

**MINUTES OF HARRISONBURG PLANNING COMMISSION**  
**October 8, 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, 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 and Adam Fletcher, City Planner.

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 10, 2014 Planning Commission meeting.

Mr. Da'Mes moved to approve the minutes as presented from the September 10, 2014 regular Planning Commission meeting.

Dr. Dilts seconded the motion.

All members voted in favor of approving the September 2014 minutes (7-0).

**New Business**

***Special Use Permit – 120 West Wolfe Street (Brewery Manufacturing)***

Chair Fitzgerald read the request and asked staff to review.

Mr. Fletcher 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 and food trucks, zoned B-1C

**North:** Vacant property (owned by the applicants), zoned M-1

**East:** Across the Norfolk Southern Rail Line, vacant paved lot, zoned B-1

South: Across West Wolfe Street, vacuum repair shop, zoned M-1

West: Non-conforming dwelling unit, zoned M-1

The applicant is requesting a special use permit per Section 10-3-85 (1) of the Zoning Ordinance, to allow a manufacturing use within the B-1, Central Business District. If approved, Back Bay Brewery is proposing to operate a brewery operation and taproom at 120 West Wolfe Street. Per the requirements of the SUP, no more than 15 employees can be working on a single shift and all storage and activities must be conducted within a building.

Back Bay Brewery currently operates in the Virginia Beach area and desires to establish a remote brewery location where they would brew approximately one barrel of beer a month. Along with selling the beer manufactured on site, the brewery would sell beer brewed at their Virginia Beach locality as well. The brewery is anticipated to have no more than five employees and operate Tuesday through Sunday. A floor plan submitted by the applicant shows the 1,710+/- square foot brewery will consist of brewery equipment, bar, tasting room and seating areas. The applicant has included both parcels with this request, in anticipation of accommodating outdoor patio seating for the brewery on the rear lot in the future.

The subject properties were rezoned in March 2009, from M-1 to B-1C, to allow for a proposed mixed use development of commercial and residential uses. Very specific proffers were submitted by the applicant, which included redevelopment of the entire site. One of the proffers provided dealt with parking for the site; that proffer stated “parking for residential units will be one space per bedroom and parking for commercial space will be one space for each 300 sq. ft.” In October 2011 the applicants revised the rezoning proffers by adding a proffer to allow the owners to utilize the current building and property as described within the earlier rezoning and to allow all B-1 special uses as approved by City Council. (The current regulating proffers are attached with this report.) Concurrently with the revised rezoning, the applicants received a special use permit to operate a vehicle repair shop at the property. Because parking for this location was a concern, and the one proffer dealing with parking only took into consideration by-right commercial uses, a condition was placed on the SUP that “one parking space shall be provided per bay plus one additional space shall be provided associated with the office space of the business. Parking spaces shall be clearly marked and delineated on site.” The automotive repair shop no longer operates from this location. Tax map 35-O-5 is currently home to several food trucks.

In addition to establishing a brewery at this location, the applicant is working with a coffee company to operate from a 450 square foot area of the existing building, and as noted above, there are several food trucks which occupy, and operate from the rear parcel. The remainder of the existing building would be used for storage for the brewery and food trucks. Because of the many uses presently operating from, and proposed for the property, staff has had numerous conversations regarding parking with the applicant. Currently, there are no parking regulations regarding food trucks; therefore, they have simply been allowed to operate in commercially zoned areas, but do not have to provide any parking. The coffee company is considered a permitted commercial use within the conditional B-1 zoning of property and the applicant would have to provide two parking spaces for the use (one space for each 300 sq. ft.). Because the proposed brewery is a SUP request, it does not have a proffered parking requirement that must be met. As well, any future additions to the uses on site may cause additional parking concerns.

The applicant has provided a drawing indicating that eight parking spaces are proposed for the site. As well, the applicant provided an email from an adjoining property owner who is willing to enter into discussions regarding leasing of their vacant property (TM 35-O-1) at the intersection of West Wolfe Street and North Liberty Street in order to ease any parking shortages for the proposed brewery use. There is public parking along portions of North Liberty Street in this vicinity and also a public parking lot (TM 34-P-13 & 14) adjacent to Liberty Park, approximately 400 feet from the subject property.

The applicant has indicated that deliveries to the brewery will occur approximately once every three weeks. Deliveries are made by a 21-foot “box type” delivery truck and would take place in the early morning, before the brewery or food trucks are open. It is anticipated that the parking lot would provide adequate maneuvering area for truck deliveries. No accessory vehicle is proposed to be housed at the site in association with the brewery.

Staff is looking at this request with a favorable recommendation and we do have some conditions that we would like to place on the SUP. One condition being our standard...

