

MINUTES OF HARRISONBURG PLANNING COMMISSION
September 10, 2014

The Harrisonburg Planning Commission held its regular meeting on Wednesday, September 10, 2014 at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

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

Members absent: Gil Colman

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 six members in attendance. She then asked if there were any corrections, comments or a motion regarding the minutes from the August 13, 2014 Planning Commission meeting.

Dr. Dilts moved to approve the minutes as presented from the August 13, 2014 regular Planning Commission meeting.

Mr. Heatwole seconded the motion.

All members voted in favor of approving the August 2014 minutes (5-0) with Mr. Way abstaining from the vote because he was not in attendance at the August meeting.

New Business

Rezoning – Eastern Mennonite University Master Plan Amendment 2014

Chair Fitzgerald read the request and asked staff to review.

Mrs. Banks said the Comprehensive Plan designates this area as Institutional. This designation states that these areas are for development by certain nonprofit and public institutional uses such as private colleges and universities, hospitals, offices of nonprofit organizations, community assembly uses and institutions that provide for the shelter and care of people.

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

Site: Academic, recreational and residential buildings, parking lots, and common area associated with the University, zoned R-3/I-1

North: Across West Dogwood Drive, residential dwellings, zoned R-2

East: Across Park Road, academic and residential buildings, athletic fields, parking lots, and common area associated with the University, zoned R-3/I-1

South: Single family homes and buildings associated with the University, zoned R-3

West: Academic buildings and common area associated with the University, zoned R-3/I-1

The applicant is requesting to amend a portion of the Eastern Mennonite University (EMU) Institutional Overlay Master Plan. The Institutional Overlay District provides for distinctive development of certain nonprofit institutional uses, such as colleges and universities, where upon

approval of a master plan, development may deviate from the requirements of the underlying zoning district. Every request for an institutional overlay requires the submission of an accompanying master plan showing how development will occur. Subsequent changes to the approved plan are accomplished by the same procedure – via a rezoning application approval.

EMU's Institutional Overlay Master Plan was originally approved in 1998. This plan provided a layout for existing and proposed buildings, the number of stories and overall heights of those buildings, as well as the proposed parking layout throughout the campus. In 2010, EMU amended the plan by adding a parcel, enlarging the Suter Science Center, and introducing green technology in the form of solar panels, to the overall plan. Although allowed by right, the design of the solar panels did not meet all the setback and height requirements of the Zoning Ordinance; therefore, they were included within the 2010 master plan amendment. The panels were proposed for roof top locations on the Hartzler Library and Hillside Dormitory buildings and on structures for the University Commons and turf field parking lots. At this time, the applicants are requesting a minor amendment for particular solar panel heights and locations.

The previously approved parking lot panels were proposed to be attached to carport style support structures and were to vary in height from 8 ½ to 16 feet with support columns spaced 18 feet on center; allowing for vehicles to park underneath the structures. The applicants are requesting to increase the height of the overall structures within the University Commons parking lot to 20 feet, with support columns spaced 18 to 27 feet on center. Along with the requested height adjustment, the applicants are proposing to remove the single row of panels previously planned along the West Dogwood Drive boundary that could have been located up to five feet from the property line. All other rows would remain as shown. The removal of the one row of panels within the parking lot actually reduces the visual impact to residents along West Dogwood Drive even with the height increase.

The second proposed change is in the location of roof top panels. The applicant desires to place panels on the University Commons building instead of on the Hillside Dormitory. As previously noted solar panels are permitted by right; however, because the height of the University Commons building is 50 feet, which is above the maximum height regulations of the R-3 district and approved as part of the 1998 master plan, staff wanted the proposed location change shown within the amendment. The panels would be about two to six inches tall and will not increase the overall height of the building.

