM. The deviations to the DCSM are described below.

- There is varying public street ROW for Collicello Street that is less than the required 50 feet minimum per DCSM 3.1.4 and Appendix F. The proposed ROW widths range from 25 to 39 feet.
- Pavement width along many sections of the street is not to the standard 26 or 30 foot width minimum per DCSM 3.6.4 and Appendix F. The proposed pavement width is a minimum of 24 feet.
- DCSM 3.6.4 and Appendix F require public sidewalks and curb to be within the public ROW, however several portions of the proposed public sidewalk and curb are outside of the proposed ROW. A public access easement would be provided for all of these areas.
- The centerline radius for the bend in Collicello Street does not meet the minimum standard per DCSM 3.6.3. The proposed centerline radius is 37 feet.
- Consecutive centerline curves without separating tangent sections are proposed to the east of Lot 8 and do not meet the standards per DCSM 3.6.2.1. The proposed length is 17.25 feet.
- The proposed curb radii at the intersection of 5th Street and Collicello Street are less than the 25-foot standard per DCSM 3.6.1.4. The proposed curb radii are 20 feet. This is a question staff will resolve with the engineer before it proceeds to Council as the plat shows the 25 foot standard was met, although shows closer to 23 foot, so we will have to resolve if the variance to 20 foot is needed.

- The sight distance along the vertical curve at station 15+75 as shown on the street cross section sheet of the preliminary plat is less than the required K-value of 20 per DCSM 3.6.2.4 and 3.6.3. The proposed vertical curve K value for this section of the street is 11.1, which is the AASHTO (American Association of State Highway and Transportation Officials) minimum standard.
- The landing design at the intersection of 5th Street and Collicello Street does not meet the standard per DCSM 3.6.2.3. The proposed Collicello Street shall serve as the landing at the 5th Street intersection.

Aside from the two requested Subdivision Ordinance variances, the submitted preliminary plat conforms to the Subdivision Ordinance and to the approved master plan.

Staff supports the preliminary plat with the requested variances.

Chair Fitzgerald asked if there were questions for staff.

Mr. Da'Mes asked how the length of the private streets compared to the maximum length for dead end public streets. Mr. Colman and Mrs. Turner said they thought the City standard was 800 to 1,000 feet long and Mr. Dean Weaver, applicant, said from the audience that Sophie Drive was approximately 400 feet long.

There being no further questions, Chair Fitzgerald asked the applicant if he wanted to speak.

Mr. Dean Weaver, applicant, said he feels that this plan is exactly what was intended with the new R-7 zoning and although there have been many steps to go through, he is so glad to have made it to this point.

Chair Fitzgerald asked for further discussion. She said that we have reviewed this many times before so it is what would have been expected.

Mr. Colman made a motion to recommend approval of the preliminary subdivision plat as recommended by the staff report.

Mr. Heatwole seconded the motion.

There being no further discussion, Chair Fitzgerald asked for a voice vote on the motion.

All voted in favor of the motion to recommend approval of the request for preliminary subdivision plat approval for Collicello North, with the requested variances (7-0).

Chair Fitzgerald said this request will move forward to City Council on December 10, 2013.

Zoning Ordinance Amendments-Screening requirements, refuse facility location regulations and other minor amendment, Sections 10-3-36, 42, 48.6, 54, 55.6, 56.5, 57.5, 81, 87, 91, 93, 96, 99, 114, 115, 182 and 193.

Chair Fitzgerald read the request and asked staff to review.

Mrs. Turner said staff is proposing amendments to several sections of the Zoning Ordinance to: clearly stipulate setback and other location requirements for refuse facilities (dumpsters), uniformly specify regulations when required to screen particular uses, add accessory buildings as a permitted use in the B-1, Central Business District, and to correct language within Section 10-3-114 (b). In all, 20 sections are proposed for modification.