1. If in the opinion of Planning Commission or City Council, the use becomes a nuisance, the SUP can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Regarding the other suggested condition which is in the staff report – staff has given it a little more thought and would like to offer a different approach. Currently, the way it is within the report is with the intent of applying the one parking space per 300 SF of gross floor area for the 1,710 SF brewery, for a total of six parking spaces. Any future additions or expansion of the special use permit would require the applicants to come back to Planning Commission and City Council. Being that they are still in the preliminary stages of wanting to make renovations to the building, they may end up with the interior being larger than the 1,710 SF. Staff proposes a different approach to the condition stating the applicant shall provide the proffered condition of one space per 300 SF of gross floor area. Therefore, if the area goes above the proposed square footage, the applicants still supply parking based on the one space per 300 SF of gross floor area. This gives the applicants the flexibility to not have to be too concerned about coming back to ask for an additional special use and gives them the flexibility to add the patio space without the need for a new SUP. We would view the patio space as part of the gross floor area because it is just as we would view a restaurant with outdoor dining. It does restrict them a bit in how they utilize the rest of the building; if they do put in the coffee tenant that is where they may have to pick-up some additional on-site parking. There is the ability in the back of the property where the food trucks are located to install some parking if they did some reconfiguring. Our parking concern is of great need at this location and we believe that the one per 300 needs to be applied here; so our suggested condition is:

2. The applicants shall provide one parking space per 300 SF of the entire gross square footage of the brewery and that the spaces are clearly delineated.

I can answer any questions you may have regarding this or the change to the suggested condition.

Mr. Colman asked if the addition of new parking spaces needed to be on site.

Mr. Fletcher replied yes, they need to be on site.

Mr. Way said in the original condition where you say the applicants shall provide six parking spaces for the brewery – that is using the one space per 300 SF of gross floor area.

Mr. Fletcher said yes, assuming that the brewery was at 1,710 SF; but our concern was that it might not be entirely planned out at this point, it could be greater.

Mr. Way said with the change they would not have to come back for a new SUP if they constructed larger than 1,710 SF or enlarged the brewery. So we should amend this condition in the staff report.

Dr. Dilts asked staff if they already had a condition written out at this time.

Mr. Fletcher said yes and then stated: The applicants shall provide one parking space per 300 SF of gross floor area and parking spaces shall be clearly delineated.

Mr. Da'Mes asked if this was a food truck court area would it require any parking spaces.

Mr. Fletcher replied no, and thank-you for asking that question. It is included in the staff report that currently there is not a parking requirement for food trucks. The way we have viewed them is as a by-right use on B-1 or B-2 zoned property. As you all know we are entering into a world where food trucks are desired as court operations now, and there is a desire to go on sites where the property is not developed. Historically in the City we have had food trucks for probably 30 years; but they have always located on developed sites. We have never had any requirement for parking for a food truck.

This was another one of staff's concerns with all of the desired uses for this small amount of space; which is why we want to ensure they have sufficient parking on-site and are not creating a burden on the surrounding community.

Chair Fitzgerald asked are we thinking about considering food truck parking issues as the City begins to see more.

Mr. Fletcher said there is actually a project review team (PRT) which includes individuals from multiple departments to include Fire, Public Utilities, Public Works, Parks and Recreation, and so forth. They are reviewing different regulations and viewing different items that they need to be evaluated regarding food trucks.

Mr. Way said the potential 450 SF coffee shop, is that covered by the amended condition?

Mr. Fletcher said the coffee shop is not part of the SUP request, it is permitted by right; therefore they are already required to have one parking space per 300 SF of gross floor area per the regulating proffers.

Mr. Colman said would the adjacent parcels that are owned by the applicant be considered off-site?

Mr. Fletcher replied yes.

Mrs. Turner said they could vacate the property line and it would become one parcel.

Chair Fitzgerald asked if there were any further questions. Hearing none, she opened the public hearing and asked if the applicant or the applicant's representative would like to speak. Hearing no one, she asked if there was anyone wishing to speak in favor of the request. Hearing no one, she asked if there was anyone wishing to speak in opposition of the request. Hearing no one, she closed the public hearing and asked if there were any further comments or a motion at this time.

Dr. Dilts moved to recommend approval of the SUP with the amended condition of one parking space per 300 SF of gross floor area and parking spaces shall be clearly delineated and, the second condition as written in the report.

Mr. Heatwole seconded the motion.

Mr. Baugh said I intend to support this SUP; but, as a heads up to all, I have had this conversation with another Council member and it may come up further at the Council level. There is a sense that this type of operation of a brewery that really is not brewing a whole lot of beer, is a bit of “gaming the system” and we may find that when the legislators go to Richmond next year there may be some steps taken to knock these types of things out. I am not sure that convinces me that this is necessarily a bad thing; but I would not be surprised if this issue gets discussed more at the City Council level.

Chair Fitzgerald called for a voice vote on the motion.

Mr. Way said I do not want to be a squeaky wheel on this one and I understand the principal of being accommodating to the potential growth of the brewery and to make it easier for them with the parking rather than having to come back for another SUP; but, I am hesitant about this. From a central urban design I am not so worried about parking minimums in that central B-1 area, where the intent is to create a bit more of a walkable community. With the one per 300, I can see exactly why staff is suggesting that, but I have some thoughts about why not just go with six and if the brewery does grow a bit, that is fine. I do not know how square footage necessarily translates into a parking space.