The Hartzler Library solar panels have been installed and EMU desires to move forward with these proposed changes. If approved, staff has informed the applicants that they would need to supply a revised and updated copy of the master plan to be kept on file, in addition to the red lined changes provided with the rezoning application. The requested changes are in keeping with the intentions of the I-1 district and staff does not foresee negative impacts to the surrounding neighborhood. Staff recommends approval of the master plan amendment.

The applicant is not in attendance at the meeting tonight; however, there is a representative in the audience if Planning Commission has specific questions regarding the panels.

Chair Fitzgerald asked if there were any questions for staff at this time. Hearing none, she opened the public hearing and 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 of the request. Hearing none,

she closed the public hearing and asked Planning Commission if there was any discussion or comments on the master plan request.

Mr. Way made a motion to recommend approval of the request as presented.

Dr. Dilts seconded the motion.

Chair Fitzgerald called for a voice vote on the motion.

All voted in favor of the motion to recommend approval (6-0).

Chair Fitzgerald said this request will move forward to City Council on October 14th with a favorable recommendation.

Unfinished Business

Alley Closing – Adjacent to 40-N-13A & 14 (LFSVA)

Mr. Fletcher said last month Planning Commission reviewed Lutheran Family Services of Virginia's (LFSVA) alley closing application to close a 5,857 +/- square foot section of the 14-foot wide public alley that is adjacent to their school property addressed off of Massanutten Street. Planning Commission tabled the application to allow LFSVA to discuss matters related to access with an adjoining property owner. LFSVA has revised its request and is now only applying to close a 700 +/- square foot portion of the public alley right-of-way (ROW).

As a reminder, the entire alley runs about 660 feet between Jackson Street and West Washington Street. Last month's request was to vacate the 410-foot in length section that is adjacent to the applicant's property. If that request would have ultimately been approved, the remaining 250 feet of undeveloped public ROW extending to West Washington Street would have remained open. During last month's review, Russell Showalter, one of the property owners of 776 North Liberty Street (tax map parcel 40-N-12) spoke in opposition to the alley closing noting that if the closing were approved, although he and his wife would have the right to purchase up to 50 percent of the alley width adjacent to their property, they would no longer have public access to the rear of their property, which they and their tenants use. As discussed above, Planning Commission tabled the application until the September regular meeting to allow for further discussion to take place between the applicant and the Showalters.

Staff met with and communicated via email several times with the applicants, and separately spoke a few times with Mr. Showalter, to try and facilitate some type of an agreement among the two entities. Staff does not believe the applicants and the Showalters ever directly communicated on working out an access issue. Recently, staff was informed by the applicants that a local attorney representing the interests of LFSVA would make contact with the Showalters (before the Planning Commission meeting) to inform them of LFSVA's decision in moving forward with an amended application.

As noted by the applicant's recently submitted letter, rather than requesting to close the 410-foot in length portion of the alley that is adjacent to the school's total property, LFSVA now desires only to close the portion of the alley, where they are the property owners on both sides of the ROW. This section of the alley stretches from the Jackson Street ROW for a length of 50 feet, which totals 700 +/- square feet in area. If approved, although closing this section of the alley would restrict the Showalters from accessing the rear of their property from the Jackson Street ROW, the remaining portions of the subject alley would remain open to West Washington Street. In addition to the

subject alley, there is an additional public alley located between 736 and 754 North Liberty Street, which extends from North Liberty Street and intersects the subject alley about 200 feet south of the Showalter's property.

It should be known that since last month's meeting occurred, physical improvements have been made to portions of the 700 +/- square foot alley area that is currently requested for closure. Soon after the Planning Commission meeting last month, LFSVA paved portions of their adjoining properties and paved over the remaining undeveloped portions of the alley that they want to obtain. (Remember that a small portion of this section of the alley extends into the area that is already paved and used for ingress and egress for the Minnick School and for some of the other properties in this area.) In addition to paving the alley, they also curbed over the Jackson Street entrance to the alley. Once staff was informed of what took place, we notified LFSVA that they must remove the section of the curb located over the alley. LFSVA had the curb removed. Paving an alley is not prohibited, but to correctly do so, one must first apply for and then receive approval of a public access permit—a permit which is free to review and obtain. LFSVA did not obtain a public access permit.