For many years staff has interpreted dumpsters and other refuse structures such as compactors to be accessory buildings. With this interpretation we have applied the rules set forth in Section 10-3-114 Accessory Buildings to such uses, where depending upon the zoning district in which they are located, the location and setback requirements vary. The Zoning Ordinance does not state whether dumpsters are considered accessory structures but requires them, in multiple zoning districts and sections, to be within a “designated point of collection with appropriate facilities,” and further that they shall be “screened as may be required upon approval of the site plan.” Recently a developer questioned our interpretation and disputed there was no direct statement requiring refuse facilities to meet any specific location or setback regulations aside from needing to be in a designated location and somehow screened. In recognizing this weakness in the Code, staff is proposing to strengthen the Zoning Ordinance by aligning our longstanding practice of applying accessory structure regulations to refuse facilities with clear and direct statements that such facilities “shall meet the requirements for accessory buildings per Section 10-3-114.”

To achieve this objective, new subsections that would include the above statement must be added to the following sections and associated zoning districts: 10-3-36 Other Regulations of the R-1 district; 10-3-56.5 (f) Area, Density and Dimensional Regulations of the R-6 district; 10-3-57.5 (f) Area, Density and Dimensional Regulations of the R-7 district; and 10-3-58.5 (5) Area, Density and Dimensional Regulations of the MX-U district. In addition, existing requirements must be amended by removing language and adding the above statement within the following sections and zoning districts: 10-3-42 (d) Other Regulations of the R-2 district; 10-3-48 (d) Other Regulations of the R-3, Multiple Dwelling district; 10-3-48.6 (d) Other Regulations of the R-3, Medium Density district; 10-3-54 (d) Other Regulations of the R-4 district; 10-3-55.6 (d) Other Regulations of the R-5 district; 10-3-81 (c) Other Regulations of the B-1A district; 10-3-87 (b) Other Regulations of the B-1 district; 10-3-93 (c) Other Regulations of the B-2 district; 10-3-99 (c) Other Regulations of the M-1 district; and 10-3-182 (d) Other Regulations of the U-R district.

In brief, Section 10-3-114 would then clearly require dumpsters, in residential districts, to be located in the rear yard, not less than five feet from side and rear lot lines, and never positioned between a principle structure and the public street, unless the parcel is a through-lot. For commercially or industrially zoned properties, like all accessory buildings, dumpsters would simply be required to meet principle building setback regulations.

As staff reviewed and discussed the above described amendments, we believed this to be a good time to make other modifications associated with screening requirements. Currently, the Zoning Ordinance requires screening around particular uses, one of which is a refuse facility, but others include: accessory storage of products to be processed or being processed and supplies and waste materials resulting from such work; outside storage or repair associated with facilities designed for the repair or storage of vehicles, recreation equipment, trailers, over the road tractors and their trailers, heavy equipment, manufactured homes, industrialized buildings, or agricultural equipment; portable restroom facilities; and storage of equipment, materials, and compost and disposal areas associated with business gardens. Although staff has been applying the screening requirements around these uses consistently in that they shall be completely screened from view at ground level, the language requiring such screening is not the same throughout the Zoning Ordinance.

To uniformly specify the screening regulations around these uses, and also to align our current practice that such uses shall be completely screened, staff is proposing to remove all usages of the often phrased requirement “shall be screened from general public view” and other unclear statements to be replaced with “shall be screened.” The ordinance sections and associated zoning

districts that would be affected include a repeat of some of the sections as listed in the earlier described amendment and others. The following are all of the affected sections: 10-3-81 (c) Other Regulations of the B-1A district; 10-3-87 (b) Other Regulations of the B-1 district; 10-3-91 (3) Uses Permitted Only by Special Use Permit of the B-2 district; 10-3-93 (c) Other Regulations of the B-2 district; 10-3-96 (19) Uses Permitted By Right of the M-1 district; 10-3-99 (c) Other Regulations of the M-1 district; 10-3-114 (g) and (h) of Accessory Buildings associated with portable restroom facilities; and 10-3-193 of Storage and Screening for business gardens.