My other reservation is connected to the fact that it is a brewery. I do now know if I want people driving around after getting a brew. Why are we stipulating parking for a brewery operation; if there is something that should not have parking associated with it, in my mind it is a brewery. The whole point of it is drinking and we do not want to encourage driving while under the influence. So to encourage a walking environment in general, and walking in particular with breweries, seems appropriate in my mind.

Mr. Baugh said I do not know if staff was thinking this, but would this be a different discussion if this request was in the middle of the B-1 area? Here you are dealing with different uses that are adjacent to this property, including residential, and for me it makes some sense.

Mr. Fletcher said it was something we considered. If you recall both of the previous two SUP requests for brewery operations had no conditions on them at all because they were central to the B-1 district. This has just been a site that has had so many desirable uses on such a small piece of property that there was concern for parking and there is no direct off-street parking on Wolfe Street.

Let me put into perspective the one per 300 requirement – this is the most lenient parking requirement we have in the Zoning Ordinance. It was interesting to hear what Mr. Baugh was saying about what the legislature was thinking because we have had that conversation in our office about how these operations somewhat place a burden on us with parking. They are actually more like bars rather than a manufacturing operation.

Mr. Baugh said it has to do more with ABC Laws, more so than someone who is opening up a restaurant that happens to have a bar in it.

Mr. Fletcher said if it were a restaurant, parking would be based on one parking space for every 100 SF of gross floor area.

Mrs. Turner said the parking thing was not really related to the brewery at all. Right now, the way the proffers are for this parcel is that they can have commercial uses located there. It is zoned B-1 so they do not have the same parking requirements as B-2; but when they became zoned B-1 there was a concern about where are people going to park. This is an area closer to residential and not quite as close to the public parking lots. So that is why the one per 300 SF was already placed on the property by proffer, recognizing that the commercial uses needed a little bit of parking in this location. Then, when this came in for an industrial use as a brewery manufacturer, we recognized that this use pretty much operates as a commercial use. It does not have the same parking needs as an industrial use; it is more of a commercial pattern and should meet the same type of parking requirement that was established by the proffer. It was not because it was a brewery.

Mr. Way agreed and said he understood; but is there a need to continue that.

Mr. Fletcher said Three Brothers Brewery is a brewery manufacturing operation in M-1, and allowed by-right and is packed with parking spaces. Yet their parking requirement is one space for every two people working on the premises on a maximum shift.

Mrs. Turner said that is because we treated them as an industrial use in an industrial area. ABC Laws allow the use to have a “tasting room” associated with them. Our parking requirements are slim and when you go by there you can see that people have to park other places when going to visit them.

Dr. Dilts said you talked about gaming the system; I think, in some ways, food trucks are gaming the system.

Mr. Colman said the question that I have is whether either one of these situations, food trucks or breweries, are they becoming a nuisance to the community. If they are, why try to fix something that does not need fixing.

Mr. Way said there is a case to be made for the private business owner to do what is best for their interest; in this case it would be to provide some sort of parking. People do not have to walk very far for this business. If you have to walk 400 feet from the public parking lot, it is really not far. It does not strike me as an undo imposition to walk that distance. I want to support this, but I want us to think about the notion of expectations with parking and what policy is doing in the B-1 area.

Mr. Colman said I understand the logic of your thinking; however, I like the idea of not continuing to expand the business without parking and one per 300 seems reasonable.

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

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

Chair Fitzgerald said the motion passes and will go before City Council on November 11<sup>th</sup> with a favorable recommendation from Planning Commission.

***Street Closing – Undeveloped 6<sup>th</sup> Street (Adjacent to 39-K-9 and 39-L-16)***

Chair Fitzgerald read the request and asked staff for a review.

Mr. Da'Mes recused himself from this request (7:35 p.m.) and left the room.

Mr. Fletcher said the following land uses are located on and adjacent to the property:

Site: Undeveloped 6<sup>th</sup> Street public street right-of-way

North: Single family home, zoned R-1

East: Undeveloped 10-foot wide, north-south alley and undeveloped 6<sup>th</sup> Street extending eastward toward Virginia Avenue

South: Single family home, zoned R-1

West: Lee Avenue intersection with developed portion of 6<sup>th</sup> Street

Brannon and Angie Hottinger (the applicants), residents of 930 Lee Avenue, are requesting to close a 50-foot wide by 150-foot long (7,500 +/- square feet) section of undeveloped 6<sup>th</sup> Street. The area requested for closure is located within the block between Virginia Avenue and Lee Avenue. In total, this block is about 310 feet in length, which includes the width of a 10-foot wide undeveloped public alley that runs north-south and equally bisects the public street ROW. If approved, the entire western half of this block, west of the alley, would be closed and become private property; the alley and eastern portion of the block would remain undeveloped public ROW.

The entire 6<sup>th</sup> Street ROW, a length of about a quarter mile, extends from its intersection with Edom Road/undeveloped Jackson Street on its eastern edge to its intersection with Stuart Street on its western edge. Undeveloped Collicello Street, Virginia Avenue, and Lee Avenue—all north-south directional streets—intersect the 6<sup>th</sup> Street ROW. The only developed section of 6<sup>th</sup> Street is located between Lee Avenue and Stuart Street, about 350 feet, which is within the Holiday Hills neighborhood.