As discussed last month, Columbia Gas of Virginia, Inc. has a 2-inch gas line that runs the length of the entire alley, and therefore, staff will recommend the City Attorney reserve an easement over the entire section of the alley to be closed so that Columbia Gas can maintain their infrastructure. In addition, this small section of the alley that is desired for vacation is the section of the alley that staff explained last month has sanitary sewer infrastructure located within its limits. (See the aerial map included within the packet demonstrating the general location of the sewer lines within this area.) Staff will recommend the City Attorney reserve an easement within this area for the City to be able to maintain this infrastructure. The easement shall be at minimum 20-foot wide centered on the sewer line. Because easements will be located over the entire section of the alley to be closed, no structures, aside from fencing, could be located within this area.

Before the second reading can occur at City Council, the survey must be revised to demonstrate the new area requested for closure and how the alley property is desired to be distributed among the applicants' properties. The survey must also demonstrate the areas in which the City will reserve easements for the utilities discussed herein.

As was also the case last month, staff is again supporting the closure of the alley request. Aside from the utilities as described, the City does not need to maintain ownership of the alley ROW to provide any other City services. Consequently, staff recommends closing the 700 +/- square feet of alley ROW with the following two conditions:

1. The City shall reserve, at minimum, a 20-foot wide sanitary sewer easement, centered on the infrastructure within the alley.
2. The City shall reserve an easement over the entire section of the alley to be closed to allow Columbia Gas of Virginia, Inc. to maintain their infrastructure.

Chair Fitzgerald asked if there were any questions for staff. Hearing none, she said this is not a public hearing; however, we generally ask the applicants, or their representatives, if they would like to speak.

Jay Litten with Litten and Sipe, LLP said he is here representing Lutheran Family Services. Mr. Fletcher did an excellent presentation; I just want to add a couple of points and answer any

questions you might have. This request represents an attempt by LFSVA, which operates the Minnick School, to make their property safer. They have the need to segregate the industrial traffic from play areas and pedestrian traffic. It was proposed to close the entire length of the alley adjoining the school; however, there was some objection by a neighboring property owner, Mr. Showalter, who said it would be less convenient for him to access the back of his property if the entire alley were closed. LFSVA then went back to the drawing board to separate what absolutely had to be done from what could be done; and in doing so they have relinquished over eighty percent of their original request. They are now asking only for the vacation of the alley between the two lots that LFSVA owns. They are doing this so that they can better segregate the vehicle traffic coming into the area; therefore, making the property safer for the children.

I think what my clients have been able to do within the month since they were last here, was to create a situation to gain what they need to do their job, without any real sacrifice on the part of any of the neighbors. I would be happy to answer any question.

Chair Fitzgerald had a question regarding the applicant's letter where it discusses installing fencing and other barriers to restrict flow. What is meant by other barriers, because the staff report is stating that nothing could be constructed within the easement?

Mr. Litten said the idea is not to deny any respective easement holders access, it is to create some type of physical barrier such as a fence so that traffic cannot flow through the area and also create a visual separation of space. These children will react to a change in the character of space and where they should and should not be.

I would like to mention that I did contact Mr. Showalter and left a voice message on Monday. I have received no reply to the message.

Chair Fitzgerald asked if there was anyone else wishing to speak in favor of the request. Hearing none, she asked if there was anyone wishing to speak against the request.

Mr. Russell Showalter said he owns the property at 776 North Liberty Street. At last month's meeting we were asked to converse with LFSVA to try and come to an agreement on this issue. We had already contacted them about an easement before the first Planning Commission, to which they declined our request. After the Planning Commission meeting we asked Mr. Pruitt if they would like to discuss the easement at that time. Mr. Pruitt said he did not want to discuss the easement, because there would be no easement. This has concerned us greatly. We have received no contact from the school, LFSVA, or a message from their attorney.