To go along with all of the above amendments, two other modifications are also needed. Staff is proposing to add accessory buildings as a permitted use in the B-1 zoning district within Section 10-3-84 (7) as currently the list only states that accessory *uses* are permitted. Since we have interpreted dumpsters as accessory buildings and because we permit dumpsters in the B-1 district, this change should be made to align current practices with the Zoning Ordinance. The other amendment is to Section 10-3-115 (7) Walls and Fences to add that walls, fences, and enclosures for refuse containers/facilities or compactors are restricted by other regulations of the Zoning Ordinance, most of which are highlighted above.

Lastly, staff would like to take this opportunity to make an amendment within Section 10-3-114 (b) of Accessory Buildings, which is unrelated to the issues above. During the review for the above described amendments, staff noticed the word “buildings” was missing from the first regulatory sentence of subsection (b). Staff found that this was a codification error that occurred after this section was proposed for modification in November 2012 during the portable restroom facilities amendments. The amendment would simply correct the error.

Staff believes the above amendments are good zoning practices and recommends approving the modifications.

Chair Fitzgerald asked if there were any questions for staff.

Mr. Colman asked about setbacks between the street and principle building in business zones. Mrs. Turner said that accessory structures cannot be placed between a street and a principle building in residential zones, but in business and industrial zones only has to meet the setback requirements. Mr. Colman said sometimes between the building and the street is the only location for dumpsters in business areas and that if they are screened it’s appropriate.

Chair Fitzgerald asked for further discussion or a motion.

Mr. Coleman made a motion to recommend approval of the changes recommended to the zoning ordinance as presented.

Mr. Da’Mes seconded the motion.

There being no further discussion, Chair Fitzgerald asked for a voice vote on the motion.

All voted in favor of recommending approval of the changes to the Zoning Ordinance as presented (7-0).

Unfinished Business

Mrs. Turner said the only item for unfinished business is to discuss what would Planning Commission like to do about review and a meeting for the Capital Improvement Program (CIP).

Chair Fitzgerald said you have the CIP binder before you; this is not required to be completed by the end of the year, but it needs to be done soon. What are Planning Commission's thoughts on reviewing?

Dr. Dilts asked for an explanation of what was done last year to review the CIP.

Chair Fitzgerald said Planning Commission received the CIP in November and we were asked to "read over" it by a particular date, and send any questions or comments to Adam. Some of the questions were answered by Adam and others were sent directly to the various City Departments for comments. Department Heads came to the December Planning Commission prepared to answer those questions and any others the Commissioners had. That is basically it; we individually reviewed the CIP and came up with questions.

Mr. Colman said was there a conversation regarding the use of the CIP by the Planning Commission.

Chair Fitzgerald replied not in the public meeting, nor in a work session.

Mr. Heatwole said to the members of the Planning Commission that have already participated in the CIP review, because Mr. Colman and I have not gone through this process, I would defer to your recommendation. I would not be opposed to having some type of work session to jointly review the CIP.

Mr. Da'Mes said in the past I have been opposed to the streamlined approach of the review. For me it is a question of what is Planning Commission's due diligence in this process.

Mr. Way said I extend that question a bit as to what is Planning Commission's scope to amend the CIP or to recommend changes. Can we ask for certain items to be removed?

Chair Fitzgerald said this has come up several times during recent Planning Commission meetings. I have asked of the City Attorney if Planning Commission's approval of the CIP fulfills their legal obligation to review the general approximate location, character and extent of each feature of the Plan. I have not received formal response back from the City Attorney if just reviewing the CIP is said to have fulfill that responsibility. Given that we are doing more than we thought we were doing when we review the CIP, I think that it is incumbent upon us to think more about what that review process is.

Mr. Baugh said let me add a few observations. When I first came on Planning Commission ten years ago, we had several long work sessions where we would review every page. After a couple of years, and given the fact that it was basically the same members on Planning Commission, things evolved to a point where there was one meeting, usually during the regular Planning Commission meeting, and Commission would ask why particular changes were in the CIP. This then evolved into the very streamlined process we have done in the past few years. We now have a change in membership and with that has come the question that perhaps we should ask – how does this plan fit with the Comprehensive Plan.

Dr. Dilts said the three of us who attended the training recently would probably agree that the clear intent was how the CIP fits with your Comprehensive Plan. But, personally, I could use an explanation sometimes on how items fit within the Comprehensive Plan.