In March 2013, City Council approved a closing request to vacate the entire block of undeveloped 6<sup>th</sup> Street from its intersection with Edom Road/undeveloped Jackson Street to the intersection of Virginia Avenue. This closing was in association with the Collicello North R-7 development project. To date, this block of undeveloped 6<sup>th</sup> Street has not been transferred to private ownership.

If both the current area requested for closure and the block of undeveloped 6<sup>th</sup> Street associated with the Collicello North project become private property, then the only undeveloped section of the 6<sup>th</sup> Street ROW that would remain would be the eastern half of the block adjacent to the area requested for vacation.

With regard to the current request, there are two properties that are adjacent to the section requested for closure; 930 Lee Avenue, north of the ROW (the residence of the applicants) and 928 Lee Avenue, south of the ROW. If the City approves the closing, both property owners adjacent to the ROW will have the opportunity to purchase up to 50 percent of the ROW width along the entire length adjoining their property.

As shown on the 2011 aerial photograph within the packet, the residents on both sides of the ROW utilize portions of the street as a driveway. Per the City's GIS, the ROW has been used in this fashion since at least 2002, and per Google Earth images, since at least 1994 and possibly earlier. The applicants also currently utilize part of the ROW as a raised garden bed. In conversation with Mr. Hottinger, he stated that it is not uncommon to witness individuals driving through the

undeveloped ROW from Lee Avenue to get to Virginia Avenue and vice versa. (It should be understood that one cannot physically drive from Lee Avenue through to Virginia Avenue without crossing the private properties of 969 and 971 Virginia Avenue—a duplex structure fronting Virginia Avenue—due to the topography of the ROW at the intersection of Virginia Avenue. Although the 2011 aerial image included within the packet does not indicate vehicular traffic usage within the ROW, 2007 and 2002 aerial photographs—also included within the packet—clearly indicate vehicular use.) Mr. Hottinger noted that at least one neighbor, south of 928 Lee Avenue, utilizes the ROW to access the undeveloped alley to reach the rear of their property. He further mentioned that if he acquired the entire width of the ROW, he plans to allow some neighbors to use the subject area.

The City does not utilize the subject area, or this block of undeveloped 6<sup>th</sup> Street, to provide any City services. There are no water or sewer lines located within this area nor does the Harrisonburg Electric Commission need this space for their services. Columbia Gas of Virginia, however, has an eight inch high pressure pipeline located within the subject area. This pipeline is one of the main feeds to the City and must maintain its service. Columbia Gas recommends a 50-foot easement centered on the infrastructure, therefore, if the line were located directly in the center of ROW, the City would reserve an easement over the entire section for Columbia Gas. However, the applicant recently had the infrastructure located and it appears to be positioned in an east-west direction about 8 to 10-feet south of the northern ROW line for most of the subject area's length, but then turns southward near the intersection of Lee Avenue. Columbia Gas understands that the City will only reserve an easement that provides 25-feet to the south and/or east of the pipeline and the remaining distance of the ROW to the north and/or west of the pipeline. Prior to the second reading of the alley closing at City Council, the applicant must submit a survey of the area indicating how the ROW will be dispersed among adjoining properties and the easement for Columbia Gas must also be identified and noted on the plat.

Staff does not believe private developers would ever desire to construct this block of 6<sup>th</sup> Street. Given the surrounding developed street network, the topography of the ROW in relation to Lee Avenue and Virginia Avenue, and the poor sight distance along Virginia Avenue, staff does not desire for this block of 6<sup>th</sup> Street to be developed and further believes it would be difficult and costly to construct. The amount of cutting that would be involved to build a public street through this section of undeveloped 6<sup>th</sup> Street would create significant slopes and likely require retaining walls along the adjacent properties.

The applicants' submitted letter explains that they spoke to neighbors surrounding the area and that they did not object to the closing. This situation, however, is not exactly as straight forward as is presented. On August 14<sup>th</sup>, staff met with Lisa Ha, a citizen interested in utilizing the subject closing area for a driveway. Ms. Ha contracted, along with her husband Timothy Smith, to purchase the undeveloped R-2 zoned lots of 1021 and 1031 Virginia Avenue (tax map parcels 39-K-1 and 2, respectively) with the intent to vacate the dividing line to create one lot and to build one single family home for her family's residence. (These properties are shown on the aerial images within the packet.) The property addressed as 1021 Virginia Avenue is one of two properties adjacent to the undeveloped 6<sup>th</sup> Street ROW, but east of the subject closure area. Ms. Ha was interested in knowing whether the City would allow them to create a driveway from Lee Avenue through the undeveloped 6<sup>th</sup> Street ROW and the adjacent alley to their property that they were in contract to buy along Virginia Avenue. Although the existing 1031 Virginia Avenue property has a driveway, which over

the years has served as the driveway for the existing single family home at 1041 Virginia Avenue, Ms. Ha did not want to utilize this driveway to serve their planned house as the sight distance at this location along Virginia Avenue is poor. (As of Friday, October 3rd, Ms. Ha and her husband own 1021 Virginia Avenue but remain in contract to purchase 1031 Virginia Avenue.)