It does not make sense for us to have to maintain the alley or drive the entire length of the alley to get to the rear of our property. The turn from Washington Street into this alley is a very tight turn and after driving the entire length of the alley we do not find it to be a very viable option. We strongly oppose our loss of an access at the northern end of this alley, as we use the access on a daily basis.

We have researched the minutes of a similar alley closing request for Muhlenberg Lutheran Church off of Ott Street where an adjoining property owner requested an easement to access the back of his property and the church provided access for all adjoining property owners.

Again, we strongly oppose our loss of access from the northern end of this alley. We hope that the Planning Commission will carefully consider how the loss of this alley will affect our property now, and in the future.

Chair Fitzgerald asked if there were any questions for Mr. Showalter. Hearing none, she asked if there was a motion or any discussion on the request.

Mr. Way asked if the physical and visual barriers could be achieved without having to actually close the alley.

Mr. Litten replied the immediate answer would be no. LFSVA has taken a long hard look at this and there is really only one way to lay out the parking that they are required to have for teachers, staff and visitors while still keeping separation for children and pedestrians. The purpose of closing it is to keep vehicles from traveling through the area and an easement defeats that purpose.

Dr. Dilts said is it the intent for the section of the property that is going towards North Liberty Street to be used for parking.

Julie Swanson, CEO of Lutheran Family Services of Virginia, said the three factors we are dealing with on this property are the large eighteen wheeled trucks that travel through the property to the poultry plant, the varying sizes of school buses that we have coming onto the site, and vehicles for staff and parents. The section that we are now requesting for closure would be the bulk of our parking, while the property going towards Liberty Street would be fenced so that we could have a very contained piece of property.

Chair Fitzgerald said the issue of the stumps and boulders in the alley coming off of North Liberty Street would not be a question of City maintenance, would it?

Mr. Fletcher said correct. You could drive on these grass alleys but if you want to make them more passable you would have to get permission from the City to remove the stumps and boulders or to put in gravel. This could be done by obtaining a public access permit from the City; however, the City would not maintain any of the alley.

Chair Fitzgerald said the question is how accessible is the ability of Mr. Showalter to get to the rear of his property from these two other access points in this alley.

Dr. Dilts said for the record, I am certainly disturbed that the opportunity for conversation was not made.

Mr. Da'Mes said what obligation does the City have to provide a back entrance to a property that currently has access; I do not believe there is one. I am not completely against this proposal.

The applicants have come forward with a modification that works for them and allows the neighbors access by other means in the alley. I am in favor of the request.

Mr. Heatwole said I will say that it is true – no one is guaranteed access to the rear of their property, and I agree with Dr. Dilts that it is a shame that the two parties could not get together on this. I do believe the long alley, parallel to Massanutten Street, might be accessible.

Mr. Baugh said Council will be interested in this request. There may be some similar type alley closing requests coming in the future. We have not dealt with something like this previously. The alley closings we have been dealing with historically have been easy. I believe City Council will probably have very much the same discussion we are having tonight.

Chair Fitzgerald said that brings up the point that no matter the outcome tonight, there is another venue where you get to weigh in on this at the City Council level. Are there any further comments or questions?

Dr. Dilts said I am going to move we approve the alley closing request with the two conditions for the reserving of the utility easements.

Mr. Heatwole seconded the motion.

Mr. Baugh said let me throw something out here. I realize, given all the stated goals from the applicant that they need to have this portion of the alley. What if we switched the request, closing the portion of the alley where there is no opposition; what effect does that have on the applicant?

Ms. Swanson said we have had quite an interesting time in the last months since the poultry plant reopened. But we are talking about a road, an easement that they use now, that we have to maintain because it is our property. We have to consider what is our safe environment for the children. We had a fire drill the other day and we had to ask, where are the children going to run too? We need to contain our property. I feel it was a big surprise to our neighboring business owners just how much property we owned once the curbing began going in. We assumed, unfortunately, that we would be able to join the two pieces of property that we own to help create the 57 parking spaces that we are required to have. To do that effectively we need that small strip of land and portion of the alley between.