Mr. Baugh said I feel this is why this body exists; to have these debates and look at these things to the satisfaction of the group.

Mr. Colman stated he felt it would be good to have a meeting, with explanations and discussion on how the CIP meets with the goals of the Comprehensive Plan.

Mr. Baugh said would it not be more likely for Community Development to give use a baseline assessment on how something would fit into the Comprehensive Plan, than from the actual department itself.

Mrs. Turner said we could ask on the format that every department provide where their request is supported by the Comprehensive Plan. They could then provide the objective within the Comprehensive Plan associated to the particular request. They will have to look for those things, and then, Planning Commission may disagree with the department's assessment believing it should be within another goal or objective of the Comprehensive Plan. Community Development staff probably would be more readily able to find where in the Comprehensive Plan a certain request would be supported. Honestly, it may be a stretch for some of the requests. We can change the process next time around to provide where in the Comprehensive Plan it supports a specific request; or we could have Community Development staff put in each of those things that tell where it is supported.

I did make copies of the section of the State Code that talks about Planning Commissions preparing Capital Improvement Program and it does say "at the direction of the governing body it shall prepare and revise annually a CIP based on the Comprehensive Plan of the locality for a period not to exceed the ensuing five years." It would be hard to say that there is something that does not meet the goals and objectives of the Comprehensive Plan; it will always be up to someone's interpretation as to whether it meets a goal.

Mr. Colman said I think it best for Community Development staff to point out where an item is covered in the Comprehensive Plan.

Mr. Way said what if we decided that something just does not fit within the Comprehensive Plan; can we ask for it to be removed from the CIP?

Mrs. Turner said you make that recommendation to City Council, just like you recommend other things to Council.

Mr. Heatwole asked if the CIP was put together in conjunction with Economic Development and the various Department Heads and is there a way for us to ask the Department Heads if they have any concerns or opinions of the CIP and the way it is written.

Mrs. Turner replied the way it is done is each department is asked to provide projects that belong in the CIP, these are items which are \$50,000 or greater, not of a recurring nature, and not considered general maintenance items. There is a CIP review committee which consists of the City Manager, the Assistant City Manager, the Director of Finance, and me; we meet with each Department Head and other members of their staff and we provide a rating for each submission. We also look at the ratings from the previous year and decide if anything has jumped up to become a more pressing issue and what new items need to be ranked as. From that, I put together all these summary charts and the Director of Finance is doing the revenue projections. The committee may make suggestions about moving items up or down a year, or perhaps splitting between two years, how reasonable is the request. There is probably not much more a Department Head can tell you, other than they would like to have everything requested.

Chair Fitzgerald said given that we need to decide on a process, I propose to have an open to the public work session; we have done this in the past. During these work session conversations we would evaluate the alignment between the CIP and the Comprehensive Plan. We could then prepare a list of questions where there are conflicts and we could then present those questions to Department Heads and the City Manager at a meeting. During the meeting with the City Manager and Department Heads we could possibly hear from the City Manager regarding the top ten priorities.

Mr. Da'Mes asked if the Department Heads would be present during these work sessions.

Chair Fitzgerald said I thought it would just be us and a member of staff.

Mrs. Turner asked what would be needed from staff for the work session.

Chair Fitzgerald said the use of the classroom and a staff person.

Dr. Dilts said the process that Mrs. Turner enumerated seemed to be very thorough to me and those persons know the Comprehensive Plan. Would Mrs. Turner be more appropriate for the meeting; because she knows why certain decisions were made to place items in the CIP?

Mrs. Turner acknowledged that when the CIP committee meets we do not line-up each item with an appropriate Comprehensive Plan goal; because the CIP basically is a budgetary tool and there are things that need to be done whether the Comprehensive Plan addresses them or not.

Mr. Colman said the point of Planning Commission's review of the CIP is to balance out the different items and determine which ones we want to encourage.

Chair Fitzgerald said from a process point-of-view we need to find some time to all meet and review this plan before we collect what we produce from this review and deliver it to staff in writing.