On August 20<sup>th</sup>, after staff discussed whether it would be possible for Ms. Ha to utilize the ROW, staff sent an email informing her of the additional information we would need to make a final determination; we also advised her to communicate her plans with the adjoining property owners. (This email is included in the packet.) On August 26<sup>th</sup>, Mr. Hottinger talked with staff about requesting to close the subject area ROW. Staff officially accepted the application on August 29<sup>th</sup>. Staff understands that by September 11<sup>th</sup>, Ms. Ha had met with an engineer to consult on the grade and sight distance issues and also met with representatives from the Department of Public Works to continue moving forward on trying to work out a driveway agreement. On September 26<sup>th</sup>, Ms. Ha noted that she would begin working on her paperwork to submit a Public Access Permit for her driveway plans within the undeveloped 6<sup>th</sup> Street ROW; she was already aware, however, the Department of Public Works would not approve nor deny her permit until City Council made a decision on the 6<sup>th</sup> Street closing request. As of mid-day Friday, October 3<sup>rd</sup>, her Public Access Permit has not been submitted to the Department of Public Works.

Staff recommended to both parties to try and come to an agreement on this matter and understands that they have communicated, but have unfortunately not made a satisfactory arrangement.

As described herein, the City does not need to maintain ownership of this area to provide any City services, nor does staff desire to have this section of undeveloped 6<sup>th</sup> Street built, and therefore, staff does not object to closing this section of 6<sup>th</sup> Street. If the closing is desired for approval, staff recommends the appropriate width easement be reserved for Columbia Gas to maintain its infrastructure.

Mr. Colman said what is the actual purpose of the closing of this portion of the right-of-way?

Mr. Fletcher said the intended purpose is that they would gain ownership in the property and it would become part of their property; but I will let the applicants better answer that question. In conversations, Mr. Hottinger talked about extending the fencing to create a larger yard, as well as allowing the next door neighbor to continue to use the area as a driveway as they have for years, along with some of the other neighbors.

Mr. Colman said the right-of-way is currently being used for access by neighbors.

Mr. Fletcher replied yes.

Dr. Dilts said are there particular ordinances or policies about the use of paper streets?

Mr. Fletcher said are you talking about use of paper streets?

Dr. Dilts said yes. What we see here is essentially a parking lot and driveway, a mobile home, a couple of buildings; all encroaching into the paper right-of-way and alley. There is an alley right next to my house; does this mean I can put an accessory building encroaching into the alley?

Mr. Fletcher said no. I may not be able to fully answer your question, but let me try to clarify a few things. First, structures are not permitted and the encroachments that have taken place may not have building permits for them. It is not uncommon to see encroachments like this occur in undeveloped alleys. It is not as common to see structures within undeveloped streets; but it does

occur. Second, you should also be asking for permission to utilize the paper street. It is more of a newer policy of obtaining a public access permit as discussed in the staff report. This exact scenario of having people use the undeveloped street as a driveway is not uncommon and whether or not they asked for permission to do so I could not tell you. We definitely encourage people to ask and the public access permit process is free. Aside from those things, I cannot think of any other regulations or policies.

Mrs. Turner said the public access permit process is not really a recent thing; we have probably had those for over thirty years. There are people across the City who have things, from driveways to what-not within undeveloped right-of-ways, and they have not applied for them. There are also places that have applied for permission and it has been granted. Many of the structures you see in this situation are probably not large enough to require a building permit and that is a problem because there is no mechanism to say where the structure is going. As a matter of fact, the size of an accessory structure you can build without a building permit just increased this year, so that problem may become worse rather than better.

Mr. Colman said to follow-up is there a public access permit allowing the current driveway, or driveways, right now?

Mr. Fletcher said I did not inquire if there was one or not; it has been there for quite some time.

Mrs. Turner said we do not have an automated system of checking public access permits; they may just be filed alphabetically in street order.

Mr. Colman said typically whenever something comes to us we identify whatever is in violation at the time, before we move forward with the request.

Mrs. Turner said if they did not have one right now I think Public Works would be hesitant to approve one if they did come in, just like they are hesitant to approve the Mrs. Ha's request.

Mr. Fletcher said to give you an example of a very similar scenario – over in the Purcell Park neighborhood, Valley Street has an undeveloped stub of right-of-way off of Weaver Avenue, to the north. There was a new single-family home built along Port Republic Road, constructed in the last three years or so, and that property owner requested to use the undeveloped portion of Valley Street to access their property with a driveway. In that scenario you had the same situation where both property owners on either side had built driveways in Valley Street, using it much the same way as these neighbors on Lee Avenue.

Mr. Colman said it appears that these neighbors are maintaining the undeveloped right-of-way, which is a benefit to the City.

Mr. Fletcher said in both scenarios it was a desirable solution, because we did not want another entrance onto Port Republic Road or in this case Virginia Avenue.

Mr. Colman said the main issue for the lots on Virginia Avenue is sight distance and having an entrance onto Virginia Avenue would not be safe. Is that the reason why the neighbor desires a driveway through the undeveloped right-of-way?