Mr. Baugh said am I hearing this correctly, that in order for you to get your 57 parking spaces you fully need to utilize that entire section?

Ms. Swanson replied absolutely. The other thing is the fencing that we are putting in that will provide the boundaries for our students. It will go all the way to Liberty Street, but will be more of a decorative fence.

Mr. Fletcher asked how many parking spaces do you end up with if the project is completed as proposed.

Ms. Swanson replied the required 57, no more. We have had difficulty with people parking everywhere all over the property, and to some degree it is difficult to be a good neighbor.

Mr. Showalter said he wanted to say that we did discover that our tenants were parking in the gravel area and we did inform them that it was not allowed. For us it is very hard to police every day, but we have taken care of the matter. One thing that we have tried to offer was, when the construction first began, if there was a possibility to gain an easement up closer to the Liberty Street area, which would allow us to come across the front of the property onto our property, where we could then access the rear of our property. This would still allow for the fencing that is proposed. I believe that that conversation just got somewhat lost in the shuffle.

Chair Fitzgerald asked the applicants if that was something worth considering; an easement further up along North Liberty Street.

Mr. Litten said with the disclosure that we have not thought more than just this moment about it; our initial reaction is negative, not knowing how it would interfere with our present or future use of the property. We would ask that the Planning Commission vote on the request as submitted.

Chair Fitzgerald said that makes it much more straightforward. There is a motion on the table and it has been seconded; is there further discussion?

Mr. Da'Mes said I feel this is a missed opportunity.

Chair Fitzgerald called for a roll call vote on the motion to recommend approval.

Commissioner Da'Mes – yes.

Commissioner Heatwole – no.

Commissioner Way – yes.

Commissioner Baugh – yes.

Commissioner Dilts – yes.

Chair Fitzgerald – yes.

Chair Fitzgerald said the motion passes (5-1) and will move forward to City Council on October 14th with a favorable recommendation.

Public Input

Panayotis Giannakouros, 98 Emery Street, said some of you may have been watching the run up to the upcoming City Council elections and you can see that there are some interesting issues coming up that have been articulated initially as issues around the proposal for a new jail; but, if you look at them more closely they are really reflecting on how we want to design and build our community. For instance, we started to see last night at City Council that planning and zoning are starting to be strongly implicated because we are seeing that this level of decision making is not mundane, as we just witnessed; but, that it can sometimes be mundane decision making that actually has larger repercussions, like we witnessed in Ferguson, (Missouri).

In connection with that we come to the tall grass and weeds ordinance, which I hope that you all see fit to recommend for repeal. I come to you today without a lot of information because I just learned that you have a vacancy in your zoning enforcement and this might be a very opportune time for you to repeal that ordinance; therefore, it would not entail an underflow of work for someone who has just been hired, you may not need to hire someone. The tall grass and weeds ordinance has numerous problems and I have pages of documentation on this. It is also not in conformity with State and Federal regulations, which state it should just be enforced on vacant lots.

We have a changing City that is being governed by folks who do not look like the folks they are governing. I hope that you might take this into consideration, for now might be the time that you want to repeal this.

Thank you.

Report of Secretary and Committees

Mr. Baugh said at City Council last night we approved everything brought forward to City Council from this body; the rezoning request on North Main Street, accepted the 2232 review, and the Zoning Ordinance amendment regarding public uses

Other Matters

Mr. Fletcher said there are four items for next month's agenda. Two are related, a zoning ordinance amendment to a special use section and the application for the special use, a street closing for a portion of undeveloped 6th Street, and a special use permit for a brewery manufacturing operation at 120 West Wolfe Street.

Adjournment

Planning Commission adjourned at 8:25 p.m.

Chair Deb Fitzgerald

Secretary, Alison Banks