Mr. Heatwole asked are we thinking we need a week or two to review the CIP individually before we get back together for the work session.

Chair Fitzgerald said I am thinking at least two weeks, and again, this does not have to happen in December, it can be reviewed in January.

After further discussion it was agreed that Planning Commission would decide on a work session date and time that would work for all.

Mrs. Turner said there is still some time; possibly early January. Be mindful, the work session may need to be advertised. Also, could you be more specific on what you are wanting from the City Manager?

Chair Fitzgerald replied some sort of comment on the CIP priorities generally and what he sees as the most critical projects over the next few years.

Chair Fitzgerald asked if there was anything else under Unfinished Business.

Mr. Da'Mes questioned when the Telecommunications Ordinance might be coming back before Planning Commission.

Mrs. Turner replied that we do not have the actual ordinance prepared yet for you to review. So as soon as we complete it, we will bring it to Planning Commission.

Public Input

Chair Fitzgerald asked if there was any public input.

Mr. Tom Domonoske, 461 Lee Avenue, said he specifically wants to discuss the relationship between the CIP and Section 15.2-2232 of the State Code. This section is the obligation of Planning Commission to review the general location, character, and extent of a new building to see whether it complies with the Comprehensive Plan. That is the statute; that is what Planning Commission needs to do and I do not believe it is to be done as part of the CIP approval. What I always thought was the CIP was the wish list; it identifies way more projects in a given year than what could possibly be done. I do not think this body is suppose to have a Section 15.2-2232 public hearing about general location, character, and extent over a wish list item. This hearing needs to take place when you can ask the specific question as to whether this project complies with the Comprehensive Plan. Unfortunately in the statute the words “substantially” and “in accord” are used; therefore, what that means is there is tremendous discretion. Planning Commission does not ask the question as to whether it complies with the general location, character, and extent until you actually have the project; and that is after the CIP and the budget session. It happens once the project is moving forward and someone can come to you and say here is what the drawings look like, here is the general location; and then Planning Commission can move forward to decide if it complies with the Comprehensive Plan as to location, character, and extent. I think it is great that you are having a work session with the CIP this year. With the Municipal Building one thing that is happening is the amount of questions that have been raised about Section 15.2-2232 CIP approval process and the Planning Commission. I would hope that you do not spend a whole lot of time in a work session trying to replicate a 15.2-2232 hearing as part of everything on a CIP or wish list, because until a project comes to fruition you do not even have the needed data. Thank you.

Mr. Way said in light of this public input is there an update on where things stand with the Municipal Building.

Mr. Baugh said City Council did take a vote on the project location and it passed 3-2.

Mr. Way asked if there was any new information since then.

Mr. Baugh said some communications have taken place between the Plan Our Park Group to try and coordinate efforts.

Chair Fitzgerald said there was also a vote at City Council regarding Planning Commission that occurred right before the building site vote.

Mr. Baugh said yes, there is a provision in the ordinance that calls for City Council to have an option to waive any requirement to go before Planning Commission. That was brought up and the waiver approved by a 3-2 vote.

Chair Fitzgerald said that vote occurred right before the site selection.

Mr. Baugh said I will go ahead and share one item since this topic has come up here tonight. I did speak to the City Attorney and asked if he had gotten back to you (Chair Fitzgerald) about your questions. He was very apologetic about not getting back to you yet. He did say that it does appear there will be litigation filed over this matter and that has been attracting more of his attention. We can discuss this if we want to; however, there is a good chance that this will get to a point where a judge will make a ruling on it.

Report of secretary and committees

Mrs. Turner said for proactive zoning this month inspectors went to the Ramblewood Road Area where they found eleven violations consisting of sign violations and inoperable vehicles. There may be an upcoming newspaper article regarding proactive zoning because a reporter did join our inspectors for this month's proactive zoning.

Mr. Baugh said there were no items forwarded to Council from Planning Commission.

Other Matters

None.

Adjournment

The meeting was adjourned at 8:55 pm.

Chair Deb Fitzgerald

Secretary, Alison Banks