Mr. Fletcher said yes, for them it was about the safety. There are several different things going on in this area of Virginia Avenue – site grade, sight distance, and the choking of two lanes into one at this point.

Dr. Dilts said Ms. Ha came to the City to ask about doing this and then she spoke to the neighbors about doing this?

Mr. Fletcher said I cannot say exactly what happened during that time. Ms. Ha spoke to us on the 14<sup>th</sup> of August and I sent her an email on the 20<sup>th</sup> of August. Somewhere between the 20<sup>th</sup> and the 26<sup>th</sup> of August Mr. Hottinger began discussions regarding how to go about requesting closure of the right-of-way. By the 29<sup>th</sup> of August, we had officially accepted the application for closure of the right-of-way. What happened between the 20<sup>th</sup> and 26<sup>th</sup> of August, I cannot say for certain. Of course the applicants and Ms. Ha are both here tonight and can answer those questions for you.

Chair Fitzgerald asked if there were any further questions. Hearing none, she said this is not a public hearing; however, we generally allow the applicant and adjacent property owners to speak.

Brannon and Angie Hottinger, 930 Lee Avenue, said we are asking for the area to be closed. We are in a five year lease to own with our landlords, the Haywards, and they have always desired to purchase that portion of right-of-way. When the two lots to the rear of our property came up for sale, I actually inquired about the lots and asked a realtor about purchasing the right-of-way at that time. The realtor told me that the City was in the process of perhaps giving that property, which was not being used, to each of the adjoining property owners and that I should hold off on any request. It was not until I saw a lot of foot traffic going back and forth through the area did I inquire and find out what was going on with Ms. Ha. So we desired to buy the area, we did not know someone wanted to use it for a driveway for their property access. This is a peaceful area and we want to keep it peaceful. We have two children and we have to look out for their safety. After finding out that someone wanted to put a driveway through, we were told by the City to inquire with the potential buyers about what their plans were and so we did have a conversation with the Has. After speaking with them we decided we did not want to have a driveway going along the side; it is a peaceful area and we had safety concerns. Also, we have a daughter with cystic fibrosis, which is a disease that affects the lungs and if they are building for the next six months or so, with contractors using the driveway, creating dust and dirt, that our daughter will have to breathe. We also had concerns if the property sold and the use of the driveway would be part of that. There are many variables that could happen as far as we are concerned. If the driveway is allowed to go in, and being that the alley is not closed, does this open up for all the other homes in the area to use the driveway to access the alley? We worry this would cause more traffic. We feel that leaving the right-of-way as is, is the best way to go; and if we need to purchase it to do that, then we will purchase it.

Chair Fitzgerald asked if “leaving it as is” meant where it is being used as a through way for the neighbors.

Mr. Hottinger replied no. In the time that we have lived there, it typically has not been used as an access. It is grassed over, and I do maintain that area currently. I have placed gravel in the area as needed.

Mr. Baugh said there is some middle ground, at least with one of the possibilities you are talking about. One possible scenario would be to close the right-of-way, and you were to grant an easement to the adjacent property owners. That would take care of the issue of anybody else who wanted to use the drive, would have to come back to you as the property owner.

Mr. Hottinger said he understood. But if we were to purchase the 50' X 100' area of right-of-way, the granting of the easement would not be considered at all. I am not here asking for the right-of-way in order to allow traffic to travel on it; I am against that.

Chair Fitzgerald asked if the right-of-way were purchased are you considering putting up a fence.

Mr. Hottinger replied yes, probably with a double gate at each end so I could drive through and use the area as I am now. Of course leaving the bottom area close to Lee Avenue as it is now so that we can use it as a driveway, it has been that way for a long time. Currently we have a neighbor, three houses to the south, and he uses the area to pull up and do a U-turn with his truck and trailer. It is somewhat of a convenience for him at this time.

Dr. Dilts said you are saying that should you purchase the property, you would grant an easement for the neighbor to the south and the neighbor three houses down to the south.

Mr. Hottinger said no, I have spoken to our neighbor three houses down and he does not have a problem pulling into his own property and yard to turn around. The right-of-way was just a convenience for him.

Dr. Dilts said but the house just to the south, adjoining the right-of-way, you plan to grant an easement to.

Mr. Hottinger replied absolutely.

Dr. Dilts said what would happen when that house sells?

Mr. Hottinger said the easement would remain. There really is no parking for that property.

Mr. Colman said that neighbor is adjacent to the right-of-way and typically if we close it, that neighbor would be offered the right to purchase their half.

Mr. Fletcher replied yes. I believe Mr. Hottinger has spoken to them and they are not interested at this time in purchasing it.

Mr. Hottinger said the neighbor is actually here tonight.

Chair Fitzgerald asked if there were any further questions. Hearing none, she asked if there was anyone else wishing to speak with regard to the request.

Shirley Cobb, 928 Lee Avenue, said I have lived in the house since 1997, and the previous owner said the agreement was that the City would never put the street through and that the adjoining neighbors would take care of the area. That is what we have done all these years. I am reluctant to see it go through for anyone else to use because it is a narrow space. I could park on the street, but it is nicer to be able to park in this area. I was told that is how it would always remain and I feel it should stay as that. I do have concerns that the more people who use the right-of-way the more congested and dangerous it would become. I would buy the half of the land as well, but I do not have the money for that.

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

Lisa Ha said my husband, Tim and I are the owners of the lot on Virginia Avenue and will soon be the owners of the lot adjacent to the right-of-way. It is heartbreaking to be moving into a neighborhood where your neighbors do not want you. I just wanted to say that first because this is very hard for me. I am here tonight to ask you to vote against the application for the street closing,

but I do not believe this is a zero sum situation. I still think that there is a chance to create a win-win-win situation not just for the City but for our neighbors and for us.

Our plan is to build a two bedroom home that is going to enhance all of Harrisonburg. We believe in the view of peaceful neighborhood and the “big community.” We are a single income family and drive one car. It is a passive solar home design. Very few homes like the one we are building exist in America. Contractors are not building sustainable modern homes for people like us; but it is happening, and it is happening here in Harrisonburg, right on our lot. We are so excited about this; we feel it is going to showcase our town, while still respecting the existing neighborhood because we purposefully chose a lot that was set behind an existing neighborhood and not right in the middle of one. Filling in undeveloped lots within the core of the City by building green, building small, and building within walkable communities is what we believe is a good thing for the Community.

The issue of us using undeveloped 6<sup>th</sup> Street as our entrance is not a matter of aesthetics or design; but one of safety. We met with City Planning officials and with Public Works officials, and with a civil engineer from Blackwell Engineering and they all see the value of our plan to come off of 6<sup>th</sup> Street. For the same reasons that the City is not going to be interested in developing 6<sup>th</sup> Street as a connector to Virginia Avenue, we are not interested in using it for a driveway. A surveyor has updated the topographic map for our land and it sits on a high point for that ridge; if you walked the area you know that. There is a steep grade that we would have to cut through, about six to eight feet from Virginia Avenue in order to get to our house and still, the driveway would be at a very steep grade. The sight distance is really poor and the lanes along Virginia Avenue narrow from two lanes to one at that point. We have a three year old and safety is very important to us. We do not consider the current access that is there onto Virginia Avenue to be safe.

When we spoke to the Hottingers they told us that they understood and that if they were purchasing the land they would want to do the same thing. I know they are concerned about increased traffic to undeveloped 6<sup>th</sup> Street. We talked to Public Works about this concern and Public Works told us they could put in a “dead end” sign to discourage traffic. In addition, when you get to our property line, we could put up a “private drive” sign. The new owner of the duplex on Virginia Avenue, right below our property, I know is one of the Planning Commissioners, but they would be free to put up a fence along their property to discourage traffic. The Hottingers have indicated that if the right-of-way is closed they would continue to use the bottom portion as a driveway, so their safety concerns of people doing U-turns on the property still exists. I am very sympathetic to their concerns for safety and our goals are aligned here, we have a family, they have a family, and I understand the need to keep traffic off of this area.

We would actually support the Hottinger’s request to close this street if they were willing to grant us the easement to use it. As you have heard tonight, they are unwilling to do that. Therefore, because closing the street would leave us in a dangerous situation of having to access our house from Virginia Avenue, because safer alternatives do exist, and because our communications with the City on this matter began prior to the petition to close the street, I am requesting that Planning Commission vote against the closing of 6<sup>th</sup> Street.

Chair Fitzgerald asked if there were any questions.

Mr. Colman said have you discussed with the applicant the possibility of buying a twenty-foot easement; something that would help them pay for the purchase of the right-of-way.

Mrs. Ha replied no. Our request to meet with the Hottingers again to discuss other alternatives was declined. But I understand the purpose of this request is to keep us from building a gravel driveway and using the City owned land. We can certainly ask, but I do not know if that would be looked upon favorably.

Mr. Way said is there any possibility for construction traffic to enter the property from a different location?

Mrs. Ha said I do not know that answer. Again, I am very sympathetic to their situation because cystic fibrosis is a very scary disease. When this was disclosed to me I reached out to a woman who manages an international support group for parents of cystic fibrosis children and she gave me some good pointers about building and construction around a child with this condition.

Mr. Way said in terms of reducing noise and dust levels, have you put any thought in this not being a gravel driveway?

Mrs. Ha said that would be rather cost prohibitive and it is my understanding that you would have to dig down deeper for pavement. Gravel, similar to what exists now, just needs to have the topsoil excavated and then gravel is placed. What I can also say is that by building over the winter, it does keep construction dust way down, and children are generally indoors at that time.

Mr. Way asked how much tree removal is expected with this project.

Mrs. Ha replied it depends on what kind of trees are there. We are trying to preserve as much as possible, especially for a passive solar home.

Mr. Colman said have you considered the possibility of sharing the driveway with the duplex that exists on Virginia Avenue?

Mrs. Ha said no, we have not.

Mr. Colman asked would you consider it.

Mrs. Ha said sure, I would consider it. I would need to discuss this with our architect and civil engineer as well as Public Works again. I believe that our safety concerns would still exist, but I am not going to say no to that until I speak to the experts.

Mr. Way said have you thought about purchasing that portion of 6<sup>th</sup> Street that is adjacent to your property?

Mrs. Ha said yes, but as I mentioned, we are a single income family. I work for the State Government and we do not really have funds for that purchase. Of course, that would do nothing to solve our issue of how we safely access our lot.

Dr. Dilts said that portion of 6<sup>th</sup> Street has a steep hill to come up.

Mrs. Ha said I believe the concerns of a single family, owner occupied home, such as the situation we are, is very different from that of a developer who purchased a property and sold off both halves as a duplex. They were looking at profit, we are looking at safety.

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

Mr. Way said I have a question for staff. With all the Collicello North requests across Virginia Avenue, are there any City plans to change Virginia Avenue in this area.

Mr. Fletcher replied no. It would still be two lanes traveling south. Collicello Street would be realigned and would have a right-in/right-out scenario only. So the sight distance concerns were cut in half for that development. The reason that the developer relocated the Collicello Street right-of-way was because of sight distance. So to answer your question, no, the lanes will not change.

Dr. Dilts said I just have some random thoughts. The applicants are willing to grant an easement to someone they obviously know and had lived there for a long time and if that property were to sell the easement would remain. I realize it is a "he said she said" situation, but Mrs. Ha indicated that the Hottingers have declined to have further conversation which troubles me. The Has asked for permission from the City to put the driveway in rather than just doing it, whereas we do not know if the Hottingers asked permission to put a mobile home on the north-south paper alley. I have to admit that the Has asked the permission. I personally wished that there was a little more attention to helping another person in the community piece that I am not seeing here. These are just my rambling thoughts on the request at this point.

Mr. Colman said I tend to agree with you on the fact that right now this is public right-of-way and there is no need for it to be closed. Why, if it is going to be continued to be used, does it need to be closed if it will deny someone else safe access. Unless the neighbors can reach an agreement where they have an easement or purchase property, it seems to me that they are just doing this intentionally.

Mr. Heatwole said I tend to agree with you both. While we were walking the site I noted that it is very steep and it would be difficult to access Virginia Avenue. I thought about what if I lived there, it would be difficult and dangerous. This is not ideal.

Chair Fitzgerald said when you walk the property the problem with the sight distance becomes really easy to see.

Mr. Fletcher said I would like to clarify that the mobile home that is referred to in the alley is actually more like a storage trailer.

Chair Fitzgerald said is that located more or less in the right-of-way and perhaps partially on the property behind the alley.

Mr. Fletcher said perhaps, but it is definitely in the alley way. For what it is worth, when staff was in the area earlier this month we spoke to a neighbor further up the alley way and they said they rarely see anyone use the alley.

Mr. Colman said the alley appears to be well maintained.

Mr. Fletcher said it appears all of the neighbors are maintaining the undeveloped areas, which is not uncommon.

Mr. Colman said personally I would like to see further discussion between the adjoining property owners; maybe something could be worked out.

Dr. Dilts said it is public right now which means anyone in that area has access to it and the argument has to be made as to why it should not be public. While I understand the concerns of the

Hottingers, Mrs. Ha and her husband are making some of the same concerns. If safety is the issue, than that is safety for everyone around the area and that is the way I look at this.

There was some conversation between the applicant and Planning Commission regarding tabling the request for further discussion between property owners; ultimately it was determined a decision needed to be made.

Mr. Way moved to recommend denial of the request to close the undeveloped portion of 6<sup>th</sup> Street.

Dr. Dilts seconded the motion.

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

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

Chair Fitzgerald said this will move forward to City Council on November 11<sup>th</sup>.

Mr. Da'Mes returned to the meeting at this time (8:37 p.m.).

### **Unfinished Business**

None.

### **Public Input**

None.

### **Report of Secretary and Committees**

Mr. Baugh said because of a quirk in the calendar, City Council has not met regarding last month's Planning Commission items. Next week we will be taking up the Master Plan Amendment for EMU and the issue for the LFSVA alley closing request.

Mr. Baugh mentioned that the 205 room hotel and conference center discussion was on the City Council agenda for next week.

Mr. Way said the convention center is likely not to come before Planning Commission, but because public money is involved in this should it come under more scrutiny through us; perhaps a 2232 hearing.

Mr. Baugh said the project would be located on State property.

Mr. Way said I understand, but City money is being used for it; should it not come under some scrutiny?

Mr. Baugh said again, it is on State property and the City land use regulations will not apply.

Mr. Way said the public realm is affected by this.

### **Other Matters**

Mr. Fletcher said we have hired a Planning/Zoning Technician and we might have a proactive enforcement next month. There are three items for next month's agenda. One is an ordinance amendment to allow recreational and leisure time uses within the B-1, Central Business District, and these uses are currently allowed in B-2. In the past we have loosely interpreted that similar uses are permitted in B-1, this just clarifies it. There is also a special use permit request for apartment

buildings in R-3; the site is along Chestnut Ridge Road. The last request is a proffer amendment for the Freeman Station rezoning on Pear Street. It was rezoned in 2009 and it is currently under construction.

**Adjournment**

Planning Commission adjourned at 8:50 p.m.

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Chair Deb Fitzgerald

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Secretary, Alison Banks